

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- vs. -

DONALD GORDON MERCREDI

Transcript of the Reasons for Sentence by The Honourable
Justice D. M. Cooper, at Yellowknife in the Northwest
Territories, on January 11th A.D., 2010.

APPEARANCES:

Ms. C. Carrasco: Counsel for the Crown
Mr. T. Boyd: Counsel for the Accused

Charge under s. 267(b) Criminal Code of Canada

1 THE COURT: The accused has pleaded guilty
2 today to the charge of having assaulted his
3 spouse Bessie Kahak on February 10th, 2009 at
4 Yellowknife, Northwest Territories and having
5 caused bodily harm to her contrary to
6 Section 267(b) of the Criminal Code. This
7 offence carries with it a maximum sentence of ten
8 years' imprisonment.

9 Crown and defence have filed an Agreed
10 Statement of Facts but disagree on what the
11 appropriate sentence should be. The Crown
12 submits that a proper sentence would be 18 months
13 in jail less credit for remand time and a period
14 of probation. The defence argues that this is a
15 case that warrants the least restrictive sanction
16 possible and asks the Court to impose a
17 conditional sentence.

18 On the night in question, the accused and
19 his spouse of 20 years, Ms. Kahak, were drinking
20 heavily in their apartment and shortly before
21 midnight were overheard by a neighbour arguing
22 who also heard the accused say "I'm trying to
23 sleep. I'm trying to get some sleep, leave me
24 alone". The arguing continued. At some later
25 time, the neighbour heard a loud bang and then
26 quiet followed by the sound of children crying
27 and screaming. She called the police who

1 arrived. She, the neighbour, called police, who
2 arrived to find Mr. Mercredi in a highly
3 intoxicated state and Ms. Kahak bleeding and with
4 severe swelling and bruising in the area of her
5 left eye.

6 She was taken to the Stanton Hospital and
7 later medivaced to Edmonton where she underwent
8 surgery to repair serious traumatic fractures to
9 the left orbital rim. Fragments from the
10 fractures had penetrated and lodged in the area
11 of the frontal lobe of her brain and could have
12 well been life threatening. The surgery was
13 successful and Ms. Kahak has now recovered.

14 The fundamental purpose of sentencing is to
15 contribute, along with crime prevention
16 initiatives, to respect of the law and the
17 maintenance of a just, peaceful, and safe society
18 by imposing just sanctions that have one or more
19 of the following objectives: to denounce
20 unlawful conduct; to deter the offender and other
21 persons from committing offences; to separate
22 offenders from society where necessary; to assist
23 in rehabilitating offenders; and to promote a
24 sense of responsibility in offenders and
25 acknowledgment of the harm done to victims and to
26 the community.

27 Another principle of sentencing is that a

1 sentence must be proportionate to the gravity of
2 the offence and the degree of responsibility of
3 the offender.

4 It is prescribed in the Criminal Code that
5 certain elements of an offence are to be
6 considered as aggravating and some others as
7 mitigating.

8 It is aggravating that the offender in this
9 case abused his spouse or common-law partner.

10 Yet another principle says that all
11 available sanctions other than imprisonment, that
12 are reasonable in the circumstances, should be
13 considered for all offenders with particular
14 attention to the circumstances of aboriginal
15 offenders.

16 I did not hear any representations with
17 respect to Mr. Mercredi's heritage. I do not
18 think that I would be wrong to assume that Mr.
19 Mercredi is either a Dene or more likely of Metis
20 heritage. Would that be the case, Mr. Boyd?

21 MR. BOYD: Yes, sir.

22 THE COURT: Now, I heard very little of
23 the background of the accused but consider this
24 of less importance in dealing with an adult 45
25 years of age as here.

26 I did hear that the accused was incarcerated
27 on remand from February 11th to June 17th,

1 2009 (a period slightly in excess of four
2 months). During that time, and subsequently, he
3 seemingly has done what he could do to
4 demonstrate that he is serious about dealing with
5 the issues that have brought him before the Court
6 today.

7 I have heard the accused address the Court
8 and I think I could characterize his sentiments
9 as being remorseful. He demonstrates today a
10 great deal more insight into his problem and what
11 he has to do in the future to deal with that, a
12 great deal more insight than most accused we see.
13 What he has said, I think attests to the personal
14 growth that he has undergone in the last seven
15 months and his awareness. I am mindful that for
16 someone to live in the Salvation Army for the
17 past seven months, given the regime that is
18 imposed on the residents of that facility, Mr.
19 Mercredi has done well and I accept that this has
20 not been easy.

21 In addition to living in the environment at
22 the Salvation Army, Mr. Mercredi's attended
23 counselling, various programs and discussion
24 groups run by the John Howard Society, meetings
25 of Alcoholics Anonymous. As well, during this
26 period he worked for the Housing Corporation in a
27 maintenance position for a one-month term in

1 August. And he did contracting work on his own
2 for which he rendered an invoice of \$11,000 in
3 October which would indicate to the Court that he
4 was a fully engaged and hard working contractor
5 at that point in time.

6 The victim Ms. Kahak provided a letter to
7 the Court in which she essentially asks the Court
8 for leniency for her husband and expresses fear
9 for the family if it loses his income or if she
10 cannot work because he is not at home to look
11 after the children. She also expresses her hope
12 that she and the accused could continue their
13 relationship as husband and wife, parents and
14 grandparents, and at this time with a changed and
15 positive lifestyle.

16 Mr. Mercredi is an apprentice carpenter and
17 he has completed one year of the four required
18 for certification. I am told that he very much
19 wants to continue his apprenticeship and to
20 attend the next training session at Fort Smith
21 during the months of March and April of this
22 year.

23 Counsel for the accused advised the Court
24 that his client pleaded guilty to spare his
25 12-year-old daughter from having to testify. And
26 to buttress the credibility of this
27 representation, counsel noted that the accused

1 admitted her testimony at the preliminary inquiry
2 by way of written agreement with the Crown. The
3 accused, in speaking to the Court, underscored
4 that one of the reasons why he wanted to change
5 his plea to that of guilty was to spare his
6 daughter the need of testifying in this case.

7 The accused is indeed to be credited for
8 having entered a guilty plea, although given the
9 facts as alleged, he may well have considered
10 himself inextricably caught. In any event, given
11 the lateness of the plea the accused does not get
12 the same benefit that he might have obtained had
13 the plea come much earlier in the process but I
14 will nevertheless accord it considerable weight
15 in mitigation of sentence in these circumstances.

16 I do observe that in cases where the accused
17 is so intoxicated that he is unable to instruct
18 counsel as to what actually did happen, there is
19 an added responsibility on defence counsel to
20 have the evidence "tested", if that is the
21 correct word, in court as opposed to assuming
22 that it is as it is represented to be in Crown
23 disclosure.

24 Mr. Mercredi wants to preserve his family
25 and his counsel has put before me sufficient
26 evidence to convince me that this time Mr.
27 Mercredi is serious about rehabilitating himself.

1 I can also take into account here that Mr.
2 Mercredi gave the police an inculpatory
3 statement, that luckily the harm he caused his
4 wife has done no lasting damage and that his wife
5 and oldest daughter want him back albeit as a
6 changed person.

7 If all I had to consider was the principle
8 of personal deterrence then I would be of the
9 view that a conditional sentence may indeed be a
10 realistic option. However, there are several
11 aggravating factors in this case as pointed out
12 by the Crown.

13 The assault was upon his spouse and, as I
14 have mentioned, I am required by law to consider
15 that an aggravating factor.

16 The accused has an unenviable record
17 although far from the worst that the Court has
18 seen. It includes 15 convictions dating from
19 1984 for assault, sexual assault in 1994, spousal
20 assault in 2000, spousal assault with a weapon in
21 2001, as well as an additional spousal assault
22 for which he received a concurrent sentence. On
23 this last spousal assault with a weapon, he was
24 sentenced to one year in jail after deduction for
25 time served.

26 He has four previous convictions for
27 drinking and driving offences but apart from a

1 conviction in May of this year for impaired
2 driving and two minor convictions (I will call
3 them "minor convictions" for failure to comply
4 with a condition of his undertaking in December
5 of this year) he has not had trouble with the law
6 since 2001. Nevertheless, the record is not
7 enviable.

8 Further, there were three children in the
9 home who were 2, 9, and 11 years old at the time.
10 As the accused concedes, there is little doubt
11 that this has had a traumatizing effect on them.

12 The Crown submits that in addition to
13 specific deterrence, the Court must take into
14 account and give emphasis to the principles of
15 general deterrence, denunciation, and protection
16 of the public.

17 Four authorities, four cases from this
18 jurisdiction were provided by the Crown,
19 including a transcript of the sentencing of the
20 accused for spousal assault with a weapon in
21 2001.

22 In R. v. Lafferty the accused, who had a
23 record of 39 previous convictions, was sentenced
24 to a term of 16 months in jail taking into
25 account pre-trial detention for having assaulted
26 his wife. Mr. Justice Vertes, who presided at
27 the time, indicated that a proper sentence would

1 be between the range of 30 to 36 months. The
2 accused had been committing offences consistently
3 since he became an adult and he had 17 previous
4 convictions for violent offences.

5 In the case of R. v. Tsetta, the accused had
6 choked his wife and fractured her jaw. He had a
7 lengthy and related criminal record and was on
8 probation for spousal assault when he committed
9 the offence. He excelled at his job and he was a
10 hard worker. Madam Justice Schuler imposed a
11 global sentence of 20 months - 16 for the
12 assault, two for the breach of probation, and two
13 for the breach of undertaking.

14 In the case of R. v. N. J. A., the
15 circumstances were similar to the case at bar and
16 the accused was sentenced to one year in jail
17 after having been credited double time for seven
18 months spent on remand.

19 When the accused was asked if he wished to
20 say anything at his 2001 sentence, he said he was
21 "really sorry", that his wife had given him two
22 beautiful children, that he didn't want them to
23 grow up seeing this, he hoped they were young
24 enough they wouldn't remember, and he promised to
25 learn from the experience.

26 For eight years the accused did appear to
27 learn. But his words expressed then have a

1 somewhat hollow ring today and the Court must ask
2 itself whether, despite the protestations of the
3 accused and his apparent dedication to
4 rehabilitation, if the accused has it within
5 himself to avoid alcohol entirely or at least
6 avoid binge drinking in the future.

7 The accused, in addressing the Court, has
8 assured the Court that he will rehabilitate
9 himself and he has been doing that for seven
10 months. As I have noted, his behaviour over the
11 past seven months augurs well for his future
12 rehabilitation.

13 I am going to impose a period of
14 incarceration here and a period of probation.
15 The Crown advised that the victim does not wish
16 the no-contact order to remain in effect so that
17 will not be a term. Nor is the Crown asking that
18 there be a prohibition against the possession or
19 consumption of alcohol. I think this is wise.
20 If someone is an alcoholic, making it a criminal
21 offence to drink is unlikely to change his or her
22 behaviour in the long term. That change has to
23 come from within.

24 The defence has asked that I accord double
25 time for time spent on remand, or approximately
26 eight and a half months, in keeping with some
27 previous cases.

1 Over the past year, there has been a growing
2 awareness of the conditions for remanded inmates
3 at the North Slave Correctional Centre through
4 inquiries and submissions of counsel and as a
5 result of evidence given by a Mr. Paul Pierce, a
6 case manager in the institution, in the matter of
7 R. v. Gerald Paul Stuart with Judge Schmaltz
8 presiding. One would conclude, in reviewing that
9 evidence, that living conditions in the North
10 Slave Correctional Centre are virtually identical
11 for remanded inmates to those accorded to serving
12 inmates and are as agreeable and benign as one
13 could expect.

14 The programming available to remanded
15 inmates is also the same as that of serving
16 inmates except for those programs which would
17 require to speak of events surrounding the
18 offence with which he is charged; for example,
19 anger management. Nor would the remanded
20 prisoner be able to avail himself of programs
21 conducted outside of the institution.

22 Apart from those aspects I have mentioned,
23 the incarcerations of remanded inmates is very
24 very similar to those of serving prisoners.
25 Accordingly, there really isn't any evidence to
26 support a claim that remand time in the Northwest
27 Territories is "hard time" that should attract a

1 highly significant period of credit. However, as
2 defence counsel reminded the Court, there is no
3 statutory remission of sentence on remand.

4 Stand up please, Mr. Mercredi.

5 On the charge of assault causing bodily harm
6 to your wife, I am going to sentence you to a
7 term of imprisonment of 14 months less credit for
8 remand time of six months, so your sentence will
9 be eight months in jail.

10 This is to be followed by one year of
11 probation on the following terms:

12 You keep the peace and be of good behavior;
13 that you appear before the Court when you are
14 required to do so; that you report to your
15 probation officer within 24 hours of your release
16 and thereafter when directed; and to take or
17 continue to take counselling generally but
18 specifically for anger management and alcohol and
19 substance abuse; and to refrain from the
20 consumption of alcohol in the presence of Bessie
21 Kahak and/or your children. So if you do
22 continue consuming alcohol after your release,
23 that will be your choice. Given your history,
24 that would not be a very wise choice.

25 Very little good seems to come from
26 excessive consumption of alcohol, and I am sure
27 that you understand that now, and I am sure that

1 your wife understands that now. You have turned
2 your world upside down, and that of your family
3 upside down, and only time will tell if your
4 children will bear the scars of this episode and
5 the entire court process. You understand, I
6 think, your conduct has tormented and deeply and
7 adversely affected a number of people. I think
8 that you understand that.

9 You will be in jail for eight months, less
10 than that counting statutory remission. But you
11 should be eligible for day parole after you have
12 served one-sixth of the eight months. That
13 should allow you to take the apprenticeship
14 course in Fort Smith and I would recommend that
15 officials at the North Slave Correctional Centre
16 give close consideration to assist you in
17 enrolling in the second year of the
18 apprenticeship program and transferring you to
19 the River Ridge facility in Fort Smith while you
20 are at that program.

21 There will be a Section 109 firearms
22 prohibition order. It will be in effect for a
23 period of ten years. And a DNA order requiring
24 you give a sample of your blood when requested to
25 do so by the RCMP. Under the circumstances,
26 there will be no victim surcharge.

27 Have I forgotten anything, counsel?

1 MS. CARRASCO: Your Honour, I am wondering
2 with respect to the exhibits filed at the
3 preliminary inquiry if the Court would make an
4 order to release those to the Crown after the
5 expiry of the appeal period.

6 THE COURT: You are asking for an order
7 for?

8 MS. CARRASCO: The release of the exhibits to
9 the Crown after expiry of the appeal period.
10 They were filed at the preliminary inquiry.

11 THE COURT: All right. Mr. Boyd?

12 MR. BOYD: No objection, Your Honour.

13 THE COURT: All right, there will be an
14 order to release exhibits identified at the
15 preliminary or filed at the preliminary inquiry
16 to the Crown at the expiration of the appeal
17 period.

18 MS. CARRASCO: Yes, sir.

19 THE COURT: Is there anything else?

20 MS. CARRASCO: No, thank you.

21 MR. BOYD: No, sir, thank you.

22 THE COURT: You may sit down, Mr.
23 Mercredi. I would like to wish you luck, Mr.
24 Mercredi, and hopefully we don't see you here
25 again and hopefully you and your wife can rebuild
26 your relationship and your family. So use your
27 time wisely. It won't be very long, use it

1 wisely.

2 I would like very much to thank counsel for
3 your very able preparation and submissions in
4 this matter and your cooperation, and I would
5 like to thank the court staff as usual, thank
6 you.

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Supreme Court Rules,

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

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