

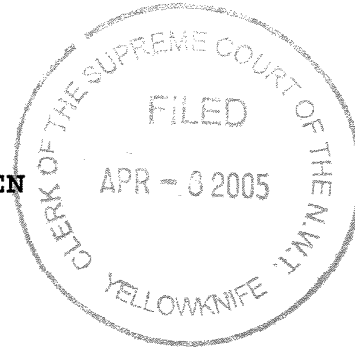
R. v. Sanguiez, 2005 NWTSC 39

S-1-CR2004000007

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN



- vs. -

GAIL SANGUEZ

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Transcript of the Reasons for Sentence by The Honourable Justice J.Z. Vertes, at Hay River in the Northwest Territories, on March 29th A.D., 2005.

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APPEARANCES:

Mr. J. Burke:	Counsel for the Crown
Mr. M. Hansen:	Counsel for the Accused

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Charge under s. 334(a) *Criminal Code of Canada*

1 THE COURT: Gail Sanguéz has entered a  
2 plea of guilty to a charge of theft, contrary to  
3 Section 334(a) of the Criminal Code.  
4 Specifically, she has admitted that, over a  
5 period of four months, she stole a total of  
6 \$16,839.75 from her employer. Her employer was,  
7 in effect, her community. She was the manager of  
8 the general store located in Jean Marie River, a  
9 store owned by the Jean Marie River First Nation.  
10 Jean Marie River is a tiny community of less than  
11 100 people located some 100 kilometers from Fort  
12 Simpson.

13 The theft was accomplished by a series of  
14 withdrawals, some 58 separate transactions in  
15 total, from the store's account. The result of  
16 this financial loss was the closure of the store,  
17 the only grocery store in Jean Marie River. The  
18 effect on the community was succinctly put in a  
19 statement written by the Band Manager of the Jean  
20 Marie River First Nation. He wrote;

21 "What did we lose and what did it  
22 cost?

23 - We lost \$16,000.

24 - We lost our little general store.

25 - We lost local shopping.

26 - We lost profits that would have  
27 gone to our band.

1                   - We lost employment for two  
2                   individuals.

3                   - It costs our people time and  
4                   expense to go shopping in Fort  
5                   Simpson.

6                   - It also set a bad example for the  
7                   youth of the community".

8                   The community, as represented by the Band  
9                   Council, feels a degree of sympathy for the  
10                  accused and her family. But at the same time it  
11                  felt, quite understandably in my view, that this  
12                  conduct must be made an example of so that it  
13                  does not happen again.

14                  The accused is 36 years old. She is married  
15                  and the mother of five children. Her husband is  
16                  frequently away from home since he travels to  
17                  Alberta for work.

18                  I was told that this theft was caused by a  
19                  combination of alcohol abuse and financial  
20                  stress. The thefts started as small withdrawals,  
21                  taken with the intent of repayment, but then  
22                  continued and escalated. By all accounts, this  
23                  conduct is viewed by most people as being  
24                  out-of-character for the accused. She has no  
25                  prior criminal record. And she indicated early  
26                  in the proceedings against her that she wished to  
27                  plead guilty to this charge. That is a highly

1 mitigating factor.

2 The traditional approach to sentencing for  
3 this kind of offence, one involving a breach of  
4 trust, has been to emphasize deterrence. This  
5 usually resulted in sentences of imprisonment,  
6 often in a penitentiary, absent exceptional  
7 circumstances. Today, however, the Courts are  
8 instructed by Parliament to take an  
9 individualized approach to sentencing, to look  
10 for the least restrictive sanction available,  
11 while fashioning a sentence that is proportionate  
12 to the seriousness of the crime and the  
13 blameworthiness of the offender.

14 This modern approach has led to numerous  
15 cases, including several recent ones from this  
16 jurisdiction, where offenders who stole from  
17 their employers were sentenced to something other  
18 than in-custody terms. This does not mean,  
19 however, that sentences of imprisonment will not  
20 be imposed in these types of cases. Indeed, this  
21 just emphasizes the fact that sentencing must be  
22 done on an individualized basis.

23 In the present case, Crown counsel has  
24 submitted that a conditional sentence would be  
25 appropriate. Defence counsel agreed with that  
26 submission although he argued over the length.  
27 Both counsel, however, recognized the importance

1 of restitution in this case. Restitution, in  
2 these circumstances, recognizes that it is the  
3 community at large who have suffered by this  
4 crime and also demonstrates the desire and  
5 willingness of the accused to be reintegrated  
6 with the community. This is particularly  
7 important in the context here where the accused  
8 is an aboriginal offender living within a small  
9 aboriginal community where the interests of  
10 restoration and harmony may be more important  
11 than individual punishment.

12 In my opinion a conditional sentence, in  
13 this particular case, can address the objective  
14 of restoring this accused with her community as  
15 well as those of deterrence and denunciation.  
16 The statutory criteria for such a sentence are  
17 met. I would not impose a penitentiary sentence  
18 in this case nor would I consider a purely  
19 non-custodial sentence to be appropriate. There  
20 is no evidence that this accused poses a danger  
21 to the community. Nor would a conditional  
22 sentence, in my opinion, be contrary to the  
23 fundamental principles and objectives of  
24 sentencing.

25 Some of the proposed conditions have given  
26 me some cause for concern. There is no sentence  
27 supervisor or probation officer in Jean Marie

1 River. There is no resident police officer. So,  
2 in essence, the entire community will have to  
3 become supervisors. I expect that if there is a  
4 violation of any condition then they will report  
5 it. Also, since the accused's supervisor will be  
6 based in Fort Simpson, I expect that there will  
7 have to be some flexibility in the supervision.  
8 The accused will probably have to travel to Fort  
9 Simpson regularly and I expect that the accused  
10 will take it upon herself to work closely with  
11 her supervisor. But, because of these logistical  
12 issues, and the fact that often the accused will  
13 be the only parent at home taking care of the  
14 children, in my opinion it is unrealistic to  
15 impose a condition of house arrest as is  
16 customary in conditional sentence orders. I  
17 think there are other ways, however, of achieving  
18 the punitive objects of the sentence.

19 In reference to the logistical limitations  
20 that I just recounted, the fact that there are  
21 few resources, if any, available locally in Jean  
22 Marie River should not act as a deterrent to  
23 providing this accused with the same range of  
24 sanctions that are available to any other accused  
25 in this country. I did not hear Crown counsel  
26 take that position because in fact it was Crown  
27 counsel who suggested a conditional sentence

1           order. But I think it is important to emphasize  
2           that just because there may be logistical  
3           problems and practical concerns with respect to  
4           how a conditional sentence is going to be  
5           supervised in a small, out-of-the-way community  
6           with few resources and with no resident  
7           supervisor, that itself should be no impediment  
8           to imposing a conditional sentence just as any  
9           other similarly situated offender would receive  
10          in any other community in this country. If it  
11          becomes an issue then obviously the authorities  
12          will have to address the lack of resources  
13          available in our communities.

14                 I also had concerns, however, over the  
15          accused's ability to make restitution given the  
16          high cost of living in Jean Marie River. I am  
17          told that she has employment available to her in  
18          the local sawmill. She is apparently the only  
19          person who can operate the notcher machine which  
20          is used to prepare logs for house construction.  
21          She will be paid \$15 per hour. Crown and defence  
22          have suggested a schedule for payment of the  
23          restitution. Plus, in addition to any other  
24          sanctions, if the accused does not pay the  
25          restitution as ordered, the Jean Marie River  
26          First Nations Band may take civil enforcement  
27          proceedings pursuant to Section 741 of the

1 Criminal Code.

2 For these reasons, I sentence the accused to  
3 a term of two years less one day to be served  
4 conditionally in her community. Ms. Sanguéz, the  
5 conditions will be as follows:

6 (1) You are to keep the peace and be of good  
7 behaviour;

8 (2) You are to report to this Court if and  
9 when required to do so;

10 (3) You are to report to the conditional  
11 sentence supervisor in Fort Simpson within 72  
12 hours and be under supervision for the duration  
13 of the conditional sentence;

14 (4) You are to remain within the  
15 jurisdiction of the Court and not leave the  
16 Northwest Territories without first obtaining  
17 permission from your supervisor or the Court;

18 (5) You are to seek and/or maintain  
19 employment;

20 (6) You are to perform 180 hours of  
21 community service work within the first 18 months  
22 of this order as directed by your supervisor;

23 (7) You are to abstain absolutely from the  
24 consumption or possession of alcohol and  
25 prohibited narcotic drugs;

26 (8) You are to attend such counselling or  
27 treatment programmes as may be directed by your



1 supervisor;

2 (9) You are to maintain a curfew in Jean  
3 Marie River where you will be required to be at  
4 home between the hours of 10 p.m. and 6 a.m.  
5 except in case of an emergency or if given  
6 permission by your supervisor to be away from  
7 home at other hours;

8 (10) You are to pay restitution in the total  
9 sum of \$16,839.75 as follows:

10 (a) all payments are to be sent to  
11 the Clerk of the Court in  
12 Yellowknife for the benefit of the  
13 Jean Marie River First Nations Band;

14 (b) the minimum sum of \$3,000 in  
15 total must be paid by no later than  
16 September 28th, 2005. That can be  
17 paid in one lump sum or it can be  
18 paid in little bits from time to  
19 time but the requirement is to pay  
20 at least \$3,000 by no later than  
21 September 28th, 2005;

22 (c) a further sum of at least  
23 \$3,000, either in a lump sum or in  
24 smaller payments over time, is to be  
25 paid by no later than March 28th,  
26 2006;

27 (d) a further sum of \$3,000 is to be

1                   paid by no later than September  
2                   28th, 2006;  
3                   (e) the balance of \$7,839.75, or  
4                   whatever lesser amount is still  
5                   owing, is to be paid by no later  
6                   than the expiry date of this  
7                   sentence.

8                   Now, Ms. Sanguiez, that restitution provides  
9                   for a schedule of payments over the course of the  
10                  next two years. If for some reason you are  
11                  unable to make these payments, if for some reason  
12                  you run into difficulty, then speak to your  
13                  supervisor. If you run into any difficulty with  
14                  any aspect of this sentence, speak to your  
15                  supervisor. Because, I must tell you, if you do  
16                  not comply with any of these conditions, if you  
17                  breach any of these conditions, if you do not  
18                  satisfy any of these conditions, then you can be  
19                  brought back to court and the conditional  
20                  sentence could be suspended and you could be  
21                  required to spend the rest of the time in jail.  
22                  Do you understand that?

23                  THE ACCUSED:                   (Affirmative nod).

24                  THE COURT:                    If you commit another offence,  
25                  you could be charged for that. If any of these  
26                  conditions need to be changed, speak to your  
27                  supervisor because there are very simple ways of

1 making those changes if they are appropriate.  
2 Work with your supervisor, Ms. Sanguenz. I am  
3 sure that neither you nor your family nor your  
4 community wants to see you sitting behind bars  
5 for no good reason.

6 I am sure your counsel will go over the  
7 conditional sentence order in detail with you  
8 and, Mr. Hansen, I encourage you to review those  
9 particular sections of the Criminal Code with  
10 your client.

11 Is there anything that I have neglected,  
12 counsel? Mr. Burke?

13 MR. BURKE: No, sir, thank you.

14 MR. HANSEN: No, sir. The only suggestion  
15 that I would make, sir, is where you refer to  
16 "with permission" that it be written permission  
17 so there is no confusion.

18 THE COURT: Yes, certainly when I talk  
19 about permission from the supervisor, it should  
20 be written permission but my emphasis here is to  
21 speak to the supervisor beforehand.

22 MR. HANSEN: Yes, sir.

23 THE COURT: Don't expect to be forgiven  
24 after the fact. Do you understand what I mean?  
25 This is a situation where you to have seek  
26 permission beforehand if there is going to be any  
27 deviation from this order. And if your

1 supervisor suggests some counselling program,  
2 some treatment programs, then discuss it with  
3 your supervisor.

4 THE ACCUSED: (Affirmative nod).

5 THE COURT: If you encounter difficulties,  
6 discuss that with your supervisor.

7 THE ACCUSED: (Affirmative nod).

8 THE COURT: I am going to direct, Madam  
9 Reporter, that a transcript be prepared of my  
10 remarks on the sentencing and in due course  
11 copies should be forwarded to the sentence  
12 supervisor in Fort Simpson. And I ask that you  
13 forward a copy of the transcript to the Band  
14 Manager of the Jean Marie River First Nations in  
15 Jean Marie River so the community can have it  
16 available for their review as well so that they  
17 know what happened in this case and they know  
18 what conditions Ms. Sanguiez must comply with.

19 If there nothing else, counsel, thank you  
20 for your assistance, we will close court.

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

25  
26  
27   
Lois Hewitt,  
Court Reporter