

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- vs. -

MATTHEW EARL MENACHO

Transcript of the Reasons for Sentence by The Honourable
Justice S. H. Smallwood, at Norman Wells in the Northwest
Territories, on November 6th A.D., 2013.

APPEARANCES:

Ms. A. Paquin: Counsel for the Crown
Mr. M. Martin: Counsel for the Accused

Charge under s. 266, s. 264.1(1)(a) Criminal Code

1 THE COURT: Matthew Menacho pleaded
2 guilty on Tuesday to two counts on an
3 Indictment; the first being, that on or
4 between the 8th and 9th day of June 2012, he
5 committed an assault on Karen Christiansen,
6 his former common-law spouse; and, secondly,
7 that, on the same date, he uttered a threat to
8 cause bodily harm to Karen Christiansen, and I
9 must now sentence him for these offences.

10 The Crown is seeking a sentence of nine to
11 12 months incarceration followed by a period
12 of probation. Mr. Menacho's counsel says that
13 an appropriate sentence is one of time served,
14 which equates to a seven month and five day
15 sentence based upon his remand time.

16 Details of the assault and threats that
17 were uttered by the accused are contained in
18 an agreed statement of facts, Exhibit S-1.

19 Briefly, the accused and Karen
20 Christiansen had been in a relationship for
21 approximately five years at the time of the
22 offences and were living together with their
23 five-year-old son. For the year prior to the
24 offences, the relationship had not been going
25 well; and on June 8th, 2012, the victim was at
26 home sleeping in her bedroom. Her son was
27 also at the residence sleeping in his bedroom.

1 At approximately 6 a.m., she woke up when
2 she heard the accused coming home. He came
3 into their bedroom. He was intoxicated,
4 verbally abusive, and aggressive.

5 Mr. Menacho accused the victim of cheating
6 on him. He got on the bed and began punching
7 the pillows that were beside the victim's
8 head. She asked him to stop and moved in
9 order to avoid being hit. As she moved, he
10 hit her on the right side of the forehead.
11 The force used was sufficient to bring tears
12 to her eyes and she later had a red mark on
13 her forehead.

14 After work that same day, the victim went
15 home with her son and spent the evening there
16 with him. The accused was not present and he
17 returned to the residence at approximately
18 12:30 in the morning. When he returned, he
19 was very intoxicated. He could not walk, was
20 unsteady on his feet, and was slurring his
21 words. He wanted to have sex with the victim
22 but she did not want to. He persisted in his
23 requests and eventually she consented to
24 having sex with him.

25 After having consensual sex for a period
26 of time, the victim told him that she no
27 longer wanted to have sex and that she needed

1 a break. The accused wanted to continue. The
2 victim told him that it was enough and she
3 kicked him off of her and he fell on the floor
4 and hit his head. The accused then went back
5 on the bed, behind the victim, he put his arm
6 around her neck in a headlock and began to
7 choke her. The victim was very scared as she
8 could not breathe and began to cough and to
9 try and catch her breath. He then released
10 her and apologized saying he was sorry. The
11 victim did not feel that his apology was
12 genuine. They later went to bed together and
13 the victim waited until the accused fell
14 asleep at which point she got up and left the
15 room.

16 During one of these incidents, the accused
17 told the victim "if I ever catch you with your
18 boyfriend, I will slice your throat. I will
19 get him".

20 I am told that the accused and the victim
21 are no longer together.

22 The Crown has filed as Exhibit S-2 a
23 handwritten note completed by Ms. Christiansen
24 yesterday. In it, she discusses how she has
25 had to take on increased responsibilities in
26 parenting their child, that the accused and
27 she have together, and that this has been

1 stressful for her. The accused has been in
2 custody for some time and so she has had to
3 act as a single parent for many months now.
4 She referred to that in the note.

5 Mr. Menacho's criminal record has been
6 filed as an exhibit, S-3. There are 13
7 convictions on his criminal record. His
8 criminal record begins in 2001 and continues
9 through to earlier this year, in March 2013.
10 The most significant convictions on his
11 criminal record are those that relate to prior
12 offences of violence against a spouse.

13 In 2003, the accused was convicted of
14 three offences:

15 Using a firearm during the commission of
16 an offence for which he received a sentence of
17 12 months incarceration;

18 Assault, for which he received a suspended
19 sentence and two years of probation;.

20 And, possession of a firearm or ammunition
21 contrary to a prohibition order for which he
22 received a sentence of one month imprisonment
23 consecutive. I am advised that that assault
24 was on a spouse although it was not the same
25 victim as the offences before the Court today.
26 Based upon the convictions that were entered,
27 the assault involved the use of a firearm in

1 the incident and it was significant enough to
2 warrant a 13 month period of imprisonment, and
3 the accused was also subjected to a firearm
4 prohibition order.

5 Following those convictions, there is a
6 gap in the accused's criminal record until
7 2007. At that point, there is an entry for an
8 impaired driving offence for which he received
9 a fine. There is then another gap in the
10 accused's criminal record until 2011.

11 On July 7th, 2011, the accused was
12 convicted of an assault and for the offence of
13 failing to comply with an undertaking. He
14 received a sentence of 45 days for the assault
15 and 15 days imprisonment concurrent on the
16 failing to comply with an undertaking.

17 The assault was a spousal assault and the
18 victim in that assault was the same victim as
19 the offences before the Court today.

20 The next convictions on the accused's
21 criminal record are from March 7th, 2013. He
22 was convicted of four counts of failing to
23 comply with a condition of his undertaking.
24 He received a global sentence of 90 days
25 imprisonment. He was credited with 55 days of
26 time served for his remand time.

27 Mr. Menacho has been in custody on these

1 charges since his arrested around January 11,
2 2013. He was initially released on an
3 undertaking but was arrested around January
4 11th, 2013 and charged with four breaches that
5 he was sentenced for on March 7th, 2013. On
6 that same date, he was also committed to stand
7 trial on these offences after a preliminary
8 inquiry.

9 His sentence for the four breaches would
10 have expired on March 30th, 2013. So his
11 remand time for these offences begins on that
12 date and, to today's date, that is seven
13 months and six days.

14 Pursuant to Section 719(3.1) of the
15 Criminal Code, the maximum credit available
16 for this remand time is one and a half days
17 for each day spent in custody unless the
18 reason for detaining the person in custody was
19 stated on the record under Section 515(9.1),
20 or the person was detained pursuant to
21 Section 524(4) or subsection (8).

22 As the accused's release would have been
23 cancelled when he was detained on the
24 breaches, Section 524(8) is applicable.
25 Mr. Menacho's counsel acknowledged that his
26 remand time is limited to one day for each day
27 in custody pursuant to Section 719(3).

1 Mr. Menacho is of aboriginal descent and
2 this requires me to consider Section 718.2(e)
3 of the Criminal Code which states:

4 All available sanctions, other
5 than imprisonment, that are
6 reasonable in the circumstances
7 should be considered for all
8 offenders, with particular
9 attention to the circumstances of
10 aboriginal offenders.

11 The Supreme Court of Canada in the cases
12 of Gladue and Ipeelee have considered that
13 section, and I have considered the principles
14 set out in those cases and the requirement
15 under the Criminal Code to consider the unique
16 systemic or background factors which may have
17 played a part in bringing an aboriginal
18 offender before the courts and the types of
19 sentencing procedures and sanctions which may
20 be appropriate in the circumstances because of
21 the offender's background.

22 I have heard that Mr. Menacho is 32 years
23 old. He was born in Inuvik and has lived in
24 Tulita most of his life. He attended school
25 up to Grade 11, and he has been employed
26 recently, prior to his detention on these
27 charges, and he is hoping to secure employment

1 upon his release. Based upon what I have
2 heard from counsel about his job
3 opportunities, that seems that that may be a
4 likely scenario.

5 With respect to Mr. Menacho's childhood,
6 he was adopted to his grandparents as a child.
7 His father attended residential school and had
8 a lot of problems as a result. His mother
9 also attended residential school for two
10 years. The relationship between his mother
11 and his father was an abusive one and his
12 mother eventually left his father as a result
13 of the abuse. He also says that his mother
14 drank alcohol when she was pregnant with him
15 and that while he was growing up alcohol was
16 prevalent, it was always around, and that the
17 accused suffered as a result of the abuse of
18 alcohol by those around him.

19 The accused himself has had issues with
20 alcohol and, upon his release, says his
21 intention is to attend the Poundmaker's
22 treatment program in Alberta.

23 The accused has had a relationship with
24 Ms. Christiansen for five years which is now
25 over. They do have a five-year-old son
26 together which the accused hopes to
27 participate in raising him.

1 He has many relatives in Tulita. He has
2 been staying recently with his mother and
3 assisting his grandmother who has a number of
4 health issues. He helps her with getting
5 wood, cleaning, and doing other chores.

6 In terms of traditional activity, the
7 accused has participated in them. He teaches
8 jigging and is involved in hand games. He
9 also likes to go on the land to hunt.

10 He has taken programs in the past to
11 address some of his problems, most recently
12 while on remand has attended AA once in a
13 while and a program put on by the Healing Drum
14 Society which is called Embracing our
15 Human-Nest program.

16 Reportedly, he has been an ideal inmate
17 who would have received remission if he were a
18 serving prisoner. He spoke eloquently
19 yesterday about his plans and his remorse for
20 the offences.

21 So despite the background of Mr. Menacho,
22 which has had hardship, violence and abuse of
23 alcohol, it seems that there is a lot to be
24 said for him. He has got a lot in his future
25 and he has a lot of potential which hopefully
26 he will be able to live up to.

27 There are a number of sentencing

1 principles that are engaged in this case. The
2 purposes and principles of sentencing are set
3 out in the Criminal Code. I do not intend to
4 refer to all of them but I have considered
5 them.

6 The fundamental purpose and principle of
7 sentencing is that a sentence must be
8 proportionate to the gravity of the offence
9 and the degree of responsibility of the
10 offender.

11 Domestic violence is a problem that has
12 been around for many years. It is one that
13 has been recognized by the courts for many
14 years and courts have frequently spoken about
15 the need to emphasize certain sentencing
16 principles in order to reduce the prevalence
17 of domestic violence in our society. Despite
18 this, cases continue to come before this Court
19 and the Territorial Court on a daily basis.

20 Recently, this Court has commented on
21 domestic violence in the cases of Weninger,
22 McLeod and Inuktalik. Weninger and Inuktalik
23 referred to the Alberta Court of Appeal case
24 of Brown, Highway and Umperville which
25 established that the paramount sentencing
26 principles in cases of domestic violence are
27 general deterrence and denunciation.

1 At page 7 of Brown, the Court of Appeal
2 stated:

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

16 Despite the passage of time since Brown,
17 (over 20 years) as I stated in Inuktalik:

18 Courts remain limited in our
19 ability to solve the problem of
20 domestic violence. It continues
21 to be a broad social problem which
22 needs to be addressed by society,
23 by government, by communities, by
24 individual citizens. When the
25 Courts get involved, the assault
26 and domestic violence has already
27 occurred. We are dealing with the

1 often messy aftermath. As such,
2 our role remains as it has been -
3 to use sentencing policy to
4 denounce domestic violence in
5 clear terms and to deter the
6 offender and other persons from
7 committing acts of domestic
8 violence.

9 Section 718.2(a) (i) and (ii) of the
10 Criminal Code makes it statutorily aggravating
11 that the offender, in committing an offence,
12 abused their spouse or common-law partner.
13 This recognized what the courts have already
14 viewed as being aggravating - the abuse of a
15 spouse.

16 In the case of Weninger, Justice
17 Charbonneau stated, at page 24:

18 The sentencing principles of
19 general deterrence and
20 denunciation require looking
21 beyond the one case that the Court
22 is dealing with. The Court has to
23 be concerned about the message
24 that this sentence sends to the
25 public. It is not about making
26 examples of people. It is not
27 about succumbing to political or

1 other pressures. It not about
2 being unduly harsh. But it is
3 about ensuring that the sentence
4 imposed for crime reflect the
5 seriousness of the crime, the
6 importance of discouraging others
7 from behaving in a similar way,
8 and that those sentences reflect
9 society's condemnation of the
10 conduct.

11 I have reviewed the cases filed by the
12 Crown and the defence. The Crown filed the
13 cases of McLeod, Sanderson, Mantla and
14 Weninger. The defence filed the cases of
15 Gordon and Hope and also, in submissions,
16 referred to the Northwest Territories Court of
17 Appeal decision of Grossette. I was unable to
18 access the decision of Grossette but have
19 considered what I was told by counsel about
20 the circumstances of that case.

21 I am not going to go through each case but
22 I would note that each case has both
23 similarities and differences to this case.
24 Some of the cases, like Mantla, are more
25 similar to this case whereas some of the
26 cases, like Hope, have perhaps more
27 differences than similarities. However, the

1 causes are useful with respect to the
2 sentencing principles that are applicable and
3 establishing a range of sentences that have
4 been imposed in other cases of violence and
5 domestic violence.

6 Turning to the factors that are applicable
7 in this case, Mr. Menacho has entered guilty
8 pleas. The guilty pleas occurred after a
9 preliminary inquiry in which the victim was
10 required to testify. Mr. Menacho was then
11 charged on an Indictment with first four
12 counts and then a subsequent Indictment was
13 filed with three counts - the two counts of
14 assault and uttering threats that he has pled
15 guilty to and one count of sexual assault on
16 which the Crown has directed a stay.

17 The guilty pleas to the assault and
18 uttering threats were entered yesterday just
19 as the trial was about to begin. On Monday
20 afternoon, a jury had been selected and we had
21 adjourned to begin the trial on Tuesday. So
22 the guilty pleas cannot be considered early
23 guilty pleas because of the timing, but the
24 accused is no longer facing the most serious
25 charge - the sexual assault. As a result of
26 new information, the Crown approached the
27 defence on Monday evening with respect to a

1 plea to the assault and utter threats. And I
2 am advised by defence that this resolution had
3 been something that had been put forward by
4 Mr. Menacho previously and that he had, on a
5 couple of occasions, proposed this and had
6 been willing to plead to these offences
7 earlier.

8 So this is a situation in the end where
9 there has been a preliminary inquiry, where
10 the victim has had to testify, and a guilty
11 plea came after jury selection. But the most
12 serious charge on the Indictment has been
13 stayed and the accused had been willing to
14 plead to the assault and uttering threats for
15 some time. In the circumstances, the accused
16 should receive credit for his guilty plea.

17 As well, it is mitigating that the accused
18 has expressed remorse for these offences
19 through his willingness to plead guilty to the
20 assault and uttering threats and with his
21 apology to the victim yesterday.

22 There are also a number of aggravating
23 factors in these offences.

24 The assault was on a spouse or common-law
25 partner, and I have already referred to the
26 principles which are applicable in that
27 situation. In this case, the accused and the

1 victim were in a long term relationship. The
2 relationship had not been going well for some
3 time but they were still living together with
4 their son.

5 The assault committed by Mr. Menacho
6 consisted of a punch to the head on the first
7 occasion and choking on the following day.
8 While not the most serious of assaults, the
9 victim must have been scared particularly
10 during the choking incident. Choking someone
11 is a particularly aggravating circumstance.
12 It is an inherently dangerous activity.
13 Someone can lose consciousness within seconds.
14 The accused is fortunate that the victim did
15 not suffer any lasting injuries.

16 And to add to the violence that the victim
17 was subjected to, there was also the threat
18 that was made that the accused would slice her
19 throat.

20 Both offences were committed while the
21 victim and the accused's five-year-old son
22 were present at the residence. The son did
23 not witness the assaults or uttering threats,
24 but it is aggravating that a child was
25 present.

26 Both of the offences were also committed
27 while Mr. Menacho was under the influence of

1 alcohol. The facts of each offence detail
2 that the accused was intoxicated when he
3 assaulted the victim the evening of June 8th
4 and the following day when he assaulted her
5 and choked her. And when he also threatened
6 her.

7 Mr. Menacho has not used his intoxication
8 as an excuse for his actions. He has attended
9 AA and says that he wants to continue
10 treatment so clearly he recognizes that
11 alcohol is a problem for him. This is evident
12 from the agreed statement of facts and from
13 the other offences on his criminal record.

14 Turning to the accused's criminal record,
15 as I mentioned this is now the third offence
16 of violence that the accused has been
17 convicted of. All three assaults have been
18 spousal assaults; the two most recent on the
19 same victim. The 2011 and the 2012 ones are
20 on Ms. Christiansen. So the criminal record
21 itself is aggravating and that this is the
22 second conviction for an offence against
23 Ms. Christiansen is also aggravating.

24 Taking into account the circumstances of
25 the offence and of the offender, the sentence
26 must meet the sentencing principles that I
27 have referred to. It is important as well in

1 sentencing someone, who has demonstrated a
2 pattern of assaulting a spouse or a partner,
3 ensuring that the sentencing principles, the
4 paramount sentencing principles do not become
5 lost. It is important to ensure that they are
6 met. Offenders who repeatedly commit offences
7 of domestic violence, particularly in
8 situations where it is the same victim, have
9 demonstrated that previous sentences, which
10 were intended to denounce conduct and to deter
11 the offender and generally deter other persons
12 who might contemplate committing an offence of
13 domestic violence, have not worked. In these
14 situations, courts should not defer or give up
15 or essentially say that there is nothing that
16 can be done but it should instead ensure that
17 the paramount sentencing principles continue
18 to be emphasized in sentencing an offender
19 convicted of domestic violence.

20 Please stand, Mr. Menacho.

21 Taking into account the circumstances and
22 the applicable sentencing principles, I
23 sentence you to nine months imprisonment for
24 the assault contained in Count 1 of the
25 Indictment.

26 I also sentence you to three months
27 imprisonment for the utter threats contained

1 in Count 3 of the Indictment. That will be
2 served concurrently.

3 I have taken into account the seven months
4 and five days of pre-trial custody on a one
5 for one basis. That leaves a sentence of
6 roughly two months minus five days.

7 To provide some clarity, using an average
8 of 30 days to a month, that will be two months
9 of 30 days each, so 60 days, minus five days,
10 leaving you a sentence of 55 days
11 imprisonment.

12 There will also be a period of probation
13 of six months. I am cognizant of the fact
14 that you have not done well recently while on
15 release but I also think it is important to
16 provide some protection for the victim and to
17 provide you with some assistance in dealing
18 with your issues with alcohol.

19 So the probation order will have the
20 statutory conditions. Those are required by
21 the Criminal Code, and they are you will keep
22 the peace and be of good behavior, appear
23 before the Court when required to do so by the
24 Court; and notify the Court or your probation
25 officer in advance of any change in name or
26 address; and promptly notify the Court or
27 probation of any change in employment or

1 occupation.

2 There will also be optional conditions.

3 You are to have no contact with Karen
4 Christiansen unless she consents and you are
5 not under the influence of alcohol. You will
6 report to your probation officer within two
7 days of your release and thereafter as
8 directed. And you will take any counselling
9 recommended by your probation officer.

10 You may sit down.

11 Do you understand those conditions?

12 THE ACCUSED: Yes.

13 THE CLERK: I didn't get when he was to
14 report to the probation officer.

15 THE COURT: Within two days of his
16 release.

17 There were some other orders that have
18 been requested by the Crown.

19 The Crown is also seeking a firearm
20 prohibition order pursuant to Section 110 of
21 the Criminal Code. The accused does have a
22 history involving firearms; as well, his first
23 spousal conviction involved the use of a
24 firearm, so that is a concern. However, that
25 is the extent of his offences involving
26 firearms and this assault did not involve the
27 use of a firearm or a weapon. So in the

1 circumstances I am not satisfied that a
2 firearm prohibition order is necessary.

3 The assault is a secondary designated
4 offence and there will be a DNA order.

5 And also, I am required to impose a victim
6 of crime surcharge on each count.

7 Is there anything else, counsel?

8 MS. PAQUIN: Your Honour, the Crown
9 suggested an additional condition - not to
10 attend the residence of Karen Christiansen and
11 her place of work unless she consents. And
12 that the accused is sober. I don't know if
13 the Court turned its mind to it.

14 THE COURT: Mr. Martin?

15 MR. MARTIN: If I might have a moment,
16 Your Honour.

17 THE COURT: Yes.

18 MR. MARTIN: Your Honour, my client has
19 expressed some concern in that he does some
20 teaching at the school where Ms. Christiansen
21 would teach. So if it would be -- if that
22 could be accommodated, he has asked me to note
23 that.

24 THE COURT: My concern with imposing
25 probation was to ensure that the conditions
26 were something that was not going to be too
27 onerous on Mr. Menacho given his history. But

1 it does make sense to have -- because of my
2 concern about contact with the victim, to have
3 a limitation.

4 I am going to have that he is not to
5 attend her residence unless she consents and
6 he is not under the influence of alcohol.

7 Because of the concern about teaching, it
8 is at the school?

9 MR. MARTIN: Yes, he does teach dancing
10 and jigging at the school as I understand.

11 THE COURT: That is a public place and I
12 imagine there are times when he attends at the
13 school and I don't want to be in the situation
14 where it can restrict his access to the school
15 so it will not include her place of
16 employment.

17 THE CLERK: There is a time to pay for
18 the victim of crime surcharge.

19 THE COURT: The victim of crime
20 surcharge, there are recent changes. I
21 believe it is \$200 now per count for
22 indictable matters. So, Mr. Martin, do you
23 have any submissions on time to pay?

24 MR. MARTIN: Since he will be in custody
25 for, it appears an additional up to 55 days, I
26 would ask for two months pursuant to his
27 release, Your Honour.

1 THE COURT: Following his release? Do
2 you have any submissions?

3 MS. PAQUIN: No, thank you.

4 THE COURT: So that is fine, two months
5 following his release.

6 Is there anything else, counsel?

7 MR. MARTIN: Nothing from the defence,
8 thank you.

9 MS. PAQUIN: Nothing from the Crown.

10 THE COURT: Thank you, counsel, for your
11 work on this matter and your attempts to
12 resolve this matter, eliminating the need for
13 a trial, so thank you. We will close court.

14 (ADJOURNED)

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18 Certified to be a true and
19 accurate transcript pursuant
20 to Rules 723 and 724 of the
Supreme Court Rules,

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Lois Hewitt,
Court Reporter

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