

R v. Clement, 2005 NWTSC 69

S-1-CR2005000045

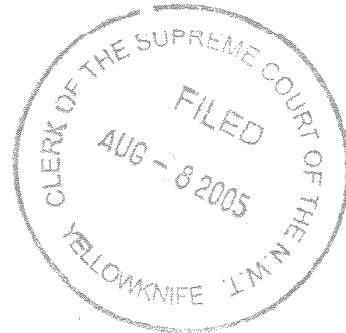
IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- vs. -

PHILLIP DON CLEMENT



Transcript of the Reasons for Sentence by The Honourable Justice V.A. Schuler, at Yellowknife in the Northwest Territories, on July 14th A.D., 2005.

APPEARANCES:

Mr. D. Mahoney: Counsel for the Crown
Ms. M. Smith: Counsel for the Accused

Charge under s. 271, s. 267(b) *Criminal Code of Canada*

**Ban on Publication of Complainant / Witness
Pursuant to Section 486 of the Criminal Code**

1 THE COURT: I will now sentence Phillip
2 Don Clement for the offences to which he has
3 pleaded guilty. There have been guilty pleas to
4 Counts 1 and 2 in the Indictment, Count 1 being
5 sexual assault and Count 2 being assault causing
6 bodily harm, both offences having as the victim
7 Mr. Clement's common-law spouse. In hearing about
8 the events that led to these offences, it is
9 clear that it is really one series of events.

10 For purposes of the sentencing judgment, I
11 will just summarize briefly the facts.

12 The situation apparently came about because
13 Mr. Clement became angry at his common-law wife
14 when he was at home drinking. He punched her in
15 the face four or five times, threw chairs at her,
16 slapped her in the face and head and when she
17 managed to flee the residence he chased her,
18 grabbed her by her hair and forced her to return
19 to it. He then hit and choked her and at one
20 point kneed her in the stomach. She in fact
21 tried to help him when his foot was cut on some
22 glass but he continued to assault her. He
23 demanded oral sex which she did not want to do
24 but complied with because she was afraid of a
25 further beating, and he then forced sexual
26 intercourse on her and kicked her in the face.
27 He finally passed out after these events and as a

1 result of what he did to her, she was bed-ridden
2 for two days. According to the Agreed Statement
3 of Facts, she had difficulty breathing and
4 sleeping due to the soreness of her ribs. The
5 ribs continued to bother her for almost a month.
6 She also suffered two black eyes as well as
7 bruises and swelling on her forehead, cheek,
8 hands, back, arms and legs.

9 So the events that I have just described can
10 be described really as nothing other than a very
11 serious, lengthy assault on the victim.

12 It is very aggravating that these events
13 took place in the presence of the three-year-old
14 child of the accused and the victim, and even the
15 child's protests did not stop Mr. Clement from
16 continuing.

17 It's also aggravating, obviously, that this
18 is a spousal assault and the Criminal Code
19 indicates that to be an aggravating factor.

20 In terms of mitigation in this case, the
21 accused has no criminal record so that is
22 something that has to be considered in his
23 favour. He also entered his guilty pleas at a
24 very early opportunity and waived his right to a
25 preliminary inquiry. The fact that he did that
26 indicates that he is remorseful, that he is
27 taking responsibility for what he did. It means

1 that the victim did not have to testify at all,
2 did not have to go through the trauma of
3 testifying and also the trauma of waiting for a
4 trial, waiting for the matter to be finished.

5 Also indicative of remorse is the fact that
6 Mr. Clement has offered apologies to the victim.
7 He also apologized here in Court today and I also
8 take into account that he came here to
9 Yellowknife from Tulita to deal with this matter
10 instead of waiting for the Court to go to Tulita
11 at some future date. So I am satisfied that he
12 has made efforts to deal with the matter, take
13 responsibility, and in effect take his
14 punishment.

15 There is before the Court a letter from the
16 victim. I have read it over and it appears to me
17 to be a thoughtful and a considered letter. It
18 is very supportive of Mr. Clement. The child is
19 obviously very important to both Mr. Clement and
20 his common-law spouse, and she speaks very
21 positively about him in this letter in terms of
22 what he is like as a father.

23 But that being said, Mr. Clement, you have
24 to realize and you should spend some time
25 thinking about the fact that what you did to your
26 common-law spouse is really the worst example
27 that you could set for your child, and in my view

1 that's something very serious. It must have been
2 terribly traumatic for your little girl to see
3 this happen. It must have been very traumatic at
4 the time. But you should also keep in mind that
5 children who see this sort of thing happen on a
6 repeated basis may start to thinking that this is
7 normal behaviour between a husband and wife and
8 that may mean that when your little girl grows up
9 that if someone does something like this to her
10 she may think it's normal and she may not get
11 help for herself. So if nothing else makes you
12 make sure that this never happens again, it
13 should be concern and love for your child. Don't
14 inflict this on her, don't let her see that this
15 is the way that some people live. Because it's
16 not the right way to live obviously, it's not
17 right for a husband to do this kind of violence
18 to his wife.

19 I accept what the victim has said in her
20 letter, that you are a very good father but I am
21 sure that you realize that this is not what a
22 very good father does.

23 I take into account that Mr. Clement is 23
24 years old. He is still fairly young. He is from
25 and he lives in Tulita. He has been employed
26 there with a camp catering company but he also
27 engages in traditional pursuits on the land such

1 as hunting and trapping. It has been indicated
2 that he was raised by his grandparents. It has
3 also been indicated that his family members have
4 had problems with alcohol. Mr. Clement himself
5 indicates that he started drinking at the age of
6 16 and acknowledges having an anger management
7 problem. And certainly from his own experience,
8 and especially the incident that was described
9 when he was a young child where his uncle held
10 him hostage with a gun when he was drinking, that
11 experience, Mr. Clement, should teach you the
12 reason not to drink.

13 If, as has been indicated here today, you
14 were so drunk on this occasion that you don't
15 clearly remember what you did, the obvious answer
16 is you should not drink because if you drink and
17 you don't remember or you drink and you become
18 angry and you do such a terrible thing, you can
19 only expect that more terrible things may come
20 out of you when you are drinking. So I accept
21 that this incident is out of character for you
22 but you have got quite a lot of thinking to do
23 about how to make sure it never ever happens
24 again.

25 Because of Mr. Clement's youth, his lack of
26 a criminal record, it is important that there be
27 an individualized disposition, that

1 rehabilitation be kept in mind but denunciation
2 and deterrence are still factors. Denunciation
3 of this offence as behaviour that society rejects
4 and condemns and deterrence of other people,
5 those are still important factors because of the
6 alarming rates of spousal and sexual assault in
7 this jurisdiction. So I do have to consider
8 those as well.

9 I also consider the fact that Mr. Clement is
10 aboriginal although there are no systemic factors
11 that have been brought to my attention.

12 All of these considerations have to be
13 blended, in effect, to arrive at a suitable
14 sentence in the circumstances.

15 The Crown seeks a sentence of two and a half
16 to three years; the defence seeks a sentence of
17 less than two years with probation with terms for
18 community service work and counselling.

19 It seems to me in considering the general
20 range of sentences for spousal and sexual
21 assault, looking at the circumstances of the
22 offence alone, certainly a sentence in the range
23 of four years would be within the range. Now,
24 here, I am satisfied however that the guilty
25 pleas are a significant mitigating factor for the
26 reasons that I have mentioned. And taking that
27 into consideration, along with Mr. Clement's

1 relative youth, his lack of any record, and the
2 positive description of him that is contained in
3 the letter from the victim, I believe that a
4 sentence at the lower end of the range,
5 notwithstanding the aggravating factors, is
6 justified in this case.

7 I have reviewed the cases that were
8 submitted, the Pierrot and the Vermilion cases,
9 and while those cases are in some ways similar
10 and in some ways different, obviously each case
11 has to be dealt with on its own.

12 Stand, please, Mr. Clement.

13 I sentence you to a term of incarceration of
14 two and a half years on each of the charges
15 concurrent, so the total sentence will be two and
16 a half years. And the warrant will be endorsed
17 with a recommendation that you be permitted to
18 serve your time in the Northwest Territories and
19 that you be given access to anger management and
20 alcohol counselling.

21 THE ACCUSED: Thank you.

22 THE COURT: You can have a seat,
23 Mr. Clement.

24 There will be the mandatory DNA order in the
25 usual terms which will commence today and -- is
26 it 20 years for the DNA? Actually, there is no
27 limit on the DNA order so the DNA order is

1 mandatory, do you have the order form?

2 MR. MAHONEY: Yes, Your Honour, it has been
3 signed by Ms. Smith.

4 THE COURT: I will have a look at that
5 when we finish Court and then have the clerk
6 return it to you.

7 Under Section 109 of the Criminal Code, a
8 firearm prohibition order is also mandatory in
9 these circumstances so there will be one. It
10 will commence today and it will end ten years
11 after Mr. Clement's release from imprisonment.
12 Because hunting for food is an integral part of
13 his life and because a firearm was not used in
14 the commission of these offences, under
15 Section 113 of the Criminal Code I am satisfied
16 that in his particular circumstances Mr. Clement
17 does require a firearm for sustenance and so I
18 will authorize the chief firearms officer and the
19 registrar to issue the appropriate authorizations
20 to Mr. Clement to hunt for sustenance.

21 And then under Section 490.12 of the
22 Criminal Code, for the sexual assault conviction
23 it is mandatory that Mr. Clement comply with the
24 Sex Offender Registry Act and an order will go to
25 that effect, that he comply for a period which
26 commences today and ends 20 years hence.

27 In the circumstances, I am going to waive

1 the Victim Surcharge.

2 Do you want to speak to Count 3 in the
3 Indictment?

4 MR. MAHONEY: Yes, Your Honour, the Crown
5 withdraws the remaining charge.

6 THE COURT: Count 3, then, will be marked
7 withdrawn.

8 Now, is there anything that I have not
9 covered?

10 MR. MAHONEY: I think that's everything,
11 Your Honour, as far as I can tell.

12 MR. SMITH: Yes, Your Honour, I think
13 that's everything.

14 THE COURT: Thank you, counsel. I will
15 have a look at the order and then have the clerk
16 return it to you.

17 MR. MAHONEY: Thank you.

18 (ADJOURNMENT)

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

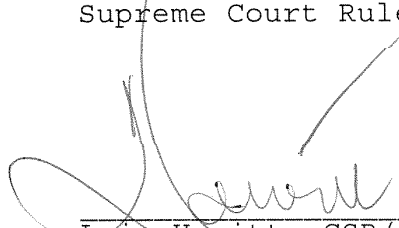
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Lois Hewitt, CSR(A), RPR, CRR
Court Reporter