

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- vs. -

BARRY SUNRISE

Transcript of the Reasons for Sentence by The Honourable
Justice J.E. Richard, at Hay River in the Northwest
Territories, on September 19th A.D., 2006.

APPEARANCES:

Mr. B. Gaunt: Counsel for the Crown
Ms. P. Taylor: Counsel for the Accused

Charged under s. 348(1)(b), s. 271, s. 348(1)(b) Criminal Code

BAN ON PUBLICATION OF COMPLAINANT/WITNESS PURSUANT
TO SECTION 486 OF THE CRIMINAL CODE

1 THE COURT: The offender Barry Sunrise has
2 pleaded guilty to the offence of breaking and
3 entering a dwelling house on the Katlodeeche
4 Reserve and committing therein the indictable
5 offence of theft. In addition, he has been found
6 guilty, following a trial, of the offence of
7 break and entering a different dwelling house on
8 the Katlodeeche Reserve and committing therein
9 the indictable offence of sexual assault. These
10 two offences occurred on the same date, February
11 11th of 2006, and indeed within the space of an
12 hour or so.

13 The circumstances, briefly, are that this
14 offender, while intoxicated, entered the home of
15 his former common-law spouse on the Katlodeeche
16 Reserve and sexually assaulted her in the
17 livingroom of her house where she was passed out
18 from intoxication. The sexual assault ended when
19 the victim's 27-year-old son came home and caught
20 the offender in the act.

21 This is an offence that is all too common in
22 this jurisdiction and the sentence imposed must
23 take into consideration the important principles
24 of deterrence and denunciation. In my respectful
25 view, the sentences being proposed by each of
26 defence counsel and Crown counsel fall far short
27 of giving effect to these two principles in the

1 circumstances of this case.

2 In an effort to prevent the offender from
3 leaving the residence before the police arrived,
4 the victim's son picked up one of the offender's
5 shoes and threw it outside the residence.
6 Nonetheless, the offender fled a short while
7 later. These events all occurred at 3 o'clock or
8 4 o'clock in the morning. The offender broke and
9 entered into another home on the reserve by
10 breaking a kitchen window and entering that house
11 while the two occupants there were sleeping.
12 After he left, it was discovered that he had
13 stolen a shoe. As stated, the offender pleaded
14 guilty to this second break and enter.

15 The offender Barry Sunrise is not a stranger
16 to the courtroom. He has a lengthy criminal
17 record. He has in excess of 30 convictions under
18 the Criminal Code for various types of offences.
19 He has three prior convictions for break and
20 enter. He has six prior convictions for assault
21 and three of those are noted as being spousal
22 assaults in 1994, 1996, and 1999. Indeed the
23 1999 spousal assault, I am told, was committed
24 against the same victim as his current offence.

25 He also has a prior conviction for sexual
26 assault and that was as recent as 2002 when he
27 received a sentence of 12 months. My reading of

1 the reasons for sentence of June 2002 indicate to
2 me that Mr. Sunrise received a lenient or a
3 minimal sentence at that time. The circumstances
4 of his 2002 sexual assault conviction are
5 strikingly similar to those of his present
6 offence.

7 Mr. Sunrise's prior criminal record is
8 clearly an aggravating circumstance.

9 His plea of guilty to the second break and
10 enter upon his arraignment yesterday is a
11 mitigating circumstance. He cannot receive any
12 similar mitigation in sentence for the first
13 break and enter. Indeed, he does not appear to
14 accept the verdict of guilty in that matter.

15 The law requires that the sentence that the
16 Court imposes for these offences must be
17 proportionate to the gravity or seriousness of
18 the crime committed and the offender's degree of
19 responsibility for those crimes. The sentences
20 proposed by each of defence counsel and Crown
21 counsel, again in my respectful view, hardly
22 reflect that proportionality.

23 One of the objectives of the sentence to be
24 imposed is to promote a sense of responsibility
25 in Mr. Sunrise for what he has done. Although
26 Mr. Sunrise appears in court today and accepts
27 responsibility for one of the crimes by his

1 guilty plea, I note that at the time of the
2 offences he took the opposite view. When
3 confronted in the act of sexually assaulting an
4 unconscious woman, his immediate response was
5 that she was consenting. When confronted in the
6 act of breaking a window and entering a house at
7 4 a.m., his immediate response was that he had
8 seen someone else do it.

9 Mr. Sunrise was arrested on February 12th
10 and has now been in custody over seven months
11 awaiting his trial on these charges. His trial
12 was scheduled to occur in July, over two months
13 ago, but at the last minute he and his previous
14 counsel had a falling-out and so his trial had to
15 be rescheduled for this week. For this pre-trial
16 custody, he is entitled to be given credit
17 towards his sentence in accordance with the
18 practice of the Court and binding case law.

19 In all of the circumstances, in particular
20 the gravity of the main offence, the lengthy
21 record of prior criminal behaviour, in my view an
22 appropriate sentence is three years' imprisonment
23 on the first offence and one year consecutive on
24 the second offence. For reasons that I have
25 stated, I give Mr. Sunrise credit of one year for
26 pre-trial custody and that one year will be
27 deducted from the sentence that would otherwise

1 be imposed.

2 Please stand, Mr. Sunrise.

3 Barry Sunrise, on Count number 1, the crime
4 of break and enter and commit sexual assault, it
5 is the sentence of this Court that you be
6 imprisoned for a period of two years.

7 On Count number 3, for the crime of break,
8 enter and commit theft, the sentence of this
9 Court is that you be imprisoned for a period of
10 one year consecutive to the sentence on Count 1.

11 There will be a Section 109 firearms
12 prohibition order for a period of ten years.

13 Also, I grant the order sought by the Crown
14 under Section 490.011 requiring you to comply
15 with the provisions of the Sex Offender
16 Information Registration Act for life.

17 In the circumstances, there will be no
18 Victim of Fine surcharge.

19 You may be seated, sir.

20 Anything else on this case, counsel?

21 MR. GAUNT: Not from the Crown, Your
22 Honour.

23 MS. TAYLOR: I just wanted to make sure
24 that I understood the sentence, Your Honour. The
25 one year for pre-trial custody, is that to be
26 deducted from the total of three years that you
27 have imposed or is that already taken into

1 account?

2 THE COURT: It has already been deducted
3 from the four years that would otherwise be
4 imposed.

5 MS. TAYLOR: Thank you.

6 THE COURT: Close Court.

7 -----

8

9

10 Certified to be a true and
11 accurate transcript pursuant
12 to Rules 723 and 724 of the
13 Supreme Court Rules,

14

15

16

17

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

18

19

20

21

22

23

24

25

26

27