

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

PAUL PAYOU

Transcript of the Reasons for Sentence delivered by The Honourable Justice P. M. Clark, in Fort Simpson, in the Northwest Territories, on the 12th day of April, 2011.

APPEARANCES:

Ms. J. Walsh: Counsel on behalf of the Crown

Mr. T. Boyd: Counsel on behalf of the Accused

Charge under s. 271 C.C.

Ban on Publication of Complainant/Witness
Pursuant to Section 486.4 of the Criminal Code

1 THE COURT: I should probably take the
2 time to write something out but I do not think I
3 am going to in the circumstances. I am not going
4 to go on at length.

5 Sexual assault is a significant problem
6 before the courts. I think it is fair to say
7 that it is of epidemic proportions. I find that
8 sexual assault has no justification in any manner
9 whatsoever.

10 The purpose of sentencing is denunciation
11 and deterrence; denunciation of the particular
12 act of Mr. Payer, denunciation of Mr. Payer and
13 others who might choose to act in the same manner
14 as he has, and to denounce that kind of
15 behaviour.

16 There is nothing that speaks to mitigation
17 of Mr. Payer's behaviour.

18 By the same token, I think it is established
19 law that it is not an aggravating factor that Mr.
20 Payer chose to hire a lawyer and defend himself,
21 electing judge and jury. That is not considered
22 to be an aggravating factor either.

23 That said, considering that Mr. Payer chose
24 to carry on in this way with the complainant, who
25 was the same age as one of his daughters; the
26 fact that this type of behaviour appears to be
27 rampant in the Territories; the self-described

1 evidence by Mr. Payout that is before the courts;
2 and taking into consideration the way he gave his
3 evidence on the taped admissions, I have no
4 choice but to conclude this is a major sexual
5 assault.

6 Taking all of the factors - the age of the
7 Mr. Payout, the age of the child, the
8 circumstances, the self-admission, the jocular
9 manner in which his evidence was given on tape, I
10 have no hesitation in defining it as a major
11 sexual assault.

12 I find it particular disquieting that he
13 chose as one of his victims - and I do not think
14 we can put it on the complainant in this case
15 that she willingly was involved in this. There
16 is only one-sided evidence in that respect. If
17 she was acting that way, that is all the more
18 reason why Mr. Payout should not have had anything
19 to do with her.

20 I am one of the judges who is dismayed by
21 the decision in Arcand. I do not think I know
22 anybody who has read the whole thing. I am
23 familiar with it and I am most familiar with the
24 very strong dissent in the case, but nonetheless
25 it is a Court of Appeal decision in Alberta. I
26 do not know whether it is under appeal or not.

27 In considering all the factors, the age of

1 Mr. Payer, the age of the complainant, the
2 circumstances of the offence as described by Mr.
3 Payer, I think that I have to -- First of all, I
4 guess I am missing a step here.

5 Mr. Payer, under the Criminal Code I have to
6 give you the opportunity to speak to the court
7 with respect to the offence. I stepped beyond
8 that when I started my sentencing. Is there
9 anything you wish to say to the court?

10 THE ACCUSED: No, I don't.

11 THE COURT: Under the circumstances, I am
12 directing that Mr. Payer be sentenced to a period
13 of three years' incarceration to be served in
14 secure custody.

15 I have taken into consideration the fact
16 that you have four girls, one of whom has a
17 disability. I take into consideration the fact
18 that you have changed, Mr. Payer. You apparently
19 had a different sort of life as a younger man.
20 You apparently quit drinking. You tried to
21 change for the better. You slipped in a major
22 way here. But that aside, you did slip in a
23 major way and I cannot countenance what you did.

24 I am directing a three year sentence.

25 I am prepared to entertain a request that it
26 be served in a territorial prison. What is the
27 situation up here?

1 MR. HANSEN: It's my understanding, sir,
2 that a federal sentence of five years or more
3 means that a person will be sent south.
4 Typically, prisoners with a sentence of less than
5 five years in the north, particularly if they are
6 of native descent, however out of an abundance of
7 caution I would ask that an endorsement be made
8 that he serve in the Northwest Territories.

9 THE COURT: I do endorse that an attempt
10 be made to have Mr. Poyou serve his sentence in
11 the Northwest Territories. I think it is
12 particularly important that people of an
13 aboriginal background be given the opportunity to
14 remain in the area where most comfortable.

15 Mr. Poyou, I am quite taken aback by your
16 behaviour in this case. There is no
17 justification for anything other than a three
18 year sentence here and that is where we are at
19 today.

20 MS. WALSH: Your Honour, the ancillary
21 orders - DNA.

22 THE COURT: The ancillary orders, by all
23 means. DNA is directed. There will be -- you
24 requested three things. A weapons prohibition.

25 MS. WALSH: Yes, Your Honour.

26 THE COURT: Is that mandatory? Does Mr.
27 Poyou live off the land?

1 MR. HANSEN: Well, sir, it is a mandatory
2 order that is required, but we'd ask for a
3 section 113 exemption as Mr. Poyou does from time
4 to time due to the seasonal nature of his work
5 make some subsistence off the land.

6 THE COURT: Ms. Walsh, any problem with
7 that? I have just run into this, for the first
8 time I ran into this last week in Nunavut. I
9 think that where people, where aboriginal people
10 do have the right to live off the land, and I
11 have no problem with it in this case, Mr. Poyou
12 having the right to use, to have firearms for the
13 purpose of hunting but not at home; and if he is
14 going to hunt, his weapons, if he has any, should
15 be in the hands of -- there will a prohibition
16 against having weapons in his hands at home for
17 the ten year period and during that period they
18 can be in the hands of a friend or a nominee of
19 his choice provided that person has a valid FAC,
20 and he can use the weapons for the purpose of
21 hunting when he goes out to live on the land.

22 MS. WALSH: That's fine, Your Honour. The
23 section 113 exemption does support subsistence
24 hunting of aboriginal/non-aboriginal people and
25 it ultimately it would be up to the firearms
26 registry whether or not he would be allowed to
27 register for firearms and the section 113

1 exemption is a suggestion to the firearms
2 registrar.

3 The only other thing, Your Honour, is the
4 Sex Offender Information Registration Act or
5 SOIRA order.

6 THE COURT: It is mandatory as far as I am
7 concerned. It is a major tool that is in use by
8 the police authorities and the courts in this
9 country and there will be registration as a sex
10 offender.

11 MS. WALSH: Sir, I believe that is
12 everything.

13 MR. HANSEN: Yes, thank you.

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16 Certified to be a true and
17 accurate transcript pursuant
18 to Rule 723 and 724 of the
19 Supreme Court Rules of Court.

20 _____
21 Annette Wright, RPR
22 Court Reporter

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