

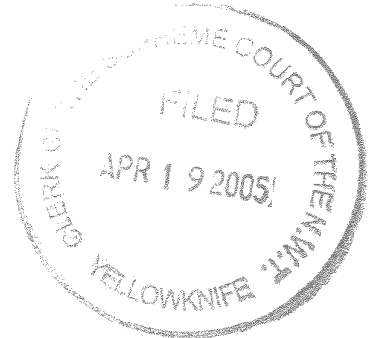
IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- and -

TRAVIS RAYMOND MINOZA



Transcript of the Oral Reasons for Sentence by the Honourable Justice V.A. Schuler, sitting at Yellowknife, in the Northwest Territories, on March 18th, A.D. 2005.

APPEARANCES:

Mr. J. Burke: Counsel for the Crown
Mr. G. Boyd: Counsel for the Accused
(Charges under s. 268, 266, 264.1(1), 267(a), 117.01(1)
Criminal Code)

1 THE COURT: Mr. Minoza has entered guilty
2 pleas to, and is now convicted of, six counts
3 involving five offences of violence against his
4 then live-in girlfriend and one unrelated count
5 involving a breach of firearm prohibition orders;
6 involving a breach on two occasions of firearm
7 prohibition orders.

8 The facts are that Mr. Minoza and the victim
9 were living together, she having come to his
10 community of Jean Marie River from another
11 community to babysit. She apparently knew no one
12 in Jean Marie River until she met Mr. Minoza.
13 About a month after they got together Mr. Minoza
14 threw a punch at another man that she was sitting
15 talking to at a party but hit her instead,
16 knocking her unconscious. She was scared and did
17 not seek immediate medical attention. This seems
18 to have been because Mr. Minoza discouraged her
19 from doing so, and though he did not threaten
20 her, she was afraid of what he might do if she
21 did not listen to him. Accordingly, it was not
22 until months later determined that she had, in
23 fact, suffered severe damage to her eye as a
24 result of the punch and now cannot see out of it.
25 That is the event reflected in count 1, the
26 aggravated assault.

27 About a month after that event, in November,

1 2003, during an argument Mr. Minoza pushed the
2 victim to the floor and kicked her in the legs.
3 That is the assault on count 2.

4 On January 1st, 2004 Mr. Minoza became angry
5 at the victim at a party accusing her of flirting
6 with someone else, told her to come home with him
7 and promised that he would not hurt her, and then
8 once at home pushed her inside the house and then
9 down on a couch and threatened her saying, "I
10 should just kill you right now and get it over
11 with." That is count 3 in the indictment,
12 uttering a death threat.

13 After that, in March of 2004, when he was
14 drinking and angry, Mr. Minoza hit the victim in
15 the side of the head with a flashlight which
16 caused her to fall to the floor. He then kicked
17 her in the mouth cutting her lip and kicked her
18 in the stomach. She ran away from him, but he
19 caught up to her and his father had to intervene
20 to stop him pursuing her further. Those events
21 are the assault with a weapon in count 4 of the
22 indictment.

23 I come then to count 5. On June 1st, 2004,
24 after accusing her of sleeping with his brother,
25 Mr. Minoza told the victim to leave, and when she
26 commenced to do so, he grabbed her, threw her on
27 the bed and sat on her chest yelling at her. She

1 was having trouble breathing and he got off of
2 her when he noticed that. That is the assault in
3 count 5 of the indictment. The next day the
4 victim left the community and went to the police.

5 In dealing first with those five offences,
6 the aggravating factors are that these are
7 spousal assaults by nature. Mr. Minoza and the
8 victim, who I understand from the Agreed
9 Statement of Facts was 30 years old at the time,
10 were living together. It is also aggravating
11 that this is a continued course of conduct over a
12 period of several months. According to the
13 Agreed Statement of Facts, the only one of the
14 assaults that resulted in lasting physical injury
15 was the first one, the aggravated assault, and
16 although apparently not meant for the victim, the
17 punch was obviously a very hard one, causing her
18 to lose her sight in one eye.

19 There were also emotional injuries to the
20 victim from these assaults. In her victim impact
21 statement filed in July of 2004 she refers to the
22 fact that even then she feels scared, confused,
23 uncomfortable, nervous and powerless, which, of
24 course, is not unusual for victims of this type
25 of continuing abuse. She also indicates that she
26 does not want anything further to do with Mr.
27 Minoza. Mr. Minoza may not yet be in the worst

1 offender or worst offences category, but,
2 obviously, if he repeats this pattern of assaults
3 against any future girlfriend or spouse, he
4 likely will be.

5 As far as mitigating factors go, Mr. Minoza
6 has entered guilty pleas to all the charges. He
7 waived his Preliminary Hearing, so there has been
8 no need for the victim to testify at all. He is
9 entitled to substantial credit for that, because
10 it has saved her the trauma of testifying, and it
11 also indicates to me that he is remorseful for
12 what he did.

13 I am told that Mr. Minoza is now 27 years
14 old, he has a grade eight education, and he has
15 had employment off and on in Jean Marie River as
16 a labourer. I take into account that he is an
17 Aboriginal person. No systemic or background
18 factors have been brought to my attention which
19 might account for Mr. Minoza having committed
20 these offences, and considering that these are
21 offences of violence, I don't see the fact that
22 he is Aboriginal as warranting any significantly
23 different treatment of him.

24 Mr. Minoza says through his counsel that
25 after being released from a term of imprisonment
26 in 2001 he wanted to stay out of trouble and
27 tried to, and it seems that he did for about two

1 years, but that he simply could not deal with the
2 relationship with the victim.

3 In looking at Mr. Minoza's criminal record,
4 it is clear that Mr. Minoza has had problems
5 dealing with other things or other people, not
6 just this particular relationship. He has a
7 criminal record that goes back to 1990 when he
8 was a youth. Among a number of other convictions
9 are convictions for assault in 1993 and
10 aggravated assault in 1994. As an adult he has
11 an assault conviction in 1996, aggravated assault
12 in 1997 and assault with a weapon in 2000. The
13 latter two offences must have been fairly serious
14 because he was sentenced to imprisonment for 21
15 months on the 1997 aggravated assault and 20
16 months on the 2000 assault with a weapon.

17 I am told by counsel that none of the
18 assaults on the record were spousal assaults.
19 That indicates to me that Mr. Minoza has a
20 tendency to turn to violence in his dealings with
21 people quite apart from the victim in this case
22 or anyone that he is in a spousal relationship
23 with. So in sentencing him I have to consider
24 not only what will serve as denunciation of the
25 offences before me and deterrence of others, but
26 also deterrence of Mr. Minoza personally, because
27 it is clear that there is a need to protect other

1 people from him.

2 In relation to count 6 in the indictment,
3 Mr. Minoza has previously twice been ordered not
4 to possess firearms and he breached those orders
5 in 2003 and 2004 by having in his possession a
6 rifle which he used to shoot ducks. There is no
7 indication that any use was made of the rifle to
8 harm, threaten or scare anyone, and, indeed,
9 there is no indication whether anyone else was
10 present when Mr. Minoza was using the rifle. I
11 note, however, that he does have a record for
12 breaches of court orders; for example, for
13 failing to appear, failing to comply with a
14 recognizance, although he has no such convictions
15 since 1999.

16 The Crown seeks a short jail term on the
17 breach charge and a global sentence on all counts
18 of four to five years' imprisonment less whatever
19 credit is given to remand time. Defence counsel
20 says that I should credit the remand time, which
21 is approximately nine and a half months, as 19
22 months and impose a 24-month sentence, which
23 would be equal to a sentence of about three and a
24 half years.

25 The issue, then, really is how to deal with
26 the remand time. Mr. Minoza has been in custody,
27 never having had or apparently requested a bail

1 hearing since June 1st or 2nd of 2004 when he was
2 arrested. He waived his Preliminary Hearing in
3 November. The Crown says that the delay from
4 then to now was at Mr. Minoza's request. I don't
5 think that delay is so significant as to have any
6 effect on the credit to be given to the remand
7 time. In other words, I don't see this as a case
8 where the delay was sought by the accused so as
9 to manipulate a two-for-one credit, if that is
10 what Crown counsel was suggesting.

11 The real issue seems to me to be whether
12 remand time is or is not more difficult than
13 straight time at the North Slave Correctional
14 Centre, since the aspects of remand time that are
15 more difficult than straight time is the reason
16 usually given for according remand time more
17 credit than its actual value.

18 Certainly, in terms of remission and such
19 things as temporary absence passes, there is a
20 difference there, and those are not available
21 when a prisoner is on remand.

22 In terms of differences in programs and
23 whether there are any real differences in the
24 programs that would be available, I don't feel I
25 have enough information before me to come to any
26 firm conclusion on that. Certainly, it is not
27 unusual to credit remand time on a two-for-one

1 basis, and absent some more specific information
2 that might make that unreasonable or
3 unjustifiable, I am going to credit the remand
4 time in this case as 18 months.

5 If I were to sentence Mr. Minoza for each of
6 the offences individually in this case and
7 without having regard to the remand time, I don't
8 think it would be unreasonable to impose a
9 sentence of four to five years, considering his
10 record and the sentences he has received in the
11 past, particularly in 1997 and 2000. But taking
12 into account the guilty plea and totality, a
13 sentence in the range of five years would be
14 excessive.

15 Stand, please, Mr. Minoza. The global
16 sentence that I am going to impose on you is one
17 of four years, in other words, 48 months, but I
18 am going to credit to that the 18 months for
19 remand time, resulting in a sentence of 30 months
20 in jail. Now, I have not broken that down count
21 by count. I will simply allocate it as 29 months
22 on counts 1 to 5 globally and one month
23 consecutive on count 6. You may have a seat, Mr.
24 Minoza.

25 There will be a DNA order in the usual
26 terms. Do you have one, Mr. Burke?

27 MR. BURKE: I am missing the last page,

1 Your Honour. I am going to have to prepare that,
2 but I will also have to prepare another order, I
3 believe, in any event. So I will have to provide
4 that to My Friend for signature and then to the
5 Court in the future.

6 THE COURT: All right. Well, I am going
7 to direct that it be submitted to me within two
8 weeks of today.

9 MR. BURKE: That's fine, Your Honour. I
10 can finish it today.

11 THE COURT: I have found in some cases the
12 orders don't come in for so long, and I don't
13 know why that is, but it is just easier to keep
14 track of them and make sure they get processed if
15 there is some kind of time line.

16 So there will be a DNA order. I will direct
17 that you submit the actual order for signing
18 within two weeks. There will also be a firearm
19 prohibition order.

20 Now, there was this issue of notice, and, as
21 I read the annotations in the *Criminal Code*, to
22 impose the lifetime firearm prohibition order the
23 accused has to be given notice. You have
24 indicated that there was some notice given. It
25 hasn't been put into evidence. I have always
26 taken the view that if the Crown wants to rely on
27 that notice, it should be submitted in court so

1 that it is clear the notice was given.

2 In the circumstances and considering that
3 Mr. Minoza is from the small community of Jean
4 Marie River and that he is Aboriginal, I am going
5 to make the firearm prohibition order 10 years;
6 in other words, commencing today, expiring 10
7 years from his release from imprisonment. I will
8 order under section 113 of the *Criminal Code* that
9 the Chief Firearms Officer and other authorities
10 be authorized to issue the appropriate permits,
11 et cetera to him so that he can have a firearm
12 for hunting.

13 Can I assume that an order that any firearms
14 be surrendered immediately would be appropriate
15 or does your client need more time?

16 MR. BOYD: I will just confirm, Your
17 Honour. Immediately, Your Honour.

18 THE COURT: All right. There will be an
19 order, then, that any firearms, explosives or
20 ammunition be surrendered immediately to the
21 RCMP.

22 Now, Mr. Minoza, just on that point, you
23 should be aware that if you continue to breach
24 firearm prohibition orders, you may lose the
25 right to have a firearm for your entire life, and
26 I am sure you don't want that. I think that
27 would be very difficult for someone living in a

1 small community, as you do. So it is not the
2 most serious breach of a firearm order that I
3 have seen, but you have to be aware that unless
4 you have got authorization to have a firearm you
5 cannot just go breaching the firearm order by
6 taking up a gun when you feel like going hunting.
7 So please keep that in mind, because otherwise
8 you could, as I say, lose the right for your
9 entire life.

10 Is there anything further on this case,
11 counsel?

12 MR. BURKE: With respect to the DNA order,
13 I was going to inquire whether that relates
14 specifically to one charge, I'm referring to the
15 aggravated assault, Your Honour, or is it made on
16 all counts?

17 THE COURT: Well, it would be required on
18 the aggravated assault.

19 MR. BURKE: Yes, that is the primary
20 designated offence.

21 THE COURT: Is that the only one that is a
22 primary?

23 MR. BURKE: I believe so, yes. The
24 assault with a weapon -- I know the simple
25 assault is secondary, and I would just like to
26 check the assault with a weapon. Sorry. As we
27 proceeded by indictment, it's primary, as well.

1 THE COURT: All right. Well, then, it
2 will be one order, obviously, but it will issue
3 on both of those primary designated offences.

4 MR. BURKE: And finally the victim of
5 crime surcharge, as well?

6 THE COURT: That will be waived in the
7 circumstances, as well.

8 MR. BURKE: Thank you, Your Honour.

9 THE COURT: Anything from you, Mr. Boyd?

10 MR. BOYD: Nothing further, Your Honour.

11 THE COURT: All right. Thank you,
12 counsel.

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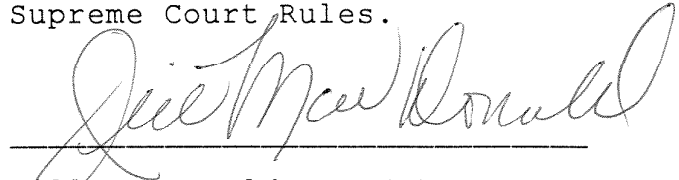
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Supreme Court Rules.

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Jill MacDonald, CSR(A), RPR
Court Reporter

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