

R. v. Roberts, 2017 NWTSC 17

S-1-CR2015000026

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- vs. -

RICHARD ROBERTS

Transcript of the Reasons for Sentence by The Honourable
Justice S. H. Smallwood, at Yellowknife in the Northwest
Territories, on January 5th A.D., 2017.

APPEARANCES:

Mr. R. Clements: Counsel for the Crown

Ms. A. Seaman: Counsel for the Accused

Charge under s. 271, 264.1 (x2) Criminal Code of Canada

No information shall be published in any document or
broadcast or transmitted in any way which could identify
the victim or a witness in these proceedings pursuant to
s. 486.4 of the Criminal Code of Canada

1 THE COURT: Mr. Roberts was convicted,
2 on June 20th, 2016 after a trial, of sexual
3 assault and two counts of uttering threats.
4 It is now my task to sentence him for these
5 offences.

6 The facts of the offences, as I found
7 them, briefly, are this:

8 That on September 5th, 2014, the
9 complainant and her spouse were drinking at
10 their residence when they began to argue. The
11 argument escalated to the point that her
12 spouse phoned the police and another person,
13 Ms. Shannahan. While he waited for the friend
14 Ms. Shannahan to arrive, he had a conversation
15 with the accused outside of the residence.
16 Shortly after this, Ms. Shannahan pulled up to
17 the residence and she observed the accused,
18 Mr. Roberts, walking towards his truck or his
19 house, in that direction.

20 The complainant's spouse and the children
21 left the residence and they later returned
22 approximately half an hour later and
23 Ms. Shannahan went in to retrieve diapers for
24 the baby. At that time she spoke with the
25 complainant for 10 to 15 minutes, observed
26 that she was upset, mad and crying, before
27 leaving the residence.

1 The complainant then went to bed and woke
2 up sometime later to Mr. Roberts on top of her
3 having sexual intercourse with her. She tried
4 to push him off, and he punched her in the
5 face five or six times, knocking her out, and
6 when she came to he was still having sexual
7 intercourse with her. She attempted to push
8 him off again. At that point, he got off of
9 her and got dressed, stating to her as he left
10 that if she told the cops, he would burn her
11 and the house down.

12 The Crown is seeking a sentence in the
13 range of three and a half to four and a half
14 years and argues that a four year sentence is
15 appropriate, less credit for remand time. The
16 defence is seeking a sentence of 32 months
17 imprisonment, less credit for remand time,
18 resulting in a sentence of two years less a
19 day, and to allow Mr. Roberts to serve his
20 sentence in the north and be closer to his
21 family. The defence is also requesting that a
22 two year probation order follow this, to allow
23 Mr. Roberts to continue with his
24 rehabilitation, and to further ensure the
25 safety of the public by ensuring that he is
26 under supervision for a longer period of time.

27 Two victim impact statements were filed by

1 the complainant in this matter. One was
2 completed about a week after the offence and
3 the second was completed in April of 2016.

4 It is clear from the victim impact
5 statements that this offence has had an effect
6 on the complainant. Immediately after the
7 offence, she was scared to leave her home.
8 She was afraid because of the threats made by
9 the offender. She had to endure the sexual
10 assault examination and said that it made her
11 feel "weird", "scared" and "grossed out". She
12 was unable to eat well, unable to sleep well,
13 and blamed herself for what had happened.

14 Her second victim impact statement
15 (completed sometime later) reveals that the
16 offence had a lasting impact on her. She
17 continued to be scared, hurt and worried. She
18 continued to have trouble sleeping and was
19 scared in her own home. She was scared to be
20 alone and was afraid to live in Yellowknife.

21 This was a serious crime committed against
22 the complainant, a serious violation of her
23 sexual integrity, and the feelings that she
24 describes in her victim impact statement are
25 understandable.

26 Mr. Roberts has a criminal record which
27 consists of five convictions from 2010 - three

1 convictions for failing to comply with release
2 conditions, an assault, and a driving
3 conviction. The sentence imposed for those
4 offences included a fine and an intermittent
5 jail sentence.

6 A fundamental principle of sentencing is
7 that the sentence must be proportionate to the
8 gravity of the offence and the degree of
9 responsibility of the offender. The Courts in
10 this jurisdiction have consistently said that
11 where there is an offence of sexual violence,
12 the paramount sentencing principles are
13 deterrence and denunciation. And that is not
14 to say that the other sentencing principles
15 are ignored; they are not. They are
16 considered but it is deterrence and
17 denunciation that are predominant.

18 The principle of denunciation involves
19 denouncing unlawful conduct, sending the
20 message that sexual violence will not be
21 tolerated by the people of this community or
22 the people of the Northwest Territories.
23 Deterrence involves deterring the specific
24 offender and other persons from committing
25 these types of offences.

26 Rehabilitation is also an important factor
27 because Mr. Roberts is still relatively young

1 and has a minimal criminal record.

2 The principles of parity and restraint are
3 also applicable.

4 It has been said by this Court, and by
5 other Courts in this jurisdiction, that sexual
6 assault is an offence that occurs far too
7 frequently in the Northwest Territories. This
8 Court has commented on this fact many times
9 because this Court is regularly responsible
10 for sentencing individuals who have committed
11 sexual assaults.

12 These cases can occur in different
13 circumstances and differ in severity. They
14 are committed by individuals with no criminal
15 records and by those who have extensive
16 criminal records. They occur frequently in
17 situations where alcohol is involved but not
18 always.

19 There is no one demographic that sexual
20 assault is most associated with. The victims
21 and offenders are sometimes young, sometimes
22 adults, sometimes elderly. In any case, there
23 is no predicting who might be the victim or
24 the offender of a sexual assault. But as I
25 said, sexual assaults occur far too frequently
26 and they occur far too frequently where the
27 victim is passed out or asleep and is sexually

1 assaulted. While it seems that there may be
2 no end in sight, this Court must continue to
3 emphasize the sentencing principles that have
4 been established for offences of sexual
5 violence.

6 Counsel have provided a number of cases
7 which I have reviewed and were very helpful.
8 I do not intend to review them but they
9 establish a sentencing range and reiterate the
10 applicable sentencing principles.

11 Offences of sexual violence, which are
12 major sexual assaults as contemplated in
13 Arcand, a starting-point has been acknowledged
14 to be three years for those types of offences.
15 From that starting-point, the range is
16 established taking into account the various
17 circumstances of each case and the mitigating
18 and aggravating factors that are unique to
19 each case.

20 In this case, a pre-sentence report was
21 prepared and also defence counsel provided two
22 letters of support, one from Mr. Roberts'
23 mother and one from his grandmother.

24 The pre-sentence report provides insight
25 into Mr. Roberts' background and his family.
26 It is apparent that he has a supportive
27 family. I have noticed that the family

1 members have been present at most of the court
2 appearances.

3 Mr. Roberts himself is 36 years old and he
4 has three children with his ex-partner. His
5 eldest son was born with a serious medical
6 condition and in his life, he has had three
7 organ transplants and requires ongoing care.
8 He has serious health concerns. Those have
9 been a challenge for Mr. Roberts and for his
10 former partner to deal with, but they have
11 taken care of him and have learned what was
12 needed to provide care for their son.

13 It is also apparent that Mr. Roberts has
14 had issues with drugs and alcohol and that he
15 has struggled in the recent past to deal with
16 those issues.

17 Mr. Roberts has said in the pre-sentence
18 report that he wants to be there for his
19 children and that he is hoping to continue to
20 address his addiction issues. And I hope for
21 his children's sake that he continues to do so
22 as his children need to have their father
23 present in their lives and present in a
24 healthy and sober way.

25 Turning to the mitigating and aggravating
26 factors, there are no mitigating factors that
27 I am aware of. But as in the case of Minoza

1 that was filed, there are things the Court can
2 consider that are not mitigating but can be
3 used to give particular effect to the
4 principle of restraint - the limited criminal
5 record of Mr. Roberts, his work record, and
6 that this offence is out of character for him.

7 There are a number of aggravating factors.
8 It is aggravating that this offence occurred
9 in the victim's home, in her bedroom while she
10 was sleeping. The victim was entitled to feel
11 safe in her home, in her bedroom. And she was
12 in a vulnerable position, being asleep or
13 passed out, such that she could not fend off
14 Mr. Roberts' advances. And when she did
15 awaken and began to struggle, she was punched
16 several times knocking her out and the sexual
17 intercourse continued. When she awoke again,
18 Mr. Roberts continued to sexually assault her.

19 So the offence involved violence beyond
20 that inherent in having sexual intercourse
21 with someone without their consent. It
22 involved the forcible subduing of the victim
23 and persistence and continuing with the
24 assault. And it also ended with the threats
25 that were made to prevent the victim from
26 going to the police. These aggravating
27 factors make the offence more serious than

1 some of the cases which were provided, where
2 there was no additional violence or the
3 assault ended when the victim objected or woke
4 up or began resisting.

5 Looking first at the ancillary orders, the
6 Crown has sought a number of them and defence
7 counsel is not opposed to the orders that have
8 been sought.

9 The sexual assault results in a mandatory
10 SOIRA order, so there will be an order
11 pursuant to section 490.012 of the Criminal
12 Code that Mr. Roberts register in compliance
13 with the Sex Offender Information Registration
14 Act for a period of 20 years.

15 The sexual assault is a primary designated
16 offence so there will be a DNA order pursuant
17 to section 487.051 of the Criminal Code, that
18 Mr. Roberts provide a sample of his DNA for
19 submission to the DNA databank.

20 Sexual assault is also an offence for
21 which there is a mandatory firearm prohibition
22 order so there will be an order pursuant to
23 section 109(1)(a) of the Criminal Code so that
24 Mr. Roberts will be prohibited from possessing
25 a firearm. That order begins today and will
26 end ten years after his release from
27 imprisonment.

1 There will be also the victim of crime
2 surcharge as stipulated. The time to pay will
3 be forthwith and any default time will be
4 served concurrent to the sentence I am about
5 to impose.

6 Mr. Roberts has been in custody and his
7 remand time amounts to 203 days. Counsel are
8 in agreement that there is no reason why he
9 should not receive enhanced credit of one and
10 a half days for every day in custody in
11 accordance with the Supreme Court of Canada's
12 guidance in Summers. Therefore, he will
13 receive credit for 304 days of pre-sentence
14 custody.

15 I have thought about what is the
16 appropriate sentence in this case, given the
17 circumstances of the offence, the aggravating
18 and mitigating factors, the personal
19 circumstances of Mr. Roberts, and the sentence
20 proposed by both counsel and the reasons for
21 each submission.

22 The four year sentence proposed by the
23 Crown is entirely reasonable and within the
24 range of sentences that have been imposed in
25 the past.

26 The 32 month sentence proposed by the
27 defence is one of less than three years (two

1 years and eight months) and that is lower than
2 what has been imposed in similar circumstances
3 in this jurisdiction taking into account
4 factors such as this is a sentence imposed
5 after trial, the offence is at the more
6 serious end of the spectrum of sexual
7 assaults, and also taking into account Mr.
8 Roberts' age and limited criminal record.
9 Given Mr. Roberts' personal circumstances, I
10 do want to exercise restraint but I do not
11 think a sentence as low as what defence
12 counsel is urging is appropriate in the
13 circumstances.

14 Please stand, Mr. Roberts.

15 For the offence of sexual assault, I
16 sentence you to a period of imprisonment of 42
17 months. You will receive credit of ten months
18 for your remand time, leaving a sentence of 32
19 months to be served. A sentence of six months
20 concurrent on each of the uttering threats
21 charge will be imposed.

22 You may sit down.

23 There will be an endorsement on the
24 warrant of committal that the correctional
25 authorities give every consideration to allow
26 you to serve your sentence in the north.

27 Counsel, is there anything else in this

1 matter?

2 THE ACCUSED: 42 months.

3 MR. CLEMENTS: There was the matter of --

4 THE ACCUSED: -- get the fuck out of here.

5 THE COURT: Mr. Roberts, sit down.

6 THE ACCUSED: I am going back to my home,

7 the prison.

8 COURT OFFICER: Mr. Roberts --

9 THE ACCUSED: -- don't say nothing to me.

10 Motherfucker.

11 (Accused re-seated)

12 THE COURT: Mr. Clements?

13 MR. CLEMENTS: Yes, Your Honour, there was

14 the matter of the order pursuant to section

15 742 of the Criminal Code.

16 THE COURT: There will be that order.

17 There will be no contact with the complainant.

18 Thank you, we will adjourn court.

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

Lois Hewitt,
Court Reporter