

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

RUSSELL HAMILTON

Transcript of the Reasons for Sentence delivered by The Honourable Justice K. Shaner, sitting in Yellowknife, in the Northwest Territories, on the 7th day of April, 2014.

APPEARANCES:

Mr. A. Godfrey: Counsel for the Crown

Mr. S. Petitpas: Counsel for the Accused

(Charge under s. 266 of the Criminal Code of Canada)

1 THE COURT: I have had the opportunity to
2 consider the submissions that were made today as
3 well as the Agreed Statement of Facts and the
4 criminal record. I have also considered what you
5 have had to say to me, Mr. Hamilton. So I am now
6 in the position of having to impose sentence on
7 you, which is possibly the worst part of a
8 judge's job.

9 Earlier this afternoon, Mr. Hamilton was
10 convicted of assault, under Section 266 of the
11 Criminal Code, and this followed a re-election to
12 trial by judge alone and a guilty plea. The
13 Crown and Defence agreed upon the facts, which
14 Mr. Godfrey then read into the record. I am not
15 going to repeat the facts here in their entirety,
16 but just to give some context to these reasons, I
17 am going to summarize them, and basically what
18 happened is this. Mr. Hamilton had a party at
19 his home on March 2, 2012. The victim came to
20 the party. She got into an altercation with
21 another guest. Mr. Hamilton intervened and
22 stopped the altercation. The police arrived and
23 then everyone left, including the victim. But
24 then, after the police left, she returned and she
25 and Mr. Hamilton got into a verbal argument. The
26 argument continued into Mr. Hamilton's bedroom,
27 where Mr. Hamilton then pushed the victim onto

1 the bed and he held her down. He then forcibly
2 removed a scarf that she was wearing. The victim
3 had not physically touched Mr. Hamilton during
4 the argument, and she was six months pregnant at
5 the time and her pregnancy was obvious.

6 Now, when prosecuted by indictment, assault
7 carries a maximum penalty of five years. The
8 range that we find in the common law on assault
9 charges is very wide owing to the variety of
10 circumstances from which an assault charge can
11 arise and the various consequences that may come
12 as a result of an assault. So it can be thought
13 of as falling on a spectrum of seriousness. And
14 while both the Crown and Defence have
15 acknowledged that assault is always a serious
16 matter, and I agree with them, they both indicate
17 that this particular assault falls at the lower
18 end of that spectrum, and I agree with that as
19 well.

20 So for this assault, the Crown seeks a
21 custodial sentence of three to seven months
22 followed by twelve to eighteen months of
23 probation. The Defence seeks a six-month
24 conditional sentence which would be followed by
25 twelve to eighteen months of probation. A
26 conditional sentence is a sentence that allows an
27 offender to serve their time in the community

1 rather than going to jail.

2 I want to first turn to Mr. Hamilton's
3 personal circumstances. He is from the Northwest
4 Territories and he is of Dene descent.

5 Mr. Petitpas described his family life as he was
6 growing up in what could be characterized as a
7 bad family life that was riddled with alcohol,
8 abuse, and violence. He himself was abused by a
9 family friend as a young boy, and this was never
10 prosecuted. He has also struggled with addiction
11 for all his life. He has eight children ranging
12 in age from eight weeks to seventeen years. He
13 lives with the mother of his eight-week-old child
14 currently. Previously, he was in a common-law
15 relationship with the victim, with whom he has
16 four children; however, they were not living
17 together as a couple at the time that the assault
18 occurred.

19 Mr. Hamilton, to his credit, has completed
20 some college courses in both liberal arts as well
21 as carpentry. He currently lives in Yellowknife
22 and has a job working as a security guard at the
23 Yellowknife Inn. At some point, he would like to
24 finish the carpentry program at Aurora College.

25 In any sentencing, the judge is required to
26 consider aggravating and mitigating
27 circumstances. In this case, the aggravating

1 circumstance is the pregnancy of the victim. As
2 well, the accused has a criminal record which
3 includes quite serious assaults against the same
4 victim. There are, however, some mitigating
5 factors. He has taken responsibility for what
6 happened in this case and he entered a guilty
7 plea and, in that process, saved the victim from
8 having to testify and preserved state resources
9 that would have otherwise been necessary to hold
10 a jury trial in Fort Smith. He also apologized
11 for his actions in court this afternoon and
12 talked about the steps he has taken to change.

13 A conditional sentence order, or as I will
14 refer to it, a CSO, which would allow
15 Mr. Hamilton to serve his sentence in the
16 community is available for this offence provided
17 there is no danger to the community at large. I
18 am satisfied that there would be no danger to the
19 community at large, and, for this conclusion, I
20 rely very heavily on the fact that Mr. Hamilton
21 has shown, during the time between the offence
22 and today, which is approximately two years, that
23 he is capable of complying with conditions and
24 staying out of trouble.

25 So I have to now turn to the question on
26 whether a CSO, combined with probation, would
27 meet the goals and objectives of sentencing that

1 I also have to apply.

2 The goals and objectives of sentencing are
3 set out in the Criminal Code. Sentencing is a
4 process that is specific to the individual
5 offender and it involves balancing a number of
6 diverse interests. Society must be protected.
7 The Court must send an appropriate message to
8 offenders and society at large reflecting its
9 disapproval of the conduct and thereby deter
10 similar conduct. That said, the Court must also
11 honour the goal of rehabilitation, and, in
12 sentencing aboriginal offenders, the Court must
13 consider their particular circumstances with a
14 view to stopping over-representation of
15 aboriginal people in our correctional facilities
16 in Canada. In that case, the Court must consider
17 all of the options besides incarceration that
18 would protect society and still serve to
19 rehabilitate the offender.

20 In my view, a CSO would, in these
21 circumstances, meet those goals and objectives.
22 Mr. Hamilton appears to be digging himself out of
23 a hole, and it is my view that a sentence of
24 incarceration would just put him back to square
25 one.

26 Now, CSO's are often considered lenient, and
27 to the extent that one is not actually required

1 to be in jail, perhaps they are. The offender is
2 permitted, often, to stay in their own home or be
3 at some other treatment facility. However, it is
4 my view that conditional sentence orders are no
5 walk in the park. There are a lot of rules.
6 There are a lot of rules for incarceration, there
7 are a lot of rules I am going to impose on you,
8 Mr. Hamilton. You would probably find that there
9 are almost as many, if not more rules, that will
10 be imposed than you would find in prison, except
11 that in prison, compliance is often easier.
12 Everything is structured, there are full-time
13 staff helping offenders comply, there is very
14 little room for choice, and so there is little
15 room to go off the rails. Moreover, in the case
16 of a CSO, there is no remission.

17 So I am going to impose a conditional
18 sentence order of six months followed by a period
19 of probation of twelve months.

20 The CSO and the probation order each have
21 mandatory and optional conditions. Now, when I
22 say "optional", those are conditions that the
23 Court does not have to impose but that I have
24 decided must be imposed. It is not optional for
25 you to comply with them; you have to comply with
26 them. So I am going to ask you to listen very
27 carefully, Mr. Hamilton, and I am going to tell

1 you what the conditions are for the conditional
2 sentence order and then I am going to go through
3 the conditions for the probation order.
4 Mr. Petitpas will no doubt explain these to you,
5 and if you have questions, I ask that you ask
6 Mr. Petitpas.

7 The mandatory conditions of the CSO are that
8 you will keep the peace and be of good behaviour;
9 you will appear in court as you are required to
10 do; you must report to a CSO supervisor in
11 Yellowknife within two working days of today and
12 then as required and directed by that supervisor;
13 you will inform the Court or the supervisor in
14 advance of any change in your name or your
15 address; and you must also promptly notify the
16 Court or any supervisor in the event that you
17 change your employment or your occupation. So if
18 you quit your job and go back to school, you have
19 to tell your supervisor about that.

20 THE ACCUSED: Yes, Your Honour.

21 THE COURT: Finally, it is a mandatory
22 condition that you remain in the jurisdiction of
23 this court (that is, the Northwest Territories)
24 unless you have permission from the Court and the
25 supervisor to leave. So if you, for example,
26 need to go out for a medical emergency or for
27 treatment, you need to get permission first and

1 you need to get the terms of the order varied.

2 It is really important that you comply with all
3 of these terms.

4 The optional conditions that I have chosen
5 to impose are as follows: You will take and
6 complete any treatment or counselling program
7 that your supervisor directs; you will advise
8 your supervisor immediately if you stop any
9 program that you are directed to attend for any
10 reason; you will abstain from consuming alcohol,
11 intoxicating substances, or drugs except in
12 accordance with directions and/or prescription of
13 a licenced medical practitioner; you will make
14 restitution to society by performing 150 hours of
15 community service work over the next six months
16 in a capacity that is approved by your
17 conditional sentence supervisor; you will reside
18 only where approved by your supervisor and you
19 will remain in your residence or on its grounds
20 at all times except for the following: To travel
21 to and from work; to attend court as required;
22 for medical emergencies for yourself or members
23 of your familiar with whom you reside; for
24 treatment or counselling; to complete the
25 community service; for the purposes of purchasing
26 groceries, toiletries, or other necessities of
27 life, and, in such case, provided the time that

1 you do use does not exceed four hours in one week
2 and is approved in advance by your supervisor.

3 Now, Mr. Petitpas, you had indicated earlier
4 that this could perhaps be done on a Saturday,
5 but it is probably easier if it is not restricted
6 to a particular day of the week, which is why I
7 have not done that. And you can also leave when
8 you need to report in person to your supervisor.

9 In addition, you will present yourself at
10 the door of your residence as requested and you
11 will answer your telephone when your supervisor
12 calls. That is required so that compliance with
13 the terms of this conditional sentence order can
14 be monitored by the authorities. You will have
15 no contact, direct or indirect, with Brandy
16 Bourke except as required to exercise access to
17 your children, and then only through a third
18 party as approved by your supervisor.

19 This will be followed by a period of 12
20 months of probation. The conditions of the
21 probation are very similar, but there are some
22 differences and I am going to set those out as
23 well.

24 Again, you will be expected to keep the
25 peace and be of good behaviour; you are to appear
26 in court when required; you have to report to
27 your probation supervisor in Yellowknife within

1 two working days of your conditional sentence
2 order ending and then as required and directed by
3 the probation supervisor; you will inform the
4 Court or the supervisor in advance of any change
5 in your name or address; and you will also
6 promptly notify the Court or the supervisor in
7 the event that you change your employment or your
8 occupation.

9 With respect to the optional conditions of
10 probation, again you will remain in the Northwest
11 Territories unless you get written permission
12 from your probation supervisor to leave; you will
13 take and complete any treatment or counselling
14 programs that your supervisor directs; you will
15 advise your supervisor immediately if you stop
16 any program that you are directed to attend for
17 any reason; you will abstain from consuming
18 alcohol, intoxicating substances, or drugs except
19 in accordance with directions and/or a
20 prescription from a licenced medical
21 practitioner; you are to have no contact direct
22 or indirect with Brandy Bourke, again, except as
23 required to have access to your children and then
24 only through a third party as approved by your
25 probation supervisor.

26 With respect to ancillary orders, I will
27 make the order requiring you, Mr. Hamilton, to

1 submit to the collection of bodily fluids for DNA
2 analysis. I will not waive the victims of crime
3 surcharge. Since you are working, you will have
4 to find a way to pay that.

5 Mr. Godfrey, is there anything else?

6 MR. GODFREY: Just a clarification, Your
7 Honour. In relation to the exceptions for the
8 house arrest, it was noted in relation to the
9 community service work as well, was it?

10 THE COURT: Pardon me?

11 MR. GODFREY: Was the option -- He was
12 given the option, I believe, travel to and from
13 work --

14 THE COURT: Yes, he can leave to go for --
15 to do his community service work, yes.

16 MR. GODFREY: And the 150 hours, is that all
17 completed within the house arrest time?

18 THE COURT: Perhaps I will get submissions
19 from you on that. I guess it very much depends
20 if Mr. Hamilton is working full-time or not.

21 MR. GODFREY: I was thinking that 150 hours
22 might be a little much. Maybe if it was spread
23 over the probation order and the conditional
24 sentence order, that may be more possible. I
25 wouldn't want to see him fall into an issue.

26 THE COURT: Yes.

27 MR. GODFREY: But I'll let my friend speak

1 to that.

2 MR. PETITPAS: Before I lose my train of
3 thought, on the victim of crime surcharge, Your
4 Honour, if it's possible to get three or four
5 months to pay?

6 THE COURT: Certainly.

7 MR. PETITPAS: I believe with respect to the
8 community service hours, Mr. Hamilton says that
9 he does work full-time at the Yellowknife Inn.
10 Often he can work up to seven days a week doing
11 overtime and whatnot. I'll leave it up to Your
12 Honour to decide whether or not that condition
13 should be amended or modified in light of those
14 circumstances, whether or not a reduction in
15 terms of hours is appropriate.

16 THE COURT: Perhaps in light of those
17 circumstances, the 150 hours of community service
18 work can be completed over the next 18 months.

19 With respect to the victims of crime
20 surcharge, I will give Mr. Hamilton four months
21 to pay that.

22 Is there anything else, counsel?

23 MR. GODFREY: Just one other condition.
24 You'd mentioned to present at the door when a
25 supervisor asked him. I wonder if that can be
26 amended to a supervisor or an RCMP officer.

27 THE COURT: I did not specify

1 "supervisor". I just said "as requested" and
2 will answer the phone when his supervisor calls.

3 MR. GODFREY: Okay. I believe that -- And
4 the amount of the victim of crime surcharge?

5 THE COURT: Two hundred dollars.

6 MR. GODFREY: Thank you.

7 THE COURT: I'm sorry. It's \$200. Is
8 there anything else?

9 MR. PETITPAS: Nothing further, Your Honour.

10 MR. GODFREY: Nothing further. Thank you,
11 Your Honour.

12 THE COURT: Thank you very much for your
13 submissions. Good luck to you, Mr. Hamilton.

14 THE ACCUSED: Thank you.

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18 Certified Pursuant to Rule 723
19 of the Rules of Court

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22 Jane Romanowich, CSR(A)
23 Court Reporter

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