

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

LYLE OMILGOITUK

Transcript of the Reasons for Sentence delivered by The Honourable Justice J.E. Richard, sitting in Yellowknife, in the Northwest Territories, on the 1st day of November, A.D. 2006.

APPEARANCES:

Mr. B. Hubley: Counsel for the Crown

Mr. H. Latimer: Counsel for the Accused

(Charges under s. 267(b) x2 of the Criminal Code of Canada)

1 THE COURT: The offender, Lyle Omilgoituk,
2 is convicted of two serious assaults which
3 occurred at a residence here in Yellowknife
4 approximately a year ago; that is, on November
5 the 6th, 2005.

6 The offender was a visitor in the residence.
7 Alcohol was being consumed. After a few hours,
8 the owner or occupant of the residence asked the
9 offender to leave. The offender became violent,
10 and he attacked one of the young women there,
11 Kimberley Ongahak. He punched her in the face
12 repeatedly, she fell to the floor, and he
13 continued punching her in the face.

14 One of the young men who was there, Tony
15 Dryneck, intervened to stop the assault on
16 Kimberley Ongahak. This offender then turned on
17 Tony Dryneck, throwing him to the floor, punching
18 him in the face, and stomping him on the face
19 with his foot.

20 The two victims were taken to the hospital
21 and were treated there for two or three days.
22 Both suffered broken facial bones and cuts and
23 bruises. Photos of their injuries in Exhibit 1
24 show clearly the serious bodily harm that was
25 caused by these vicious, unprovoked assaults.

26 The offender was eventually arrested and
27 charged. He has been in custody since December

1 2005 on these charges and on another set of
2 charges.

3 On these charges, he elected to be tried by
4 a judge and jury in this court. A preliminary
5 inquiry was held in Territorial Court in March
6 2006, following which he was committed to stand
7 trial in this court. His jury trial was set for
8 October 30th. The Sheriff's Office served jury
9 summons on a large number of citizens, and this
10 past Monday, 100 persons attended for jury duty.
11 Twelve citizens were selected to serve as
12 Mr. Omilgoituk's jury. Just as the trial proper
13 was about to commence on Monday afternoon,
14 Mr. Omilgoituk advised that he wished to change
15 his plea to guilty, which he did.

16 I mention the detail of these dates so that
17 the record will show (a) that Mr. Omilgoituk's
18 guilty plea is not an early guilty plea - far
19 from it - and (b) that the fact that
20 Mr. Omilgoituk has spent a number of months on
21 remand status at the North Slave Correctional
22 Centre is to a large extent of his own doing. I
23 note in this context that he has not only been
24 represented by very experienced counsel since
25 February of this year, Mr. Omilgoituk himself, on
26 evidence before me, has a great deal of
27 experience in the criminal justice system. In

1 any event, today he is to be sentenced for what
2 he did on November 6th, 2005, not for anything
3 that he has done or not done since then.

4 The maintenance of a peaceful and safe
5 community is one of the fundamental purposes of
6 the criminal justice system, including the
7 imposition of appropriate sentences on those who
8 commit crimes. To achieve this, sometimes it is
9 necessary to separate offenders, like Lyle
10 Omilgoituk, from society by sending them to jail
11 for a substantial period. Also, sometimes it is
12 necessary to impose a meaningful jail term on
13 offenders such as Lyle Omilgoituk in order to
14 deter them from committing crimes and to promote
15 in them a sense of responsibility for the harm
16 they have done to their victims.

17 It is a further fundamental principle of the
18 sentencing process that a sentence must be
19 proportionate to the gravity of the crimes
20 committed and of the offender's degree of
21 responsibility for the harm done to the victims
22 and to the community.

23 In my respectful view, the sentences being
24 proposed, whether a two-year imprisonment or two
25 and a half years' imprisonment, fail to address
26 the principle of proportionality in particular in
27 the circumstances of this case.

1 The rate of violent crime in this
2 jurisdiction is five or six times the national
3 average and has been so year after year for many
4 years.

5 Again, in my respectful view, the sentences
6 being proposed, whether two years' imprisonment
7 or two and a half years' imprisonment,
8 inadequately address the principle of deterrence
9 in the circumstances of this case.

10 This offender, Lyle Omilgoituk, is now 28
11 years of age and is of Inuvialuit descent. He is
12 at an age when, in the Court's experience, most
13 young men who have been in and out of jail in
14 their early adult years usually tire of that kind
15 of life and conform to society's rules.
16 Mr. Omilgoituk appears to be an exception to that
17 usual change that we see in young men in their
18 late twenties. He has spent a good portion of
19 the last ten years serving jail sentences. He
20 has been sentenced to jail terms on seven or
21 eight separate occasions.

22 During the year 2005, he was involved in a
23 common-law relationship and has a two-year-old
24 child with his former common-law spouse. I am
25 told that he has had sporadic employment as a
26 labourer in the construction field, and when he
27 has earned money, he has helped to support his

1 ex-common-law and her two children. His former
2 common-law spouse considers him to be a good
3 parent when he is sober.

4 Mr. Omilgoituk has a significant criminal
5 record, including several crimes of violence. In
6 1995 he was twice convicted for assault in Youth
7 Court in Inuvik and in Norman Wells. In 1997 he
8 was convicted of assault in Inuvik and was
9 sentenced to five months' jail followed by a
10 period of probation. In 1998, again in Inuvik,
11 he was convicted of forcible confinement and
12 sentenced to eight months, consecutive, followed
13 by another period of probation. In 1999 he was
14 convicted in Hay River of assault and sentenced
15 to six months' imprisonment. Later in 1999, he
16 was sentenced in Fort Smith for a number of
17 offences including assault, uttering threats, and
18 resisting arrest, and was given a global sentence
19 of nine months' imprisonment. In June of 2000,
20 again at Fort Smith, he was convicted of robbery
21 and was sentenced to four years in penitentiary.
22 In March 2006, here in Yellowknife, he was
23 convicted of common assault and two other
24 offences and was sentenced to six months'
25 imprisonment after receiving credit for
26 approximately three months of pre-sentence
27 custody.

1 With respect to his March 2006 sentence, his
2 counsel indicates that but for the outstanding
3 criminal charges which are before the Court
4 today, he would have been released on July 21st,
5 2006, and, accordingly, he seeks credit in the
6 determination of an appropriate sentence for the
7 present offences for his time on what he submits
8 is remand status between July 21st, 2006 and
9 today's date at a rate of two-for-one; that is,
10 six months' credit.

11 A witness from the John Howard Society
12 testified on this sentencing hearing about some
13 of her observations while interacting with this
14 offender in the past nine or ten months while he
15 has been in custody. Among her observations are
16 that he is emotionally immature and until very
17 recently has been self-centred and only recently
18 has he made an effort to express empathy. It is
19 the witness's understanding that Mr. Omilgoituk
20 has had a substance abuse problem throughout his
21 young life, and this no doubt is connected to the
22 fact that he has committed many criminal offences
23 in the past ten years.

24 Mr. Omilgoituk is convicted today of two
25 serious crimes. In Count 1, assault causing
26 bodily harm. The victim being Kimberley Ongahak.
27 In Count 3, assault causing bodily harm. The

1 victim being Tony Dryneck. Each of these crimes
2 carries a maximum of ten years' imprisonment in
3 the federal penitentiary.

4 There is a Victim Impact Statement signed by
5 the victim Kimberley Ongahak and it is dated
6 November 15th, 2005. That is just a week or so
7 after she was released from hospital almost a
8 year ago. In her statement on the pre-printed
9 form, she answers the question posed; that is
10 "How has the crime affected you?" and she speaks
11 of recurring nightmares, of the embarrassment of
12 her facial appearance because of the fracture of
13 her cheekbone, of her ongoing fear whenever she
14 is walking alone on the streets, of the effect on
15 her relationships with others, et cetera. There
16 is no Victim Impact Statement from the other
17 victim, Tony Dryneck, although I am told that he
18 was advised of his right to make a statement to
19 the Court.

20 As stated, Mr. Omilgoituk is of Inuvialuit
21 descent. His counsel asks that the Court take
22 into consideration in the imposition of sentence
23 that Mr. Omilgoituk is an aboriginal offender. I
24 take it this is a reference to Section 718.2(e)
25 of the Criminal Code where Parliament has
26 directed the Court, on the sentencing process, to
27 consider all other available sanctions other than

1 imprisonment, especially when dealing with
2 aboriginal offenders. However, in this case, any
3 sanction other than imprisonment is not a viable
4 or realistic alternative. So his status as an
5 aboriginal person is of no impact in that regard.
6 In any event, the Court has not been provided
7 with any specific evidence of any unique,
8 systemic, or background factors that may have
9 played a part in bringing this offender before
10 the Court today.

11 There are two aggravating features that
12 impact on the determination of sentence in this
13 case. Firstly, there is the gratuitous nature of
14 the violence visited upon the two victims by
15 Mr. Omilgoituk. There is simply no explanation
16 for this brutal violence on a vulnerable woman
17 followed by similar brutal violence on a man who
18 was simply trying to stop the first attack on a
19 helpless victim. Secondly, there is the
20 offender's past record of violent criminal
21 behaviour which shows that these two violent
22 assaults in November 2005 are part of a pattern
23 of anti-social dangerous behaviour from which the
24 public needs to be protected.

25 On the mitigating side, there is very little
26 that can be said. Mr. Omilgoituk's late guilty
27 plea obviously acts in mitigation of sentence,

1 though in a limited way. I see no evidence of
2 any remorse for putting two innocent people in
3 the hospital with serious injuries to their face.
4 These were two gratuitous acts of violence
5 committed by a man with a violent past. There
6 has to be serious consequences. The gravity of
7 the circumstances of these assaults cannot be
8 minimized.

9 I repeat myself when I say, with the
10 greatest respect to both counsel, that the
11 sentences proposed by counsel simply do not
12 adequately address the principles of sentencing
13 that bind this court. My understanding of the
14 law that binds me and my conscience do not permit
15 me to impose a sentence of two years or two and a
16 half years in this case. In my view, such a
17 sentence is unreasonable. It is contrary to the
18 public interest.

19 I do not understand the individual
20 submissions made by Crown counsel and defence
21 counsel this morning to be a "joint submission"
22 as that term is used by those of us in the
23 criminal justice system. There is no indication,
24 for example, that the individual submissions on
25 sentencing this morning are in any way the result
26 of any plea bargain in this case. I reiterate,
27 however, for the record, that I have given

1 serious consideration to each of the submissions
2 on behalf of the Crown and on behalf of the
3 offender. At the end of the day, however, it is
4 the Court's responsibility to impose a fit
5 sentence in each individual case.

6 Taking into consideration all of the
7 circumstances of this case, including the late
8 guilty plea, the short period of time on remand
9 status, and the Crown's position on sentencing, I
10 find that an appropriate global sentence for
11 these two serious assaults is four years'
12 imprisonment.

13 Please stand, Mr. Omilgoituk.

14 Lyle Omilgoituk, for the crimes that you
15 have committed, Count 1, assault causing bodily
16 harm on Kimberley Ongahak, it is the sentence of
17 this court that you be imprisoned for a period of
18 four years; and on Count 3, assault causing
19 bodily harm to Tony Dryneck, four years'
20 imprisonment, concurrent. In addition, there
21 will be the mandatory Section 109 firearms
22 prohibition for a period of ten years. Further,
23 I grant the DNA order sought by the Crown.
24 Finally, in the circumstances, there will be no
25 victim of crime surcharge. You may sit.

26 Is there anything further on this case,
27 Counsel?

1 MR. HUBLEY: Nothing from the Crown, Your
2 Honour.

3 MR. LATIMER: No. Nothing.

4 THE COURT: Fine. We will close court.

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8 Certified Pursuant to Rule 723
9 of the Rules of Court

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12 Jane Romanowich, CSR(A), RPR
13 Court Reporter

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