

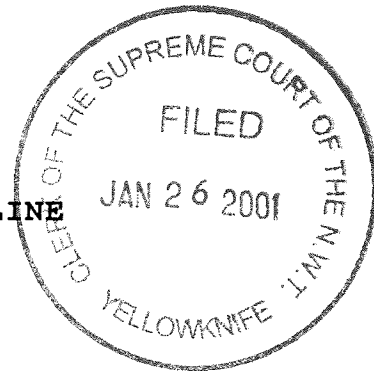
IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- and -

CLIFFORD MICHAEL BOLINE



Transcript of the Reasons for Sentence delivered by The Honourable Justice J.Z. Vertes, sitting in Yellowknife, in the Northwest Territories, on the 25th day of January, A.D. 2001.

APPEARANCES:

Mr. J. O'Halloran: Counsel for the Crown
Mr. T. Boyd: Counsel for the Defendant

(Charges under 253(a) x2 of the Criminal Code)

1 THE COURT: The offender, Clifford Michael
2 Boline, also known as Clifford Michael Johnstone, was
3 convicted after trial of three offences: impaired
4 driving, operating a motor vehicle while disqualified
5 from doing so, and resisting arrest. The offences
6 occurred as parts of a sequence of events in
7 Yellowknife in the early morning hours of April 24,
8 2000. The offender has been in custody since that
9 time.

10 The circumstances of the offences themselves are
11 not particularly serious or aggravating. It was a
12 relatively short sequence of events and no one was
13 injured. It is the offender's circumstances that are
14 particularly serious.

15 The offender is 31 years of age. He is a Dogrib
16 Indian born and raised in this region. He had a
17 difficult childhood. His natural father died when he
18 was very young; he was custom-adopted by his elderly
19 grandparents. He later lived with other members of
20 his extended family. He was shuttled between
21 communities and homes for many years. He had no
22 stability in his life, and there are indications that
23 he was exposed to violence from an early age. He does
24 not suffer from any psychological disturbances, but he
25 has had a lengthy and entrenched problem with alcohol
26 abuse. He has minimal education and few job skills.

27 The offender has a serious and disturbing record

1 of criminal convictions. He was first convicted in
2 Youth Court in 1986. As an adult, he has accumulated
3 twenty-one convictions since 1989 (not counting the
4 three for which he is being sentenced today). The
5 list of convictions include four previous drinking and
6 driving offences, the last one in 1998, including a
7 conviction for impaired driving causing bodily harm in
8 1990 for which he was sentenced to two years
9 incarceration. The list includes a conviction for
10 dangerous driving, three for driving while
11 disqualified, and five convictions for failing to
12 comply with court orders. He was a parole violator.
13 He also has convictions for crimes of violence,
14 including committing sexual assault and causing bodily
15 harm in 1990 for which he was sentenced to a term of
16 five years in prison. As Crown counsel said, the
17 offender has spent most of the 1990s behind bars.

18 Yet, even with this history, there is some cause
19 for optimism. The offender has the strong support of
20 his common-law spouse. He is apparently a good and
21 reliable father to the three children of the family.
22 His wife appears to have a good deal of insight into
23 what she and the offender need to do to build a strong
24 and lasting relationship, free from the ill-effects of
25 alcohol abuse and family histories of violence.

26 The pre-sentence report outlines the many
27 resources that are available for the offender to

1 assist in his rehabilitation. There are signs that
2 the offender himself recognizes that now is the last
3 chance he has to come to grips with his problems. The
4 report concludes with what I would call a conflicted
5 recommendation from the probation officer who prepared
6 it. I quote:

7 Based on the acquired facts and
8 information, this writer is struggling
9 with recommending a decision as to
10 whether or not the subject would be a
11 suitable candidate for a community-based
12 sentence. I have known the subject for a
13 number of years, and I think that with
14 the proper mind-set and supports in
15 place, the subject could find it within
16 himself to obey the orders of the Court.
17 Through my interviews with the subject,
18 he appeared remorseful and serious about
19 making some positive changes in his
20 lifestyle and becoming a law-abiding
21 citizen. On the other hand, his prior
22 criminal convictions for failing to obey
23 conditions of the Court have certainly
24 impacted the writer's concerns as to his
25 compliance with a community-based
26 sentence and whether or not his risk
27 could be managed at the community level.

18 Crown counsel in this case has suggested a total
19 sentence of two years less one day of actual
20 incarceration (after taking into account pre-trial
21 detention). In his submission, the principles of
22 deterrence and denunciation must be emphasized. Crown
23 counsel argued that the offender is a continuing
24 danger to the community and that it is unrealistic to
25 think that there could be meaningful restrictions
26 imposed on the offender in a community-based sentence.

27 I must say that I appreciate the position taken

1 by Crown counsel in this case because, frankly, as I
2 said during the submissions, it showed a great deal of
3 restraint. I was initially under the impression,
4 having regard to this offender's record of
5 convictions, that there might well be cause to seek a
6 penitentiary sentence. But I think Crown counsel has
7 shown admirable restraint in the position taken in
8 this case.

9 Defence counsel argued strenuously for a
10 community-based sentencing approach. He suggested a
11 conditional sentence with requirements for counselling
12 and treatment.

13 I must admit that this case has caused me a great
14 deal of concern. On the one hand, the offender has a
15 history of dangerous conduct with a complete disregard
16 for external controls. On the other hand, past
17 incarceration has failed to change his ways, and a
18 lengthy period of incarceration now may have no
19 greater chance of success. In addition, a lengthy
20 period of incarceration may have devastating effects
21 on his family. The prime objective of all sentencing
22 is of course the protection of the community. But we
23 do not ignore, as well, the aims of rehabilitating the
24 offender and restoring him to the community as a
25 worthwhile member of it.

26 This is not a case where either a penitentiary
27 term or no term of imprisonment would be appropriate.

1 So I must give consideration to the imposition of a
2 conditional sentence or some combination of sentencing
3 alternatives. There are four criteria in Section
4 742.1 of the *Criminal Code* to be considered before
5 deciding to impose a conditional sentence:

- 6 (1) The offence must not be one punishable by a
7 minimum term of imprisonment;
- 8 (2) The term of imprisonment must be less than
9 two years;
- 10 (3) The safety of the community would not be
11 endangered by the offender serving a sentence
12 in the community; and
- 13 (4) A conditional sentence would be consistent
14 with the fundamental purpose and principles
15 of sentencing as delineated in the *Criminal*
16 *Code*.

17 As a starting point, it must be noted that a
18 conditional sentence is not available on the impaired
19 driving conviction. That offence carries a mandatory
20 minimum sentence of not less than 90 days by virtue of
21 the offender's previous convictions. The Crown served
22 notice of its intention to seek the greater punishment
23 provided by Section 255(1) of the *Criminal Code*, so
24 the first criterion for a conditional sentence is not
25 met. But that does not rule out some combination of
26 actual custody, a conditional sentence, and even
27 probation.

28 Here we have three separate offences. In *R. v.*
29 *Alfred* (1998), 122 C.C.C. (3d) 213, the Ontario Court
30 of Appeal held that, when sentencing for more than one

1 offence, the Court cannot impose a conditional
2 sentence together with a sentence of actual
3 incarceration where the total sentence exceeds two
4 years less one day. This would violate the spirit, if
5 not the letter of the law, in Section 742.1(a) of the
6 *Criminal Code* which provides that a conditional
7 sentence can only be granted where the Court imposes a
8 sentence of imprisonment of less than two years.

9 In the subsequent case of *R. v. Ploumis*, [2000]
10 O.J. No. 4731 (Q.L.), the Ontario Court of Appeal went
11 on to hold that a conditional sentence can be imposed
12 together with a sentence of actual incarceration where
13 the total sentence does not exceed two years less one
14 day. It also held that such a total sentence can have
15 added to it a period of probation. The Court
16 supported this by reference to the Supreme Court of
17 Canada case of *R. v. R.A.R.* (2000), 140 C.C.C. (3d)
18 523.

19 In *R.A.R.*, the accused had been convicted of
20 sexual assault and two counts of common assault. The
21 trial judge imposed a sentence of one year
22 imprisonment plus these years probation on the sexual
23 assault count and fines on the two common assault
24 counts. The Court of Appeal set aside those sentences
25 and substituted consecutive conditional sentences of
26 six months, two months, and one month. Finally, the
27 majority in the Supreme Court of Canada restored the

1 one-year custodial sentence and probation order
2 imposed by the trial judge. So the final total
3 sentence in R.A.R. consisted of one year actual
4 incarceration plus probation and three months of
5 consecutive conditional sentences. And if one
6 examines the concluding paragraph of the judgment in
7 R.A.R., it is clear that the Supreme Court
8 contemplated that the sequence of sentences would be
9 one year in custody followed by the three-month
10 conditional sentence and then followed by the
11 three-year probation order. And it appears obvious as
12 well that the Supreme Court must have thought that in
13 a proper case a blended sentence combining actual
14 imprisonment with a conditional sentence and a period
15 of probation would be consistent with the principles
16 of sentencing.

17 In the case before me, my concerns are to
18 recognize the need for deterrence and denunciation,
19 which would, of course, be more directly served by a
20 custodial sentence, together with the goal of
21 restoring the offender to the community and placing
22 some structure to control his activities in the
23 community. These goals can better be achieved through
24 the restrictions of a conditional sentence together
25 with the conditions of a lengthy period of probation.
26 I emphasize the word "lengthy" because I think this
27 offender will require a lengthy period of

1 rehabilitation and control.

2 In *R. v. Proulx* (2000), 30 C.R. (5th) 1, the
3 Supreme Court held that the purpose of the conditional
4 sentencing option was to reduce reliance on
5 incarceration as a sanction and to increase the use of
6 restorative justice principles in sentencing. The
7 clear message is for restraint in the use of
8 incarceration. Conditional sentences are available
9 for all categories and types of offences (so long as
10 the statutory criteria are met). The requirement to
11 ensure that the safety of the community would not be
12 endangered by imposing a conditional sentence means
13 that consideration must be given to the risk posed by
14 the specific offender, not the theoretical risk posed
15 by not imposing a sentence that emphasizes general
16 deterrence. After all, a conditional sentence can
17 itself provide significant deterrence and
18 denunciation. The danger-to-the-community factor must
19 be assessed on the basis of the risk of the offender
20 reoffending and the gravity of the damage that could
21 ensue if he does reoffend.

22 On this basis there is here a significant risk of
23 this offender reoffending having regard to his past
24 history. This militates in favour of some period of
25 actual incarceration. Further, the fact that this
26 offender habitually drinks and drives regardless of
27 any disqualification imposed on him, and having regard

1 to the wide-spread national concern with drinking and
2 driving offences as a social problem, I think it is
3 fair to conclude that the objectives of deterrence and
4 denunciation are particularly pressing in this case.

5 As noted in *Proulx* (at para. 114):

6 Where punitive objectives such as
7 denunciation and deterrence are
8 particularly pressing, such as cases
9 where there are aggravating
circumstances, incarceration will
generally be the preferable sanction.

10 The other factor I must consider is the effect of
11 Section 718.2(e) of the *Criminal Code* which requires
12 that all available sanctions other than imprisonment
13 that are reasonable in the circumstances be
14 considered, with particular attention to the
15 circumstances of aboriginal offenders. In *R. v.*
16 *Gladue* (1999), 133 C.C.C. (3d) 385, and the subsequent
17 case of *R. v. Wells* (2000), 182 D.L.R. (4th) 257, the
18 Supreme Court of Canada acknowledged that, while
19 sentences for aboriginal offenders should not be
20 automatically reduced, Section 718.2(e) of the Code is
21 meant to recognize the unique circumstances of
22 aboriginal offenders, and thus there must be a
23 different approach to the sentencing of aboriginal
24 offenders because of the systemic or background
25 factors that play a part in bringing them before the
26 Court. The aim is to ameliorate the serious problem
27 of over-representation of aboriginal people in prison

1 and to encourage the use of restorative approaches to
2 sentencing.

3 In this case, the offender's personal history is
4 a poignant example of some of the deprivations that
5 impact on the lives of aboriginals. There is no doubt
6 that the wide-spread abuse of alcohol that has
7 devastated many aboriginal families and communities
8 played a role in this offender's current problems.
9 For these reasons, I feel that a restorative and
10 rehabilitative approach must be combined with the
11 punitive approach I described earlier.

12 Bearing in mind all of these factors, I have
13 concluded that the total sentence in this case should
14 combine the deterrence provided by a custodial
15 sentence, the rehabilitative measures provided by a
16 conditional sentence, and the longevity of a control
17 system provided by a further probation period.

18 I have taken into account the time spent in
19 pre-trial custody. Of the nine months of his
20 detention, three and a half months were allocated to
21 serving a sentence. The remainder I credit as the
22 equivalent of twelve months, and I take that into
23 account on the sentence I impose on the impaired
24 driving charge.

25 Stand up, Mr. Boline.

26 On the charge of impaired driving (count 2 of the
27 Indictment), I impose a sentence of actual

1 imprisonment of 12 months less one day. In addition,
2 you will be subject to a probation order for a period
3 of three years. The conditions of that probation
4 order will be as follows:

- 5 (a) You are to keep the peace and be of good
6 behaviour;
- 7 (b) You are to appear before the Court
8 if and when required to do so;
- 9 (c) You are to report to and be under the
10 supervision of a probation officer;
- 11 (d) You are to notify your probation officer of
12 your address and employment at all times;
- 13 (e) You are to abstain absolutely from the
14 consumption of alcohol or other intoxicating
15 substances and the consumption of drugs
16 except in accordance with a medical
17 prescription;
- 18 (f) You are to submit on demand of a peace
19 officer to provide a sample of your breath
20 for analysis;
- 21 (g) You are not to be in any place where alcohol
22 is served;
- 23 (h) You are to participate actively in any and
24 all counselling and treatment programs as
25 directed by your probation officer; and
- 26 (i) You are to perform 200 hours of community
27 service work as directed by your probation
officer.

22 Please note, Mr. Boline, that if you do not
23 comply with these conditions, that is a criminal
24 offence and you may be charged for that. Do you
25 understand?

26 THE ACCUSED: Yes.

27 THE COURT: If you commit an offence while

1 you are on probation, you may be charged for that and
2 the probation terms may be changed. Do you understand
3 that?

4 THE ACCUSED: Yes.

5 THE COURT: On the charges of driving while
6 disqualified and resisting arrest (counts 3 and 4 of
7 the Indictment), I impose a conditional sentence to be
8 served in the community of six months on each charge.
9 That is a total of 12 months which will be served
10 consecutive to the sentence on the impaired driving
11 charge.

12 The terms and conditions of the conditional
13 sentences will be as follows:

- 14 (a) You are to keep the peace and be of good
15 behaviour;
- 16 (b) You are to appear before the Court if and
17 when required to do so;
- 18 (c) You are to report to the conditional sentence
19 supervisor in Fort Rae within two days of
20 your release from prison, and to continue to
21 report when and as directed by your
22 supervisor;
- 23 (d) You are to remain within the Northwest
24 Territories unless prior permission is
25 obtained from your supervisor;
- 26 (e) You must notify your supervisor of any change
27 in address or employment;
- (f) You are to reside in the home of Yolanda
 Lafferty and you are to contribute to the
 care and support of that family;
- (g) You will be subject to a curfew whereby you
 must be in your residence between the hours
 of nine p.m. and six a.m. daily, subject only
 to:

- 1 (i) attendance at church or other
2 religious or cultural events;
- 3 (ii) medical emergencies;
- 4 (iii) participation in organized community
5 harvesting projects; or
- 6 (iv) participation in treatment or
7 counselling programs;
- 8 (h) You are to participate actively in any and
9 all counselling and treatment programs as
10 directed by your supervisor;
- 11 (i) You are to abstain absolutely from the
12 consumption of alcohol or other intoxicating
13 substances, and the consumption of drugs
14 except in accordance with a medical
15 prescription;
- 16 (j) You are to submit, on demand of a peace
17 officer, to provide a sample of your breath
18 for analysis;
- 19 (k) You are not to be in any place where alcohol
20 is served;
- 21 (l) You are to abstain absolutely from having in
22 your possession any weapon, firearm, or
23 ammunition except when participating on a
24 community hunting trip.

25 Are these conditions clear?

26 THE ACCUSED: Yes, Sir.

27 THE COURT: Do you understand them?

28 THE ACCUSED: Yes.

29 THE COURT: If you do not comply with any of
30 these conditions, you may be imprisoned to serve the
31 remainder of the conditional sentence. Do you
32 understand that?

33 THE ACCUSED: Yes.

34 THE COURT: In addition, pursuant to Section

1 259(2) of the *Criminal Code*, I hereby make an order
2 prohibiting you from operating a motor vehicle for a
3 period of ten years starting from the date of your
4 release from prison. Do you understand that?

5 THE ACCUSED: Yes.

6 THE COURT: You may have a seat. Now,
7 Mr. Boline, Counsel, by this sentence, combined
8 sentence, you, Mr. Boline, are going to be under some
9 form of control for the next five years of your life.
10 As I outlined from my interpretation of the Supreme
11 Court of Canada's judgment in *R.A.R.*, I think the
12 sequence of events will be actual imprisonment, the
13 conditional sentence period, and three years of
14 probation.

15 Now, you know, Mr. Boline, and I know, that you
16 will be out of the Yellowknife Correctional Centre
17 within a few months. The sentence of 12 months less a
18 day, unless you do something very wrong, you will be
19 released well before the end of that time. And I hope
20 that your family, Miss Lafferty, will understand that
21 and will hang in there until you are released, because
22 it won't be that long until you will be back home.
23 And then it is up to you. Essentially, over the last
24 12 years you have wasted most of your time in prison
25 for very serious crimes. I see and I have read how
26 much support there is for you. You have a very big
27 opportunity right now, Mr. Boline. I'm sure you

1 understand. And I suspect that your community, your
2 home community, the people there, and your family
3 members, with the support of Miss Lafferty, are
4 willing to give you a final chance. So it is up to
5 you from now on. All the talk that was put in the
6 pre-sentence report about how you want to change your
7 ways, how you want to get treatment and counselling, I
8 took seriously. So this is your chance. Don't mess
9 it up.

10 Now, Counsel, there is going to be a lot of
11 paperwork that the clerk will have to prepare that Mr.
12 Boline will have to sign. The conditional sentence
13 orders, the probation order, and the driving
14 prohibition order. So I wonder if he can be kept here
15 for the next little while, down in custody, whatever
16 arrangements there are, until the clerk has the
17 paperwork ready and then he can be brought up to sign
18 them. He can sign them in front of the clerk. And,
19 Mr. Boyd, I wonder, if it is not imposing on you too
20 much, if you could stay around until the paperwork is
21 ready. Or maybe the clerk can call you and ask you to
22 come back. I think it would assist the clerk if you
23 were here to explain the paperwork to your client so
24 he has a complete understanding.

25 MR. BOYD: Yes, I'll do that.

26 THE COURT: Anything else?

27 MR. O'HALLORAN: Just one clarification. Your

1 Honour did not a time to impose a time to complete or
2 a rate of completion of the CSO.

3 THE COURT: The community service work in the
4 probation order will be complete within the first 18
5 months.

6 MR. O'HALLORAN: I think the rest is clear.


7 THE COURT: Thank you. Again, thank you,
8 Counsel.

9 Mr. Boline, I must say, and I meant to say this
10 at the conclusion of the trial, your counsel did and
11 said everything possible on your behalf. So I thank
12 Mr. Boyd as well for his efforts. Thank you
13 gentlemen. We're closed.

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Certified Pursuant to Rule 723
of the Rules of Court



Jane Romanowich, CSR(A)
Court Reporter