

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

DONALD IAN THWAITES

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Transcript of the Oral Reasons for Sentence by The  
Honourable Justice V. A. Schuler, sitting in Hay River, in  
the Northwest Territories, on the 21st day of January,  
A.D., 2010.

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APPEARANCES:

Ms. T. Nguyen: Counsel for the Crown

Mr. L. Sebert: Counsel for the Defence

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Charge under s. 271 Criminal Code of Canada

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1 THE COURT: Donald Ian Thwaites has been  
2 convicted of sexual assault and it is now my duty  
3 to sentence him. The events in question occurred  
4 on May 19th, 2009, and partly in the late hours  
5 of May 18th, here in Hay River.

6 From the jury's verdict it is clear that the  
7 jury must have had no reasonable doubt about what  
8 happened and they must have accepted the evidence  
9 of the victim. She testified that she had no  
10 interest in Mr. Thwaites. She testified that  
11 although she and he were drinking with others she  
12 was rude rather than friendly to him. She passed  
13 out on a bed alone and then woke to find him  
14 turning her over. She told him no, told him to  
15 go home, and that she would tell the police, and  
16 she tried to fight him, but despite that he had  
17 sexual intercourse with her.

18 In her evidence at trial the victim spoke of  
19 how she was overwhelmed and traumatized by this  
20 sexual assault. Her victim impact statements  
21 clearly describe how anger, depression, and other  
22 negative emotions have plagued her since the  
23 sexual assault, emotions that are routinely  
24 described by other sexual assault victims, and  
25 that often lead to alcohol and drug abuse or  
26 increased alcohol and drug abuse, and a downward  
27 spiral in the individual's ability to cope with

1 life. The victim in this case describes  
2 essentially that as having happened to her.

3 It was also very clear from her demeanor in  
4 court that the victim was extremely upset when  
5 testifying about the sexual assault. The Court  
6 can only hope that with the trial now over she  
7 will be able to focus on what can be done to help  
8 her deal with this terrible event. She is only  
9 24 years old, and unfortunately this event will  
10 no doubt be part of and will probably affect the  
11 rest of her life.

12 Mr. Thwaites is 38 years old, originally  
13 from Ontario. He has a grade 11 education and  
14 took a gas fitters course at a community college.  
15 In 1996 he moved to Alberta where he worked for  
16 nine years, and after meeting his spouse there he  
17 moved with her to her home community of Trout  
18 Lake here in the Northwest Territories. They are  
19 currently separated and have a six-year-old  
20 daughter.

21 Mr. Thwaites admits to having an alcohol  
22 problem. He has had treatment or counselling for  
23 it, he took the 28-day course here in Hay River,  
24 but he continued drinking. On May 10th, 2009, he  
25 was released on an undertaking after being  
26 charged with spousal assault and another offence.  
27 One of the conditions of that undertaking was

1           that he abstain from the consumption of alcohol.  
2           On May 19th, nine days later, he was drinking  
3           alcohol and committed the sexual assault for  
4           which I must now sentence him.

5                     Mr. Thwaites has a lengthy criminal record  
6           dating back to 1989 when he was convicted of  
7           assault in Ontario. Since then he has been  
8           before the Courts quite regularly in Ontario,  
9           Alberta and the Northwest Territories, for  
10          offences such as failing to appear, theft,  
11          driving with more than the legal limit of alcohol  
12          in his blood, mischief, careless use of a  
13          firearm, and various breaches of promises to the  
14          Court.

15                    In March, 2008, Mr. Thwaites was put on a  
16          peace bond for a period of up to 12 months for  
17          four offences, which included two assaults and  
18          uttering threats. Even though these did not  
19          result in criminal convictions and even though  
20          they may have been minor, and that may be why the  
21          result was only a peace bond, they do indicate  
22          that Mr. Thwaites has used violence against  
23          another person or persons.

24                    In August of 2009, after this sexual assault  
25          was committed, Mr. Thwaites was convicted of a  
26          spousal assault and forcible confinement,  
27          resulting in a sentence of ten months total in

1 jail and two years probation. Despite the  
2 lengthy record these were his first jail  
3 sentences. All of his previous offences were  
4 dealt with by way of fines and/or probation. The  
5 date of the offences for which he was convicted  
6 in August, 2009, and his arrest on those offences  
7 pre-date the sexual assault and were the reason  
8 that he was on an undertaking at the time of the  
9 sexual assault.

10 What the record indicates to me sadly is a  
11 recent and increasing use of violence by  
12 Mr. Thwaites, which is somewhat surprising given  
13 his age and the absence of any violent offences  
14 on his record from 1990 to 2007. I do not know,  
15 because it was not put before me, whether the  
16 conviction for careless use of a firearm in 2005  
17 involved anything that might be called violence.  
18 However, the increasing and recent use of  
19 violence has to be of concern to the Court  
20 because it indicates that people need protection  
21 from Mr. Thwaites.

22 Although he was arrested and has been in  
23 custody since May 19, 2009, no submission was  
24 made that the remand time should be taken into  
25 account since it was considered when he was  
26 sentenced for the assault and forcible  
27 confinement in August. Therefore, there is no

1 remand time applicable.

2 Sexual assault is an offence for which  
3 Parliament has decided the maximum punishment is  
4 ten years in jail; there is no minimum  
5 punishment. Sentences for sexual assault  
6 involving forced intercourse are almost  
7 invariably jail sentences in the three to  
8 four-year range in the Northwest Territories,  
9 sometimes less than that where the offender is a  
10 young adult, but sometimes more when there are a  
11 number of aggravating circumstances. Each case  
12 is different and must be judged according to its  
13 particular circumstances.

14 The aggravating factors in this case are,  
15 firstly, the fact that the victim was passed out,  
16 she was extremely intoxicated. Mr. Thwaites took  
17 advantage of that, of her vulnerability.  
18 Mr. Thwaites's actions show a callous disregard  
19 for the victim's personal and sexual integrity  
20 and also for the law. That is at least in part  
21 reflected very clearly in the part of her  
22 testimony where the victim said that she told  
23 Mr. Thwaites she would call the police, and his  
24 response was "well, it will still be worth it."

25 In my view, it is also aggravating that  
26 there were children in the home when these events  
27 happened. Whether or not the children were aware

1 of what Mr. Thwaites did to the victim, and there  
2 is no evidence that they were aware of it, the  
3 fact that he was drinking to the point of passing  
4 out, swearing and arguing with the victim  
5 according to the evidence of the mother of the  
6 children, and then committed a crime in their  
7 home is, in my view, an aggravating circumstance.  
8 Children learn from the behavior of the adults  
9 around them. Mr. Thwaites has a child of his own  
10 and he should know that. His actions show a  
11 total disregard for the wellbeing of the children  
12 in that house.

13 Now, obviously there were other adults in  
14 that house who were also behaving, not the same  
15 as Mr. Thwaites, but they were behaving in a way  
16 that children should not be exposed to. So I do  
17 not say that this is entirely Mr. Thwaites's  
18 responsibility, but he does bear responsibility  
19 for his actions. It is also an aggravating  
20 factor that at the time he committed this offence  
21 Mr. Thwaites was on the undertaking that I have  
22 already referred to.

23 It is not an aggravating factor that  
24 Mr. Thwaites insisted on his right to a trial.  
25 That simply means that he does not get the  
26 mitigation that he would otherwise get had he  
27 pleaded guilty. There are no real mitigating

1           circumstances in this case. The fact that the  
2           trial was brought on quite quickly compared to  
3           what we often see is somewhat mitigating, but it  
4           is not of much weight because the victim still  
5           had to testify at the preliminary inquiry and the  
6           trial.

7           This type of sexual assault on a vulnerable  
8           drunk or passed out woman is very prevalent in  
9           the Northwest Territories, as has been noted in  
10          many cases decided in this Court. Whatever  
11          punishment is imposed has to signal that society,  
12          the community, the people, denounce and reject  
13          Mr. Thwaites's actions and sexual assault in  
14          general, and the punishment should be significant  
15          enough to deter, to stop others who might be  
16          inclined to engage in this behavior.

17          As far as Mr. Thwaites himself is concerned,  
18          the sentence I impose should also seek to deter  
19          him from committing further crimes at all, and  
20          particularly crimes of violence. I have already  
21          referred to the fact that now, in his late 30s,  
22          he is exhibiting violent behavior, whereas prior  
23          to that his only assault conviction was 20 years  
24          ago. His record as a whole shows a long-standing  
25          and consistent disregard for the law. He is not  
26          a young man, he has had years and years to learn  
27          about life and to put his own life on track, and



1           only he can make sure that happens.

2           I have no doubt that he has been told time  
3           and time again that he has to stop drinking, that  
4           he has to do something about his alcohol problem,  
5           and I have no doubt that time and time again he  
6           has said he will do that. The fact that he was  
7           drinking and drinking very heavily, only nine  
8           days after promising in an undertaking to the  
9           Court that he would not drink at all, and also at  
10          some point before that, it was not clear when on  
11          the evidence, having taken up a spot in the  
12          28-day program seeking to treat him for his  
13          problems, all of that suggests that Mr. Thwaites  
14          needs to try much harder than he has in the past.  
15          So having said all of this, it is very clear to  
16          me that the sentence I impose must be significant  
17          enough to deter Mr. Thwaites.

18          One of the principles of sentencing is that  
19          the sentence imposed must also be proportionate  
20          to the gravity, in other words the seriousness of  
21          the offence, and the degree of responsibility of  
22          the offender. Sexual assault is a serious  
23          offence because, as I said, it is a breach of the  
24          physical and sexual integrity or privacy of  
25          another person, and because it invariably results  
26          in psychological trauma or distress to the  
27          victim, the effect of which is often felt for a

1 long time, and those words accurately describe  
2 this case.

3 As to the degree of responsibility of the  
4 offender, Mr. Thwaites is a mature middle-aged  
5 man. To the extent that he blames alcohol for  
6 his actions, alcohol is not an excuse and he must  
7 be aware of that by now. He must also be well  
8 aware of the affect alcohol has on him. So he is  
9 fully responsible for this offence.

10 Counsel are in agreement that this offence  
11 calls for a sentence of incarceration and they  
12 are certainly accurate as far as that goes.  
13 Crown Counsel seeks a sentence of four to four  
14 and a half years, and defence counsel submits  
15 that a sentence of three and a half to four years  
16 would be appropriate.

17 There are a number of ancillary orders that  
18 I have to consider and I will deal with those  
19 now. There will be a DNA order under Section  
20 487.051 of the Criminal Code. Sexual assault is  
21 a primary designated offence, and therefore  
22 Mr. Thwaites's DNA is to be collected and put in  
23 the DNA database according to the procedure and  
24 if it is not already there.

25 Under Section 490.012 I make an order that  
26 Mr. Thwaites comply with the Sex Offender  
27 Information Registration Act. The prosecutor has

1 applied for that order and Mr. Thwaites has not  
2 sought to establish that the impact of such an  
3 order on him would be grossly disproportionate to  
4 the public interest in the protection of society  
5 through such an order. Therefore, the order will  
6 issue, and he will report under the Act to the  
7 applicable registration centre within ten days of  
8 his release from jail, for a period of 20 years,  
9 which will start today.

10 Pursuant to Section 109 of the Criminal  
11 Code, as this is a sexual assault and it does  
12 involve violence by its very nature and the  
13 maximum term of imprisonment is ten years, a  
14 firearm prohibition order must issue. So that  
15 will issue, it will commence today and expire ten  
16 years after Mr. Thwaites's release from  
17 imprisonment. The victim surcharge will be  
18 waived in the circumstances. Stand please,  
19 Mr. Thwaites.

20 Having regard to all of the factors that I  
21 have referred to I sentence you to a term of  
22 imprisonment of four years consecutive to the  
23 term that you are currently serving. I hope,  
24 Mr. Thwaites, that you will have learned  
25 something from these events and that you will  
26 learn something from this sentence, which is not  
27 a short sentence. If you do not learn it looks

1 to me like you are running a very great risk of  
2 spending most of the years of your middle age in  
3 a jail cell, and I am sure you do not want that.  
4 At the very least you should think about your  
5 daughter. You should think about whether you  
6 want her to grow up thinking that drinking and  
7 violence are what makes for a normal life. I am  
8 sure you do not want her to think that, but only  
9 you can make it so that she does not think that.  
10 So please give that some thought while you are  
11 serving your four years. You can have a seat.  
12 Is there anything further, counsel?

13 MS. NGUYEN: Not from the Crown, Your  
14 Honour, thank you.

15 MR. SEBERT: No, Your Honour.

16 THE COURT: Thank you very much for your  
17 work in this case, and we will close court.

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20 Certified to be a true and  
21 accurate transcript, pursuant  
22 to Rules 723 and 724 of the  
23 Supreme Court Rules.

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24 \_\_\_\_\_  
Joel Bowker  
25 Court Reporter

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