

R. v. Rabesca 2009 NWTSC 31

S-1-CR2008000069

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- vs. -

KEVIN RABESCA

Transcript of the Reasons for Sentence by The Honourable
Justice J.Z. Vertes, at Yellowknife in the Northwest
Territories, on May 11th A.D., 2009.

APPEARANCES:

Mr. J. MacFarlane:

Counsel for the Crown

Ms. K. Payne:

Counsel for the Accused

1 THE COURT: In these proceedings, Kevin
2 Rabesca has entered guilty pleas to four counts,
3 relating to four offences, all of them committed
4 on June 11th, 2008 at Behchoko. Count 1 is a
5 charge of assault on his common-law spouse during
6 which he used a weapon. Count 2 is a charge of
7 unlawful confinement of his common-law spouse.
8 Count 3 is a charge of breach of an undertaking
9 whereby he was directed to abstain from any
10 communications directly or indirectly with his
11 common-law spouse or to attend at her residence
12 in Behchoko. And Count 4 was a charge of
13 breaching an undertaking by failing to appear in
14 court as required to do so.

15 I am indebted to counsel for their
16 presentation of an agreed statement of facts and
17 for the manner in which they have resolved this
18 case.

19 The agreed facts reveal that on June 11th,
20 2008, the accused attended at the home of his
21 common-law spouse. The accused and his spouse
22 had been separated since January of 2008 but they
23 had been living in a relationship for
24 approximately 13 or 14 years up until then. They
25 have four children.

26 At the time that he went to the house, he
27 was let in by the couple's 13-year-old daughter.

1 When the victim returned to the residence, the
2 accused began to physically assault her by
3 punching her repeatedly in the face, pulling her
4 hair, and by pushing her down on the floor. The
5 accused struck her with a stereo, that being the
6 alleged weapon in Count 1. She tried to
7 barricade herself in the bathroom. The accused
8 came after her and continued the assault.

9 As Crown counsel noted, this was a prolonged
10 assault in which the victim was held as a
11 prisoner her own home.

12 Help was not obtained until after the
13 accused left the residence approximately six
14 hours after he had arrived.

15 As counsel know, Section 718.2 of the
16 Criminal Code makes the abuse of one's spouse or
17 common-law partner an aggravating factor in
18 sentencing. What is even more disturbing in this
19 case is that the couple's four children were in
20 the residence at the time of this assault and,
21 indeed, part of the assault was witnessed by
22 their 13-year-old daughter.

23 The unfortunate reality is that we see all
24 too many cases of spousal violence in this Court.
25 The causes of that violence vary but it is a
26 significant and serious aspect of life in many of
27 our communities. For that reason, these cases

1 are dealt with very seriously and an emphasis is
2 placed on deterrence of the accused and
3 deterrence of others to show that spouses and
4 children have a right to be safe within their
5 relationships and within their homes. This was a
6 relationship whereby each partner deserves trust,
7 respect, and protection; not violence.

8 In this case as well, there is another
9 significant aggravating factor, that being the
10 accused's criminal record. Since 1995 he has
11 accumulated 17 convictions of which nine are for
12 crimes of violence including three previous
13 assault convictions on the same victim.

14 The Crown and the defence have put before me
15 submissions with respect to the disposition of
16 this case. They do not call it a joint
17 submission but it is apparent that it is the
18 result of a great deal of effort on the part of
19 both counsel in trying to resolve all the issues
20 surrounding these charges.

21 Apparently there were other charges arising
22 from this series of incidents.

23 The victim apparently wants to reconcile
24 with the accused and has made that abundantly
25 clear to the Crown and the police. It is not for
26 me to comment on the victim's wishes in this
27 regard, how wise or unwise they may be. But it

1 is apparent to me that as part of the resolution
2 process for this case, Crown and defence counsel
3 have put significant thought into what may be
4 best in a global sense for everyone involved.

5 The accused is 37 years old. He is an
6 aboriginal Tlicho man with a Grade 10 education.
7 I am told that he has extensive experience as a
8 construction worker and that he is planning to
9 take an apprenticeship program in carpentry.

10 The guilty plea is recognized by both
11 counsel, and by myself, as a significant
12 mitigating factor in this case. I think it is
13 significant because it is an acknowledgment by
14 the accused of his responsibility. I take that
15 into account as well as I take into account the
16 words that he spoke in this courtroom just a few
17 moments ago - apologizing to the victim,
18 apologizing to the other members of his family,
19 and giving some recognition to some of the issues
20 that he has to confront in terms of putting his
21 life together for his own benefit and for the
22 benefit of his children. I took his words as a
23 sincere expression and I hope he will follow
24 through on them.

25 Ordinarily these types of cases result in
26 lengthy terms of imprisonment, particularly
27 considering the aggravating nature of this

1 assault and the history of violence exhibited by
2 this man.

3 In this case, Crown counsel has suggested
4 that an appropriate disposition would be a global
5 sentence of 15 months. However, the accused has
6 spent a total of seven and a half months in
7 pre-sentence custody, and Crown counsel has
8 clearly indicated to me that the Crown feels that
9 this is an appropriate case for the application
10 of the normal pre-sentence custody criteria as
11 articulated by the Supreme Court of Canada in its
12 1998 decision in the case of Wust. I have heard
13 nothing to suggest that the criteria mentioned in
14 that case should not be applied in this case.
15 The end result, of course, is that, if I apply a
16 normal two-for-one credit (with the accused
17 having served seven and a half months pre-trial
18 custody) that would be equivalent to the global
19 sentence that the Crown suggests.

20 I have to take into consideration the
21 accused's status as an aboriginal person. The
22 Criminal Code requires me to do so. I must say I
23 have heard nothing to suggest that there is
24 anything particular in this case or in the
25 circumstances of the accused that should warrant
26 some differential treatment from anybody else
27 convicted of these types of crimes.

1 I must say at first blush, I may have been
2 inclined to think that the recommendations of
3 Crown counsel were quite lenient but having heard
4 everything that counsel have said to me regarding
5 the efforts made to resolve this case, regarding
6 some of the difficulties presented by this case,
7 and having heard directly from the accused of
8 what I take to be a sincere expression of
9 remorse, I accept the submissions of counsel with
10 respect to the disposition.

11 Stand up, Mr. Rabesca.

12 Mr. Rabesca, as I just indicated, I took
13 your words very seriously and I hope that you
14 meant them seriously, because I can assure you
15 that if there is any repetition of this type of
16 behaviour, this type of violent conduct within
17 the family context, no Judge is going to be as
18 lenient as I am going to be right now. And I am
19 sure that you understand that.

20 THE ACCUSED: Yes.

21 THE COURT: Ordinarily, and I want to make
22 this clear, based on the facts that I have heard,
23 a sentence of 12 months on Count 1, six months on
24 Count 2, three months each on the breach charges,
25 as originally proposed by Crown counsel, would be
26 appropriate. That would be a 15 month global
27 sentence. Taking into account the time that you

1 have already served in pre-sentence custody, the
2 sentence I impose on you is one day in jail on
3 each count to be served concurrently and deemed
4 to have been served by your attendance in court
5 today.

6 In addition, you will be on probation for a
7 period of two years. Having heard counsel's
8 representations, the only terms and conditions of
9 that probation order that I am going to impose,
10 in addition to the statutory ones of keeping the
11 peace and being of good behaviour, are that you
12 are to report forthwith to a probation officer
13 and you are to continue reporting to that
14 probation officer as and when directed by the
15 probation officer. You are to take such
16 counselling and treatment programs as may be
17 recommended and arranged by your counsellor. Do
18 you agree to do so, sir?

19 THE ACCUSED: Yes.

20 THE COURT: And you are to seek and
21 maintain active employment or enrolment in a
22 program of education or training.

23 In addition, there will be an order pursuant
24 to Section 487.051 of the Criminal Code that you
25 are to provide a sample for DNA analysis and
26 submission to the DNA databank in accordance with
27 the regulation.

1 Further, there will be an order pursuant to
2 Section 109 prohibiting you from having in your
3 possession any firearm, ammunition, or explosives
4 for a period of ten years. I will make that
5 order subject to an order under Section 113,
6 authorizing the chief firearms officer to issue
7 an authorization or license to you, so that you
8 may use firearms for sustenance purposes.

9 I make that further direction, counsel, on
10 the basis of what I have heard that the accused
11 supplements his income by hunting and trapping
12 and also provides food for his extended family in
13 Behchoko.

14 You may sit down, sir.

15 Is there anything that I have neglected,
16 counsel?

17 MS. PAYNE: Your Honour, I am just curious
18 how that will show up his record. We have had
19 some issues come up with regard to how time
20 served is reflected on the...

21 THE COURT: Well, the transcript of my
22 remarks will be available so that no one can
23 mistake the fact that I do not think one day in
24 jail is an appropriate penalty for someone
25 convicted of spousal assault. It is only because
26 of the application of the credit for pre-sentence
27 custody that we get to the one day. The actual

1 warrant, the conviction order will reflect one
2 day in jail concurrent on each count. But in
3 other terms, I think there has become a practice
4 in the court registry that, for example, they may
5 indicate on the warrant what might have been the
6 sentence but for the pre-sentence custody. In
7 this case that should be shown as 15 months as a
8 global sentence, if that is going to be done,
9 less 15 months credit for the pre-sentence
10 custody.

11 MS. PAYNE: Thank you, sir.

12 THE COURT: So I am sure that can be
13 worked out. Have I neglected anything?

14 MR. MacFARLANE: No, thank you.

15 THE CLERK: Surcharge?

16 THE COURT: The victim of crime fine
17 surcharge is waived under the circumstances.

18 MS. PAYNE: Thank you, sir.

19 THE COURT: Thank you, counsel, we are
20 adjourned.

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22 Certified to be a true and
23 accurate transcript pursuant
24 to Rules 723 and 724 of the
25 Supreme Court Rules,
26

27 _____
Lois Hewitt, CSR(A), RPR, CRR
Court Reporter

