

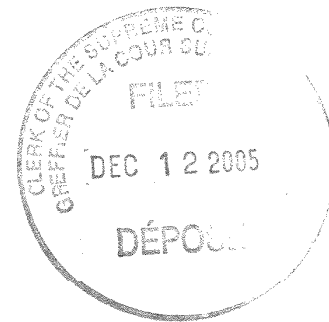
IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- and -

SHELDON CHARNEY



Transcript of the Oral Reasons for Sentence delivered
by the Honourable Justice J.Z. Vertes, sitting at
Yellowknife, in the Northwest Territories, on
December 8th, A.D. 2005.

APPEARANCES:

Mr. D. Mahoney: Counsel for the Crown
Mr. J. Mahon: Counsel for the Accused

(Charge under s. 271 *Criminal Code*)

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

1 THE COURT: The accused has pleaded guilty
2 to a charge of sexual assault committed on March
3 27th, 2005 in Fort Smith. Crown counsel has
4 acknowledged that this plea should be regarded as
5 an early one, having regard to the fact that the
6 accused waived the need for a Preliminary Inquiry
7 and indicated his willingness to plead guilty at
8 that time. Therefore, the guilty plea is a
9 mitigating factor.

10 The circumstances are set out for the most
11 part in an Agreed Statement of Facts. The
12 accused, 22 years old, and the victim, 16 years
13 old, were at a drinking party. They left at the
14 same time. Some time later they were found in a
15 field near the local high school. The accused
16 was raping the victim with her lying on the
17 ground - this in minus 13 degree weather - with
18 the accused on top of her, penetrating her and
19 covering her mouth with his hand. The police had
20 to pull the accused off the victim.

21 I was told that the accused, even at his
22 relatively young age, has a substance abuse
23 problem with alcohol and drugs. Yet at the time
24 of this offence he was working toward his GED
25 certificate while living with his aunt in Fort
26 Smith. Nothing much was related to me about his
27 personal circumstances, other than that he was

1 born in Inuvik and has lived in a number of
2 communities.

3 One of the significant things related to me,
4 however, was the accused's criminal record.
5 Between 1996 and 2001 the accused was convicted
6 of 20 offences as a young offender. Since then
7 he has been convicted of nine offences as an
8 adult offender. The most recent of these was a
9 conviction for break and enter with intent
10 entered on April 14th, 2005, for which he was
11 sentenced to a term of 18 months' imprisonment.
12 Obviously, that crime was committed prior to the
13 sexual assault, since he has been in custody
14 since his arrest on March 27th.

15 The only saving grace is the fact that this
16 offence is the first crime of personal violence
17 on the accused's record.

18 There are, apparently, some significant
19 psychological issues in this young man's life
20 that will need to be addressed if he is to avoid
21 a life behind bars. These issues are likely far
22 more significant than can be answered in this
23 sentencing hearing, but it is my hope and
24 expectation that the correctional authorities
25 make a thorough assessment of this offender's
26 difficulties and needs.

27 The crime of sexual assault is a crime of

1 serious personal violence. The harmful impact on
2 the victim was reflected in her victim impact
3 statement. She will suffer from the
4 psychological harm caused by the accused for a
5 long time.

6 Naturally, perhaps, she expresses a wish for
7 retribution and severe punishment. Sentencing,
8 however, is not based on retribution or revenge.
9 It is based on what is in the interests of
10 justice, what would best serve society as a whole
11 by denouncing this heinous act, by deterring this
12 offender and others, and by trying to
13 rehabilitate this offender for the long term good
14 of everyone.

15 It is virtually impossible to mete out a
16 sentence that will be proportionate to the
17 expectations of victims. The courts must balance
18 a number of different considerations as laid down
19 by Parliament in the *Criminal Code*.

20 In this case, Crown and defence agreed that
21 a sentence in the range of 30 to 36 months would
22 be appropriate. This was not labelled as a joint
23 submission, nor was that term used, but there was
24 agreement on this range.

25 The Court of Appeal has said for many years
26 that an appropriate sentence for crimes of
27 serious sexual assault, such as this one, would

1 be in the range of three years, assuming an
2 offender of previously good background and an
3 early guilty plea. This type of starting point
4 sentence is set forth by appellate courts as
5 guidance to lower courts so as to achieve greater
6 uniformity and consistency of sentencing. This
7 does not, however, detract from the overarching
8 principle that sentencing is always an
9 individualized process attempting to set an
10 appropriate sentence for the circumstances of the
11 particular crime and those of the particular
12 offender.

13 Were it not for the guilty plea and the fact
14 that the accused waived his Preliminary Hearing,
15 I would have been inclined to the view that this
16 offence and this offender, notwithstanding his
17 relatively young age, mandated a sentence of up
18 to four or five years. As it is, I accept the
19 range proposed by counsel, although, in my view,
20 this crime must be placed at the top end of that
21 range, having regard to the evident callousness
22 of the accused at the time, his already lengthy
23 criminal record and the impact on the victim.

24 I have considered the circumstances of the
25 accused as an Aboriginal offender. His counsel
26 acknowledged, however, that he could point to no
27 systemic or background factors either generally

1 or specifically for this offender that would
2 warrant consideration of any type of sentence
3 different from what would be imposed on anyone
4 else in these circumstances.

5 For these reasons, I would impose a sentence
6 of 36 months' imprisonment. From that, however,
7 I will deduct a credit of two months for the one
8 month spent in pre-trial custody relating to this
9 offence specifically. Therefore, the actual
10 sentence is one of 34 months' imprisonment.

11 In addition, since a conviction for sexual
12 assault brings into play various mandatory terms
13 of the *Criminal Code* and in the absence of
14 information or evidence to suggest that the
15 making of these orders would be grossly
16 disproportionate as between the interests of the
17 accused and the interests of society, I make the
18 following orders:

19 1. There will be an order requiring the accused
20 to provide a sample for DNA analysis and
21 submission to the DNA data bank pursuant to
22 section 487.051 of the *Criminal Code*.

23 2. I make an order that the accused must comply
24 with the provisions of the *Sexual Offender*
25 *Information Registration Act* for the designated
26 period of 20 years pursuant to section 487.012 of
27 the *Criminal Code*.

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3. I make an order under the mandatory provisions of section 109 of the *Criminal Code* prohibiting the accused from having in his possession any firearms, ammunition or explosives for a period of no less than 10 years from the date of his release from his sentence of imprisonment, ending ten years from that date.

I will rely on Crown counsel to provide the necessary and appropriate formal orders for entry on the court record.

Under the circumstances, there will be no victims of crime fine surcharge.

Is there anything I have neglected, counsel?

MR. MAHON: I have nothing further, sir.

MR. MAHONEY: No, sir. Thank you.

THE COURT: Then I want to thank both of you for the manner in which you have resolved this case. Thank you.

MR. MAHONEY: Thank you, sir.

THE COURT: 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