

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES
IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

MICHAEL DRYNECK

Transcript of the Reasons for Sentence delivered by The
Honourable Justice J.Z. Vertes, in Yellowknife, in the
Northwest Territories, on the 29th day of July, 2008.

APPEARANCES:

Ms. S. Aitken: Counsel on behalf of the Crown

Mr. T. Boyd: Counsel on behalf of the Accused

Charge under s. 266 C.C.

1 THE COURT: In this case, Michael Dryneck
2 has entered a plea of guilty to a charge of
3 common assault. It is not often that this court
4 is called upon to deal with such charges, but the
5 facts reveal a very serious case of assault in
6 this instance.

7 The victim was the accused's common-law
8 spouse. They had been living in a relationship
9 for the past ten years and they have two
10 children, ages 5 and 8.

11 On the night of July 23rd, 2007, at their
12 home in Wekweti, Northwest Territories, the
13 accused and his spouse were engaged in what I may
14 describe as intimate lovemaking. However, he
15 began to hurt his spouse. She tried to make him
16 stop. He then became angry and started talking
17 about some things from her past. He started
18 hitting her and punching her about the face. The
19 victim managed to escape the house and seek
20 assistance at the local nursing station. There
21 is no police detachment in Wekweti, so the next
22 day the victim had to leave the community and
23 seek shelter elsewhere.

24 The accused was arrested in October of 2007
25 for his actions and eventually a jury trial was
26 scheduled to be held in the community of
27 Behchoko. Just days before that trial was set to

1 begin, the accused entered a guilty plea for the
2 charge that we are dealing with today.

3 Crown counsel has pointed out a number of
4 aggravating circumstances to take into account in
5 this case. First and foremost, there is the fact
6 that this offence involves the abuse of the
7 offender's spouse, an act of violence recognized
8 by the Parliament of Canada as a most serious
9 aggravating factor since it has been specifically
10 designated as such in the Criminal Code.

11 There is no excuse for this behaviour. I
12 heard the accused talk about his past, his
13 difficult upbringing, and I am sure that is the
14 root of many of his difficulties, and indeed it
15 may be the cause of what he describes as "the
16 anger inside me". But that is no excuse to react
17 violently to one's loved one and the mother of
18 one's children. It is a gross abuse of trust and
19 it is, unfortunately, a very recurring act in our
20 communities.

21 Compounding that aggravating fact is the
22 fact that the victim was nine weeks pregnant at
23 the time. It appears obvious to me that the
24 accused did not give a thought to that fact as he
25 engaged in his violent attack on his spouse. The
26 injuries were significant, as revealed by the
27 photographs that were submitted.

1 Also aggravating is the fact that the
2 accused has a criminal record. He has 33
3 convictions between 1989 and 2006. Of those 33
4 convictions, nine offences are for crimes of
5 violence and five of those involve the same
6 victim, starting in 2000. He was on probation at
7 the time of this offence, with a condition that
8 he have no contact with the victim, although
9 Crown counsel acknowledges that the two of them
10 were living together with the consent of the
11 victim and regardless of the no-contact clause.
12 But this repetitive behaviour reveals to me that
13 the accused did not learn from his past conduct.
14 He was charged, tried and punished for his past
15 attacks on the victim, and yet that did no good.
16 Maybe now at his age and with growing
17 self-awareness he will come to the realization
18 that only he can make the changes in his life
19 that are necessary, both for himself and for his
20 family.

21 Of course there is the strong mitigating
22 factor of a guilty plea. Crown counsel, while
23 recognizing that the guilty plea did not come at
24 an early stage of these proceedings, acknowledges
25 the fact that it has meant that the victim need
26 not go through the ordeal of having to testify at
27 a trial. So I give credit to the accused for

1 that.

2 The accused is 37 years old. He grew up in
3 a large family in the North Slave region. In the
4 past he has been working for Renewable Resources
5 as a firefighter and has also obtained employment
6 as a labourer with one of the logistical
7 companies working at a diamond mine.

8 I am told by his counsel that on the day of
9 this offence he had consumed quite a bit of
10 alcohol. That of course may partly explain his
11 conduct, but it is no excuse.

12 Crown counsel has suggested a sentence of
13 two years less a day, with credit for time spent
14 on remand, and a further three-year probationary
15 term specifically providing for a no-contact
16 provision. In this case, I am assisted by the
17 fact that defence counsel has indicated that the
18 defence joins in that sentencing proposal.

19 In my opinion, the sentence for this
20 offence, considering the accused's background and
21 all of the aggravating factors that I have
22 identified, could very well be significantly
23 higher than that proposed in the joint
24 submission. I recognize, however, that the joint
25 submission is one that has been put forward by
26 experienced counsel, and considering the fact
27 that there has been a guilty plea, I am satisfied

1 that it meets the principles and objectives of
2 sentencing.

3 I must of course consider the circumstances
4 of the accused as an aboriginal offender. I
5 recognize that there are widespread systemic
6 factors of a general nature affecting all
7 aboriginal Canadians that place them at a
8 disadvantage. I heard the accused speak about
9 some factors that are specific to his upbringing
10 - the abuse he suffered from the hands of his
11 father apparently and other members of his
12 family. Again, I say that those factors, while
13 they may be very much part of the cause for his
14 anger and for his lack of self-control, cannot
15 explain away the repetitive nature of his
16 conduct, his violent and abusive conduct toward
17 his spouse. In these circumstances I have no
18 alternative but to impose a sentence that would
19 be imposed on anyone else who has exhibited such
20 a history of violence.

21 With respect to the credit for remand time,
22 the accused has apparently spent six months in
23 remand attributable to this offence. The Supreme
24 Court of Canada has recognized that credit must
25 be given for remand time in the absence of a
26 significant reason not to do so. While there is
27 no formula, the usual rule of thumb is to credit

1 remand time at a ratio of two-to-one, in the
2 absence of evidence of circumstances that may
3 warrant a deviation. I heard no evidence of any
4 circumstances that would warrant a deviation from
5 the usual calculation of credit for remand time.

6 Stand up, Mr. Dryneck.

7 Mr. Dryneck, having listened to you, it
8 seems to me that you are starting to become aware
9 of your difficulties. I only hope that at your
10 age you are able to start to take control of your
11 emotions and to deal with them and to try and put
12 your life together so that you can be the man and
13 father that you tell me you hope to be.

14 I agree with Crown and defence that an
15 appropriate sentence would be one of two years
16 less one day. Taking into account remand time,
17 which I credit at two-for-one which would amount
18 to 12 months, I sentence the accused to a term of
19 imprisonment of 12 months.

20 In addition, there will be a period of
21 probation for a further term of three years. The
22 terms of that probation will be that you are to
23 keep the peace and be of good behaviour; you are
24 to report to the court as and when required to do
25 so; you are to report to a probation officer upon
26 your release from imprisonment and continue to
27 report as and when directed by a probation

1 officer; you are to participate in any treatment
2 or counselling programs that may be recommended
3 by your probation officer.

4 Do you agree with that, sir?

5 THE ACCUSED: Yes, sir.

6 THE COURT: And you are to have no contact
7 directly or indirectly with Therese Boline during
8 the period of your probation order.

9 Do you understand that?

10 THE ACCUSED: Yeah, I can respect that.

11 THE COURT: Very well. Your counsel will
12 explain to you the significance of the probation
13 order and the fact that if you breach any term of
14 that order you can be charged with that and
15 brought back in court and sentenced for that. Do
16 you understand?

17 THE ACCUSED: Yes, sir.

18 THE COURT: In addition, as requested by
19 Crown counsel, there will be an order requiring
20 the accused to provide a sample for DNA analysis
21 for submission to the DNA databank, pursuant to
22 section 487.051 of the Criminal Code.

23 Finally, I make an order under the
24 discretionary provisions of section 110 of the
25 Criminal Code prohibiting the accused from having
26 in his possession any firearms, ammunition or
27 other devices mentioned in section 110 for a

1 period of no less than ten years from the date of
2 his release from his sentence of imprisonment.

3 Is there anything else we need to address,
4 counsel? Ms. Aitken?

5 MS. AITKEN: Just in relation to the
6 victims of crime surcharge, sir.

7 THE COURT: Under the circumstances, the
8 victims of crime surcharge fine surcharge is
9 waived.

10 MR. BOYD: Nothing from defence. Thank
11 you, Your Honour.

12 THE COURT: Thank you, counsel, for your
13 submissions. We will close court.

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16 Certified to be a true and
17 accurate transcript pursuant
18 to Rule 723 and 724 of the
19 Supreme Court Rules of Court.

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21 Annette Wright, RPR, CSR(A)
22 Court Reporter

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