

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- V -

STEPHEN WENINGER

Transcript of the Reasons for Sentence by The Honourable
Justice L. A. Charbonneau, sitting in Fort Smith, in the
Northwest Territories, on the 4th day of July, A.D., 2013.

APPEARANCES:

Mr. A. Godfrey: Counsel for the Crown

Mr. S. Petitpas: Counsel for the Defence

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

INITIALS USED FOR THE COMPLAINANT'S NAME TO
PROTECT THE IDENTITY OF THE COMPLAINANT

1 THE COURT: Stephen Weninger pleaded
2 guilty yesterday to a charge of having, between
3 the 1st of November, 2011, and the 18th of May,
4 2012, assaulted his common-law spouse, S. A.,
5 and having caused bodily harm to her. I must
6 now decide what his sentence should be for that
7 offence.

8 The Crown takes the position that a jail
9 term between 18 and 20 months is appropriate
10 for this offence. Even giving credit to
11 Mr. Weninger for the time he has already spent
12 on remand, this would mean imposing a further
13 jail term on him today in the range of 6 to 8
14 months. Mr. Weninger's counsel has argued that
15 the time that Mr. Weninger has already spent in
16 custody is sufficient to address the goals of
17 sentencing.

18 Crown and defence agree that whatever
19 else I do I should include a term of probation
20 as part of his sentence, to include a no-contact
21 order to provide a sense of safety to S. A., and
22 also to include conditions designed to assist
23 Mr. Weninger in his own efforts towards his
24 rehabilitation.

25 Mr. Weninger and S. A. became involved
26 in a relationship in November of 2011. They
27 started living together here in Fort Smith.

1 According to the facts that I heard yesterday
2 that relationship soon became volatile.
3 Mr. Weninger and S. A. got into arguments
4 and used some level of force and violence
5 against each other as conflicts between them
6 escalated. Mr. Weninger admits that there
7 were a number of times between January and
8 May, 2012, where he struck her on her arms
9 and shoulders to the point of causing bruising
10 to her. He also admits that he slapped her
11 and pulled her hair. The facts presented to
12 the Court do not include any details as to
13 what brought these incidents on or what the
14 difficulties between these two individuals were
15 about. What I did hear was that these things
16 happened when the two of them had been drinking.

17 On May 16th they got into yet another
18 argument and a confrontation. This one
19 escalated to the point where Mr. Weninger bit
20 S. A.'s left earlobe. This caused an injury
21 to her that required ten stitches to close.
22 To this date, over a year later, there remains
23 a scar and discolouration on her injured earlobe
24 and she still experiences numbness to that area
25 of her body.

26 The facts do not include the exact time
27 when these offences came to the attention of

1 the RCMP, but sometime after the last assault
2 Mr. Weninger re-located to the community of
3 Fort Liard where his former spouse, D. B., and
4 his children live. After the offences against
5 S. A. were reported and charges were laid a
6 warrant was issued for his arrest, presumably
7 because the RCMP in Fort Smith could not locate
8 him. That warrant was executed on June 30th,
9 2012. Mr. Weninger was taken into custody,
10 and following a show cause hearing held in
11 Yellowknife he was ordered detained on July
12 10th and has been in custody since. As of
13 today's date, July 4th, 2013, he has spent
14 a year and four days in custody.

15 The Warrant of Committal issued following
16 the show cause hearing includes an endorsement
17 pursuant to paragraph (9.1) of Section 515 of
18 the Criminal Code, stating that he was detained
19 primarily because of previous convictions. The
20 legal effect of this is that for the time he has
21 spent on remand I can only give him credit for
22 one day for each day spent on remand. I do not
23 have the discretion to give him credit on a ratio
24 any greater than that for the time he has spent
25 on remand.

26 S. A. did not provide a victim impact
27 statement, although Crown Counsel confirmed

1 that he met with her earlier this week and that
2 she was advised of her right to do so. She also
3 did not wish to attend this sentencing hearing.
4 I am told that after meeting with Crown Counsel
5 and the Crown witness coordinator she expressed
6 that she still feels afraid of Mr. Weninger.
7 She does not want any contact with him. I heard
8 this morning that she is also not even interested
9 in contact with him for the purposes of him
10 expressing a written apology to her, and I think
11 that speaks volumes about the impact that these
12 offences had on her even though I do not have
13 the benefit of a victim impact statement.

14 This is not a case where there is any
15 suggestion that either party would like to
16 continue or restore the spousal relationship
17 that existed at the time of these events.
18 Crown Counsel also advised me yesterday in
19 submissions that S. A. has also expressed
20 that she does not think that Mr. Weninger
21 should receive any additional jail term for
22 this offence. This also tells me something
23 about her character. Evidently she is not
24 interested in revenge.

25 Mr. Weninger's criminal record has been
26 filed as an exhibit, and in looking at that
27 record it is not surprising that the Justice

1 of the Peace who presided over the show cause
2 hearing ordered his detention primarily because
3 of his prior convictions. I say that because
4 there are numerous entries on his criminal
5 record for crimes of violence and a large
6 number of entries for breaches of court orders.
7 Both types of convictions would have raised
8 significant concerns about releasing him on
9 bail.

10 The criminal record begins with entries
11 in October of 1997 for dangerous operation of
12 a motor vehicle. Then there is a fairly steady
13 stream of convictions every year or so until
14 the last conviction before this one, which was
15 in December of 2012 for possession of marijuana.
16 In between those two there are a number of
17 different types of convictions on this record;
18 driving offences, offences for failing to comply
19 with court orders, property offences, many many
20 entries for assault, a few convictions for crimes
21 committed against police officers (one assault
22 police officer and one resist arrest conviction),
23 as well as one conviction for uttering threats.

24 What makes the record of grave concern is
25 the number of entries on it that are convictions
26 for crimes of violence against his spouse, and
27 these include the following: December 19th,

1 2002, a conviction for assault for which he
2 received four months in jail followed by
3 probation for one year. June 26th, 2003, a
4 conviction for assault for which he received
5 six months in jail and probation for one year.
6 August 6th, 2004, two convictions for assault
7 for which he received concurrent terms of six
8 and four months in jail. On the same date he
9 was also convicted of breach of probation which,
10 based on the dates, would had to have been
11 related to the probation order he was on for
12 the earlier assault in 2003. October 15th, 2007,
13 one conviction for assault for which he received
14 a jail term of 60 days. August 5th, 2008, two
15 convictions for assault for which he received
16 a total of seven months in jail followed by
17 probation for two years. February 8th, 2010,
18 a conviction for assault for which he received
19 a jail term of six months. Again, he was also
20 on that day convicted for breaches of probation
21 and received consecutive jail terms for that.
22 Again, this would had to have been the probation
23 order from the earlier conviction that was part
24 of his sentence for another conviction for an
25 assault on his spouse.

26 For most of these convictions the Crown
27 prosecutor was able to determine from police

1 records that the victim was Mr. Weninger's
2 previous spouse, D. B. She was also the victim
3 in the assault convictions from 2003 and 2004.
4 The records that the Crown was able to consult
5 did not specifically identify those assaults as
6 spousal in nature, but in all the circumstances
7 I consider it an inescapable conclusion that
8 these assaults occurred when Mr. Weninger and
9 D. B. were in a spousal relationship.

10 I heard at the sentencing hearing that
11 he was in a relationship with her for several
12 years and that they have two daughters together;
13 the eldest is now 11 years old. That means she
14 was born sometime in the latter half of 2001 or
15 the first half of 2002. Given this I have no
16 difficulty in concluding that the assaults for
17 which Mr. Weninger was convicted for assaulting
18 this same person, D. B., in 2003 and 2004 were
19 spousal in nature.

20 All that means is that before he began his
21 relationship with S. A. Mr. Weninger had been
22 convicted eight times for assault committed
23 against his spouse. For each of those assaults
24 he received jail terms, although none of them
25 were particularly lengthy. This is his ninth
26 conviction for such an offence, and it is a
27 conviction for an offence that is more serious

1 than any of the previous ones because this time
2 he committed the crime of assault causing bodily
3 harm as opposed to simple assault, which is what
4 he was convicted of the eight other times.

5 These past related convictions are obviously
6 of significant concern to the Court. It matters
7 very little that the spouse that he assaulted
8 this time was not the same person as the one
9 he had assaulted so many times in the past.
10 Irrespective of the identity of the person
11 assaulted what this demonstrates is a pattern
12 by Mr. Weninger of abusing the women he shares
13 his life with. Deterring him from engaging in
14 this conduct again is a significant sentencing
15 objective at this point.

16 Defence counsel is asking the Court to take
17 into account the fact that violence went in both
18 directions in Mr. Weninger's relationship with
19 S. A., and the Crown does not dispute that this
20 was a volatile relationship where both spouses
21 used force against the other, particularly when
22 they were intoxicated.

23 On a charge of assault causing bodily
24 harm consent is not a defence. That is
25 because, for policy reasons, our law does
26 not accept the notion of a person being able
27 to consent to another inflicting bodily harm

1 on them. I do accept that the circumstances
2 of the assault may offer some mitigation on
3 sentencing when it is shown that the offender
4 used excessive force and inflicted bodily harm
5 in circumstances where the altercation began as
6 a consensual fight, because that type of scenario
7 is admittedly different than the scenario when
8 the use of force is entirely one-sided. At the
9 same time, this factor can only go so far in
10 mitigation in this case, and I say that for
11 two reasons:

12 The first is that this case does not involve
13 a single occurrence of Mr. Weninger "going too
14 far" in responding to force used against him in
15 the context of a volatile relationship. There
16 were a number of incidents here, a number of
17 times where he "went too far." He did not just
18 cause bodily harm to her by biting her ear on
19 May 16th, it is also admitted that the bruises
20 visible in the photographs taken in May of 2012
21 were the result of some of the earlier incidents.
22 So he would have seen the consequences of his use
23 of force on her. There are no allegations before
24 me that he was ever injured by her. What is
25 clear is that she was injured by him more than
26 once, and the type of force he used against her
27 on May 16th, biting her earlobe to the point it

1 required stitches, is very serious. Biting is
2 quite a vicious type of assault.

3 The second reason why I am reluctant to
4 attach significant weight to the fact that there
5 was force being used both ways here is that to
6 an extent I think that factor is overshadowed
7 by the pattern of spousal violence revealed by
8 Mr. Weninger's criminal record. In my view
9 there is clearly a problem here, a problem he
10 urgently needs to address if he does not want
11 to find himself before the Courts again and
12 imprisoned for very long periods of time.

13 When Mr. Weninger spoke to the Court
14 yesterday he apologized and he said he was
15 ashamed about what he did, and I believe that
16 this is truly how he feels today. He talked
17 about making a mistake, but he also described
18 himself as a not violent person by nature,
19 saying he has a tendency to retaliate even
20 though he knows he should not. I do not
21 question his sincerity in saying that, but
22 with all due respect to him I do have some
23 difficulty with how he characterizes himself
24 and how he characterizes his actions. I question
25 the accuracy of his self-perception in being "not
26 violent in nature." I do so when I consider the
27 sheer number of convictions for assault on his

1 record, combined with the fact he also has a
2 conviction for uttering threats, combined with
3 the fact he does not only have spousal assault
4 convictions on his record but also convictions
5 for other types of assault, including assaults
6 and behavior resisting peace officers.

7 Putting all of that on account of
8 retaliation as opposed to being violent,
9 simply put, does not sound very realistic to
10 me. I think Mr. Weninger does have a problem
11 with violence and anger, not just a problem
12 with alcohol and retaliating when he should
13 not. I think he is going to have to come
14 to terms with the fact that he is capable
15 of violence period, and he needs to get help
16 to figure out why and figure out how not to
17 act this way when he is angry or frustrated or
18 whatever it is that triggers these reactions.

19 There are a number of aggravating factors
20 in this offence. First, the fact that there
21 were several incidents over the course of a
22 number of months as opposed to a single incident.
23 Second, the type of injury inflicted on the last
24 incident and the lasting consequences that it
25 had. That impact continues a year later, and
26 in my view is not at the most minor end of what
27 constitutes bodily harm. The third aggravating

1 factor is the criminal record, which I have
2 already talked about at length. The fourth is
3 the fact that this occurred within the context
4 of a spousal relationship which has, for many
5 years, been treated by this Court and other
6 Courts as an aggravating factor and is now
7 specified as an aggravating factor in the
8 Criminal Code.

9 As far as mitigating factors, the main
10 one and really I think the only one is the
11 guilty plea. This guilty plea was not entered
12 at an early opportunity. The case did proceed
13 to a preliminary hearing and S. A. had to testify
14 at that hearing. Sometime ago this week was
15 identified as the week where the trial would
16 proceed in this Court. At the end of last week
17 counsel for Mr. Weninger advised the registry
18 that there would be a guilty plea.

19 I recognize that while S. A. was not spared
20 completely from having to testify in relation to
21 this charge, because she did have to testify at
22 the preliminary hearing, the Crown was able to
23 advise her that she would not have to testify at
24 this trial and the Crown was able to de-notify
25 other witnesses. I am certain she must have
26 been very relieved not to have to testify at
27 this trial.

1 This Court knows very well from seeing
2 witnesses testify in criminal cases week in
3 and week out that it often is a very difficult
4 process for them. It would be especially
5 difficult for someone who remains afraid of the
6 accused. Sparing someone from that is always
7 significant. It also provides complainants
8 with certainty of the outcome, which is not
9 insignificant.

10 So while Mr. Weninger is not entitled to
11 as much credit for his guilty plea as he would
12 have if he had offered it a year ago or at some
13 earlier time in the process, he did give up his
14 right to have a trial and have the Crown prove
15 these allegations beyond a reasonable doubt, and
16 for that he is entitled to some credit. I also
17 consider that he was facing not just a charge of
18 assault causing bodily harm when this matter was
19 set for trial, the Crown was going to try him
20 also on the more serious charge of aggravated
21 assault, a charge that the Crown is now prepared
22 not to proceed with. So the jeopardy he faced
23 as this trial date was coming up was greater
24 than ultimately what he has pleaded guilty to.
25 That is another reason why I am prepared to give
26 that plea mitigating effect even though it was
27 entered late in the process.

1 The circumstances of the offence, which
2 is what I have mostly been talking about so far,
3 are part of what I must consider when determining
4 what a fit sentence is. Another important aspect
5 I have to consider is Mr. Weninger's personal
6 circumstances. I have already talked about
7 his criminal record, which is part of those
8 circumstances, but obviously there is a lot
9 more to him and to his life than that criminal
10 record.

11 I heard from counsel that Mr. Weninger
12 was offered up for adoption right from birth.
13 He was fortunate to be placed in the care and
14 later formally adopted by a family where he
15 was able to grow up in a supportive and loving
16 environment, free from abuse and violence.
17 His family re-located several times as he was
18 growing up because of the nature of his father's
19 employment, and later of his mother's employment,
20 but there is no suggestion that those frequent
21 re-locations impacted negatively on him.

22 It is clear from what his counsel has said
23 and from what Mr. Weninger himself said that the
24 conduct that he had displayed in his adult life
25 is not in line with the values that his parents
26 taught him or with how they behaved with each
27 other in the family unit. I heard that for

1 whatever reason Mr. Weninger did experiment
2 with alcohol when he was very young, 10 years
3 old, and unfortunately his use of alcohol
4 escalated when he was 15. He now acknowledges
5 that he has an addiction to alcohol, and he has
6 said to the Court that in the year that he has
7 spent on remand he has had a lot of time to
8 think about the role that alcohol has played in
9 his life. He says he has come to the conclusion
10 that he must absolutely stop drinking if he wants
11 to change his lifestyle and not end up in jail
12 again. He appears determined to make that
13 change.

14 It is a fact that this is not an easy
15 road to travel even for people who are very
16 determined. Mr. Weninger knows this because
17 he has been in treatment twice before, in
18 alcohol treatment, and he I am sure realizes
19 that he will need to renew his commitment to
20 live an alcohol-free life regularly if he is to
21 succeed. There is no doubt he will be exposed
22 to temptation to return to alcohol use when
23 he regains his freedom, and he probably will
24 need help and support if he wants to maintain
25 a sober lifestyle. I heard he has an education,
26 he has talents and skills and many hobbies and
27 interests. So I have no doubt that he is capable

1 of doing it, but it will require a life-long
2 commitment on his part. It is the Court's
3 sincere hope that for the sake of his children,
4 for the sake of others in his life who care for
5 him, and for his own sake, that he will in fact
6 maintain that commitment.

7 Mr. Weninger is of Metis descent, and this
8 imposes special obligations on me in the analysis
9 I must undertake to decide what a fit sentence is
10 for this crime, in accordance with the directions
11 given by the Supreme Court of Canada in the cases
12 of R. v. Gladue, [1999] 1 S.C.R. 688, 133 C.C.C.
13 (3d) 385, 23 C.R. (5th) 97, and R. v. Ipeelee,
14 2012 SCC 13. I have considered the principles
15 set out in those cases and the obligation that
16 I have to examine systemic and case-specific
17 factors that have impacted Mr. Weninger as an
18 aboriginal person. I have considered to what
19 extent those factors should impact my ultimate
20 decision on sentencing today.

21 As I have already alluded to, his family
22 situation as he was growing up was such that
23 it does not appear that he faced some of the
24 systemic disadvantages that we hear about in
25 many sentencing hearings involving aboriginal
26 offenders in this jurisdiction. He grew up,
27 by all accounts, in a healthy and supportive

1 environment, something he acknowledges. He said
2 himself "this is not how I was raised." He was
3 not raised in alcohol abuse, he was not raised
4 in violence, and he was not taught growing up
5 that it was okay to abuse a spouse, physically
6 or psychologically.

7 He has succeeded in his educational
8 pursuits. He got his general education
9 degree in 2006, as well as a diploma from
10 Aurora College here in Fort Smith to work
11 in small airports as an observer/communicator.
12 He has held that type of employment, and he
13 has also worked as a carpenter and obviously
14 has good employment prospects for the future.
15 He has musical talents, hobbies, he can carve,
16 he can build log cabins, and he assists people
17 on hunts. Clearly he has a lot of skills.

18 I also heard that he believes, from
19 speaking with relatives, that his biological
20 mother abused alcohol when she was pregnant
21 and that when he was born he had some features
22 generally associated with fetal alcohol
23 syndrome disorder that he somehow outgrew.
24 It is difficult for me to assess the weight
25 and effect of this information. There is
26 no evidence of an actual diagnosis, and my
27 understanding is that FASD is not something

1 that a person can simply outgrow, although a
2 person can learn skills to help cope with the
3 condition. Maybe in his case it was more a
4 question of physical features that disappeared
5 as he got older, I do not know.

6 I also heard that both Mr. Weninger's
7 biological parents passed away sometime ago
8 from illnesses. He also lost an adoptive sister
9 who passed away when she was still fairly young,
10 35 years old. She suffered from diabetes. So
11 like many aboriginal offenders who come before
12 our Courts he has experienced a fair bit of
13 loss in his life. He started using and abusing
14 alcohol at a young age, which is also something
15 we frequently hear about and is part of what
16 leads young people to making destructive choices
17 and run into problems with the law.

18 I am satisfied that despite his good
19 fortune in being adopted by a supportive
20 and healthy family there are things in
21 Mr. Weninger's background that are relevant
22 for the purposes of assessing what a fit
23 sentence is for this offence and going to
24 the root cause of his behavior. At the same
25 time, the paramount considerations on sentencing
26 have to be denunciation and general deterrence
27 for reasons that I will get into in a moment,

1 and I do not think that the Gladue and Ipeelee
2 factors that are present here are such that
3 they can serve to significantly reduce his
4 level of blameworthiness for this offence
5 and result in a much more lenient sentence
6 than would otherwise be the case.

7 This takes me to the principles of
8 sentencing that I must apply in deciding
9 this case and an examination of the case law.
10 Counsel have submitted various cases for my
11 consideration, and I have also refreshed my
12 memory with a few others that have talked
13 about the principles that apply in domestic
14 violence cases.

15 The purpose and principles of sentencing
16 are set out in the Criminal Code, and I will
17 not refer to all of them here. The fundamental
18 sentencing principle is proportionality.
19 A sentence should be proportionate to the
20 seriousness of the offence and the degree of
21 blameworthiness of the offender. Sentencing
22 in the area of domestic violence engages certain
23 considerations that are specific to the nature
24 of that unfortunately still very prevalent social
25 problem.

26 In 1992 the Alberta Court of Appeal
27 had occasion to comment on this in the case

1 of R. v. Brown, (Alta. C.A.) [1992] A.J. No.
2 432. In that case the Court was dealing with
3 appeals in three cases involving wife assaults.
4 It took the opportunity to comment about what
5 the paramount sentencing considerations are when
6 dealing with this type of crime. Although that
7 case is now over 20 years old, in my view the
8 things that the Court of Appeal said in it remain
9 as relevant today as they were when the case was
10 first decided. I will refer to that case because
11 I think what was said in it is important to
12 remember.

13 The Court said many things, but started
14 its analysis by referring to comments made by
15 Justice Wilson in the Supreme Court of Canada
16 decision of R. v. Lavallee (1990) 55 C.C.C.
17 (3d) 97 (S.C.C.). That was not a sentencing
18 case, that was a case that dealt with the
19 "battered wife syndrome" defence in the context
20 of a murder charge. But Justice Wilson said in
21 that decision, at pages 112 and 113, among other
22 things, this:

23
24 The gravity, indeed, the tragedy
25 of domestic violence can hardly be
26 overstated. Greater media attention
27 to this phenomenon in recent years
has revealed both its prevalence
and its horrific impact on women
from all walks of life...

1 ...Long after society abandoned
2 its formal approval of spousal
3 abuse, tolerance of it continued
4 and continues in some circles to
5 this day.

6 Fortunately, there has been a
7 growing awareness in recent years
8 that no man has a right to abuse
9 any woman under any circumstances.
10 Legislative initiatives designed to
11 educate police, judicial officers
12 and the public, as well as more
13 aggressive investigation and
14 charging policies all signal a
15 concerted effort by the criminal
16 justice system to take spousal
17 abuse seriously.

18 Then, and this is on page 6 of R. v.
19 Brown, the Court of Appeal of Alberta made
20 its own comments about its experience with
21 the phenomenon. It said the following:

22 This Court's experience is that the
23 phenomenon of repeated beatings of
24 a wife by a husband is a serious
25 problem in our society. It is not
26 one which may be solved solely by
27 the nature of the sentencing policy
28 applied by the courts where there
29 are convictions for such assaults.
30 It is a broad social problem which
31 should be addressed by society
32 outside the courts in ways which
33 it is not within our power to
34 create, to encourage, or to finance.
35 But when such cases do result in
36 prosecution and conviction, then the
37 courts do have an opportunity, by
38 their sentencing policy, to denounce
39 wife-beating in clear terms and to
40 attempt to deter its recurrence on
41 the part of the accused man and its
42 occurrence on the part of other men.

1 Then the Court went to establish certain
2 guidelines or principles to assist sentencing
3 judges who are dealing with wife assaults. The
4 first of these principles was that the starting
5 point should be what the sentence would be if
6 the assault had taken place between strangers.
7 The next step that the Court suggested was to
8 then consider that the fact that the assault
9 happened in a domestic context is an aggravating
10 factor because of the breach of trust that this
11 represents. Interestingly this principle, as
12 I have already mentioned, has since then been
13 codified: it is specifically provided for in the
14 Criminal Code, now, that this is an aggravating
15 factor.

16 Today this may go without saying, or seem to
17 go without saying, but it bears remembering that
18 there was a time where this would not have even
19 been considered an offence, or it might have been
20 considered mitigating that the person assaulted
21 was the person's spouse. There are reasons why
22 the law has evolved in this way and those reasons
23 must be borne in mind.

24 The next thing that the Court said in
25 R. v. Brown is that one of the sentencing
26 objectives in dealing with these types of
27 matters is to foster the rehabilitation of

1 the offender and deter the specific offender
2 from repeating the conduct, but that these are
3 now the paramount considerations. The Court
4 said at page 7:

5
6 The more important principles are
7 that the sentence should be such as
8 to deter other men from similarly
9 conducting themselves toward women
10 who are their wives or partners
11 (what is called the principle of
12 "general deterrence"), and that
13 the sentence should express the
14 community's wish to repudiate such
15 conduct in a society that values
16 the dignity of the individual (the
17 "denunciation principle").

18
19 Finally, the Court talked about how
20 cautious sentencing judges should be in those
21 cases that commonly occur in these types of
22 situations where the very victim of the offence
23 does not want to see the offender punished
24 because they hope to continue the spousal
25 relationship, are concerned about loss of income,
26 do not want to deprive the children from their
27 father's presence, and reasons of the sort.
Those considerations are not applicable in this
case as the relationship between these parties
is over. But the point is, even when the parties
wish to pursue the relationship, the victim's
views are not determinative and must be assessed
with great caution and with the recognition

1 of the unique dynamics that are at play in
2 the context of domestic violence.

3 In summary, one way of saying it is that
4 as I approach this case I must remember that
5 it is not just about Mr. Weninger. It is about
6 him, of course, but it is not just about him
7 and it is not just about what he did to S. A.
8 The sentencing principles of general deterrence
9 and denunciation require looking beyond the one
10 case that the Court is dealing with. The Court
11 has to be concerned about the message that
12 this sentence sends to the public. It is
13 not about making examples of people, it is
14 not about succumbing to political or other
15 pressures, it is not about being unduly harsh,
16 but it is about ensuring that the sentences
17 imposed for crimes reflect the seriousness of
18 the crime, the importance of discouraging others
19 from behaving in a similar way, and that those
20 sentences reflect society's condemnation of the
21 conduct.

22 R. v. Brown was quoted and approved of a
23 few years after it was decided by our own Court
24 of Appeal in R. v. B.A., [1996] N.W.T.J. No. 7
25 (NWTCA), and R. v. L.R.C., [1996] N.W.T.J. No.
26 8 (NWTCA), among others. It was applied several
27 times by this Court and by the Territorial Court.

1 It, of course, does not answer the question
2 that I have to answer today, namely, what a
3 fit sentence is for this particular offence.
4 But the principles that it stands for, which
5 have been restated in different ways by different
6 Courts over the years, remain important to bear
7 in mind, and that is why I have taken the time
8 to talk about that case. As I said at the
9 outset, over 20 years later I think it is every
10 bit as relevant as it was when it was decided,
11 as are the comments made by Justice Wilson in
12 Lavallee, which I have also referred to.

13 I now turn to the cases that the Crown and
14 defence have provided to me. No two cases are
15 ever exactly alike. It is always possible to
16 draw some distinctions, but I found reviewing
17 those cases quite helpful. It is always helpful
18 to review decisions made in other cases and
19 assess how similar or dissimilar they are
20 from the ones being dealt with.

21 The first two cases filed by defence,
22 R. v. Condo, 1995 CarswellOnt 4560, and
23 R. v. English, 2012 CarswellNfld 345, have
24 some elements of similarity with this one in
25 the sense that they involve offenders who bit
26 another person's ear. The injuries inflicted
27 in these cases were actually more significant

1 than the one here. On the other hand, these
2 cases did not occur in a domestic violence
3 situation, and that is a significant
4 distinction.

5 They are helpful cases to some extent
6 because, as I have said previously, the starting
7 point in determining a fit sentence in a domestic
8 violence situation is to think about what the
9 sentence would be if the same assault had been
10 perpetrated on a stranger, but that is in my
11 view the extent to which those cases can be
12 of assistance because the existence of a spousal
13 relationship is a significant aggravating factor
14 and is at the root of the sentencing principles
15 that are paramount when dealing with such cases.

16 The third case referred to me by defence,
17 R. v. Olson, 2010 CarswellBC 2270, is a case
18 from British Columbia that does involve a
19 domestic violence situation. The offender
20 in that case was sentenced for fairly serious
21 assaults against two different partners, as
22 well as other charges, breaches of release
23 documents and an attempt to obstruct justice.

24 While that decision includes several
25 statements about the seriousness of spousal
26 violence that I completely agree with, with
27 the greatest of respect I find the case

1 wholly unpersuasive as far as its result.

2 In my view it is completely out of line with
3 the law in this jurisdiction, and I want to
4 spend a few moments talking more specifically
5 about that case to make it clear why I am of
6 that view.

7 Mr. Olson was being sentenced for numerous
8 charges involving crimes committed against two
9 different women he had been in relationships
10 with. As I said, these included assaults,
11 threats, breaches of bail conditions, and a
12 charge for attempting to obstruct justice.

13 In relation to the first complainant the
14 offender had become controlling and abusive
15 after she moved in with him. She moved out at
16 one point, but returned shortly thereafter to
17 live with him. After she returned he became
18 mad at her over money issues, and in the course
19 of the argument that followed he told her that
20 she needed to be taught a lesson. He pounced
21 on her, and it appears from the decision that
22 he was somehow mimicking the behavior of a dog.
23 He licked her on her body and he bit her in
24 various places of her body, including her breast
25 area. He let her go briefly, but then resumed
26 his assault, banging her head against the wall
27 and pressing his thumbs on her temples. He later

1 apologized, but told her that she needed to be
2 taught a lesson. He added that if she ever tried
3 to leave him again he would have her fired from
4 her job and have a friend beat her up.

5 There was another incident that happened
6 about a week later, but she was able to escape.
7 She notified the police, and that is when he was
8 charged. While he was out on bail he struck up
9 a relationship with another woman a few months
10 later, and he became controlling and abusive
11 of her as well. There was various incidents,
12 ultimately one where he bit her. He was charged,
13 arrested, released on bail again. Despite this
14 he returned to her residence and threatened to
15 kill her and her family and refused to leave.
16 There was a further incident where he assaulted
17 her, striking her on the head and threatened to
18 kill her. They were in a bathroom apparently
19 and he would not let her leave the room. He
20 held a knife and threatened to stab her a hundred
21 times, cut her head and put it in the toilet, and
22 before doing this he had apparently disconnected
23 the phone.

24 A few days later, after this last assault,
25 the police contacted her to follow up on the
26 earlier matter for which Mr. Olson was already
27 facing a charge. Because of the threats he had

1 made to her she tried to convince the police
2 not to proceed with that charge. In the end,
3 when she disclosed all of this, he was charged
4 with attempting to obstruct justice.

5 That accused had spent the equivalent of
6 ten months in pre-trial custody. On sentencing
7 the Court was presented with a joint sentence
8 of a three-month jail term to be served in
9 the community as a conditional sentence.

10 The sentencing judge found the joint submission
11 unreasonable and he did not go along with it.
12 Instead, he imposed a further jail term of
13 eight months, but he did make it a conditional
14 sentence.

15 I certainly understand why the sentencing
16 judge did not follow the joint submission.
17 In this jurisdiction, and I suspect in most,
18 it would be considered clearly outside the
19 range for such a serious series of offences.
20 As far as the sentence that was actually imposed
21 in Olson, to the extent I can make an assessment
22 based on the reported case, I do not think it is
23 in line at all with the range of sentences that
24 would be imposed in the Northwest Territories
25 for similar facts.

26 A person in the Northwest Territories who
27 would assault partners in this way, repeatedly

1 breach release conditions, re-assault the same
2 victim while on bail, especially in a spousal
3 context, who utters threats and who tries to
4 obstruct justice by convincing his spouse not
5 to testify or scaring her, in this jurisdiction
6 would ordinarily receive a significant jail
7 term and would not be permitted to serve that
8 jail term in the community.

9 For those reasons, while I think R. v.
10 Olson does include several comments that
11 I agree with about the considerations and
12 principles that are relevant when dealing
13 with the case of domestic violence, in its
14 result I do not find it persuasive.

15 I now turn to the cases filed by the Crown.
16 They are from this Court. As defence counsel
17 correctly noted, they each have certain features
18 that distinguish them somewhat from this case.

19 In R. v. Nitsiza, 2010 NWTSC 22, the accused
20 was sentenced for an assault with a weapon. He
21 had beaten his spouse with his fist, but also
22 used a belt and a plastic coat hanger while he
23 was assaulting her. He had a criminal record
24 and was on probation at the time of the offence,
25 but his record was not nearly as extensive as
26 Mr. Weninger's. The victim suffered extensive
27 bruising to her entire body. The decision does

1 not specify what type of treatment she had to
2 receive, but she was treated first at a local
3 nursing station and then sent out for followup
4 treatment. She wanted the relationship to
5 continue and did not want the offender to receive
6 a jail term. A guilty plea was entered at the
7 11th hour, on the day scheduled for the start of
8 his trial. The sentence imposed in that case was
9 18 months in jail.

10 In R. v. Tsetta, 2006 NWTSC 14, the assault
11 was more serious than it is in this case. It
12 involved choking the victim to the point of
13 unconsciousness and punching her to the face to
14 the point of breaking her jaw. The accused
15 pleaded guilty shortly before his trial was set
16 to commence. He was also being sentenced for a
17 breach of probation. That probation was as a
18 result of a conviction for an assault on the
19 same person; that would have been an aggravating
20 factor. He also had a significant criminal
21 record, although there is no indication that he
22 had as many prior convictions for spousal assault
23 as Mr. Weninger does.

24 In that case the Crown was asking for
25 a term of imprisonment in the penitentiary,
26 and the defence was asking the Court simply
27 to impose a shorter sentence than that. The

1 sentence imposed was 20 months, 16 of which
2 were for the assault causing bodily harm.
3 Reviewing the decision, one must be cautious
4 about the individual sentences imposed on
5 each count in that case because the Court
6 had to consider totality. As mentioned at
7 paragraph 18 of the decision, the Court had
8 to consider totality not just as between
9 the two charges it was sentencing the accused
10 for, but also in the context of a sentence
11 that Mr. Tsetta was already serving when he
12 was sentenced for these offences.

13 The last case referred to by the Crown
14 was R. v. Mercredi, 2010 NWTSC 5. Again, the
15 injuries inflicted in that case were serious and
16 required surgery. The offender pleaded guilty to
17 assault causing bodily harm. It appears that he
18 did so because he did not want his 12-year-old
19 daughter, who had witnessed the events, to have
20 to testify. He had a record which included some
21 convictions for assault, including some spousal
22 assaults, but again, it does not appear that his
23 record for domestic violence was as significant
24 as Mr. Weninger's. He had three prior such
25 convictions, not eight. But the most recent
26 one had been an assault with a weapon, and for
27 that he had received a year in jail. This is

1 another case where his spouse had sent a letter
2 to the Court pleading for leniency and expressing
3 her wish to continue the relationship with him
4 and expressing the hope that he would change his
5 lifestyle. On that case the sentence imposed was
6 14 months imprisonment.

7 I have considered all of these cases.
8 The one feature that this case has and those
9 cases do not is the fact that this is the
10 ninth conviction that Mr. Weninger has for
11 an assault on a spouse. A Court must always
12 be careful not to overemphasize a criminal
13 record. People should not be punished over
14 and over again for things that they have
15 already been sentenced for. But the persistence
16 of this offender's pattern in being violent
17 towards his spouse cannot be ignored. That
18 pattern re-emerged remarkably quickly after
19 his relationship with S. A. began. It is a
20 very frightening pattern, one that raises
21 serious concerns for the safety of whoever
22 Mr. Weninger's next partner will be.

23 The sentence I impose today must address
24 this. It is very clear that the relatively
25 short jail terms that were imposed on him, even
26 after he was repeating the same conduct over and
27 over again, have not achieved this. The sentence

1 I impose today has to send a clear message to him
2 about the seriousness and consequences of this
3 type of conduct, and it must also send a message
4 about how seriously this Court treats domestic
5 violence.

6 Mr. Weninger has said that he knows he
7 is a better person than what it would appear
8 on paper, and I am certain that this is true.
9 The things that I have heard about him, as
10 I have referred to already, suggest that he
11 has many skills, abilities and talents, and
12 he has obviously made some efforts during the
13 time he has spent on remand to better himself.
14 He has participated in AA meetings. He has
15 taken the Embracing Our Human Nest program.
16 He has taken educational upgrading. He was
17 involved in the inmates committee and was its
18 president for a number of months. And he has
19 expressed remorse. All of those things are in
20 his favour, and the fact that he has skills and
21 abilities suggests that if he sets his mind to
22 it he can be productive and not behave in this
23 manner.

24 He has said, and I think he is correct
25 on that as well, he realizes that he must
26 eliminate alcohol from his life if he is going
27 to achieve his objective of changing his path.

1 He has taken treatment programs before and
2 may need to take them again, I do not know,
3 but I am certain that he will need support
4 and assistance.

5 I have listened carefully to what he has
6 said, to his comments about being 40 and wanting
7 to change, wanting to abide by counselling and
8 treatment conditions and wanting to beat his
9 addiction to alcohol. That is really the only
10 reason I am inclined to include probation as
11 part of his sentence. I say that because the
12 reality in the past has been that probation
13 has not been successful with him in the past.
14 He was convicted several times for breaching
15 probation orders, and it appears they had no
16 effect in preventing him from re-offending.
17 But perhaps this time probation can and will
18 be more effective and productive than it has
19 been in the past.

20 Maybe Mr. Weninger really is at a crossroads
21 today. Either he will take a different path,
22 and to do so he will need help, or he will
23 continue on the same path he has been on for
24 over a decade. If this happens there will just
25 be more victims and more suffering. So for
26 that reason I certainly think it is worthwhile
27 to include probation as part of his sentence.

1 That aspect of my sentence essentially is aimed
2 at supporting his efforts at rehabilitation,
3 it is intended to support his efforts in making
4 the changes that he has told the Court about,
5 and it is also intended to provide S. A. some
6 measure of comfort by knowing he will not be
7 permitted to have any contact with her.

8 The sentence I impose today, as I have
9 referred to already, must attempt to foster
10 Mr. Weninger's rehabilitation, but it also
11 has to address, and in a paramount way,
12 deterrence and denunciation for all of the
13 reasons I have been talking about. I am
14 unable to conclude that those objectives will
15 be met by imposing a sentence of time served,
16 which would be the equivalent of a one-year
17 sentence. In my view, such a sentence will
18 offend the principle of parity when one looks
19 at cases from this jurisdiction involving
20 serious spousal violence. It would not
21 adequately reflect the seriousness of this
22 offence or the fact that Mr. Weninger is a
23 repeat offender for this type of crime.

24 Honestly, in my view, with his criminal
25 record, the repetition of the assaults on S. A.
26 and the seriousness of his conduct on the most
27 recent of the incidents, Mr. Weninger would have

1 been facing a sentence in the penitentiary range
2 had he not pleaded guilty to this offence and had
3 been convicted after trial. And while his guilty
4 plea is mitigating it cannot have the effect
5 of bringing the sentence down to a one-year
6 sentence in all the circumstances.

7 I would have been inclined initially to
8 impose a sentence of two years less a day for
9 this offence, the very maximum range available
10 to me short of a sentence in the penitentiary
11 range. But having thought about it and
12 reflected on it and taken into account the
13 Crown's position, all the things that were
14 said on Mr. Weninger's behalf, and especially
15 having reminded myself of the importance of
16 the principle of restraint, I will refrain
17 from doing so. Stand up please, Mr. Weninger.

18 Mr. Weninger, for the assault causing bodily
19 harm you committed on your spouse I sentence
20 you to a term of imprisonment of 20 months.
21 For the time you spent in remand I will give
22 you credit for one year. So there will be
23 a further jail term of eight months in jail.
24 You can sit down.

25 This will be followed by a probation
26 order for two years, and the terms will be
27 that you keep the peace and be of good behavior.

1 You know what that means. Within 24 hours of
2 your release you are to report to Probation
3 Services and then as directed by them. You
4 are to take counselling and treatment programs
5 recommended by your probation officer including,
6 but not limited to, the areas of alcohol
7 addiction and anger management. You are
8 to have absolutely no contact directly or
9 indirectly with S. A.

10 Given what I have heard from Crown
11 Counsel this morning I am not going to create
12 an exception to this no-contact condition.
13 There may be a time where it will be okay for
14 you to express your apology directly to her,
15 but she is not prepared to hear that at this
16 point, and the Court has to respect that and
17 you have to respect that. I am sure the Crown,
18 in his discussions with her, has passed on what
19 you have said, and as I say, over time her
20 views may change on that. But for the period
21 of your probation you are not to have any
22 contact with her even if it would be for
23 that purpose.

24 In addition, there will be a DNA order as
25 it is mandatory for this offence. There will
26 be a Section 109 firearms prohibition order;
27 it too is mandatory. There will be an order

1 for the return of any exhibits seized during
2 this investigation if that is appropriate.
3 By this I mean returned to the rightful
4 owners, otherwise they will be destroyed
5 at the expiration of the appeal period.

6 Given the jail term that I am imposing
7 today and the amount of time that Mr. Weninger
8 has spent on remand I am not going to make an
9 order for the payment of the victim of crime
10 surcharge. I am satisfied that it would result
11 in hardship.

12 The Warrant of Committal will be endorsed
13 with the recommendation that if adequate
14 programming is available to Mr. Weninger in
15 the correctional facility here in Fort Smith
16 the correctional authorities consider placing
17 him there so as to allow him easier access to
18 family members, and in particular given the
19 illness of one of his uncles.

20 Defence counsel has asked that I make a
21 further recommendation that Mr. Weninger be
22 considered for an early work release program.
23 I am not going to make that recommendation.
24 I think that Mr. Weninger has done some work
25 trying to deal with his issues, and he has
26 obviously done a lot of thinking, but I also
27 think there are things he needs to continue

1 to work on. It is possible that some of the
2 programs available to him while in custody
3 will assist him in that.

4 The reality is that he will be looking at
5 the prospect of very significant jail terms if
6 he does not address the underlying issues that
7 lead to this conduct, especially if he ever
8 commits another crime of violence against a
9 spouse. So it would be in his best interest
10 to have access to more programming and more
11 assistance in understanding the root causes
12 of his behavior before he is released and free
13 to make all of his own choices again. That
14 whole question of his participation in whatever
15 release programs may exist, I think, is better
16 left with the correctional authorities, based
17 on their assessment of his progress and their
18 assessment of how the risk he presents can be
19 managed.

20 Is there anything that I have overlooked?

21 MR. GODFREY: Your Honour, I didn't hear
22 the length of the firearms prohibition order.

23 THE COURT: I am sorry. It will commence
24 today and expire ten years after his release.

25 MR. GODFREY: Thank you.

26 THE COURT: Anything from defence?

27 MR. PETITPAS: No, Your Honour.

1 THE COURT: Mr. Weninger, I do hope you
2 are able to achieve what you have said you want
3 to do, and I do hope that you will not ever be
4 having to appear in a criminal courtroom again.
5 We will close court.

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7
8 Certified to be a true and
9 accurate transcript, pursuant
10 to Rules 723 and 724 of the
11 Supreme Court Rules.

12 _____
13 Joel Bowker
14 Court Reporter
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