

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- and -

GERALD NEKIA ANTOINE

Transcript of the Oral Reasons for Sentence delivered
by the Honourable Justice V.A. Schuler, sitting at
Yellowknife, in the Northwest Territories, on January
9th, A.D. 2007.

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

APPEARANCES:

Ms. S. Smallwood: Counsel for the Crown

Ms. K. Payne: Counsel for the Accused

(Charges under s. 271, 349(1) Criminal Code)

1 THE COURT: I will now sentence Gerald
2 Nekia Antoine in this matter. Mr. Antoine is a
3 24-year-old man who has been convicted of sexual
4 assault in circumstances that, sadly, are typical
5 of many of the cases that come before this Court.
6 After a house party that he was kicked out
7 of three times, Mr. Antoine returned to the house
8 and the victim of the sexual assault, who was
9 asleep, awoke to find him having sex with her.
10 She managed to get him off her and get help.
11 When the police came to the house and found
12 Mr. Antoine, he was intoxicated but alert. There
13 was reference to him having been beaten up, but
14 it is unclear, based on what little has been said
15 about that, who beat him up, why they beat him
16 up. So, in my view, that is something that I
17 simply cannot take into account.
18 This is another example, unfortunately, of
19 so many young men - and I am sure Mr. Antoine is
20 probably one of them - young men who are fine
21 when they are not drinking, but when they drink
22 they lose all sense of self-control and all
23 respect for others.
24 This Court has said on numerous occasions
25 that to deter, to discourage others from this
26 type of behaviour and to show how society and the
27 people of the Northwest Territories condemn this

1 behaviour, normally a significant jail sentence
2 will be imposed.

3 In this case there are some important
4 mitigating factors. Mr. Antoine has from an
5 early stage indicated that he would plead guilty
6 if the DNA results linked him to the crime, and,
7 as a result, he waived his Preliminary Hearing.
8 He claims to have no memory of the offence.

9 The DNA results were not available until
10 December, 2006, almost exactly a year after the
11 offence. So although his guilty plea comes only
12 the week that he was to go to trial by jury in
13 Fort Simpson pursuant to his original election,
14 there is an explanation for that.

15 So I do give the guilty plea full credit,
16 especially in light of the fact that the victim
17 has never had to testify. So, in effect,
18 Mr. Antoine has saved her the difficulty, the
19 trauma of testifying. The guilty plea also
20 indicates remorse on his part, and I note that he
21 did apologize here in court.

22 The remand time that has been incurred since
23 May of 2006 will also be taken into account. I
24 do note, however, that Mr. Antoine was in remand
25 because he breached the undertaking that he was
26 originally released on. As I understand it from
27 what has been said, within only a few weeks of

1 his release he had breached the undertaking four
2 times by breaching the condition that he report
3 to the RCMP. While the distance that he lived
4 from the police detachment at that time made
5 reporting difficult, the way to deal with that
6 would have been to request a change in the
7 reporting condition, not to sleep in and ignore
8 it. In any event, he has been sentenced for the
9 breach. The only significance of it is in
10 relation to the credit to be given to his remand
11 time.

12 In terms of the circumstances of the remand
13 time and the disruption in his relationship with
14 his child and the family tragedies that occurred
15 while he was in remand and that he was not able
16 to deal with in a way that he would have wished,
17 although those factors, no doubt, have made his
18 remand time difficult, again, I have to bear in
19 mind that he was in remand because of his own
20 actions. I do not think that personal issues in
21 relation to remand time are necessarily as
22 significant as the fact that one does not get
23 remission time on remand time and - and I do not
24 have any real evidence in this case about it -
25 sometimes is not able to partake of programs at
26 the correctional centre.

27 There are aggravating factors in this case.

1 Mr. Antoine was also on probation at the time of
2 the offence. So that is an aggravating factor
3 which can be taken into account, as there is no
4 separate charge for that. It is also aggravating
5 that he was told to leave the house, but came
6 back to it.

7 I also take into account the vulnerability
8 of the victim, who was asleep and, therefore, an
9 easy target for Mr. Antoine. Although there is
10 no victim impact statement, this type of offence
11 invariably results in trauma to the victim. As I
12 have said, however, I take into account that
13 because of the way Mr. Antoine has dealt with
14 this case she has not had to testify.

15 Mr. Antoine is described as an immature
16 24-year-old who has a grade 11 education. He has
17 had work in construction and also the oil and gas
18 industry and earned his safety certificate in the
19 latter. So he obviously has some ability and
20 background that he could put to good use. Also,
21 his parents are supportive and have attended
22 court today and have helped him maintain a
23 relationship with his four-year-old daughter
24 while he has been incarcerated. So he is
25 certainly luckier than some people who come
26 before this Court who do not have such family
27 support.

1 I have been told that Mr. Antoine knows now
2 that he has to deal with his alcohol addiction
3 and that he has decided to maintain sobriety for
4 himself and his daughter and he has attended AA
5 meetings while incarcerated and also had the help
6 of an Elder. His efforts in that regard are
7 certainly to his credit, but it is also easier
8 said than done, and when there are controls on a
9 person and when someone has court coming up,
10 sometimes they make promises or say they will do
11 things, but the real test is when they are back
12 out in the community.

13 I am sure, Mr. Antoine, that you want to do
14 all those things. You are now 24 years old. You
15 have a child. I cannot ignore the fact that you
16 do have a very long record, and I am sure that
17 over the last eight years you have been told
18 repeatedly and have realized repeatedly that you
19 have to stop drinking. You have to learn to
20 exercise control over your actions, and only you
21 can do that.

22 The record has to be taken into account.
23 The main concern that it raises are the five
24 assaults over a period from 1998 to 2005 which
25 are related, of course, to the offence for which
26 I am about to sentence Mr. Antoine, because
27 sexual assault is considered an offence of

1 violence even if there was not other violence
2 involved beyond the sexual assault itself.

3 Now, of course, with the conviction for
4 sexual assault Mr. Antoine will have an even more
5 serious charge on his record, and, if he comes
6 back to court, can only expect to be looking at
7 sentences of even longer duration for similar
8 types of offences. I would say, as well, that
9 obviously the sentence in this case has to seek
10 to deter Mr. Antoine, to stop him from engaging
11 in this type of behaviour in the future.

12 Counsel agree that the range for a sexual
13 assault where there is a guilty plea is two to
14 three years in this jurisdiction, and I think
15 that, generally speaking, they are correct about
16 that.

17 Would you stand up, please, Mr. Antoine. In
18 considering all of the factors, because of the
19 guilty plea mainly and notwithstanding the
20 record, in my view a sentence of two and a half
21 years is appropriate in this case. I will credit
22 the remandtime, for the reasons that I have
23 referred to, as one year. So the resulting
24 sentence from today is 18 months in jail.

25 I have not heard any submissions to the
26 contrary, and it does seem appropriate, so there
27 will be a firearm prohibition order which will

1 begin today and continue for a period of ten
2 years after Mr. Antoine's release from
3 imprisonment, and any such items are to be
4 surrendered to the RCMP forthwith. Pursuant to
5 section 490.012 of the Criminal Code, Mr. Antoine
6 will register with the Sex Offender Registry and
7 report pursuant to the terms of that registration
8 for a period of 20 years. The victim of crime
9 surcharge will be waived in the circumstances.

10 You can have a seat, Mr. Antoine. Is there
11 anything I have overlooked?

12 MS. SMALLWOOD: I don't believe so, Your
13 Honour.

14 MS. PAYNE: Your Honour, just if there
15 could be a recommendation that he be permitted to
16 spend his remaining custodial time in the
17 Northwest Territories at the North Slave
18 Correctional Centre, because --

19 THE COURT: He would in any event, would
20 he not, because the sentence is 18 months at this
21 point?

22 MS. PAYNE: I'm not sure how it works with
23 Corrections, because the sentence -- that may be.
24 I am just concerned that if he is -- if it is
25 looked at globally, he would have received a
26 federal term.

27 THE COURT: All right. Is there anything

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from the Crown on that?

MS. SMALLWOOD: I have no submissions on that,
Your Honour.

THE COURT: All right. Well, I think it
is probably not necessary, but, in any event, I
don't have any difficulty with it. There will be
a recommendation on the warrant that he be
permitted to serve his time in the Northwest
Territories.

MS. PAYNE: Thank you.

THE COURT: All right. Thank you very
much, counsel, for your disposition of the case.
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