

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

BRENDA VALERIE KOWANA

Transcript of the Reasons for Sentence delivered by The Honourable Justice L. Charbonneau, in Yellowknife, in the Northwest Territories, on the 16th day of February, 2009.

APPEARANCES:

Ms. T. Nguyen: Counsel on behalf of the Crown

Mr. J. Bran: Counsel on behalf of the Accused

Charge under s. 267(a) C.C.

1 THE COURT: Counsel and Ms. Kowana, I have
2 not had a lot of time this afternoon, but at the
3 risk of not being as eloquent as I would like to
4 be, I have had enough time to make a decision.
5 So instead of delaying this any further, I am
6 going to impose my sentence now and that way the
7 matter will be over with this afternoon. I would
8 have preferred having a little bit more time to
9 polish these reasons for sentence a little bit
10 better, but under the circumstances I think it is
11 best to just conclude the matter today and I
12 understand that is very much what Ms. Kowana
13 prefers.

14 The circumstances that I heard this
15 afternoon after Ms. Kowana pleaded guilty to a
16 charge of assault with a weapon is that on the
17 afternoon this incident happened she was trying
18 to harm herself. She had a knife. Her uncle,
19 who was present, tried to stop her, and he is the
20 one, in the end, who got injured. He has a very
21 limited recollection of what took place, but he
22 did suffer a stab wound that required some
23 stitching to close. He was treated and released
24 from hospital the same day. So fortunately for
25 him and fortunately for Ms. Kowana, his injury
26 was not as serious as it could have been.

27 I have unfortunately had occasion to say

1 this before, but I will say it again. When it
2 comes to stabbings, the difference between a
3 relatively minor injury and a very serious
4 injury, and at times death, is often a matter of
5 a few centimetres, and always, more than anything
6 else, a question of pure luck. So it is a very
7 lucky thing indeed that nothing more serious
8 happened on this occasion.

9 I heard that Ms. Kowana was released on a
10 recognizance on this matter, but she breached her
11 promise to the court twice and eventually was
12 taken back into custody. I was told this
13 afternoon that she entered guilty pleas to two
14 breach charges, both of which were alcohol
15 related, in other words, breaches of the
16 condition not to consume alcohol, and she was
17 sentenced for those back in December of 2008.

18 From what has been said on her behalf and
19 what she has told the Court herself directly
20 earlier this afternoon, it is clear that alcohol
21 is a major problem for her. It has led to most,
22 if not all, of the convictions on her criminal
23 record. It has led to the events that bring her
24 before the court today, as well as to the two
25 breaches that I have already referred to.

26 On this particular charge, the time she has
27 spent on remand was from December 18th, 2008, to

1 today's date, so just about two months.

2 The Crown has argued that a fit sentence for
3 this offence would be four months' imprisonment
4 considering Ms. Kowana's criminal record but
5 taking into account the unusual circumstances of
6 this offence, in other words, the fact that she
7 was actually trying to harm herself as opposed to
8 trying to attack another person, and also taking
9 into consideration her guilty plea and the fact
10 that she waived her preliminary inquiry so that
11 no witnesses ever had to testify about this case.

12 In any sentencing, the Court has to consider
13 the circumstances of the offence and the
14 circumstances of the offender. The Criminal Code
15 includes a number of sentencing principles and I
16 have considered them. I have addressed my mind,
17 in particular, to whether Ms. Kowana's aboriginal
18 status should impact on the sentence to be
19 imposed on her today. I gave counsel an
20 opportunity to draw to my attention any factors
21 that I should be aware of in this regard. After
22 consulting with his client, counsel said there
23 was nothing in particular that could be drawn to
24 my attention bearing on this issue. Because it
25 is clear that Ms. Kowana is anxious to have this
26 matter dealt with today, I do not think it would
27 be appropriate or in her best interest to adjourn

1 this matter any further to attempt to gain more
2 information about this.

3 Generally speaking, offences that involve
4 the use of weapons, and in particular knives,
5 lead to the imposition of jail terms
6 significantly longer than the four months that is
7 being sought in this case, at least in this
8 jurisdiction. This is because of the inherent
9 danger of serious harm to the victim whenever a
10 knife is used in an assault. Many of the
11 homicide cases that we have had in this
12 jurisdiction over recent years and even over a
13 longer term period have involved stabbings. The
14 courts tend to impose severe penalties for these
15 types of offences, even in those fortunate cases
16 where the injuries are not at the most serious
17 end of the scale. So in that sense, the sentence
18 that is being sought here by the Crown is outside
19 the usual range, especially considering
20 Ms. Kowana's record. But I have concluded that
21 it is an appropriate range given the fact that
22 the circumstances of this case are unusual.
23 Ms. Kowana, unlike many people in this
24 jurisdiction who sometimes do, did not pick up a
25 knife in anger to attack someone else or
26 introduce a weapon in what was before a
27 consensual fight. She was trying to harm herself

1 and ended up hurting someone who was trying to
2 stop her. So I do agree that in the very unusual
3 circumstances of this case, a four month sentence
4 is a fit sentence. That leaves the question of
5 how much credit Ms. Kowana should receive for the
6 time she has spent on remand.

7 Defence counsel has argued that Ms. Kowana
8 should get credit on two-for-one scale. I am not
9 entirely clear on what the Crown's position is.
10 They do not seem to be suggesting strongly that
11 credit be given on a ratio other than
12 two-for-one. But they have also said that the
13 sentence of time served, which is essentially
14 what the defence is asking, is not to be treated
15 as a joint submission. So my interpretation is
16 the Crown is more or less leaving it in the
17 Court's hands to decide how much credit to give
18 to the remand time.

19 How much credit is given for remand time is
20 a matter for the court's discretion. Sometimes
21 two-for-one credit is given but it is not an
22 absolute or hard and fast rule. In circumstances
23 such as these where Ms. Kowana was initially
24 released and only ended up back in custody as a
25 result of breaches, I do not think it is
26 appropriate to use the two-for-one credit ratio
27 and I think a one-for-one credit is the most that

1 the Court can give to her. Ms. Kowana ended up
2 in custody on this matter because she was unable
3 to keep her promise to the Court. The fact that
4 she was released in the first place, considering
5 that she was facing an aggravated assault charge
6 and that she had a large number of convictions on
7 her record for failing to comply with court
8 orders, is already somewhat surprising to the
9 Court. But certainly the fact that she then
10 ended up back in custody because of her breaches
11 affects how much credit could be given to her for
12 her remand time.

13 Ms. Kowana herself has talked about her
14 alcohol problem, about issues she has faced, and
15 about losing her children because of alcohol.
16 She says she wants to address her issues in the
17 hopes of one day being able to get her children
18 back. She wants to relocate to Yellowknife when
19 she is released because she thinks that she will
20 have access to better resources here, perhaps
21 more options, and also maybe have more regular
22 contact with the Department of Social Services so
23 she can work towards getting her children back.
24 She has had her difficulties, but she is, I
25 emphasize again, very lucky that nothing more
26 serious happened on this day. One can only hope
27 that these events will be the trigger for her to

1 turn her life around for good, and that is what
2 the Court sincerely wishes for her. Only time
3 will tell.

4 As I have already said, the sentence that is
5 sought by the Crown is at the very, very low end
6 of the range of sentences imposed for this type
7 of crime. While I agree that the guilty plea for
8 which I give Ms. Kowana full credit and the
9 circumstances of the offence made that suggestion
10 a fit sentence, I am not able to agree that time
11 served is appropriate because of the views I hold
12 with respect to how much credit can be given to
13 the time spent on remand.

14 Ms. Kowana, can you stand, please.

15 Ms. Kowana, for this offence of assault with
16 a weapon, I am going to sentence you to two
17 months' imprisonment, which is four months minus
18 the two that you have already spent on the
19 remand.

20 You can sit down.

21 The Crown has sought a firearms prohibition
22 order, and because it is mandatory in a case like
23 this I will make that order.

24 I will also make a DNA order which I
25 understand is also mandatory in the circumstances
26 of this case.

27 As I said, Ms. Kowana, there are things that

1 only you can do to stop this cycle of being in
2 and out of court. You were able to stay out of
3 court for a good stretch of time in early 2000,
4 and that means you are able to do that if you set
5 your mind to it. You are still quite young and
6 you have time to turn your life around and I wish
7 you the best of luck in doing that after your
8 release. I really hope you will be able to deal
9 with your issues and do the things you want to
10 do. You still have a lot of time ahead of you in
11 your life to do good things, if that is what you
12 choose to do. I wish you luck.

13 Is there anything else, counsel?

14 MS. TKATCH: No, Your Honour.

15 THE COURT: Mr. Bran?

16 MR. BRAN: I believe that covers
17 everything.

18 THE COURT: You don't need any orders for
19 exhibits or anything of that?

20 MS. TKATCH: No.

21 THE COURT CLERK: How long is the period of
22 firearms prohibition?

23 THE COURT: Ten years.

24 We can close court.

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

Annette Wright, RPR, CSR(A)
Court Reporter