

R. v. Avery, 2004 NWTSC 56

S-1-CR-2004000057

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- vs. -

THOMAS KENNETH AVERY



Transcript of the Oral Reasons for Sentence by The Honourable Justice J.Z. Vertes, at Yellowknife, in the Northwest Territories, on August 26th, A.D. 2004.

APPEARANCES:

Ms. L. Colton:	Counsel for the Crown
Mr. G. Boyd:	Counsel for the Accused

Charges under s. 348(1)(a) and 348(1)(b)
Criminal Code of Canada

1 THE COURT: I must admit, counsel, that I find
2 this case to be difficult, to say the least. On the
3 one hand, we have a relatively young man, still only 22
4 years old, who apparently has had a number of
5 difficulties in his life, having left school at age 16,
6 living on his own, apparently developing a drug and
7 alcohol habit that he cannot control up until now, that
8 seems to have controlled him and that has resulted in
9 his accumulating a lengthy record at a young age. I
10 have to bear in mind, considering those factors, the
11 prospects of rehabilitation and the self-professed
12 awareness that Mr. Avery spoke about just a few minutes
13 ago.

14 On the other hand, we have an individual who has
15 entered guilty pleas to nine offences, seven of break,
16 enter and theft, one of break and enter with intent,
17 one of mischief, all of these offences having been
18 committed within a period of 12 days shortly after he
19 had just been released from prison after serving a
20 sentence on other break and enter charges.

21 By my count, he has a record of 17 convictions
22 since 2001, and that is not counting the offences for
23 which he has been convicted today. He had six
24 convictions in Youth Court in 1998.

25 But what his record tells me is that it is quite
26 apparent that these are the types of crimes committed
27 by individuals who cannot control their drug and

1 alcohol dependency and are looking for quick cash and
2 quick scores so as to feed their habits. Mr. Avery is
3 well on his way to becoming, as I said during the
4 sentencing hearing, an habitual criminal, even if he
5 cannot be regarded as a "professional" one.

6 Crown counsel suggested a global sentence of three
7 years' imprisonment. At first blush, I must say that I
8 thought this was quite lenient. I could easily see
9 someone in Mr. Avery's position, someone who seems to
10 have led a pattern of crime and seems to have been a
11 scourge on the community for the past several years --
12 I can easily see someone in his position being
13 sentenced to a lengthier term in a federal
14 penitentiary. But I have to keep in mind the
15 circumstances.

16 I take at face value what Mr. Avery said about his
17 desire to finally come to grips with his problems, his
18 desire for rehabilitation, and any sentence I impose
19 must be one that does not crush those desires. But, at
20 the same time, I have to impose a sentence that I think
21 is a meaningful one, one that will at least deter
22 others from this type of behaviour, one that will
23 encourage Mr. Avery to reform his behaviour.

24 Stand up, Mr. Avery. I take into account the fact
25 that you were cooperative and readily confessed when
26 you were apprehended. I take into account the fact
27 that you have entered guilty pleas. And I take into

1 account what you told me just a few minutes ago. I
2 think it shows at least a certain degree of
3 self-awareness and a willingness to take
4 responsibility, and I hope what it also shows is a
5 willingness to take control of your life for the
6 future.

7 At first blush, as I said before, I was inclined
8 to think that even three years was too lenient, but I
9 took into account everything that your lawyer said on
10 your behalf. And while I think that three years may be
11 an appropriate global sentence, I will deduct from that
12 the credit for the time you have already spent in
13 custody. By my count, you have spent approximately
14 seven and a half months in custody. So I will credit
15 you with the equivalent of 15 months, and that will
16 reduce your sentence to one of 21 months'
17 imprisonment.

18 Now, I am sure you are aware that you will
19 probably be released prior to those 21 months being
20 over. But whenever you are released, it is going to be
21 up to you to really take control of your life, and in
22 order to, perhaps, assist in your rehabilitation I am
23 going to impose a further condition.

24 The sentence is 21 months' imprisonment. That
25 will be followed by a year of probation. The terms of
26 that probation order will be as follows: First, you
27 are to keep the peace and be of good behaviour.

1 Second, you are to report to this Court if and when
2 required to do so. Third, you are to report to and be
3 under the supervision of a probation officer. Fourth,
4 you are to participate in any counselling and
5 rehabilitation programs as may be directed by your
6 probation officer.

7 You are to abstain absolutely from the consumption
8 of alcohol and non-prescription drugs, and by that I
9 mean drugs prescribed by your doctor for you. You are
10 prohibited absolutely from being in any bar, tavern,
11 restaurant or other commercial establishment where
12 alcohol is sold. You are prohibited absolutely from
13 having any contact directly or indirectly with Loreen
14 Lambert or from being within one 100 yards of her
15 residence located at 5014 - 53rd Street in the City of
16 Yellowknife.

17 The only exception I will make to that non-contact
18 order is that if you do write a letter of apology to
19 her, and I encourage you to do so, not for her sake,
20 but for your sake, but if you do, then you can mail
21 that letter to her or through your lawyer have it
22 delivered to her or through your probation officer or
23 the authorities at the correctional centre have it sent
24 to her, and that will not be regarded as a violation of
25 this condition.

26 You are to also perform 100 hours of community
27 service work under the supervision of your probation

1 officer.

2 Do you understand those terms, Mr. Avery?

3 THE ACCUSED: Yes, I do.

4 THE COURT: I sincerely wish you luck in coming
5 to grips and taking control of your life. You are a
6 young man. It would be utterly foolish to waste it
7 behind bars, and that is all that is going to happen if
8 you don't change. Take it from me, this is your last
9 chance. You may have a seat.

10 In addition, there will be an order directing that
11 the offender provide a sample for analysis for DNA
12 purposes and lodging the results in the DNA data bank.
13 The appropriate order can be prepared, Ms. Colton.

14 MS. COLTON: Yes, sir.

15 THE COURT: Under the circumstances, there will
16 be no victim of crime fine surcharge. Is there
17 anything I have neglected, Ms. Colton?

18 MS. COLTON: No, sir. Thank you.

19 THE COURT: Mr. Boyd?

20 MR. BOYD: Nothing further, sir.

21 THE COURT: All right. Thank you, counsel.

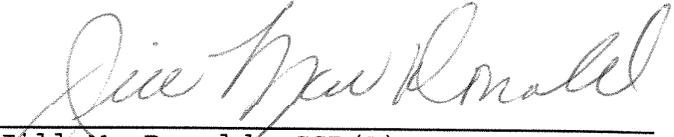
22 **(AT WHICH TIME THE ORAL REASONS FOR SENTENCE CONCLUDED)**

23 Certified to be a true and accurate
24 transcript pursuant to Rules 723
and 724 of the Supreme Court Rules.

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Jill MacDonald, CSR(A), RPR
Court Reporter