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IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

VS

WILLIAM PALVIALOK

Transcript of the Oral Sentencing Delivered by His Honour Judge R. M. Bourassa, sitting at Yellowknife in the Northwest Territories, on Friday, March 2nd, A.D., 1984.

APPEARANCES:

MR. M. ZIGAYER: Counsel for the Crown
MR. C. ROGERS: Counsel for the Defence





1 THE COURT: In the blink of an eye, the passage of a
2 millisecond, William Palvialok's life and Helen Palvialok's
3 life have changed irreversibly. This is an offence of
4 domestic violence, wife battering, as it is popularly
5 known these days, and probably represents the most difficult
6 area for a court to deal with.

7 Judge G. M. Thompson of the Provincial Court, Family
8 Division in Ontario, in addressing a symposium in Domestic
9 Violence: Issues and Dynamics, succinctly expressed the
10 problems facing the court this way:

11 "No one is, or should be, more subject to confusion
12 and uncertainty in this process," the criminal
13 trial process," than the Judge. He or she considers
14 the following facts and dilemmas:

- 15 - I am placed in a role which requires me to
16 deal with serious criminal behavior, yet
17 also asks me to treat the matter as a family
18 problem.
- 19 - I know very few domestic assaults reach the
20 Courtroom and that the problem is a serious
21 one and yet, in most cases, the victim either
22 does not want to proceed with the case or does
23 not want me to use the serious sentences
24 which are available. It is difficult to
25 respond to the case in a way which seems to
26 make both parties unhappy with the result.
- 27 - I am concerned about deterrence of such
behavior generally, and yet these cases are
dealt with in virtual secrecy. Moreover,
there is a reason for privacy because of the
general reluctance of both husband and wife
to have these matters dealt with in a public
forum.
- If I use the serious sentences of imprisonment
or fine, I may be, in fact, punishing both
parties and possibly exposing the victim to
severe repercussions later. As well, because
I am aware of how ineffective such sentences
have been in deterring other criminal behavior,
I see little reason to hope that they will be
effective in these cases.



- 1 - Although I want to both protect the victim
2 and provide relief for the causes of the
3 assault, I am aware of the relative
4 ineffectiveness of peace bonds and of the
5 limited ability of the Court to enforce the
6 conditions of probation orders. Furthermore,
7 I am often being asked to deal with inter-
8 personal and practical problems which cannot
9 be easily solved. Even if a solution is
10 conceivable, the necessary resources are
11 rarely available.
- 12 - I am under great pressure to resolve the
13 matter quickly.
- 14 - I am dealing with a problem for which my
15 training has insufficiently prepared me.
16 Moreover, when I do seek information in the
17 area, I am generally exposed to widely
18 varying attitudes and expert opinion."

19 In other words, there is no one answer to the problem of spousal assault:

20 "- I know that it is both naive and simplistic to
21 isolate certain behavior as indicative of fault
22 within the marriage. I can see that the role
23 of the victim in the assault is much less
24 easily measured when he or she is a spouse
25 in a continuing relationship. Yet I want to
26 draw a line which excludes personal violence
27 even though the pressures which produce that
28 violence are often beyond my resolution.

- 29 - Finally, I am a person who is shaped by my
30 experiences, values and perceptions; these
31 colour my response in all cases, but this
32 area, perhaps more than any other, is one
33 in which these individual characteristics
34 are likely to have a major effect.

35 When one examines this list of concerns and
36 the various responses which they may produce,
37 it comes as no surprise to discover that the
38 approaches taken by Judges to domestic assaults
39 vary widely."

40 As I indicated earlier, this is a domestic assault.

41 William was getting drunk with his wife. He passed her
42 his glass of drink momentarily. When it was returned to



1 him it was empty, and in a fit of anger, William hurled
2 the empty glass at his wife. It broke on her face and the
3 end of the story is that she has lost an eye. It is in this
4 context that I have to sentence the accused.

5 This is a serious offence under Section 245.1(1)(b) of
6 the Code. It carries with it a maximum of ten years
7 imprisonment. The accused has a criminal record: He has
8 been convicted twice before of assault, one of a common
9 assault as it was then known, and one of assault causing
10 bodily harm; a conviction for driving with over 80
11 milligrams of alcohol in his blood. He has never received
12 a sentence of imprisonment.

13 I have to observe that he is not a master criminal -
14 he is not a calculating individual who is going to bring
15 society to its knees, or jeopardize the structures and
16 organizations within society.

17 I have to note that the offence took place in a split
18 instant, without planning, without forethought. It is
19 unfortunate that the results for Helen have been so tragic.

20 The presentence report which I requested in this
21 matter, which has been filed, describes the accused's
22 background to some degree. As is sadly the case in so
23 many instances, William appears to be acting out and creating
24 the very environment that he was subjected to from his parents
25 when he was a child. It is obvious that he has a serious
26 problem with alcohol and it is obvious from the presentence
27 report that he has no intention, desire or willingness to



1 address that problem. It appears to be equally obvious from
2 the presentence report that he views the actus reus much as
3 I have described it, as a single moment in time, a blink -
4 inconsequential - without planning or forethought or even
5 afterthought and should be treated in the same fashion, that
6 is to say, as it was only a momentary lapse. It perhaps
7 should pass by the court in a blink of an eye.

8 Unfortunately, looking at the other side of the coin,
9 the elements that are present here are present in virtually
10 all of the violent episodes that come before the courts:
11 drinking and a total loss of control while drunk, serious,
12 extensive violence committed on individuals while in a drunken
13 stupor. I am told that Helen, his wife, is willing to take
14 him back and to forgive him. I point out that I have been
15 unable to find "forgiveness" as a sentencing principle.
16 Indeed, courts and the law do not forgive. Notwithstanding
17 the court's reluctance generally to interfere, or to become
18 too involved in interpersonal or spousal relationships, I
19 think what happened here goes far beyond any such line, as
20 narrow or as broad as it may be that may be drawn. His spouse
21 may forgive him, but the court cannot ignore or downplay the
22 serious assault that took place, and the serious
23 repercussions for the victim. The accused, in my estimation,
24 has gone too far for the court to entertain the request
25 that this relationship be left undisturbed in the matrimonial
26 home, and the issues be left within the family for resolution.
27 The injuries are too serious.



1 The accused has shown his inability to control
2 himself while under the influence of alcohol in the past.
3 As I have indicated, he has been previously convicted of
4 assault. It seems obvious to me from his criminal record,
5 from the facts before me in this case, and from what is
6 said in the presentence report that he has a vicious temper
7 and he is unable to control that temper. In fact, the
8 presentence report even goes so far as to suggest that he
9 is known in his community as a bit of a bully.

10 If I had something before me indicating that as a
11 result of the terrible injury suffered by his wife that
12 some good had surfaced, that William was addressing the
13 very serious personal problems that he has and chooses to
14 ignore, that would encourage me to extend some leniency
15 or to accept that in some mitigation.

16 What I find very distressing about this case is
17 throughout the presentence report there is no indication
18 that the accused has learned anything as a result of this.
19 The presentence report states that it is not uncommon for
20 William to become violent towards his wife when he is
21 drinking. "In light of past behavior, the offender,
22 though remorseful, treats the event lightly." "Over the
23 past five months William has made little attempt at
24 rehabilitation, either personal or alcohol related." He
25 did make an effort to speak twice with an alcohol
26 counsellor, yet did not follow up on any other appointments.
27 "William continued to drink after the offence, and up to his



1 second court appearance on February 21st."

2 I want to caution William that he is not here before
3 the court because of a complaint or at the insistence of his
4 wife. He is here because the state has an interest in the
5 'Peace Order - good government' in the community and any
6 any assault, whether it is on his wife or a third person
7 attracts the attention of the state. The state representing
8 the people has a vested interest to see that these matters
9 do not occur. I want to make it very clear to the accused
10 that there is no justification in my eyes for him to
11 rationalize this or in some way pervert the criminal process
12 into blaming his wife for being here. He chose the direction
13 in which he was going to act, and he must bear the consequences
14 for that by answering to the criminal justice system.

15 I have considered this matter at some length. I
16 searched in vain for some mitigating factors. I have
17 considered carefully the cases submitted to me by Defence
18 counsel, and I thank him for them. The decision of Mr.
19 Justice Tallis in R. vs. Capot-Blanc, and the decision of Mr.
20 Justice Tallis in Agnes McPherson have both been cited. I
21 would distinguish this case from both of those cases firstly
22 in that the Capot-Blanc case was an assault consisting of
23 kicking and pushing by an accused who had an extensive
24 criminal record, and the McPherson case consisted of what
25 His Lordship himself described as a relatively minor wound
26 in the upper chest area.

27 I believe that what occurred here is clearly far



1 beyond the injuries that His Lordship addressed in those
2 cases.

3 I have noticed that the courts appear to make a
4 distinction in sentencings on spousal assault cases when
5 dealing with offenders who are still with their spouses and
6 those who are not. The former category seem to be treated
7 a little bit differently , perhaps more leniently than the
8 latter.

9 While William Palvialok is apparently still with his
10 wife, I place no emphasis or no weight on that matter. I
11 believe the assault merits a significant term of imprisonment,
12 not necessarily simply for William Palvialok's rehabilitation
13 or deterrence, but it has to be understood that while the
14 courts may be somewhat reluctant to interfere in every single
15 matrimonial dispute, there is a line that may have to be
16 drawn. I don't propose to draw that line. All I can do is
17 observe that William Palvialok has gone far beyond any such
18 line. It must be understood that this kind of vicious,
19 mindless violence is not to be tolerated. Hopefully other
20 people who are drinking will think twice before they commit
21 an offence such as this.

22 William, would you stand, please. On this charge, I
23 sentence you to eleven months imprisonment.

24 (AT WHICH TIME THESE PROCEEDINGS WERE CONCLUDED.)

25 Certified a correct transcript,

26 *Laurie Ann Young*
27 Laurie Ann Young
Court Reporter