

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

LEROY JAMES NITSIZA

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Transcript of the Reasons for Sentence delivered by The Honourable Justice J.Z. Vertes, sitting in Whati, in the Northwest Territories, on the 8th day of March, A.D. 2010.

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APPEARANCES:

Ms. J. Walsh: Counsel for the Crown

Mr. P. Falvo: Counsel for the Accused

(Charge under s. 267(a) of the Criminal Code of Canada)

1 THE COURT: The accused, Leroy James  
2 Nitsiza, has pleaded guilty to a charge of using  
3 a weapon in the commission of an offence,  
4 contrary to Section 267(a) of the Criminal Code.  
5 The offence carries a potential maximum penalty  
6 of ten years in prison.

7 The plea of guilty came at the start of the  
8 accused's scheduled jury trial here in Whatì.  
9 While every guilty plea is worthy of  
10 consideration as a mitigating factor on  
11 sentencing - since it avoids the necessity of  
12 having the victim of the crime relive the  
13 circumstances by testifying and because it  
14 demonstrates an acknowledgment of responsibility  
15 by the offender - not every guilty plea, however,  
16 will be credited with the same mitigating effect.  
17 A plea offered at an early stage of the  
18 proceeding will be given much more weight than  
19 one offered, as it was here, literally at the  
20 last minute. I do not fault defence counsel for  
21 that. Sometimes it takes the sight of one's  
22 community assembled for jury selection to focus  
23 the mind of an accused person.

24 The accused and the victim in this case had  
25 been in a common-law relationship since 2006. On  
26 March 30th, 2009, the accused beat the  
27 complainant with his fists and also used, at one

1 point, a leather belt and, at another point, a  
2 plastic coat hanger to hit her. The victim  
3 suffered extensive bruising on her face and body.  
4 The victim was further humiliated by having her  
5 clothes stripped from her body while the accused  
6 was beating her. She was seen by the nurse at  
7 the local medical centre on March 31st and  
8 transferred to the Stanton Hospital in  
9 Yellowknife for further treatment.

10 The accused was intoxicated at the time, but  
11 this of course is no excuse. The victim  
12 indicated that this assault occurred during an  
13 argument between the two of them. Both were  
14 drinking at the time. This was the second time  
15 in the space of one week that the accused beat  
16 the victim as a result of some argument. The  
17 accused was intoxicated then as well.

18 The accused is 24 years old. Regrettably,  
19 he already has a criminal record. In October  
20 2008 he was convicted of sexual assault and  
21 assault with a weapon. The circumstances must  
22 have been relatively minor since he was only  
23 sentenced to a total of five months in jail. He  
24 was, however, also placed on probation for one  
25 year. So, the accused was subject to a probation  
26 order when this offence was committed. This is  
27 an aggravating factor.

1           Then, in August 2009, the accused was  
2 convicted of assault causing bodily harm and two  
3 counts of breach of probation. These offences  
4 occurred a month or so before the current  
5 offence. At that time, he was sentenced to a  
6 total of six months in custody plus one year  
7 probation.

8           During his last period of incarceration, the  
9 accused went through a two-month family violence  
10 treatment program. Since his release, he has  
11 seen a counsellor who comes twice a month to  
12 Whati. All that is to his credit and  
13 demonstrates his willingness to come to grips  
14 with his problems with violence and alcohol  
15 abuse. But, as counsel recognize, he is now  
16 before me to be sentenced on a serious case of  
17 spousal violence. The Criminal Code expressly  
18 recognizes, in Section 718.2(a)(ii), that abuse  
19 of one's spouse or common-law partner is an  
20 aggravating factor in sentencing.

21           It is sad but true that domestic violence is  
22 a profound problem that must be denounced in  
23 clear terms. By the sentence it passes, the  
24 Court must attempt to deter its recurrence on the  
25 part of the accused and on the part of other men.  
26 Violence towards one's spouse or partner  
27 constitutes a breach of trust. The paramount

1           considerations therefore, as Crown counsel  
2           stated, are deterrence and denunciation.

3           In this case, as in many others, the victim  
4           has indicated that she wants her relationship  
5           with the accused to continue. But the desires of  
6           the victim must not prevail over what would  
7           otherwise be the required sentence. The aim here  
8           is not to simply reject the victim's wishes but  
9           to break the cycle of violence exhibited by the  
10          accused.

11          Counsel did not refer to it, but I must also  
12          take into consideration, as required by the  
13          Criminal Code, the fact that the accused is an  
14          aboriginal Canadian. In this case, the accused's  
15          aboriginal background is certainly a factor to  
16          consider. Unfortunately, in too many of our  
17          communities there are personal histories similar  
18          to that of this accused, particularly a history  
19          as here of being exposed to alcohol abuse and  
20          domestic violence at an early age, as well as  
21          suffering the loss of loved ones. But I did not  
22          hear anything that would suggest particular  
23          unique systemic or background factors applicable  
24          to this accused that would suggest a disposition  
25          different from that which would be imposed on any  
26          offender in his circumstances committing this  
27          type of crime.

1           I have taken into account the fact that the  
2           accused has pleaded guilty. I have taken into  
3           account the brief two weeks the accused spent in  
4           pre-trial custody. I also acknowledge the  
5           accused's expression of remorse as given through  
6           his counsel. In my opinion, however, this  
7           sentence calls for a period of incarceration that  
8           recognizes the aggravating circumstances  
9           previously mentioned. I will, however, couple  
10          that sentence with a further period of probation  
11          so as to assist in the accused's efforts at  
12          rehabilitation.

13                 Stand up, Mr. Nitsiza.

14                 Mr. Nitsiza, your counsel has told me that  
15          you recognize the difficulties caused by your  
16          behaviour and you recognize the seriousness of  
17          your behaviour. I took what your counsel said at  
18          face value, that you sincerely regret what has  
19          happened in the past and that you sincerely want  
20          to change your behaviour. I hope you do. But I  
21          hope you also recognize that I am sentencing you  
22          here for something you did a year ago, something  
23          that was very serious, very violent, and I have  
24          to send a message not just to you but to  
25          everybody else that this type of behaviour, that  
26          violence between spouses or common-law partners,  
27          is not going to be tolerated. Do you understand?

1 THE ACCUSED: Yes.

2 THE COURT: So I wish you the best of luck  
3 in your future.

4 I impose a sentence of 18 months'  
5 imprisonment to be followed by probation for a  
6 further period of 18 months. The terms and  
7 conditions of that probation order will be, in  
8 addition to the statutory conditions, that you be  
9 under the supervision of a probation officer and  
10 that you participate in such counselling services  
11 as directed by a probation officer.

12 Since the law requires that I make an order  
13 that samples of your DNA be collected and put in  
14 the DNA database, I make that order under Section  
15 487.051 of the Criminal Code. I do so since this  
16 offence is a primary designated offence.

17 This offence also requires that a firearm  
18 prohibition order be made under Section 109 of  
19 the Criminal Code. I will make that order in the  
20 usual terms. It will begin today and expire ten  
21 years from your release from imprisonment.

22 Mr. Nitsiza, I sincerely hope that you will  
23 be able to bring your life together for yourself  
24 and for your family in the future. You may sit  
25 down.

26 Under the circumstances, there will be no  
27 victim of crime fine surcharge.

1                   Is there anything else we need to address,  
2                   Counsel? Ms. Walsh?

3       MS. WALSH:                   Nothing from the Crown, Your  
4                   Honour.

5       THE COURT:                   Mr. Falvo?

6       MR. FALVO:                   Nothing further, Your Honour.

7       THE COURT:                   All right. Then thank you for  
8                   your assistance both. We will adjourn.

9       THE COURT CLERK:            Thank you, Your Honour. All  
10                   rise. Court is now adjourned.

11                   .....

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14                                    Certified Pursuant to Rule 723  
15                                    of the Rules of Court

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18                                    Jane Romanowich, CSR(A), RPR  
19                                    Court Reporter

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