

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- and -

GARY FOOTBALL

Transcript of the Oral Reasons for Sentence delivered
by the Honourable Justice J.E. Richard, sitting at
Behchoko, in the Northwest Territories, on December
4th, A.D. 2006.

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

APPEARANCES:

Ms. M. McGuire: Counsel for the Crown

Mr. J. Brydon: Counsel for the Accused

(Charge under s. 268 Criminal Code)

1 THE COURT: The offender before the Court
2 is Gary Football, a 28-year-old Dene man who has
3 pleaded guilty to a serious crime of violence
4 against his common-law spouse over a two-day
5 period in August, 2005. During the two days, the
6 offender administered a severe beating upon his
7 wife causing serious injuries that required her
8 to be medivaced to an Edmonton hospital for
9 treatment. During the two-day period when this
10 appalling behaviour occurred the couple's two
11 young children, ages two and four, were present
12 in the home.

13 Details of the injuries sustained by the
14 victim are contained in the Agreed Statement of
15 Facts, Exhibit S-1. When one looks at the
16 photographs of the victim's visible injuries, it
17 is difficult to understand how any human being
18 could do this to another human being, let alone
19 one's wife. Among the victim's many injuries
20 were a fractured jaw, a brain injury and multiple
21 bruises on her face and all over her body. The
22 extensive beating to the victim's facial area
23 caused loss of vision and extreme swelling, such
24 that the victim was unrecognizable to her own
25 sister and to a police officer who knew her.

26 Mr. Football is convicted of aggravated
27 assault contrary to section 268 of the Criminal

1 Code, a crime which carries a maximum sentence of
2 14 years' imprisonment in a federal penitentiary.
3 It is now my serious responsibility to impose an
4 appropriate sentence.

5 I am told that at the time of this offence
6 Mr. Football and the victim had been in a
7 common-law relationship for approximately ten
8 years and had two young children. At the time of
9 the offence Mr. Football was employed with a
10 local construction company.

11 Mr. Football has a criminal record and, most
12 notably, his criminal history includes previous
13 crimes of violence against this same victim. In
14 1997 he was convicted of assaulting the victim
15 and received a suspended sentence and was placed
16 on probation for one year. In 1999 he assaulted
17 his wife on two separate occasions and, again,
18 received a suspended sentence and was placed on
19 probation. In 2001 he, again, was convicted of
20 assaulting his wife and received a sentence of
21 six months' imprisonment.

22 Mr. Football has been in custody awaiting
23 his trial since he was arrested on these present
24 matters in August, 2005. This is a period of
25 approximately 16 months, and he will receive
26 credit for this time in custody awaiting trial in
27 accordance with the long-standing practice of

1 this Court and binding case law.

2 It is regrettable that it is only now that
3 this matter is being disposed of in a final way.
4 As Mr. Football's counsel phrased it,
5 Mr. Football has taken some time to make his
6 journey from an initial reactive denial to an
7 acknowledgement of responsibility and wrongdoing.

8 Mr. Football elected trial by Judge and jury
9 and requested a Preliminary Hearing where, I am
10 advised, everything was in issue and the victim
11 was required to testify. In March, 2006 he was
12 committed for trial by jury in this court and his
13 jury trial was scheduled for a two-week period
14 here in Behchoko commencing today, December 4th,
15 2006. However, in September, with the assistance
16 of his counsel, there was a negotiated resolution
17 of the criminal charges and Mr. Football signed
18 an Agreed Statement of Facts admitting to the
19 commission of the aggravated assault and
20 accepting responsibility for what he has done.

21 Although Crown counsel fairly acknowledges
22 that in these circumstances Mr. Football's guilty
23 plea is not a last minute guilty plea, it also
24 cannot be characterized as an early guilty plea
25 or one made at the first opportunity.

26 The Courts have attempted in its sentencing
27 decisions in this jurisdiction, in the last two

1 decades in particular, to send a message that
2 domestic violence, or violence against women
3 generally, will not be tolerated and that
4 meaningful, severe penalties, i.e., significant
5 jail time, will be imposed on offenders who
6 assault their spouse.

7 Case law has for a long time stated that
8 denunciation and deterrence are the paramount
9 sentencing principles in cases of serious
10 domestic violence. Several years ago Parliament
11 enacted a specific provision in the Criminal Code
12 directing that the Court in sentencing an
13 offender for a crime such as aggravated
14 assault -- directing that the Court consider any
15 violence against a spouse to be an aggravating
16 circumstance in the determination of an
17 appropriate sentence. In that enactment,
18 Parliament clearly stated that the sentence
19 should be increased on account of that
20 circumstance alone.

21 I am told that the victim of this crime was
22 advised of her right to place a victim impact
23 statement before this Court at the time of
24 sentencing. However, she has declined to do so.

25 There are many aggravating features to
26 Mr. Football's crime and precious little that can
27 be said in mitigation. He has, indeed, pleaded

1 guilty to the charge. However, as I have
2 mentioned, it is not an early guilty plea and
3 cannot have the same mitigating effect as an
4 early guilty plea. Also, today he presents in
5 court in his home community as genuinely
6 remorseful for what he has done and he publicly
7 apologizes to the victim and her family.

8 The aggravating circumstances include his
9 previous record of criminal violent behaviour
10 towards his spouse resulting in three appearances
11 before the Court in the last nine years, and on
12 each occasion he was treated with some leniency.
13 It is also an aggravating feature of the
14 predicate offence that it was not a situation of
15 one spontaneous blow, but, rather, a continuing,
16 ongoing sequence of assaultive behaviour over a
17 two-day period.

18 It is an aggravating circumstance also that
19 Mr. Football's two young children were present in
20 the home throughout this two-day ordeal suffered
21 by their mother. One can only cringe at the
22 thought of what lasting psychological impact that
23 could have for those children.

24 From the description of the victim's
25 injuries in the Agreed Statement of Facts and
26 from the photos I infer that at least some of
27 Mr. Football's assaultive behaviour can also be

1 characterized as gratuitous violence upon his
2 spouse. As his counsel noted, this is not normal
3 human behaviour, and Mr. Football, a mature man
4 of 28 years of age, ought to know now that he has
5 some sort of illness, that he ought to access
6 professional help while he is serving his period
7 of incarceration and also following his release.

8 This was a serious criminal offence.
9 Mr. Football's criminal behaviour was egregious
10 and there has to be serious consequences for him.

11 Taking into consideration the submissions of
12 counsel and the aggravating and mitigating
13 factors that I have mentioned and all of the
14 other circumstances and the principles of
15 sentencing, in particular denunciation,
16 deterrence and proportionality, in my view the
17 appropriate sentence in this case is six years'
18 imprisonment. I give credit of two and a half
19 years to Mr. Football for the time he has spent
20 in custody awaiting disposition of his case.

21 Please stand, Mr. Football. Gary Football,
22 for the crime that you have committed, aggravated
23 assault contrary to section 268 of the Criminal
24 Code as set out in count 2, it is the sentence of
25 this Court that you be imprisoned for a period of
26 three and a half years.

27 I will have the Clerk endorse the warrant of

1 committal that takes you to jail with this
2 Court's recommendation that you be permitted to
3 serve your sentence at an institution in the
4 Northwest Territories.

5 I grant the mandatory DNA order sought by
6 the Crown. I grant the mandatory section 109
7 firearms prohibition order for a period of ten
8 years. I decline to grant a section 113 order
9 softening the impact of the section 109 order,
10 given the lack of an evidentiary foundation for
11 such an order and given that the Crown opposes
12 it. In the circumstances, there will be no
13 victim fine surcharge. You may be seated.

14 Counsel, is there anything further with
15 respect to this case?

16 MS. MCGUIRE: No. Thank you, Your Honour.

17 MR. BRYDON: Nothing further.

18 THE COURT: Thank you, then. We will
19 close court.

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

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Jill MacDonald, CSR(A), RPR
Court Reporter