

R. v. Peterson, 2008 NWTSC 17 S-1-CR-2006-000027

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

WILLIAM PETERSON

Transcript of the Reasons for Sentence (Oral) delivered  
by The Honourable Justice P. Clark, in Inuvik, in the  
Northwest Territories, on the 22nd day of February, 2008.

APPEARANCES:

Ms. J. Walsh: Counsel on behalf of the Crown

Mr. B. Enge: Counsel on behalf of the Accused

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Charge under s. 271 C.C.

Ban on Publication of Complainant/Witness  
Pursuant to Section 486(3) of the Criminal Code

1 THE COURT: The accused was convicted  
2 after a trial by a local jury of the offence of  
3 sexual assault.

4 The facts of the case are fairly  
5 straightforward. The complainant was 16 years of  
6 age at the time of the assault. The accused was  
7 the adoptive father of the complainant, having  
8 adopted the complainant and her twin sister under  
9 a custom adoption arrangement when they were  
10 approximately five years of age. The complainant  
11 considered the accused to be her father, having  
12 been brought up by her adoptive mother and father  
13 through her formative years.

14 The complainant testifies that on the night  
15 in question she had been at her father's  
16 residence and was in the house talking to her  
17 twin sister when the father came in and offered  
18 them a six-pack of beer. The complainant  
19 testified that she drank five of the beers and  
20 that her sister drank one. The sister then went  
21 upstairs to go to sleep, whereas the complainant  
22 remained downstairs where she engaged in a  
23 drinking game with her father, as I understand it  
24 a card game for shots where the loser was  
25 required to drink a shot of vodka. The  
26 complainant became intoxicated and passed out.

27 She subsequently awoke to find her pants and her

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1 underwear pulled down, and her father, the  
2 accused, on top of her with his penis in her  
3 vagina, engaged in an act of sexual intercourse.  
4 She pushed him off and ran upstairs.

5 The complainant subsequently told her mother  
6 and her sister about the event. The RCMP were  
7 contacted 12 days after the actual occurrence.

8 It is accepted jurisprudence that a delay in  
9 reporting a sexual assault is not unusual or  
10 inappropriate where the victim is affected by a  
11 range of emotions, extending from guilt through  
12 to revulsion, to shame and embarrassment. The  
13 Court accepts that the delay in reporting the  
14 matter is of no consideration either in the  
15 charge originally brought or in sentence.

16 The accused was charged with the offence on  
17 April 11th, 2006. He was released on a  
18 recognizance that he would remain in the  
19 jurisdiction, which is a standard condition, and  
20 would change his address and his employment,  
21 et cetera, only upon notice to the appropriate  
22 authorities. The accused subsequently moved to

23 Whitehorse, Yukon, without adhering to the  
24 provisions of the recognizance and without  
25 reporting. He remained outside the jurisdiction  
26 for 16 months before he was finally apprehended  
27 and brought back under a public interest warrant.

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1 He has been in custody, I believe, since that  
2 time for 16 months.

3 The accused suffers from some disabilities.  
4 He has a learning disorder. He has a Grade 2  
5 education and is functionally illiterate. He has  
6 an eye and vision disorder that severely limits  
7 his ability to see beyond approximately two feet  
8 and seems to have only peripheral vision.

9 The complainant was a child at the time of  
10 the offence.

11 The assault was by a parent, a parent by  
12 adoption but nonetheless a parent and an  
13 authority figure, with whom the complainant  
14 should have had a loving and trusting  
15 relationship as she was growing up. A parent has  
16 the duty to protect a child from harm and is the  
17 repository of trust placed in him by the child.

18 A sexual assault by a father of a child  
19 constitutes a grave breach of that duty and an  
20 outrageous breach of trust.

21 A complicating but material factor in my  
22 decision today is that the accused - and this was  
23 brought to my attention during the course of the  
24 sentence hearing - was convicted of a charge of  
25 sexual interference with his other adopted  
26 daughter, the sister of the complainant, on June  
27 18th, 2002, at which time he was sentenced to

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1 five months' incarceration and 18 months of  
2 probation. This being brought to the Court's  
3 attention, introduces a somewhat different focus  
4 of the question of an appropriate sentence for  
5 the offence, as has been quite adamantly  
6 emphasized by counsel for the Crown. The accused  
7 seems to prey upon his own family for sexual  
8 gratification. The prior conviction was known to  
9 the complainant in this case. In my opinion, the  
10 assault upon her and the knowledge of what  
11 happened to her sister has had a very  
12 considerable effect on the complainant's ability  
13 to testify at the trial, both in her

14 examination-in-chief and her cross-examination.  
15 The effects of what took place are brought in to  
16 sharp focus when one reads the complainant's  
17 victim impact statement, which was not read out  
18 in court but which is an exhibit to the  
19 sentencing hearing.

20 The Crown seeks a sentence of five to six  
21 and a half years, plus probation, on the basis of  
22 the circumstances of the case and the family  
23 situation. Ms. Walsh suggested there should only  
24 be a one-for-one consideration for the time in  
25 custody due to the fact that the accused was out  
26 of the jurisdiction without notification while on  
27 recognizance, and that he has been in custody and

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1 declined interim release on application.

2 Mr. Enge, counsel for the accused, suggests  
3 the court should be much more lenient in its  
4 considerations given the accused's disability and  
5 the fact that he was in Whitehorse taking care of  
6 an aged parent who relied on him for her support.  
7 Mr. Enge suggests a sentence of three years less  
8 time in custody on a two-for-one basis.

9           The Alberta Court of Appeal in the decision  
10       of R. v. S.(W.B.) 1992, 73 C.C.C. (3d) 530,  
11       provides an exhaustive review of authorities,  
12       suggests a starting point four to five years in  
13       cases of sexual abuse of a child by a person who  
14       stands in loco parentis in cases of sexual  
15       intercourse. The decision, now 16 years old,  
16       then emphasized the need for denunciation and  
17       deterrence to deter others from committing the  
18       type of offence that this accused had been found  
19       guilty of. The panel then described the offence  
20       as an abhorrent offence.

21           I am advised, and accept, that sexual  
22       assault cases are of epidemic proportions in the  
23       Northwest Territories but, by the same token,  
24       they are also of epidemic proportion in the other  
25       jurisdiction in which I sit.

26           In this case there are of course the  
27       aggravating factors of the assault on the

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1       daughter, the disappearance from the jurisdiction  
2       without notice, and the fact that this accused is  
3       a repeat sexual offender.

4           There are no obvious mitigating factors save

5 for the personal disabilities of the accused.

6 There is no suggestion of any remorse except  
7 for what was mentioned this morning upon request  
8 by the court. There is no suggestion that the  
9 accused is aware of the consequences of his  
10 actions.

11 The complainant does not wish to see her  
12 father again except under very controlled  
13 circumstances. In her impact statement she  
14 expresses fear of what he will do when released  
15 from prison.

16 I have concluded that an appropriate  
17 sentence in this case is a penitentiary sentence  
18 of six years, subject to a reduction for the  
19 pre-trial custody of 16 months on a one-for-one  
20 basis.

21 There will be a direction for a DNA sample.

22 There will be a section 109 order for  
23 weapons prohibition, if that has not already been  
24 pronounced against the accused on a prior  
25 offence.

26 There will be an order for registration of  
27 the accused under the sexual offender



1 legislation.

2 THE COURT CLERK: That's for 20 years, sir?

3 THE COURT: Twenty years.

4 There will be no direction for probation.

5 To the extent that that arrangement appears to  
6 have been imposed in the prior circumstances and  
7 appears to have been of no force and effect. I  
8 am not going to go through the process again.

9 That is my decision.

10 MS. WALSH: Your Honour, I just want to  
11 clarify. Mr. Peterson has been in jail since  
12 September of 2007; that would be six months, not  
13 16.

14 THE COURT: Oh, six months. I'm sorry, I  
15 misspoke. Six months in that case.

16 MS. WALSH: And that's one-for-one, sir?

17 THE COURT: One-for-one.

18 MR. ENGE: Given the fact that Your  
19 Honour had erred --

20 THE COURT: Wait a minute, that does  
21 affect my -- I thought it was 16 months. He was  
22 out of the jurisdiction for 16 months?

23 MS. WALSH: That's correct, sir. Out of  
24 the jurisdiction for 16 months, apprehended in  
25 September of 2007, and has been remanded in  
26 custody on that status since September 19th,  
27 2007.

1 THE COURT: In those circumstances I have  
2 extended a year beyond what I considered  
3 appropriate. I am going to move it back to...  
4 So it was six months. That is a ten-month  
5 difference. I am going to go back to five years  
6 in the circumstances, due to my error. So it  
7 will be five months less a one-for-one for the  
8 six -- five years less one-for-one for the six  
9 months that he was in custody. I went for six  
10 years specifically. That is what I am going to  
11 do.

12 Just a minute. That does not make sense,  
13 no.

14 I am going to remain at six years. Pardon  
15 me for my vacillation. I am going to make it for  
16 six years less one-for-one for time in custody of  
17 six months. I am remaining at six years. I  
18 think the offence requires a sentence of six  
19 years in all the circumstances. Sorry for the  
20 vacillation and confusion.

21 (ADJOURNMENT)

22 THE COURT: Ms. Walsh, I understand there  
23 are two issues to be addressed. One is the

24 duration of the weapons prohibition.  
25 MS. WALSH: That's correct, Your Honour,  
26 the duration, and the Crown would suggest it's in  
27 the discretion of Your Honour but would say ten

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1 years.  
2 THE COURT: Tell me, there was a section  
3 109 order in 2002. So what happens in those  
4 situations?  
5 MS. WALSH: It is something that it would  
6 begin upon the completion of Mr. Peterson's time  
7 in jail, therefore it's safe to say that a  
8 weapons prohibition at this point in time --  
9 THE COURT: Will continue, okay. In this  
10 case it will commence with today and will  
11 continue for a period of ten years from today.  
12 With respect to the request that  
13 Mr. Peterson be incarcerated in Yellowknife, we  
14 cannot direct that but we can recommend it, and I  
15 do recommend it. It is important in these  
16 situations that Mr. Peterson remain close to his  
17 family, where they can access him with relative  
18 ease. That direction is to be included.  
19 MS. WALSH: I would just simply ask that

20 Madam Clerk, or perhaps that you can advise Madam  
21 Clerk to endorse the warrant of committal thusly.  
22 MR. ENGE: Your Honour, could you please  
23 waive the victim fine surcharge as well for  
24 hardship?  
25 THE COURT: The victim fine surcharge is  
26 waived. I suspect that that's required in these  
27 circumstances.

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1 .....  
2 Certified to be a true and  
3 accurate transcript pursuant  
4 to Rule 7 23 and 7 24 of the  
5 Supreme Court Rules of Court.  
6 \_\_\_\_\_  
7 Annette Wright, RPR, CSR(A)  
8 Court Reporter  
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