

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- and -

RICHARD ADRIAN DELORME

Transcript of the Oral Reasons for Sentence delivered by
the Honourable Justice V.A. Schuler, sitting at
Yellowknife, in the Northwest Territories, on March 14th,
A.D. 2011.

APPEARANCES:

Mr. G. Boyd: Counsel for the Crown
Mr. A. Khan: Counsel for the Accused

(Charge under s. 271 Criminal Code)

1 THE COURT: Well, the victim impact
2 statement has been filed, I don't normally mark
3 it as an exhibit, I don't think it is required.
4 It has been filed with the court as required by
5 the Criminal Code.

6 All right, after having heard the
7 submissions this morning, I will now sentence
8 Mr. Delorme.

9 On February 2, 2011, Richard Adrian Delorme
10 was found guilty by a jury of sexual assault. It
11 is now my duty to sentence him for that crime.

12 At trial, the evidence establishing a sexual
13 assault came from the victim, Mr. Delorme did not
14 testify. From the verdict, it is clear that the
15 jury accepted the victim's testimony.

16 She testified that in August, 2009, when she
17 would have been about 21 or 22 years old, she
18 fell asleep on a bed at a house where she had
19 been partying. When she woke up she found that
20 Richard Delorme was in the act of having sexual
21 intercourse with her. She kicked him off her and
22 ran out of the room. She knew him from around
23 town in Fort Resolution which is where this took
24 place.

25 The circumstances are unfortunately all too
26 familiar. This Court regularly hears testimony
27 of similar incidents, incidents where a woman is

1 asleep or passed out and a man takes advantage of
2 her vulnerability for his own sexual
3 gratification. This behaviour is a serious
4 problem in the Northwest Territories.

5 In her victim impact statement, the victim
6 sets out the effect that this offence has had on
7 her, the fact that she constantly replays what
8 happened in her head and cannot sleep as a
9 result. She says that it will haunt her for the
10 rest of her life.

11 She indicates that she would like to have
12 access to counselling to help her deal with this,
13 and I hope that the Crown's office will provide
14 whatever assistance it can to her for that
15 purpose.

16 The crime and the after effects have been
17 traumatic for the victim, and she also speaks of
18 how the emotional effects of it have affected her
19 relationship with her young son.

20 So these events have clearly had and will
21 likely continue to have a profound and very sad
22 effect on this young woman.

23 Turning to Mr. Delorme, he is of Chipewyan
24 descent, he is 38 years old, soon to turn 39. He
25 has a grade 8 education and has some training in
26 underground mine work, although has not actually
27 done that type of work. His most recent

1 employment was with the Hamlet of Fort Resolution
2 clearing brush and painting. When not working,
3 he hunts and traps.

4 He has two children, boys ages 14 and 11 who
5 live with their mother in Yellowknife. I infer
6 that Mr. Delorme and his wife are separated or
7 divorced.

8 Mr. Delorme has struggled with alcohol abuse
9 since the age of 11 when he was introduced to it
10 by older individuals. He has abused both alcohol
11 and drugs. He also indicates that he was
12 sexually molested at the age of seven or eight by
13 an individual who was four or five years older
14 than him.

15 Mr. Delorme's parents are deceased, his
16 mother only in the last year. Some others close
17 to him have died or are suffering from cancer. I
18 take into account these tragic circumstances.

19 I must also take into account Mr. Delorme's
20 criminal record, which is lengthy. It consists
21 of some 38 convictions before the offence for
22 which I must now sentence him and 3 convictions
23 which post-date that offence.

24 The record spans the time frame 1991 to
25 2010. It includes eight convictions for assault
26 before the sexual assault and one conviction for
27 assault after the sexual assault. I have not

1 been made aware of the circumstances of any of
2 the assault convictions.

3 I note that there are also two convictions
4 for uttering threats. The assault and uttering
5 threats convictions are all related to the
6 offence now before me because they involve
7 violence or the threat of violence. The record
8 also includes numerous convictions for breaches
9 of court orders and various other offences.

10 In total, the record reflects a disregard
11 for the law and also for the personal integrity
12 and well-being and safety of other people.

13 Because of the many offences of violence and
14 the sexual assault, which is also a crime of
15 violence, it is clear that the public needs
16 protection from Mr. Delorme.

17 It is also a concern to the Court that
18 despite some gaps in the record, the seriousness
19 of Mr. Delorme's criminal conduct has increased
20 with this sexual assault, notwithstanding that he
21 is a mature man who should have learned how to
22 control his behaviour after almost two decades of
23 appearances before the Court.

24 The sexual assault for which Mr. Delorme now
25 stands convicted is one for which the offender
26 may be sentenced to a maximum of 10 years in
27 jail. There is no minimum sentence prescribed in

1 the Criminal Code.

2 Crown counsel seeks a sentence of 4 to 5
3 years less credit for remand time, defence
4 counsel seeks a sentence of 3 to 4 years.
5 Because Mr. Delorme served a sentence for other
6 convictions, counsel as I understand it are in
7 agreement that the remand time to be considered
8 on the sentence for the sexual assault is 57
9 days.

10 The Truth in Sentencing Act is not
11 applicable because the offence predates February
12 22, 2010, when that Act came into force. So as
13 was the case before that Act, I have a discretion
14 as to what credit to give to the remand time.

15 As stated in the recent case of R. v.
16 A.J.P.J., 2011 NWTCA 2, the starting point
17 sentence for sexual assaults involving
18 intercourse is three years' incarceration. Where
19 the victim is asleep, that is usually an
20 aggravating factor as was also recognized by my
21 colleague, Vertes J., in his recent sentencing
22 decision in R. v. Kodzin, 2011 NWTSC 2.

23 The 3-year starting point is adjusted upward
24 or downward depending on and by balancing both
25 aggravating and mitigating factors. As I have
26 already noted, the fact that the victim was
27 asleep is an aggravating factor.

1 In the recent case of R. v. Arcand, 2010
2 ABCA 363, the Alberta Court of Appeal said the
3 following, which I think is worth repeating here:

4 "Sexually assaulting an unconscious
5 victim elevates an offender's degree
6 of responsibility for the crime
7 beyond the norm contemplated by the
8 3-year starting point.

9 An offender who sexually
10 assaults a person who is asleep or
11 passed out is treating that person
12 as if the person were an object to
13 be used and abused at will.

14 Since the offender knows full
15 well that the person is not
16 consenting, this reveals an enhanced
17 degree of calculation and
18 deliberateness by the offender.

19 Further, at that point the person is
20 at their most vulnerable, unable to
21 defend themselves in any way and
22 unable to call for help from others.

23 The offender knows this, too, adding
24 further to the high level of
25 moral blameworthiness for the
26 illegal conduct."

27 And that is the end of the quote.

1 There are no significant mitigating factors
2 in this case. Mr. Delorme is neither youthful
3 nor because of his criminal record can he claim
4 to be of previous good character.

5 When given the opportunity to speak today,
6 he did indicate a wish to apologize to the
7 victim, so I accept that he has some remorse
8 although belated and not as weighty as had there
9 been a guilty plea.

10 I do note that this case does not involve a
11 breach of trust, which is an aggravating factor,
12 but as indicated does not apply in this case.

13 It has been said repeatedly in cases of
14 sexual assault that the guiding principles in
15 determination of sentence are denunciation and
16 deterrence. The sentence imposed should aim to
17 signify, to reflect that society rejects
18 Mr. Delorme's behaviour as unacceptable and as
19 detrimental to society as a whole. The sentence
20 should also aim to discourage other people from
21 behaving in this way.

22 Further, the sentence should discourage
23 Mr. Delorme himself from repeating this or any
24 other criminal behaviour, and the sentence
25 imposed should be proportionate to the gravity,
26 the seriousness of the offence and Mr. Delorme's
27 moral blameworthiness.

1 As was said in the Arcand decision in the
2 passage I just quoted, sexually assaulting a
3 victim who is asleep or passed out involves a
4 high degree of moral blameworthiness. It shows a
5 callous disregard for the victim and her privacy
6 and integrity.

7 As Mr. Delorme is an Aboriginal offender, I
8 am required by law to consider Section 718.2(e)
9 of the Criminal Code. I can infer that Mr.
10 Delorme's upbringing and the alcohol abuse he was
11 witness to as well as his own experiences with
12 alcohol and sexual abuse, which are circumstances
13 which have affected many Aboriginal people, have
14 played a part in bringing Mr. Delorme before this
15 Court.

16 However, because of the seriousness of the
17 offence and the fact that Mr. Delorme has been
18 before the courts many, many times, including for
19 other offences of violence, there is no
20 alternative in this case to a lengthy term of
21 incarceration.

22 I heard Mr. Delorme say that he does not
23 want his two sons to follow his path. One way of
24 trying to ensure that they do not follow that
25 path is to set a good example for them and to
26 show them that a person can learn from his
27 mistakes and turn his life around and become a

1 law abiding and productive member of the
2 community even after 20 years of criminal
3 conduct.

4 If you do not do that, Mr. Delorme, then the
5 only example they will have from you is the one
6 that you have set in the past. Only you can
7 change that, and you have a responsibility to
8 your sons to at least make an effort to make that
9 change.

10 I recognize that Mr. Delorme has faced and
11 is facing some difficult circumstances in his
12 life; however, because of his actions over the
13 last 20 years, his violence, he does pose a risk
14 and society needs protection from him.

15 On taking into account the aggravating
16 factors and considering that there are no
17 significant mitigating factors, a sentence
18 greater than three years is warranted.

19 I have reviewed the cases submitted by Crown
20 counsel, and in my view the case that is most
21 similar to this one is the Thwaites case where
22 the sentence that was imposed was four years.

23 One difference in this case is that
24 Mr. Delorme has a prior record that includes
25 repeated assaults over 20 years, whereas in
26 Mr. Thwaites' case the history of assault was more
27 recent.

1 I will deal first with the various orders
2 sought by the Crown. As no submission has been
3 made opposing these orders, first of all there
4 will be an order that Mr. Delorme provide a
5 sample for DNA analysis pursuant to Section
6 487.051 of the Criminal Code.

7 There will also be an order requiring
8 Mr. Delorme to comply with the Sexual Offender
9 Information Registration Act for a period of 20
10 years pursuant to Section 490.012 of the Criminal
11 Code.

12 There will be a Section 109 Criminal Code
13 firearm prohibition order which commences today
14 and expires ten years from Mr. Delorme's release
15 from imprisonment. Because there will be a term
16 of incarceration, the victim surcharge is waived.

17 Stand please, Mr. Delorme. In all the
18 circumstances, I credit the 57 days of remand
19 time as the equivalent of three months; and after
20 having done that, the sentence I impose today is
21 four years in jail. You may have a seat.

22 I have reviewed the letter from
23 Mr. Delorme's MLA, and it seems to me to be more
24 appropriate for the correctional authorities to
25 consider and not the Court.

26 The Court cannot order where Mr. Delorme or
27 any other offender serves his sentence, which is

1 what the letter seems to be asking. The Court
2 can only make a recommendation; but in this case
3 with a mature offender who has been incarcerated
4 many, many times in the past, in my view the
5 decision is best left entirely in the hands of
6 the correctional authorities who I am sure will
7 consider Mr. Delorme's difficult family
8 circumstances. So I decline to make any order or
9 recommendation in that regard.

10 Is there anything further, Counsel, that I
11 need to address?

12 MR. BOYD: Nothing from the Crown,
13 Your Honour.

14 MR. KHAN: No, Your Honour.

15 THE COURT: Thank you both for your
16 submissions, we will close court.

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

Catherine Metz
Court Reporter