

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

CHRISTOPHER SHAE

Transcript of the Sentencing Hearing held before The Honourable Judge R.M. Bourassa, sitting in Yellowknife, in the Northwest Territories, on the 9th day of February, A.D. 1999.

APPEARANCES:

Ms. S. Aitken:	Counsel for the Crown
Mr. A. Mahar:	Counsel for the Defence

1 MR. MAHAR: Dealing with Mr. Shae, I believe the
2 only charge that he has before the court today is a
3 Section 139 offence?

4 THE COURT: Yes, Christopher Shae is charged with
5 attempting to obstruct the course of justice by
6 bribing a Crown witness.

7 MR. MAHAR: Yes, Sir. He has instructed me that
8 he wishes to elect Territorial Court on this matter
9 and I believe he wishes to enter a plea of guilty; is
10 that correct, Mr. Shae?

11 THE ACCUSED: NODS IN THE AFFIRMATIVE

12 THE COURT: Okay, you sit down and the Crown
13 Attorney will tell me what happened. You listen
14 carefully to what she says. Is this straight
15 indictable?

16 MS. AITKEN: Yes, Sir, it is.

17 MR. MAHAR: It is.

18 MS. AITKEN: Yes, Sir. Sylvia Kelly is a Crown
19 witness in a sexual assault matter involving Mr. Shae
20 that's presently set for trial in the Supreme Court
21 in April in Fort Good Hope. She's not the
22 complainant, she is a witness to the event.

23 She received a letter from Christopher Shae some
24 time between October 15th and October 28th of 1998.
25 This is a period when Mr. Shae was in custody in
26 Yellowknife.

27 In the letter Mr. Shae offered Ms. Kelly \$500

1 and some liquor in order to influence her evidence.
2 He asked her to testify in court to the fact that the
3 victim wanted to have sex with him and that the
4 victim was all over Shae. Ms. Kelly did not keep the
5 copy of the letter. She showed it to a friend and
6 then she burned it. It later came up when she went
7 to the police to discuss both the sexual assault
8 event and as they were questioning her, it became
9 apparent that the reason she was trying to change was
10 based on this letter and the whole letter came up
11 that she had received this letter.

12 THE COURT: So she did try and change her
13 statement?

14 MS. AITKEN: Well, she started to give a statement
15 about it but then fairly quickly on said, No, here's
16 the -- this is why she was saying it. Those are the
17 allegations, Sir.

18 THE COURT: Is that admitted as true?

19 MR. MAHAR: With the exception of the offer of
20 alcohol, yes Sir.

21 MS. AITKEN: That's fine, Sir.

22 THE COURT: Okay.

23 MS. AITKEN: The Crown alleges a record, Sir, I'm
24 showing it to my friend.

25 MR. MAHAR: The record is admitted.

26 THE COURT: Exhibit 1.

27 **[EXHIBIT 1: ACCUSED'S CRIMINAL RECORD]**

1 MS. AITKEN: Sir, I can advise that in addition to
2 the record that you have before you Mr. Shae was
3 convicted after pleading guilty to -- it was in
4 November of '98 to a failing to appear charge as well
5 a breach of undertaking, and he received a total
6 sentence of five months at that time. He's now
7 serving that; two months and three months consecutive
8 were his sentences there.

9 MR. MAHAR: That's admitted.

10 MS. AITKEN: Sir, in addition to that, Mr. Shae at
11 this point has not had a show cause hearing in
12 relation to the sexual assault matter and is detained
13 on that matter and, as I mentioned, the trial is in
14 April.

15 In terms of disposition today, it's the Crown's
16 submission that the only mitigating factor is the
17 guilty plea. This is obviously a very serious
18 offence. We can tell that by Parliament has made it
19 a straight indictable offence and is subject to
20 imprisonment of a maximum of ten years.

21 The facts of the case before the Court today are
22 obviously, in the Crown's submission, very
23 aggravating. We have a situation where Ms. Kelly is
24 a Crown witness in a sexual assault matter. It's
25 presently set for trial. There was a preliminary
26 inquiry, Mr. Shae was not present and it proceeded in
27 his absence. The complainant, who is 16-years-old,

1 who was allegedly 13-years-old at the time of the
2 offence, had to testify as well as Ms. Kelly.

3 Ms. Kelly is a key Crown witness given that it's
4 her evidence that she witnessed much of the offence.
5 Obviously if her evidence was influenced in any way
6 it could seriously impact the case of the Crown given
7 that the complainant, in fact, was quite intoxicated
8 and her memory may not be as clear as the -- Ms.
9 Kelly.

10 THE COURT: How old is the Kelly girl?

11 MS. AITKEN: I'll just check, Sir, I think she's
12 older. She is 24, Sir.

13 THE COURT: Okay.

14 MS. AITKEN: And, as I understand it, she's known
15 Mr. Shae for some time. They actually, I think, have
16 children together. So a previous boyfriend.

17 In the circumstances of this type of offence and
18 for the facts, it's clear that a jail term is
19 warranted. In my submission, as I mentioned the
20 mitigating factor is the guilty plea, I would suggest
21 that a term of imprisonment of six months consecutive
22 to any sentence he's serving would be appropriate
23 given the guilty plea and given the allegations.

24 My experience of some other charges that have
25 been before the Court, some after trial and some
26 prior to trial, we've seen sentences anywhere from
27 five months to a year depending on the seriousness of

1 the allegations. Those essentially are my
2 submissions, Sir.

3 THE COURT: Mr. Mahar?

4 MR. MAHAR: Sir, Mr. Shae is an an object lesson
5 of how to take a very bad situation and consistently
6 make it worse over the last three years. He's
7 serving five months now for charges related to
8 breaching and failing to appear on the outstanding
9 sex assault. He's now looking at more time for
10 attempting to tamper with a witness on the sex
11 assault charge. He spent three years more or less on
12 the land worrying about these charges living in the
13 bush. It is quite disturbing to see a fairly
14 straightforward situation turned into a very
15 destructive situation for Mr. Shae. It's going to be
16 going on for years.

17 THE COURT: Why? That charge is 1998?

18 MR. MAHAR: I believe he was gone -- I thought it
19 was about -- I thought the complainant was 13 at the
20 time?

21 MS. AITKEN: Yes, Sir. No, the -- I don't have
22 that file in front of me but, yes, she was 13 at the
23 time. She's now -- well she was almost 14 so --

24 THE COURT: Okay, but the charge against this man
25 is from December of '98.

26 MS. AITKEN: This charge.

27 THE COURT: Oh this charge, yes. Oh, you're

1 talking about the --

2 MS. AITKEN: I think we're talking about the sexual
3 assault matter.

4 MR. MAHAR: The outstanding sexual assault charge
5 that this stems from.

6 THE COURT: All right.

7 MR. MAHAR: Before I go much further, Sir, this is
8 a joint submission for your consideration and we're
9 putting it to you for that.

10 Mr. Shae has admitted his guilt in this. He was
11 trying to get the witness to recall events in line
12 with his recollection of events. It's about the
13 stupidest obstruct justice or attempt to obstruct
14 justice that you can imagine. He sends a letter, now
15 for some reason the letter was burned at the other
16 end but sending a letter from jail trying to get
17 someone to do something like this, this isn't a very
18 sophisticated way of going about it.

19 He's 29 years old. He's got a grade 7
20 education. His father died when he was 14, his mother
21 left town about a year later. He lived in the bush
22 more or less on his own since that point in time.

23 He hasn't had any long-standing relationships
24 with anyone. His abilities are somewhat marginal and
25 I don't know what he was thinking. He doesn't know
26 what he was thinking. He just wanted this to go away
27 and he got a hold of a witness through a letter.

1 Fortunately the witness changed her mind in the
2 middle of trying to change her story with the RCMP
3 and he has owned up to the fact of asking her to do
4 this even though the letter is no longer present. So
5 he hasn't taken it to trial, he has elected to deal
6 with it in an expeditious manner.

7 That said, Sir, he's also trying to develop a
8 career as a carver. He's also working on his
9 upgrading while he's in Yellowknife Correctional
10 Institute. He says he's now working at about a grade
11 8 level and he's continuing on with some courses.

12 His jury trial is set to proceed on the 12th of
13 April and he will be going to trial on that charge.
14 If he had simply shown up at his preliminary hearing
15 and set the matter for trial, it would all be over by
16 now, the preliminary matter. But here we are and he's
17 got another charge stemming and I would urge the
18 Court to follow the joint submission we put before
19 you. Subject to any questions, Sir.

20 THE COURT: There can be a real chasm between two
21 different ways of viewing this offence; one that it's
22 just stupid and harmless in a way; and another one
23 that it's very serious. Maybe the answer is
24 somewhere in the middle over the chasm, I don't know.

25 Here is a man with 14 criminal convictions since
26 1989 and serious convictions at that, I mention that
27 because clearly he must understand -- I assume he

1 must understand, he obviously has some intelligence -
2 the connection between crime and punishment. In 1989
3 assault -- two charges of assault with a weapon, and
4 for his first brush with the law he received terms of
5 imprisonment, 16 months, and failure to comply with a
6 probation order two months. He couldn't have been
7 out of jail very long and in 1991 in August in Fort
8 Good Hope he was convicted of assault and fined. And
9 then in November of 1991, possession of a firearm
10 while prohibited and taking a vehicle without the
11 consent of the owner, fines in both instances. In
12 1993 in August in Fort Good Hope, mischief, another
13 fine. 1994, take a motor vehicle without the consent
14 of the owner, another fine. 1994, November, break
15 and enter with intent; obviously the Courts were
16 trying to help him: A suspended sentence and
17 probation for 12 months, 60 hours of community
18 service work. 1996, assault, assault with a weapon,
19 assault causing bodily harm, failure to comply with a
20 probation order.

21 So he must know the consequences and no doubt
22 those consequences were weighing on his mind when he
23 wrote his ex-girlfriend whom he is in a position to
24 influence. It's not as though it was a stranger. He
25 offers her \$500 and, as an ex-boyfriend, father of
26 some of her children, he's in a position to exert
27 some influence and exploit it. He asks her to change

1 her story to the police with respect to the sexual
2 assault. Clearly he understands the consequences of
3 conviction for sexual assault.

4 This was a plan that may very well have been
5 stupid, but carried out with it the real prospect of
6 success. I'm told by the Crown that the witness
7 began to change her story until, under interrogation
8 from the police, the truth came out.

9 The offence for which he's facing trial is
10 apparently a sexual assault on a 13-year-old child.
11 It's extremely distressing for any observer of the
12 legal system to see criminal offences involving small
13 children, especially sex charges, fail to advance and
14 go to a full hearing because the child is afraid to
15 testify - which happens. Many young children don't
16 want to come to court at the preliminary inquiry, a
17 trial in front of a jury, and have to go through all
18 of the personal details of a sexual assault.

19 So, in trying to answer my original question, I
20 take a serious view of the offence. It may very well
21 have been stupid, but it was also criminal, and a
22 seriously criminal act by someone who knows what he's
23 doing and understands the cause and effect and knew
24 what would happen if he was successful in his
25 endeavor.

26 In my view, all prosecutions have to be
27 protected and Crown witnesses protected, but

1 particularly in the cases of sexual assaults
2 involving small children.

3 I note a number of convictions for breach of
4 court process.

5 The maximum penalty is ten years imprisonment.
6 This is certainly not the most attractive accused or
7 the most attractive offence. In my view, a proper
8 sentence to reflect the gravity of the crime, the
9 accused's participation and plan and what was
10 available to the accused had his plan succeeded, and
11 to discourage both the accused and others from ever
12 contemplating interference in a prosecution in this
13 way, in my view a term of imprisonment in the
14 neighborhood of a year would be appropriate.

15 I'm taking into account he's pleaded guilty, and
16 that's a significant mitigating factor. Stand up,
17 Mr. Shae. Is there anything you want to say before I
18 impose sentence?

19 THE ACCUSED: I'm sorry about it. It's just that
20 I -- I was thinking about my son, that's all I
21 could -- I haven't been free in a long time and
22 everything just being locked up, it's just being
23 locked up. My emotions all go to my son so that's
24 the reason why I did that was for my son.

25 THE COURT: It's all up to you, Mr. Shae, whether
26 you're locked up or not. You know once you get out,
27 if you behave and don't cause problems, you'll never

1 be locked up again.

2 THE ACCUSED: When I was out there that's what I was
3 trying to do was trying to keep the peace and --

4 THE COURT: Well, you've got problems and now
5 you've got to deal with them. .

6 THE ACCUSED: That is true.

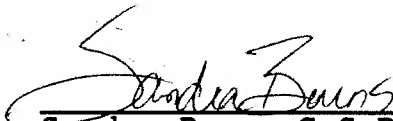
7 THE COURT: Eight months imprisonment.

8 MR. MAHAR: Thank you, Sir, I thank my friend.
9 That concludes my matters for today.

10 THE COURT: Thank you, Mr. Mahar. That will be
11 consecutive to any other time he's serving.

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13 **Certified correct to the best of my skill**
14 **and ability (Subject to Editing by Presiding**
15 **Judge) .**

16 
17 **Sandra Burns C.S.R. (A)**
18 **Court Reporter**

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