

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- and -

LEON JONAS TSETTA

Transcript of the Oral Reasons for Sentence delivered
by the Honourable Justice V.A. Schuler, sitting at
Yellowknife, in the Northwest Territories, on March
15th, A.D. 2006.

APPEARANCES:

Mr. B. Hubley: Counsel for the Crown

Ms. P. Taylor: Counsel for the Accused

(Charges under s. 267(b), 733.1(1), 145(3) Criminal Code)

1 THE COURT: In the matter of Leon Jonas
2 Tsetta, last week Mr. Tsetta entered guilty pleas
3 to three charges that he did on or about August
4 8th, 2005, here in Yellowknife, commit an assault
5 causing bodily harm on Grace Landry; that he did
6 fail without reasonable excuse to comply with a
7 probation order by failing to keep the peace and
8 be of good behaviour; and that he did fail
9 without lawful excuse to comply with a condition
10 of an undertaking, that condition being to keep
11 the peace and be of good behaviour. The charges
12 all arise out of the same set of circumstances.

13 The facts that have been related to me are
14 that on August 8, 2005 Mr. Tsetta and the victim,
15 his common-law spouse, were at their residence
16 here in Yellowknife. They argued and it became
17 physical. I am not sure whether that means they
18 engaged in a physical fight together or that he
19 assaulted the victim. But, in any event, at some
20 point he did assault her by choking her to the
21 point that she lost consciousness. He sat on her
22 and punched her on the left side of her face
23 fracturing her jaw. So those are the facts that
24 give rise to the assault causing bodily harm for
25 which he has now been convicted.

26 Mr. Tsetta had been placed on probation in
27 September, 2004, so his actions amounted to a

1 breach of that probation by failing to keep the
2 peace and be of good behaviour. In January, 2005
3 he had been placed on an undertaking with respect
4 to another set of charges, so his actions on
5 August 8 amount also to a breach of that
6 undertaking by failing to keep the peace and be
7 of good behaviour.

8 The assault itself in this case is a very
9 serious one. Choking to the point of
10 unconsciousness and fracturing the victim's jaw
11 indicate that it was a lot of force that was used
12 against her. There is no evidence that Mr.
13 Tsetta was intoxicated - not that that would be
14 an excuse - but the evidence that is before me
15 indicates that these were deliberate actions on
16 his part, apparently arising from anger, and that
17 he simply did not assert any control over either
18 his actions or his emotions. It is also,
19 obviously, a situation of breach of trust because
20 of the spousal relationship.

21 The breaches are also serious because he was
22 on probation for another assault, a common
23 assault, on the same victim, and he was on an
24 undertaking for allegations of other offences of
25 violence, assault with a weapon and threats to
26 cause bodily harm, on the same victim and her
27 daughter. So he would have been on that

1 undertaking pending trial on those charges, but
2 neither that nor the fact that he was on
3 probation for assaulting the victim on a previous
4 occasion deterred him.

5 It seems to me, then, that I have to regard
6 this as an example of a complete disregard of the
7 past sentence and the promises that he gave to
8 the court in his undertaking. And I have to say
9 that I do find that of great concern, because
10 this is not, as we often see, a case where in a
11 haze of alcohol someone does something that they
12 might not have done when they were sober. I
13 don't have evidence that he was in a haze of
14 alcohol. So, again, it seems to me that there is
15 just a deliberate disregard for his situation.

16 Mr. Tsetta acknowledges in the letter that
17 he wrote that, "In the moment of my anger I had
18 no sense of dealing with my emotions properly."
19 So he seems to acknowledge that he simply wasn't
20 dealing with his emotions, wasn't controlling his
21 emotions.

22 Mr. Tsetta is 36 years old. From the
23 information that has been provided in his letter
24 and the letter of Ms. Crapeau I accept that he
25 comes from a difficult family background. It is
26 also clear that people do speak highly of him
27 regarding his work and his volunteer activities.

1 For example, that is reflected in the
2 evidence that I heard from Mr. Cheezie, and it
3 also appears from Mr. Cheezie's evidence that Mr.
4 Tsetta is a responsible tenant. The letter from
5 the Tyhee NWT Corporation from July of 2005 calls
6 him, "the most productive core sawyer we have on
7 site." Rachel Crapeau's letter refers to him as
8 hard working and highly committed to his duties
9 in the community, and she also talks about how he
10 is loyal, considerate and supportive to his
11 brothers and sisters.

12 I note, as well, that despite having only a
13 grade four education obtained at the age of 19,
14 Mr. Tsetta has been able to obtain employment;
15 for example, the employment with Diavik that was
16 referred to.

17 So it is hard to reconcile all of this with
18 the other Leon Tsetta who assaults his spouse and
19 certainly on this particular occasion that I am
20 dealing with today brutally assaulted her.

21 Mr. Tsetta does have a criminal record.
22 Since 1991 he has accumulated several convictions
23 for offences of violence and offences of not
24 obeying court orders. There is a gap in the
25 record in the mid-1990s after he would have
26 served the sentence for armed robbery, but I
27 think that is overshadowed by the continued

1 pattern of assaults on his spouse in 2004 and
2 2005.

3 There is no evidence before me in this case
4 about the impact of the assault on the victim or
5 how much or for how long she required medical
6 treatment, but clearly a fractured jaw is a
7 serious injury. I do not, having considered it,
8 see any relevance to the fact that she delayed in
9 reporting the assault. It is certainly not
10 unusual in situations of spousal abuse,
11 especially when it is not the first time that it
12 has happened, for the victim to not go to the
13 police right away, whether because of fear or
14 intimidation or some other emotion or factor that
15 is operating on her.

16 The Crown is asking that Mr. Tsetta be
17 sentenced to penitentiary time. The defence is
18 asking that he be sentenced to something less
19 than that. I take into account that the maximum
20 sentence for assault causing bodily harm is ten
21 years. Certainly the cases that have been
22 referred to indicate that significant sentences
23 are imposed for spousal abuse, especially where
24 there is a repeated pattern of it.

25 There are some mitigating factors in this
26 case. Actually, there is a mitigating factor in
27 this case, and it is a significant one, and that

1 is the guilty pleas. Although they came on the
2 eve of trial, they were indicated earlier for the
3 assault causing bodily harm offence. There were
4 other charges involved. But, in any event, the
5 guilty pleas certainly are an indication of
6 remorse and they, very importantly, save the
7 victim the inevitable trauma of testifying,
8 especially before a jury.

9 The aggravating factors in this case are, as
10 I have mentioned, that there is a breach of trust
11 involved. Mr. Tsetta's spouse, be it this spouse
12 or any other spouse he may have, is entitled to
13 look to him for protection and for love or
14 kindness and to expect that she will not be
15 brutally treated, as the spouse was on this
16 occasion. The level of violence is also an
17 aggravating factor, as is the fact that there has
18 been repeated such behaviour toward this victim.

19 There is no pre-trial custody to take into
20 account in this case, because, as advised by
21 counsel, it was credited on the other charges for
22 which Mr. Tsetta was convicted in November, 2005
23 and then sentenced in December, 2005.

24 The issue of considering the effect of a
25 global sentence had Mr. Tsetta been sentenced
26 with the other charges in December is, perhaps, a
27 difficult one. I certainly cannot put myself in

1 that sentencing Judge's shoes and try to
2 determine what global sentence might have been
3 imposed in December had the offences for which I
4 am now sentencing Mr. Tsetta been before the
5 court at that time. But what I will do and what
6 I think is proper to do is to consider that the
7 sentence that I impose today will be added onto
8 the sentence he is already serving. So I should
9 consider the totality, in other words, the end
10 result of that sentence and ensure that it is a
11 proper one.

12 The principles of sentencing in this case
13 that are most important are, obviously,
14 denunciation and deterrence, denouncing Mr.
15 Tsetta's conduct, showing how society condemns
16 this conduct and also deterring others from
17 committing this type of offence. By that I refer
18 in particular to the assault causing bodily harm,
19 the type of offence in a spousal context that is
20 far too prevalent, but, also, Mr. Tsetta himself
21 obviously needs to be deterred, because for the
22 last two years this has been a problem and he
23 clearly has not been deterred by processes that
24 have been put into effect to deal with his
25 assaults.

26 As I alluded to earlier, it is always
27 difficult to sentence someone who is well thought

1 of by members of his community for some of his
2 activities, but then commits serious and
3 especially continuing offences and, in this case
4 particularly, against a family member.

5 I have considered carefully what Mr. Tsetta
6 has said in the letter that he wrote, and he
7 certainly expresses good intentions about taking
8 courses and working on his anger, his emotional
9 difficulties. Like many people who come before
10 this court, I think it is probably not so hard
11 for Mr. Tsetta to now acknowledge his problems,
12 to say that he is taking responsibility when he
13 is involved in programs and he has people who are
14 working with him.

15 But the point is, Mr. Tsetta, that you have
16 to act on those things when you are back out in
17 the community, and it is only you who decides
18 whether you just forget all these things and go
19 ahead and beat up your wife or you remember those
20 things and you keep in mind that this is
21 something that no society accepts. It is
22 completely contrary to the traditions of any
23 society.

24 It seems to me at the age of 36, if you
25 continue this way, you are just going to end up
26 spending more and more and more time in jail, and
27 I am sure you don't want that. I am sure you

1 don't want to spend your middle age sitting in a
2 jail cell when you could be out hunting or
3 working or doing other things. So that is
4 something that you have to keep in mind and it is
5 something that only you can control.

6 I have considered all the factors that I
7 have referred to, and I will just reiterate that
8 I have that given considerable credit to the
9 guilty plea. I have considered the fact that Mr.
10 Tsetta is now serving a sentence of nine months'
11 imprisonment, which was the balance left after
12 his remand time was credited.

13 Stand up, please, Mr. Tsetta. On count 3 of
14 the indictment, which is the assault causing
15 bodily harm, I sentence you to 16 months
16 consecutive to the sentence that you are now
17 serving. On count 4, which is the breach of
18 probation, I sentence you to two months
19 consecutive, and on count 5, the breach of
20 undertaking, two months consecutive. So that is
21 a total sentence of 20 months, all of which will
22 be consecutive to the time that you are currently
23 serving. You can have a seat.

24 There are no other orders, then, to be
25 imposed in light of the fact that there is
26 already a firearm prohibition order and a DNA
27 order and the Crown is not asking for anything

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further in that regard. The victim crime surcharge will be waived in the circumstances.

Is there anything else, counsel, that I should deal with?

MR. HUBLEY: Nothing from the Crown.

MS. TAYLOR: Nothing, Your Honour.

THE COURT: All right. That's fine.

Thank you, then, for your resolution of this case, and we will close court.

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

Jill MacDonald, CSR(A), RPR
Court Reporter