

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- and -

LEON ANDREW

Transcript of the Reasons for Sentence Delivered by His Honour Judge R. M. Bourassa, sitting at Yellowknife, in the Northwest Territories, on Tuesday, February 9th, A.D., 1993.

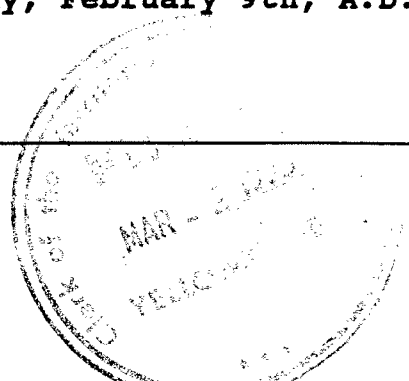
APPEARANCES:

MR. A. FERGUSON:

Counsel for the Crown

MS. D. RUTSCHMANN:

Counsel for the Defence



1 THE COURT: The accused has pleaded guilty to two
2 charges of assault on his spouse, one on the 23rd of
3 December, and one on the 13th of January.

4 The criminal law is not designed to provide
5 solutions or resolve problems. The whole theory and
6 philosophy behind the criminal law is to draw limits
7 or to demark limits of acceptable human conduct.

8 There is a wide range of acceptable conduct before
9 it becomes criminal. People can be boors, scoundrels,
10 a whole variety and not be criminals. Mr. Andrew has
11 gone beyond the line of conduct that is acceptable to
12 society in assaulting his wife, and I see my function
13 as a court applying the criminal law, to demark this
14 line in a way that Mr. Andrew understands and perhaps
15 others understand as well.

16 I have great admiration for the many women that
17 come to this courtroom having forgiven their husbands
18 for outrageous conduct and outrageous assaults. A
19 pistol shoved down a woman's throat, and the husband
20 saying I love you, I love you; women picking
21 themselves up off the floor covered with blood, and
22 the husband saying I love you, I love you. Forgiveness
23 does not have a role in the criminal law. In fact, in
24 the Court of Appeal has clearly stated in Umpherson
25 and Brown that the wishes of the victim, given the
26 amount of the violence in the home, is not to be given
27 a significant or governing weight in sentence.

1 Mr. Andrew, as others in his position, are free to
2 arrange their lives as they see fit. But not to beat
3 upon their wives. If that warning is disregarded, and
4 if that line is crossed, then there will be
5 consequences, and that certainty must be there.

6 The accused has a criminal record which includes
7 an assault causing bodily harm back in 1988 in Fort
8 Norman. The Crown attorney is right. At that time he
9 was told a day in jail is nominal only...a warning.

10 I take into account that he has pleaded guilty,
11 and he has pleaded guilty virtually at the first
12 instance. As some courts have indicated, up to
13 one-third of what would otherwise be an appropriate
14 sentence should be subtracted in arriving at a fit
15 sentence. It shows a sense of responsibility and is
16 reflective of some remorse.

17 I also take into account the words of his wife who
18 indicates that she is hopeful that Mr. Andrew
19 apparently is willing to do something or at least try
20 to do something about his abuse of alcohol and the
21 abuse of his wife.

22 I return to a fundamental principle: that Mr.
23 Andrew must learn without a shadow of a doubt that
24 this kind of conduct is absolutely unacceptable, and
25 further conduct of that kind will result in harsh
26 sentences if that is what is required.

27 I indicated a moment ago that the Court of Appeal

1 has indicated that spousal assaults are to be taken
2 seriously. They are too great a problem. I have just
3 returned from circuit. Close to two-thirds of every
4 docket I had to deal with involved violence against a
5 woman. It is a major problem.

6 Counsel for the Defence has referred to a number
7 of cases across Canada where suspended sentences have
8 been imposed. I think of the cases in our
9 jurisdiction of Goose, Bernhardt, Curley, and others
10 where jail sentences have been imposed.

11 Looking at the particular facts of the assaults
12 before me, because any sentence must always be
13 proportional to the offence and to the circumstances:
14 On the first occasion the victim was choked until she
15 almost lost consciousness. This was done in a
16 situation of sobriety. There is no indication before
17 me of any alcohol present. What can one say about
18 choking another person to unconsciousness or almost to
19 unconsciousness? It is frightening.

20 The second offence, clearly the victim was worried
21 in advance. She wrote down the number of the police
22 and put it by the phone. Clearly she was waiting and
23 expecting problems. She wasn't, unfortunately,
24 disappointed. The assault of the 13th of January is
25 not a momentary burst of anger, a cruel, thoughtless
26 and unpremeditated blow. This is a deliberate,
27 continuing assault of another human being in

1 circumstances as indicated by Crown where it should
2 not be occurring. A home is supposed to be a refuge.
3 She was pursued. She was struck. She was knocked
4 down. She was pursued again. She was threatened
5 which was implicit in dragging the fork across the
6 wall and pointing it at her. She begged. She
7 pleaded. It is dehumanizing.

8 I take into account the submissions of Defence
9 with respect to this matter. But in my view, given
10 the circumstances of the offences, anything other than
11 a jail sentence would be contraproductive. I believe
12 that a jail sentence can have a rehabilitative effect.
13 It will make very clear to Mr. Andrew what he can and
14 cannot do, and hopefully to others who might lose the
15 control that he lost.

16 I am asked to consider a variety of other options
17 such as court ordered counselling, court ordered
18 community service or probation. I am not inclined to
19 do that. I am dealing with an adult who has some
20 intelligence. Presumably he can make the logical
21 connections needed and take the steps needed.

22 I am encouraged by the evidence of Mrs. Blondin
23 Andrew that the accused is apparently taking steps to
24 deal with whatever problems he may have. I don't
25 think it is necessary for the courts to, in effect,
26 get into his life any more than necessary. As I said,
27 I want Mr. Andrew to leave this courtroom and to know

1 with great certainty that this kind of conduct is
2 unacceptable. It is criminal.

3 In my view, I have to treat the two matters
4 consecutively. They weren't part and parcel of a
5 continuing matter. It wasn't a long drawn out
6 assault. It was two separate events, two separate
7 times with three weeks in between. I am also
8 concerned because many writers with respect to
9 violence in the home indicate it happens again and
10 again. If it happens twice, it is almost a foregone
11 conclusion that it will happen again and again. I
12 think it has to stopped, and I think I have to impose
13 a sentence that will underscore that.

14 Stand up please, Mr. Andrew. Is there anything
15 you want to say before I impose sentence?

16 THE ACCUSED: No.

17 THE COURT: On the first count, count one, you
18 will be sentenced to two months imprisonment. On the
19 second count, four months imprisonment, and that is
20 consecutive.

21 MR. FERGUSON: Will there be a waiver of the
22 surcharge?

23 THE COURT: Yes, I am not going to impose a
24 surcharge.

25

26 (AT WHICH TIME THESE PROCEEDINGS WERE CONCLUDED)

27

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

Certified correct to the best of my
skill and ability,

L. Young
Laurie Ann Young
Court Reporter