

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

WADE DEAN GRAY

Transcript of the Oral Reasons for Sentence by The Honourable Justice J. Z. Vertes, sitting in Hay River, in the Northwest Territories, on the 13th day of September, A.D., 2004.

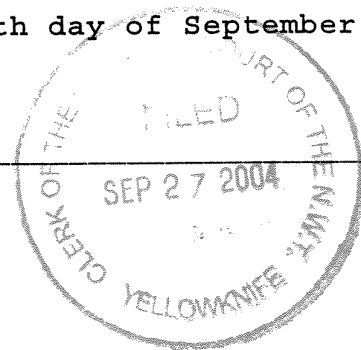
APPEARANCES:

Ms. S. Tkatch:

Counsel for the Crown

Mr. S. Shabala:

Counsel for the Defence



1 THE COURT: Wade Dean Gray has entered pleas
2 of guilty to two counts in a three-count Indictment.
3 Count 1 charges the offence of break enter and
4 theft, committed on October 31st, 2003, in Hay
5 River. Count 2 is an offence of attempted robbery,
6 also committed here in Hay River, on October 31st,
7 2003.

8 It is my responsibility now to sentence
9 Mr. Gray for these offences. I have had the benefit
10 of thorough submissions from both counsel, and I
11 have profited greatly from the extensive and
12 comprehensive presentence report prepared in this
13 case, and I thank the probation officer for that.
14 There is, appended to that report, a psychological
15 assessment, which has also been of great assistance.

16 I also note that I have been provided with
17 letters of support from the accused's family and
18 various other materials that have enabled me to put
19 these offences and the accused himself into
20 perspective.

21 It is often said that sentencing is a human
22 process. By that I mean that it is a very
23 case-specific process. There is no one sentence
24 that fits every offender or every crime. And the
25 case-specific nature of the sentencing process is
26 reflected in what we call the proportionality
27 principle. That proportionality principle is

1 described by the *Criminal Code of Canada* as the
2 fundamental principle of sentencing, and that is
3 simply that a sentence must be proportionate to the
4 gravity of the defence and the degree of
5 responsibility of the offender. By that I mean that
6 the sentence must fit the specific crime and the
7 specific offender.

8 This principle of proportionality is rooted in
9 our sense of fairness and justice. The sentence
10 imposed must reflect, as I said, the seriousness of
11 the offence, the degree of culpability of the
12 offender, and the harm occasioned by the offence.
13 And in this process, of course, I have to keep in
14 mind the various aggravating and mitigating
15 circumstances present in this case.

16 In addition, any sentence must also promote one
17 or more of the objectives identified in the *Criminal*
18 *Code*. These are to denounce unlawful conduct, to
19 deter the offender and other persons from committing
20 offences, to separate offenders from society where
21 necessary, to assist in rehabilitating offenders, to
22 provide reparations for harm done to the community,
23 and to promote a sense of responsibility in the
24 offenders and an acknowledgment of harm done to
25 victims and to the community.

26 If the offence is particularly serious, in that
27 it causes or threatens significant harm to an

1 individual or to the community, then obviously the
2 objectives of denunciation and deterrence would
3 usually predominate.

4 Here the two crimes to which the offender has
5 pleaded guilty are very serious ones. The
6 offender's personal history is troubling. And the
7 need for deterrence, both specific and general, is
8 paramount.

9 As I said before, both offences occurred on
10 October 31st, here in Hay River. The first offence
11 involved a break-in at the Migrator Motel, where the
12 accused stole a cash register and got \$80 cash. The
13 second offence occurred when the accused took a
14 fishing knife and went to the Red Rooster
15 convenience store. He masked his face with a toque
16 and, brandishing the fishing knife, he went into the
17 store and grabbed the cash register. He tried to
18 make off with it and was stopped when the clerk came
19 out with a pizza knife and took a couple of swings
20 at him, from which the accused apparently suffered a
21 laceration to his left arm.

22 The police tracked him down. The second
23 incident was recorded on a video surveillance tape.
24 He was arrested a few hours later.

25 It is an agreed fact that the accused was
26 smoking crack cocaine at the time he committed these
27 offences, and it is agreed that the motivation for

1 these offences was to get money so as to buy more
2 crack cocaine.

3 What is quite apparent throughout this case is
4 that the accused's drug dependency has taken hold of
5 his life and has had a strong hold on his life for
6 many years.

7 This is not the first time that I have heard
8 about the problems caused by crack cocaine addiction
9 in Hay River. Indeed, it is becoming quite apparent
10 to anyone who has any knowledge of the criminal
11 justice system in the North that crack cocaine has
12 become a scourge in many of our communities, leading
13 otherwise decent people into lives of depredation
14 and crime and causing untold misery to their
15 families and to the victims of their crimes.

16 It is certainly regrettable that political and
17 social service agencies in this territory have not
18 come to address this problem in a more forthright
19 manner and come to address the need for well-funded,
20 well-resourced treatment facilities. It is a
21 scourge that is affecting wide segments of the
22 population, of all classes and backgrounds, of all
23 ages, and I think the case before me typifies that
24 problem.

25 As I said, the accused's personal history is
26 troubling, to say the least. He has a criminal
27 record of 19 convictions between 1986 and March of

1 2004. Many of the convictions are for related
2 crimes. He has a conviction for robbery in 2000 for
3 which he was sentenced to two and a half years in
4 prison. He has at least three prior convictions for
5 break enter and theft. He has four prior
6 convictions for narcotics-related offences. In
7 March of 2003, he was convicted of a break enter and
8 theft with intent, plus two counts of theft. He was
9 given a total sentence of six months and placed on
10 probation for a year.

11 So these offences for which I am sentencing him
12 today were committed while he was on probation. It
13 certainly seems apparent that no amount of structure
14 or supervision was able to prevent him from
15 committing further offences. That is a highly
16 aggravating situation.

17 The record is highly aggravating because, of
18 course, it talks about the personal circumstances of
19 the accused. As I said, it is quite apparent that
20 the accused suffers from a long-standing and
21 entrenched drug dependency, in particular on crack
22 cocaine.

23 This, from everything I read in the presentence
24 report, has led to such character traits as
25 impulsivity, antisocial and criminal behavior. He
26 is egocentric and described as having little empathy
27 for others. He is described as being manipulative.

1 And even though he has been through numerous
2 treatment and counselling programs, he is still
3 considered to be a high risk to reoffend, since it
4 is quite apparent that he has yet to come to grips,
5 either individually or through the help of some
6 long-term strenuous rehabilitation program, with his
7 crack cocaine dependency.

8 And those of us in the criminal justice system
9 who have seen the effects of crack cocaine can
10 understand how debilitating that dependency can be.
11 Crack cocaine is highly addictive. It affects the
12 neurological system to such an extent that people do
13 not act like themselves. They become
14 uncontrollable, they become impulsive, they are a
15 threat to be violent, and they will do anything to
16 feed their habit; hence, as I said before, the need
17 for deterrence, both specific to this individual and
18 to others, and the need, unfortunately, to remove
19 this individual from the community for a significant
20 period of time.

21 I take into account the fact that the accused
22 has pleaded guilty. Such an acknowledgment of
23 responsibility is always, in my opinion, a
24 mitigating factor, even though it may come at a late
25 date in the process. I take into account that he
26 has served four and a half months of remand time.
27 He has been in custody for a total of ten and a half

1 months, but six months of that was serving a
2 sentence for another break and enter. So I give him
3 credit for that.

4 But I think there is no alternative but to
5 impose a lengthy sentence of imprisonment. Both
6 counsel have recognized that in their submissions to
7 me, and in many ways it is probably the only way to
8 protect the community of Hay River from Mr. Gray and
9 to protect himself from his own habits. And it is
10 my sincere hope that this time, during his period of
11 incarceration, he receive the intensive and specific
12 treatment programs that he requires so as to come to
13 grips with his crack cocaine dependency and the
14 other psychological factors that may be at work that
15 have led to a situation where he is apparently
16 incapable of controlling his behavior.

17 So I will direct, Madam Clerk, that copies of
18 the presentence report, including the psychological
19 assessment report, and a transcript of this hearing,
20 including Ms. Caudron's testimony, together with my
21 reasons for sentence, be transmitted to the federal
22 correction authorities so that they can conduct a
23 thorough evaluation so as to determine the type of
24 long-term programs, both treatment programs and
25 counselling programs, that would address the root
26 causes of Mr. Gray's behavioral and drug issues.

27 But ultimately, Mr. Gray, as I am sure you

1 realize, it is up to you. It is you who puts that
2 drug into your body. So it will ultimately have to
3 be up to you to get control of your life. Will you
4 please stand.

5 At 37 years of age, Mr. Gray, you do not need
6 any lectures from me. I think you can look around
7 and see the hurt you have caused, in particular to
8 your family, and I think if you do not take the
9 opportunity now to try and come to grips with it, it
10 may be too late to try any other time.

11 On the offence of break and enter and theft
12 from the Migrator, Count 1 of the Indictment, I
13 sentence you to a term of imprisonment of two years.
14 On Count 2, the attempted robbery at the Red Rooster
15 store which, because of the fact that you were
16 armed, and considering all of the circumstances
17 surrounding that, I consider to be the more serious
18 of these two offences, I sentence you to serve a
19 term of imprisonment of three years consecutive.
20 The total term of imprisonment is five years.

21 And I can say this, Mr. Gray, I can say this to
22 you, and through you to others, in this community
23 and to every community in the North, crack cocaine
24 may be the reason for some of this behavior, but it
25 is not an excuse, and I suspect it is not the root
26 of the problem. It may be just a symptom of the
27 problem. If people cannot come to grips with it and

1 cannot control themselves, and if they continue a
2 pattern of criminal behavior, the sentences are
3 going to become stiffer and stiffer, it is as simple
4 as that. You may have a seat.

5 As I said before, the clerk will take steps to
6 have the material from the sentencing hearing put
7 together and forward it to the federal correctional
8 authorities. I heard the pleas from Mr. Gray's
9 family members to try and get some long-term
10 treatment in place, and yes, I think that the only
11 long-term solution for Mr. Gray and for the
12 community is if there is some long-term treatment
13 and a permanent solution, and I certainly hope that
14 that will be undertaken.

15 In addition, there will be an order requiring
16 the accused to provide a sample for DNA analysis.
17 Also, there will be an order prohibiting the accused
18 from having in his possession any firearms,
19 ammunition, or explosives for a period of no less
20 than ten years from the date of his release.

21 Is there anything that I have neglected,
22 counsel?

23 MS. TKATCH: No, Your Honour.


24 MR. SHABALA: Nothing further, Your Honour.

25 Thank you.

26 THE COURT: Thank you once again for your
27 submissions. We are adjourned until 1:30.

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



Joel Bowker, CSR(A)
Court Reporter