

2002 NWTC A2

T-1-CR-2001003743

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES  
IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

ALLAN SHORTT



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Transcript of the Reasons for Sentence (Oral) delivered by The Honourable Judge B.A. Bruser, in Yellowknife, in the Northwest Territories, on the 22nd day of February, A.D. 2002.

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APPEARANCES:

Mr. S. Niblock: Counsel for the Crown  
Mr. P. Smith: Counsel for the Defence

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Charges under ss. 266, 264.1(1) x 2, 811 C.C.

1 THE COURT: Most certainly there is no need to  
2 review the facts again. That I won't do.

3 The first thing for me to do is to resolve the  
4 application for a conditional discharge. If there is  
5 a ruling against the application, then the next step  
6 is for the Court to move on to the other  
7 considerations, such as a suspended sentence, a fine,  
8 imprisonment, and so forth.

9 Section 730 is the provision that allows courts  
10 to impose discharges, both absolute and conditional.

11 If there is an absolute discharge, the offender  
12 is deemed not to have committed the offence. To be  
13 more technically precise: He is deemed not to have  
14 been convicted of the offence even though he committed  
15 it.

16 If there is a conditional discharge and the  
17 discharge runs its term successfully, then it is  
18 deemed to be absolute, in which case the same  
19 conclusion follows, as if it had been absolute in the  
20 first instance.

21 The court may, if it considers it to be in the  
22 best interests of the offender and not contrary to the  
23 public interest, grant one of the two types of  
24 discharges.

25 Note that I said the word "may", because the  
26 court can conclude that it would be in the best  
27 interests of an offender and not contrary to the

1 public interest to grant a discharge and still the  
2 court is not mandated to grant one. The court could  
3 still, applying all the objectives and principles and  
4 keeping in mind the underlying purpose of sentencing,  
5 refuse to grant a discharge. Making the findings then  
6 in favour of the defence does not necessarily mean  
7 that a discharge will follow.

8 I concur with the Crown and the defence that it  
9 would in the circumstances of this offender, for  
10 having committed these offences in these  
11 circumstances, be in his best interest to grant a  
12 discharge.

13 Is it the case that the accused has met the  
14 second condition? Can I find that it is not contrary  
15 to the public interest to grant one?

16 The case law says that the discharge provisions  
17 are not restricted to trivial, minor or technical  
18 offences. A discharge is available unless there is a  
19 sentencing provision that makes it unavailable. In  
20 the case of Count 1, Count 2, Count 3 and Count 4, a  
21 discharge is in each case available.

22 What about the public interest?

23 Even though a person who assaults a spouse may  
24 receive a discharge, even though somebody who  
25 threatens to kill somebody may receive a discharge, it  
26 is not common at all and probably unusual, if not  
27 rare, for discharges to be given for these offences

1 when combined as they are in this case. Why are they  
2 unusual? They are unusual because of the need to send  
3 a message to the public that the conduct of assaulting  
4 one's spouse - which involves a breach of trust even  
5 if separated - and conduct of threatening to kill  
6 people will not be treated unreasonably leniently by  
7 the courts. All of this is designed to give the  
8 public confidence that the courts are treating public  
9 protection as the single most important goal of the  
10 sentencing process, there being a number of principles  
11 and objectives to apply in attaining that goal.

12 In determining whether it would or would not be  
13 contrary to the public interest to grant a discharge,  
14 there are two approaches to take. In some cases it is  
15 obvious that to grant a discharge would be contrary to  
16 the public interest. In other cases - and this is one  
17 of them - at first blush it is difficult to see how  
18 the accused could not meet the second condition. In  
19 approaching it from that particular perspective, I ask  
20 myself this question: Can it be said that it is not  
21 contrary to the public interest by identifying any  
22 particular public interest criteria that would be  
23 offended by granting the discharge? How could it be  
24 contrary to the public interest, is a way to phrase  
25 it, while at all times keeping the specific language  
26 in s. 730 in mind. In other words, there are a number  
27 of ways of approaching it while keeping the central

1 criterion in mind; the public interest criterion in  
2 this case.

3 If there were a conditional discharge that could  
4 protect the public, protect Mrs. Shortt, affect  
5 rehabilitation, address denunciation and that could  
6 meet the other objectives and principles of  
7 sentencing, then it could be said that it is not  
8 contrary to the public interest to grant one. If all  
9 of those factors could be met, the answer to the issue  
10 of the public interest would be addressed in the  
11 accused's favour.

12 Defence counsel says that there is no  
13 demonstrable reason not to grant a discharge. The  
14 defence says it is not contrary to the public interest  
15 to grant one. I agree with defence counsel. I am in  
16 agreement because in addressing all of those factors  
17 that I mentioned a few moments ago, I am unable to  
18 conclude that it would harm the public interest to  
19 grant a conditional discharge. If I cannot conclude  
20 that it would harm the public interest to grant one,  
21 it follows that I conclude it is not contrary to the  
22 public interest to grant one.

23 The conclusions then that I draw are that it  
24 would be in the best interests of the accused to grant  
25 a conditional discharge and not contrary to the public  
26 interest, although I do not find that it would meet  
27 the test to grant an absolute discharge.

1 I began by saying that the court "may" but not  
2 "shall" grant a discharge having resolved the issues  
3 in the accused's favour. This is a discretion which  
4 the court has. A discretion which the court has is a  
5 judicial discretion that must be exercised according  
6 to law. The law states that the least restrictive,  
7 least onerous form of sentencing should be adopted by  
8 the courts.

9 In my view, a conditional discharge is a fit and  
10 proper sentence for this offender for having committed  
11 these offences in these circumstances in this  
12 community toward these victims, so why refuse him that  
13 sentence? There is no reason to refuse it.

14 If there is no reason to refuse to grant a  
15 discharge, one, it follows, should be granted.  
16 Accordingly, there will be one.

17 It will be for a period of one year. During this  
18 period, Mr. Shortt, you will have to obey the  
19 conditions of a probation order.

20 It has not escaped my attention that one of the  
21 charges is a failure to obey an order made by the  
22 court. Hence, the conditions will be firm and I urge  
23 Crown counsel, if any information comes to the  
24 attention of the authorities, to consider having this  
25 matter brought back to court, in which case the court  
26 can revoke the discharge and impose any other lawful  
27 sentence that I could have made today, including,

1 Mr. Shortt, imprisonment. But it is my intention, and  
2 I cannot make this too clear, that the sort of conduct  
3 that you entered into and your wife entered into after  
4 the two of you were placed on a peace bond is not  
5 going to be tolerated or condoned. This warning  
6 cannot be made more clear.

7 Also, if you do not obey the probation order you  
8 could be charged with failing to do so. That is a  
9 separate crime punishable by imprisonment of up to two  
10 years and also punishable by a number of other things.

11 One reason - and you may have seen me hesitate  
12 somewhat as I worked my way through the discharge  
13 reasoning process - one major reservation which was an  
14 impediment to arriving at the conclusion that I did  
15 was the failure by you on the evidence to honour your  
16 commitment to this court regarding that peace bond. I  
17 was the one who placed you on it. That is why I say  
18 it is incumbent upon the Crown to do what it can to  
19 assist the administration of justice in ensuring, as  
20 well as the Crown and the police can, that this order  
21 is complied with.

22 I will do what I can by having return dates in  
23 this court. At those times the probation officer will  
24 prepare reports to give the court and the Crown and  
25 the defence better assessment of whether this is  
26 working or not. If it is not working, then that is  
27 the time to get on top of it, not after it has



1 expired.

2 The conditions are: You will keep the peace and  
3 be of good behaviour; appear in court as required by  
4 the court.

5 I would like to be the judge here when the review  
6 dates are happening. There will be the first review  
7 on Tuesday, April 2nd, at 1:30 p.m.

8 I continue.

9 You are to report to a probation officer by 4:00  
10 p.m. today in Yellowknife, and after that when and as  
11 directed by the probation officer. The clerk can tell  
12 you how to go about doing that. You will be under the  
13 supervision of the probation officer for the entire  
14 one year period. You are to participate actively in  
15 any counselling as the probation officer may direct  
16 from time to time. You are to have no contact or  
17 communication with Tambria Shortt of any sort, unless  
18 she initiates it or unless it is through another  
19 adult. For the entire one year, you are not to have  
20 any firearms in your possession, nor any ammunition or  
21 explosives of any sort.

22 Madam Clerk, this is not a separate firearm  
23 prohibition order; it is part of the probation order.  
24 It will additionally contain the other named items  
25 that are in section 109 of the *Criminal Code* though, I  
26 don't have to get into all them now - crossbow and so  
27 forth - I'd like all of them to get into the order.



1           It may seem farfetched, but everything mentioned  
2 in sections 109 and 110, every type of weapon of that  
3 sort has been used in the past by husbands to kill  
4 wives. That's one reason why they are in there. Even  
5 crossbows. It is important that they get into the  
6 order. But I think it need only be for one year.  
7 With the passage of one year, emotions will have  
8 cooled, the divorce should be probably close to over  
9 with and may be well behind the two of them.

10           I continue.

11           You are not to attend at her place of work for  
12 any purpose. You are not to attend at her home or on  
13 her property for any purpose. If you need to pick up  
14 the children or drop them off, find out another way to  
15 do it, but you are not going to do it at her home.  
16 Note that your prohibition against attending at her  
17 home, property or place of work does not have the  
18 exception "unless she initiates it". You just cannot  
19 do it, even if she does initiate it. That is how the  
20 order will be worded. You are not to attend at her  
21 home, her property or place of work even if she does  
22 initiate it; however, you may have other communication  
23 and contact if she does initiate it but through a  
24 third party. So for example, if she says "Let's meet  
25 with the kids at McDonald's", that's fine. You can do  
26 that. Not at her home or on her property or place of  
27 work.

1           You are to do, on the four matters in total, 100  
2 hours of community service work. That is not 100 on  
3 each, that's 100 in total. If it has to be broken  
4 down for technical reasons to make it legally perfect,  
5 it will be 25 hours on each count. The work is to be  
6 done when and as directed by the probation officer to  
7 that person's satisfaction, and not less than 20 hours  
8 per month beginning March of this year.

9           There will be an exception to the firearm  
10 prohibition. You can have firearms in your possession  
11 but only on the land. If you want to go caribou  
12 hunting with Wylie Grimm, you can do that, but you  
13 cannot keep them at your home and you cannot even take  
14 them from town to the land. But when you are out  
15 there, then you can have them on the land for the  
16 purpose of hunting and for protection.

17           There cannot be a plea of hardship regarding the  
18 victim fine surcharge. He has plenty of income coming  
19 in. That will be \$50, that being the statutory  
20 amount. I see no need to increase it. The \$50 will  
21 be on each count. Any default time in prison will be  
22 consecutive.

23           I will get to time to pay in a moment.

24           Does the Crown have anything further regarding  
25 the probation order?

26           MR. NIBLOCK:                Yes, sir, perhaps a no contact order  
27 for Mr. Krestel.

1 THE COURT: Thank you. You are to have no  
2 contact or communication with Kevin Krestel of any  
3 sort, nor attend at his home or place of work.  
4 Does the defence have anything further regarding  
5 the probation order?  
6 MR. SMITH: Two questions, Sir. You indicated  
7 not less than 20 hours community service; is that per  
8 month beginning in March?  
9 THE COURT: Yes. I thought I said that but  
10 maybe I didn't.  
11 MR. SMITH: Yes, you indicated it commenced in  
12 March and I wasn't sure if that was per month.  
13 THE COURT: Not less than 20 hours per month  
14 beginning March.  
15 MR. SMITH: Thank you. And \$50 on each count,  
16 so \$200 total; is that the victim fine surcharge?  
17 THE COURT: Yes. No DNA order, I see no need to  
18 make one in this case.  
19 MR. SMITH: Pardon me, sir?  
20 THE COURT: No DNA order, this is not the case  
21 one needs to be made.  
22 MR. SMITH: With respect to time to pay, sir,  
23 Mr. Shortt does not need time to pay, he can pay the  
24 victim fine surcharge today.  
25 THE COURT: Payable today, at your request.  
26 Anything more in this matter from the Crown?  
27 MR. NIBLOCK: No, sir, thank you.

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THE COURT: Does the defence have anything more?

MR. SMITH: Nothing, Your Honour, thank you.

THE COURT: I thank both of you again for a job well done, and that can be passed along in particular to Ms. Bond.

The probation order will be prepared later. You'll have to attend at the court office to sign it between 3:30 and 4:00 today, and that will give the court clerk time to have lunch today and still prepare the order.

THE COURT CLERK: Thank you, sir.

THE COURT: It can't be prepared for next week because I'll be travelling and I need to sign it.

So 1:30, Madam Clerk.

**(ADJOURNMENT)**

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Certified pursuant to Practice Direction #20 dated December 18, 1987.

*Annette Wright*  
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Annette Wright, RPR, CSR(A)  
Court Reporter