

R. v. Michel, 2008 NWTSC 01

S-1-CR2007000052

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- vs. -

CLIFFORD MICHEL

Transcript of the Reasons for Sentence by The Honourable
Justice J.Z. Vertes, at Yellowknife in the Northwest
Territories, on December 19th A.D., 2007.

APPEARANCES:

Ms. C. Gagnon: Counsel for the Crown

Mr. G. Boyd: Counsel for the Accused

Charge under s. 271 Criminal Code of Canada

Ban on Publication of Complainant/Witness
pursuant to Section 486 of the Criminal Code

Official Court Reporters

1 THE COURT: The accused has pleaded guilty
2 to a charge of sexual assault. The pertinent
3 facts of the offence have been set out in an
4 agreed statement of facts filed by counsel. I
5 will briefly summarize the facts set out therein.

6 On January 7th, 2007, in the early morning
7 hours in the community of Lutsel K'e, the accused
8 and a group of others, including the 16-year-old
9 complainant, were drinking alcohol at a residence
10 in Lutsel K'e. At about 4 a.m. that morning, the
11 complainant and her cousin went to another home.
12 Shortly thereafter the accused and several others
13 showed up at that home and continued drinking.
14 After the alcohol was consumed, the accused and
15 the others left. The complainant and her cousin
16 then went to sleep. Sometime between 7 and 8
17 a.m., the complainant awoke to find the accused
18 kneeling beside her where she was sleeping,
19 trying to perform oral sex on her. He then tried
20 to have sexual intercourse but she managed to
21 push him away and then she was able to get away
22 herself. She reported this assault right away.

23 The accused is only 21 years old. He lives
24 with his grandparents in Lutsel K'e. He was
25 raised by his grandparents. He left school in
26 Grade 10 to pursue a traditional lifestyle under
27 the guidance of his grandfather. He has taken

1 some upgrading courses since then but I am told
2 that he has many traditional skills and
3 participates in community events and activities.
4 He helps support his grandparents, providing them
5 with food, cutting wood, etcetera. He has worked
6 seasonally as a general labourer but would like
7 to upgrade his skills and become a certified
8 general carpenter.

9 Unfortunately this young man also has a
10 criminal record. That record reveals that he has
11 been convicted on four different occasions,
12 between 2005 and earlier this year in May of
13 2007. He has a conviction for assault, for
14 mischief, for being unlawfully in a dwelling
15 house for which he was sentenced to 14 days in
16 jail and a year of probation. He also has
17 convictions for impaired driving and breaches of
18 various Court orders.

19 It is evident from his record and from the
20 facts submitted to me that, even at his young
21 age, the accused has developed a problem with
22 alcohol abuse. I was told that his parents were
23 alcoholics and the accused himself has succumbed
24 to that problem.

25 There are a number of aggravating
26 circumstances in this case. The very fact that
27 the assault was committed upon a sleeping

1 helpless victim is extremely aggravating. It is
2 the type of offence that we see all too often in
3 the courts here in the Northwest Territories.
4 But, in addition, there are certain other
5 aggravating circumstances.

6 As noted by Crown counsel, he came back
7 uninvited to the residence after the occupants
8 had gone to sleep. There is the relatively young
9 age of the complainant, who was only 16 at the
10 time. And significantly, there is the fact that
11 the accused at the time of this offence was bound
12 by a probation order and, in addition to that,
13 bound by an undertaking as a result of other
14 pending charges.

15 Among the mitigating circumstances are of
16 course his young age. Crown counsel has quite
17 correctly pointed out that for offences of this
18 type, offences of sexual violence, the principles
19 of deterrence, both specific and general,
20 denunciation, and public safety must be
21 emphasized. But considering the still relatively
22 young age of the accused, I must also consider
23 his prospects for rehabilitation.

24 On that aspect, I am told that he has taken
25 some positive steps during his incarceration
26 since this offence. He has attempted to deal
27 with his alcohol problem. He has attended AA

1 meetings in jail on a regular basis. He has
2 participated in healing circles. I am told that
3 he intends to pursue a sober life and I heard
4 from him about his own recognition of his
5 problems and his apology for the crime that he
6 has committed.

7 Another mitigating circumstance is the very
8 fact of this guilty plea. It does come
9 relatively late in the day. It is not an early
10 plea by any sense of that word. He was scheduled
11 to go to trial in a few weeks from now in his
12 community before a jury. Although I take into
13 account the fact, as his counsel told me, that
14 part of the delay in resolving this matter was
15 due to a change of counsel partway through the
16 proceedings, the fact is that the complainant
17 still had to testify at a preliminary hearing.
18 So while I do acknowledge and give him credit for
19 his guilty plea, more importantly because I think
20 it is the surest sign of his growing sense of
21 responsibility, it is somewhat limited in weight
22 because of the circumstances in which it has been
23 made.

24 The other fact that I must take into account
25 of course is that the accused is of aboriginal
26 ancestry. He grew up and lived his entire life
27 in a small aboriginal community on the shore of

1 Great Slave Lake. But this is the type of crime,
2 and the circumstances of the accused are such,
3 that really the same principles of sentencing
4 that would apply to this case anywhere in Canada
5 must be applied here. The emphasis on deterrence
6 and denunciation leaves very little room to
7 engage in speculation about alternative
8 sentencing sanctions. This was a crime of
9 violence and a significant sanction must be
10 imposed to get it across to this young man, and
11 to others, that this type of behaviour must be
12 controlled. There is no excuse.

13 I recognize that the accused was under the
14 influence of alcohol at the time of this offence
15 but that is still no excuse and it is certainly
16 not a mitigating circumstance.

17 Finally, I must take into consideration the
18 fact that the accused has been in pre-trial
19 custody. He was incarcerated originally on
20 February 10th, 2007. Part of the time since then
21 has been taken into account as sentences on other
22 unrelated matters but Crown and defence agree
23 that a total of nine and a half months should be
24 considered as pre-trial custody. I have heard
25 nothing to suggest that that period of pre-trial
26 custody should be treated in any other than the
27 usual way; that is, to be accorded credit at a

1 ratio of two-to-one.

2 Crown counsel has suggested that an
3 appropriate range for this offence is
4 imprisonment of 22 to 24 months. She has also
5 urged me to consider a probation order so as to
6 provide some preventative measures and perhaps to
7 assist with the accused's attempts at
8 rehabilitation. Defence counsel has submitted
9 that an appropriate sentence would be one of time
10 served, considering the fact that the period of
11 pre-trial custody would amount to the equivalent
12 of 19 months.

13 In my opinion, considering the circumstances
14 of this offence, and considering the fact that
15 the accused was bound by various Court orders,
16 and the fact that the accused failed to control
17 his own behaviour, all this leads me to the
18 conclusion that the range suggested by Crown
19 counsel is an appropriate one and indeed it is a
20 relatively lenient one. There have been cases in
21 this jurisdiction where people have been
22 sentenced to penitentiary terms in excess of two
23 years for this type of behaviour and those were
24 people with similar types or even lesser criminal
25 records than this accused. But I accept the
26 Crown's recommendation.

27 In my opinion an appropriate sentence would

1 be one of 24 months. If I apply the credit of
2 pre-trial custody to that, that would leave a
3 sentence of five months.

4 Stand up, Mr. Michel.

5 Mr. Michel, I listened to your words and I
6 can only say to you that I hope you will follow
7 through on them, that you will take the steps
8 necessary to enable yourself to lead a sober
9 upstanding life. You are still a young man, you
10 still have much of your life ahead of you, and I
11 am sure that you can become a credit to your
12 community and even a leader in your community.

13 The sentence of this Court is five months
14 imprisonment. In addition, you will be placed on
15 probation for a period of two years following the
16 end of your imprisonment.

17 The terms and conditions of that probation
18 will be as follows:

19 You are to keep the peace and be of good
20 behaviour. You are to report to the Court if and
21 when required to do so. You are to be under the
22 supervision of a probation officer. You are to
23 report to the probation officer within 72 hours
24 of your release and to continue reporting to the
25 probation officer as directed by the probation
26 officer. You are to participate actively in any
27 counselling or treatment programs as recommended

1 by your probation officer. Do you agree with
2 that?

3 THE ACCUSED: Yes, sir.

4 THE COURT: You are to abstain absolutely
5 from the consumption or possession of alcohol or
6 any other intoxicating substances. That means
7 drugs, illegal drugs, home-brew, alcohol, beer,
8 wine, no matter. Do you understand?

9 THE ACCUSED: (No verbal response).

10 THE COURT: You are to have no contact
11 directly or indirectly with the complainant Leah
12 Abel.

13 In addition, there are certain orders that I
14 must make as required by the Criminal Code
15 because of the nature of this conviction. I have
16 heard nothing, either in the submissions of
17 counsel or in the evidence, to suggest that the
18 making of these orders would be grossly
19 disproportionate as between your interests and
20 the interests of society therefore you will be
21 bound by the following orders as well.

22 First, there will be an order requiring the
23 accused to provide a sample for DNA analysis and
24 submission to the DNA databank pursuant to
25 Section 487.051 of the Criminal Code.

26 Second, there will be an order that you must
27 comply with the provisions of the Sexual Offender

1 Information Registration Act for the designated
2 period of 20 years pursuant to 487.012 of the
3 Criminal Code.

4 Third, I make an order under the mandatory
5 provisions of Section 109 of the Criminal Code
6 prohibiting the accused from having in his
7 possession any firearms, ammunition, or
8 explosives for a period of no less than ten years
9 from the date of his release from his sentence of
10 imprisonment, ending ten years from that date.

11 Now, I will make an exception to that,
12 because of what I heard about your background and
13 your traditional life skills, that you will be
14 entitled to possess and use firearms and
15 ammunition limited solely for the purpose of
16 sustenance hunting. And, counsel, you can
17 include a provision to that effect in the formal
18 order.

19 Have a seat, Mr. Michel.

20 Under the circumstances, the Victim of Crime
21 fine surcharge is waived.

22 Have I neglected anything, Ms. Gagnon?

23 MS. GAGNON: I believe that's complete,

24 Your Honour.

25 THE COURT: Mr. Boyd?

26 MR. BOYD: Nothing further, sir.

27 THE COURT: Then, counsel, thank you for

