

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

HARRY CLARKE

Transcript of the Reasons for Sentence delivered by the Honourable Justice V. A. Schuler, in Yellowknife, in the Northwest Territories, on the 26th day of May, 2014

APPEARANCES:

Ms. A. Piche: Counsel for the Crown

Mr. P. Harte: Counsel for the Accused

Charge under s. 279(2), 271 Criminal Code of Canada

1 THE COURT: I am sentencing Mr. Clarke,
2 then, for a conviction for unlawful confinement
3 and also a conviction for sexual assault.

4 I have already reviewed the circumstances,
5 so I am not going to review them further other
6 than just briefly to say that the circumstances
7 involved or arise from a day when Mr. Clarke and
8 his girlfriend at the time were drinking at his
9 apartment. There was some consensual sexual
10 activity, but Mr. Clarke became, as the
11 complainant said, rough, and I have already
12 referred to the biting and the slapping that was
13 involved when she was naked and in the bed.

14 And Mr. Clarke also told her to leave on a
15 couple of occasions and then prevented her from
16 leaving. And it is clear from the complainant's
17 evidence that he was extremely angry when he made
18 those comments to her.

19 And I agree with the characterization
20 suggested by Crown counsel that there is an
21 atmosphere of Mr. Clarke attempting to dominate
22 the complainant, ordering her what to do, what
23 not to do, and imposing his will on her. It was
24 a relationship of trust because of the intimate
25 nature of the relationship, so that is an
26 aggravating factor.

27 I have heard that Mr. Clarke is 40 years

1 old, that he had a difficult childhood in terms
2 of the prevalence of alcohol in the home, both on
3 the part of his mother originally but also then
4 the home that he was subsequently given to. And
5 obviously, having his first blackout from alcohol
6 at the age of 12 is an indication of the
7 inadequacy of supervision, perhaps, of course, by
8 the family, because that is not the type of
9 situation, obviously, a child that age should be
10 in.

11 So I take that into account, and that, of
12 course, is relevant to the -- to what we call the
13 Gladue factors, that Mr. Clarke obviously has
14 experienced the difficult family circumstances
15 that many aboriginal people in this jurisdiction
16 and elsewhere in Canada experience.

17 But having said that, at the same time, he
18 has obviously been able to obtain and maintain
19 employment. So he has, I take it, at times, been
20 able to control his drinking and control the
21 effect alcohol has on his life.

22 His criminal record also does indicate a
23 problem with alcohol. There are numerous
24 convictions for impaired driving. There are a
25 variety of other convictions going back to when
26 he was a youth. The convictions that are of most
27 concern, of course, today, are the convictions in

1 2004 for sexual assault for which he was
2 sentenced to 17 months' imprisonment and two
3 years' probation. And then in 2009, a
4 conviction, also for sexual assault, for which he
5 was sentenced to 15 months' consecutive to time
6 that he was sentenced to for some unrelated
7 offences. And on that same occasion in 2009 he
8 was convicted of forceable confinement and
9 received a sentence of 3 months' concurrent to
10 15 months. So I conclude from that, that all
11 arose out of the same incident.

12 So with now a third conviction on his record
13 for sexual assault and a second conviction for
14 unlawful confinement and again, arising out of
15 the same circumstances --

16 Mr. Clarke, if you are not aware, you should
17 be aware that if you are convicted of similar
18 offences in the future, you are almost certainly
19 looking at lengthy penitentiary time. You are
20 40 years old, and this kind of behaviour has to
21 stop or you will end up spending your middle
22 years incarcerated. So you need to think about
23 that pretty carefully.

24 If you can stop drinking long enough to hold
25 employment, you can stop drinking. And to the
26 extent that drinking played a part in what
27 happened on this occasion, which I have no doubt

1 it did, you need to make sure -- you obviously
2 realize the things that you do and can do when
3 you are under the influence of alcohol. And in
4 the end, all they are going to do is mean that
5 you end up in jail.

6 So I know that stopping drinking, quitting
7 drinking completely is not easy, especially with
8 the background that you have got. But if you can
9 do it to work, then you can do it. And it seems
10 to me that you have to now come to grips with the
11 fact that you have to do it, or, as I say, you
12 are simply going to end up in custody.

13 So the sentence that is imposed has to serve
14 to deter, to discourage both Mr. Clarke and other
15 people from committing these types of offences,
16 particularly in the context of a domestic
17 relationship because of the importance of that
18 type of relationship and what it means.

19 As I was saying, we need to protect people
20 in domestic relationships and not -- and send a
21 signal that this kind of behaviour will be dealt
22 with by way of serious consequences.

23 So in this case what I have from counsel is
24 a joint submission that because Mr. Clarke has
25 spent 19 months in remand, and because there is
26 no bar in the circumstances of this case to
27 giving him credit of 1.5 for that time, that

1 he -- it be considered that he has served 28.5
2 months and that, therefore, time served is the
3 appropriate sentence. So that is over two years
4 when the credit is applied, and it obviously is
5 quite a bit more than what he was previously
6 sentenced to.

7 In the circumstances, and the test, of
8 course, is always whether the joint submission is
9 unreasonable or unfit or not in accordance with
10 the types of sentence normally imposed in the
11 circumstances, I am satisfied that it is not in
12 any of those categories. So I am prepared to
13 accept the joint submission.

14 I think the way to do it is to, as far as
15 the jail term is concerned, to order that he is
16 sentenced to time served but that the warrant
17 reflect that with the 1.5 credit to 19 -- to just
18 over 19 months. Actually, we will say 1.5 credit
19 to 19 months of remand. It is 28.5 months,
20 therefore, and I will also order that Mr. Clarke
21 will be on probation for a period of two years
22 following -- starting today.

23 The conditions of the probation will be that
24 he report to a probation officer within three
25 days of today's date and thereafter as the
26 probation officer requires and that he take such
27 counselling for alcohol abuse as is recommended

1 by the probation officer. That condition will
2 apply throughout the two years.

3 There will also be a 20-year order pursuant
4 to the *Sex Offender Registration Act* that he
5 register under that Act and report for that
6 period of time.

7 There will be a mandatory DNA order, and
8 there will be a firearm prohibition order
9 commencing today, and it will end ten years from
10 his release from imprisonment, which will
11 effectively be today.

12 Are there any firearms or other items that
13 your client has?

14 MR. HARTE: If I could just have an
15 indulgence for a second, Your Honour.

16 No. He has no firearms at present, Your
17 Honour. Thank you.

18 THE COURT: All right. So the order will
19 be that any such items are to be surrendered to
20 the RCMP forthwith.

21 Now, is there anything that I have
22 overlooked or that...

23 MR. HARTE: I have nothing, Your Honour.
24 Thank you.

25 MS. PICHE: No, thank you, Your Honour.

26 THE COURT: All right. So that is fine,
27 then. Thank you very much, counsel, for your

1 handling of the case, and we will close court.

2 Mr. Clarke, please consider very carefully
3 what I have said, because as I say, you are too
4 old now to be looking at spending so much time
5 incarcerated, but it is up to you to change
6 things.

7 All right. We will close court.

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9 PROCEEDINGS ADJOURNED ACCORDINGLY

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1 CERTIFICATE OF TRANSCRIPT

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I, the undersigned, hereby certify that
6 the foregoing pages are a complete and accurate
7 transcript of the proceedings taken down by me in
8 shorthand and transcribed from my shorthand notes to
9 the best of my skill and ability.

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Dated at the City of Yellowknife, in the
11 Northwest Territories, this 26th day of May, 2014.

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Tiffany Low

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Court Reporter

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