

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- and -

DELROY NICHOLAS MORGAN

Transcript of the Oral Reasons for Sentence delivered
by the Honourable Justice L.A.M. Charbonneau, sitting
at Yellowknife, in the Northwest Territories, on
April 13th, A.D. 2007.

APPEARANCES:

Ms. M. McGuire: Counsel for the Crown

Ms. D. Keats:

Ms. P. Taylor: Counsel for the Accused

(Charge under s. 268 Criminal Code)

1 THE COURT: Delroy Morgan was convicted
2 after trial on a charge that on July 21st, 2006,
3 here in Yellowknife, he committed an aggravated
4 assault on N.D. by wounding him. In
5 my Reasons for Judgment convicting Mr. Morgan I
6 referred at some length to the evidence adduced
7 at the trial. I won't refer to it in as much
8 detail for the purposes of these Reasons for
9 Sentence, but I will summarize the general
10 circumstances of the commission of this offence.

11 This unfortunate incident took place last
12 summer in the early morning hours in an area
13 outside the Ravens' Pub, which is a drinking
14 establishment in Yellowknife. Near closing time
15 the lights in the pub had gone out and customers
16 had started being ushered out of the bar. A
17 large number of people found themselves in the
18 parking lot area that is between the Ravens' Pub
19 and the Corner Mart.

20 A verbal argument erupted between two groups
21 of people. It seems, from the evidence, that
22 this argument involved one group of Yellowknife
23 residents and one group of Edmonton residents.
24 This verbal argument eventually escalated to a
25 physical fight.

26 The evidence adduced at trial did not paint
27 an entirely clear picture of all of the details

1 of what happened during that fight. That is not
2 surprising. Most of the witnesses who described
3 what they saw had consumed alcohol, things
4 happened in a short time frame and the whole
5 situation appears to have been quite chaotic. As
6 a result, there are some aspects of exactly what
7 transpired that were not, in my estimation,
8 established all that clearly.

9 What is clear is that Mr. D. had not
10 yet exited the bar when the fight broke out, but
11 when one of his friends came back inside bleeding
12 from the face Mr. D. ran out and started
13 fighting with people. He was described by one of
14 the witnesses as very angry. It is clear he made
15 the decision to become involved in the "action",
16 for lack of a better word, that had erupted in
17 the parking area between the Raven Pub and the
18 Corner Mart.

19 Mr. D. first fought with Jeffrey
20 Morris, a friend of Mr. Morgan's. He punched him
21 and eventually threw him to the ground. Right
22 after this something caused him to turn around
23 and Mr. D. saw Mr. Morgan in front of
24 him. They started fighting and wrestling.

25 I concluded at the end of the trial that the
26 Crown had established beyond a reasonable doubt
27 that during the course of that fight Mr. Morgan

1 caused the two wounds to the back of Mr.
2 D.'s head. The trial evidence left me
3 with a reasonable doubt about how other wounds
4 suffered by Mr. D. were inflicted and,
5 more importantly, by whom.

6 There was also evidence adduced at the trial
7 from which I drew the inference that a short time
8 before his altercation with Mr. D. Mr.
9 Morgan was involved in another altercation. A
10 witness called by the defence describes seeing a
11 person, who I found to be Mr. Morgan, being
12 assaulted by two others. She observed this from
13 being parked across the street near the Reddi
14 Mart. There is no evidence about how that
15 situation ended or how Mr. Morgan found himself
16 facing Mr. D. closer to the back of the
17 Corner Mart sometime after.

18 Over the years, this Court has dealt with a
19 number of cases involving deaths resulting from
20 wounds inflicted during the course of a physical
21 fight between intoxicated people. It is a matter
22 of pure luck that the injuries to Mr. D.
23 were not more serious and were not fatal. The
24 consequences for Mr. Morgan today, obviously,
25 would have been much more significant if that had
26 been the case. So although I am sure it may
27 sound odd to both Mr. D. and Mr. Morgan

1 to hear me say that they were lucky in this
2 event, the fact is that they are both very
3 fortunate that this did not lead to much more
4 tragic results.

5 I take it from the comments Mr. Morgan made
6 when he addressed the Court this morning that he
7 realizes the seriousness of this event and that
8 it could have led to far worse consequences.

9 Sentencing is never an easy process, because
10 it requires balancing a number of factors, and
11 those factors sometimes point in different
12 directions. The principles of sentencing are set
13 out in the Criminal Code, in particular at
14 section 718, 718.1 and 718.2. I am not going to
15 refer to each and every one of these principles
16 or quote from the sections, but I have considered
17 all of them.

18 There was evidence that the argument that
19 led to this series of fights was an argument
20 about whether Edmonton is better than Yellowknife
21 or whether Yellowknife is better than Edmonton.
22 If that was all that led to all of this, it can
23 only leave a person shaking their head in dismay.
24 But the Court often hears about those kinds of
25 events, often times in circumstances where people
26 are under the influence of alcohol or other
27 substances, and, unfortunately, I am sure this

1 case will not be the last one where the Court has
2 to deal with events such as the ones that
3 happened last July.

4 In fact, a number of the cases filed by the
5 Crown show other examples from this jurisdiction
6 and from elsewhere where people have been
7 seriously injured in fights that started over
8 nothing or over things that are entirely silly or
9 stupid.

10 I was struck by the comment of one of the
11 witnesses during the trial who, in describing the
12 events of that night, said something along the
13 lines that this was, quote, "Just a typical
14 night, a bunch of people fighting in a group,"
15 unquote. I say quote, but they may have been
16 just words to that effect.

17 If this type of brawl is considered or
18 described as typical of bar closing time, it
19 speaks volumes about how far we still have to go
20 as a supposedly civilized society. That kind of
21 senseless violence must be deterred and denounced
22 firmly by the courts. Sending the message that
23 this conduct will not be tolerated by society and
24 will be met with a meaningful response is an
25 important sentencing objective. Discouraging Mr.
26 Morgan himself, but also others, from engaging in
27 this kind of senseless behaviour is an important

1 sentencing objective.

2 Rehabilitation can never be overlooked in a
3 sentencing. If a sentence can contribute to help
4 a person in their rehabilitation, help them
5 become law-abiding and productive, then obviously
6 that serves the interests of the offender, but it
7 serves the interests of society as a whole.

8 Mr. Morgan is still a very young man. He is
9 in his early 20s. So his rehabilitation is a
10 factor that must be taken into account. But in a
11 case with this level of seriousness,
12 rehabilitation does take second place to other
13 sentencing objectives that I have referred to,
14 and the law on that is clear.

15 During counsels' submissions this morning, I
16 heard two very different characterizations of the
17 offence committed by Mr. Morgan and different
18 submissions about his level of blameworthiness
19 for that offence. Crown counsel has described
20 this as an unprovoked attack on an unarmed man.
21 By contrast, defence counsel has asked me to draw
22 inferences that Mr. Morgan's level of
23 blameworthiness for this offence is at the lower
24 end of the spectrum.

25 Strictly speaking, the Crown is not entirely
26 wrong. Mr. D. was not involved in any
27 altercation with Mr. Morgan before this happened,

1 he did not provoke him and he was unarmed. But,
2 with respect, I find that the characterization
3 does not do justice to the full context of how
4 this altercation came to be.

5 Mr. D. chose to go outside the bar
6 and get himself involved in this fight. No one
7 had attacked him. He decided, as I said already,
8 to jump into the action, as it were. He was far
9 from an innocent bystander. He was quite willing
10 and able to engage in physical altercations, and
11 when he turned and found himself facing Mr.
12 Morgan, on my understanding of the evidence, they
13 both engaged into this fight.

14 I am not convinced the evidence was all that
15 clear that Mr. Morgan immediately wounded Mr.
16 D. to the back of the head. The fight
17 moved some distance before they were both against
18 that fence behind the Raven Pub, and my
19 recollection of the evidence is that Mr.
20 D. was not that clear as to when he felt
21 himself being stabbed in the back of the head.
22 He was very clear that it was during his fight
23 with Mr. Morgan, but I did not understand his
24 evidence to be clear that it was right at the
25 beginning of their altercation. So I do have a
26 bit of a problem with how the Crown has
27 characterized things.

1 I also have a bit of a problem with how
2 defence characterized Mr. Morgan's level of
3 blameworthiness. Whether Mr. Morgan was
4 intervening in the fight between Mr. D.
5 and Jeffrey Morris really does not matter all
6 that much. Mr. Morgan was not an innocent
7 bystander either. He had been in another fight,
8 one where it seems at least for a time he was
9 outnumbered. But somehow, when that altercation
10 ended, rather than leaving the area or staying
11 out of any further fighting, somehow Mr. Morgan
12 got himself to the area near the back of the
13 Corner Mart and chose to essentially confront Mr.
14 D..

15 The evidence, as I understand it - and on
16 this there really only is Mr. D.'s
17 evidence - was that they started fighting pretty
18 much right after Mr. D. turned around.
19 Mr. D. testified that he put his hand on
20 Mr. Morgan's shoulder. He admitted that he was
21 trying to get a good swing at him. But he also
22 said this was a physical fight; they were both
23 using their strength.

24 So I do not agree that the inference can be
25 drawn that Mr. Morgan's actions were more
26 defensive than aggressive. In my view, the most
27 significant element of blameworthiness in this

1 case quite simply is the introduction of a weapon
2 in what was otherwise a fist fight.

3 Fist fights are not a good thing, but the
4 introduction of a weapon in what is otherwise a
5 fist fight is a very, very serious thing.
6 Whatever was used to cause these wounds, Mr.
7 Morgan had to have it on him at the start of that
8 altercation with Mr. D.. He chose to use
9 it and he chose to use it more than once. He
10 used it on Mr. D.'s head. That is very
11 serious conduct, and, in my view, even when
12 looked at in consideration of the overall context
13 of these events, it remains very serious.

14 The introduction of a weapon in a fight
15 escalates things to a considerable degree. The
16 risk of serious and potential lethal injury rises
17 dramatically when a weapon is introduced and so
18 does the level of blameworthiness of the person
19 who chooses to introduce it.

20 Defence counsel has asked that I take into
21 account the nature of the wounds in examining the
22 blameworthiness of Mr. Morgan for this offence.
23 Clearly, the injuries could have been more
24 serious. I am not certain how much credit Mr.
25 Morgan can receive for that, though. He did
26 wound Mr. D. in the head. As I have
27 already mentioned, the fact the injury was not

1 much more serious is at least in part a matter of
2 pure luck. But I recognize, as I have said, that
3 the injuries could have been more serious and
4 that Mr. Morgan must be sentenced for what he
5 actually did and not for the various things that
6 might or could have happened.

7 In reviewing the other factors, more
8 specifically the aggravating factors on this
9 case, I have considered the fact that Mr. Morgan
10 has a criminal record, which was filed as an
11 exhibit. It does not include convictions for
12 crimes against persons, except for a dated Youth
13 Court conviction. So it is of limited relevance
14 to this hearing, as Crown counsel fairly
15 mentioned, but the existence of that record means
16 Mr. Morgan does not get the benefit or mitigating
17 impact of coming before the Court as a first
18 offender. I do note that he has never before
19 been sentenced to a jail term.

20 The second aggravating factor is the fact
21 that Mr. Morgan was on a recognizance at the time
22 of this event. A copy of the recognizance was
23 also filed as an exhibit. It shows that Mr.
24 Morgan was on release on charges of assault with
25 a weapon, assault causing bodily harm and
26 mischief.

27 The fact that someone is out on bail when

1 they commit a crime is an aggravating factor.
2 That principle has been recognized in many cases,
3 including those included in the Crown's book of
4 authorities on that issue; cases such as
5 R. v. Lau and R. v. Mircha and other cases. So
6 it is another aggravating factor in this case.

7 Turning to mitigating factors, there is very
8 little by way of mitigation in this case.
9 Clearly, Mr. Morgan is entitled to be credited
10 for the time he has spent in pre-trial custody.
11 He has been in custody since a few days after the
12 incident, which works out to be just under nine
13 months.

14 A sentencing Judge has discretion to decide
15 how much credit should be given for time spent on
16 remand. Defence counsel has asked that more
17 credit than the usual two-for-one ratio be given
18 in this case because Mr. Morgan did not have
19 access to schooling while he was on remand
20 because of the status he was under. I have
21 considered this argument, but in my view this is
22 not a case where Mr. Morgan should receive any
23 more than the usual credit for his remand time.

24 Mr. Morgan spoke when he was given an
25 opportunity to do so and said he apologized to
26 Mr. D. for this event. He said he wished
27 Mr. D. was here so he could look him in

1 the eye and apologize to him. He said no one
2 should have to go through what Mr. D.
3 went through. Mr. Morgan is right about that. I
4 accept that he is sincere in his apology and that
5 he realizes the seriousness of what he has done,
6 even though he may still have some difficulty
7 accepting that he, in fact, did it.

8 Crown counsel has filed a number of cases
9 from this jurisdiction and others to assist the
10 Court with arriving at a fit sentence in this
11 case. Of course, no two cases are the same.
12 That is one of the challenges of sentencing.
13 There are many variables to each case and rarely
14 do the circumstances of one case match perfectly
15 the circumstances of another case. But I have
16 reviewed the ones that were filed and I have
17 taken into consideration the principles that were
18 applied in those cases. I have reviewed the
19 cases from this jurisdiction, R. v. Itsi,
20 R. v. Green, R. v. Gruben and R. v. Gonzales, and
21 I have also considered the other cases that were
22 included in the Crown's book of authorities.

23 I have given some consideration to the
24 MacLeod case that was filed by defence counsel
25 where a six-month sentence was imposed in a
26 stabbing case. I must say I find the
27 circumstances of that case very distinguishable

1 from the situation here. The incident in that
2 case happened after the victim and another person
3 went, uninvited, inside the house where the
4 accused and the home owner were sleeping. The
5 stabbing occurred while the victim was in the
6 process of assaulting the owner of the home. The
7 fact that the eventual victim had basically
8 broken and entered a dwelling-house at night
9 surely must have played a significant part in the
10 ultimate sentence imposed in that case.

11 The Crown's position is that an appropriate
12 sentence for this offence is between four and
13 five years and that I should deduct from this the
14 credit to be given for the remand time. That
15 would result in a further sentence between two
16 and a half years and three and a half years.

17 Defence counsel has asked me to consider a
18 much lower range of 18 months to two years less a
19 day minus credit to be given for the remand time.
20 This would translate, at the low end, to a
21 sentence of time served or, at the high end, to a
22 sentence of a further six months' imprisonment.
23 In my respectful view, that range falls far short
24 of what is required to reflect the seriousness of
25 this offence and address the other sentencing
26 principles I must address.

27 In my view, and bearing in mind that each

1 case must always be examined on its own specific
2 facts, the general range that emerges from the
3 case law for crimes of this nature is between 30
4 months and five years.

5 In arriving at a fit sentence in this case,
6 the challenge is to impose a sentence that will
7 send the appropriate denunciatory message about
8 this kind of conduct, while not crushing an
9 offender who is still a young man and who, I
10 accept from the e-mail from his father and
11 brother which has been filed, continues to have
12 the support of his family.

13 After much consideration, I am not satisfied
14 that the imposition of a sentence as high as what
15 the Crown seeks is necessary to achieve the
16 purposes of sentencing. However, even exercising
17 some leniency, even taking into account Mr.
18 Morgan's youth, the fact that this will be the
19 first time he is sentenced to jail and the fact
20 that a Court should never sentence a person to
21 more time than is needed to address sentencing
22 principles, it is my duty to impose a sentence of
23 some significance to him today.

24 Mr. Morgan, please stand. Mr. Morgan, I
25 have concluded that a fit sentence for the crime
26 that you have committed, if you had not spent any
27 time in pre-trial custody, would have been a

1 sentence of three and a half years. So because
2 of the time you have spent on remand, which I
3 give you credit for, I am sentencing you today to
4 a further term of imprisonment of two years. You
5 may sit.

6 I am required by law, as this is a primary
7 designated offence and no submissions have been
8 made otherwise, to issue a DNA order, and I will
9 issue such an order.

10 I am also going to make a firearms
11 prohibition order pursuant to section 109 of the
12 Criminal Code, which is to expire 10 years after
13 Mr. Morgan's release. Any firearms that Mr.
14 Morgan owns will have to be surrendered, I am
15 going to say, within 14 days. The situation is
16 that he is here and whatever he owns would be
17 somewhere else, if there is anything, so he will
18 have some time to make arrangements.

19 Given the fact that I am imposing today a
20 jail term of some significance, I will not make
21 an order for payment of the victims of crime
22 surcharge, as, in my estimation, that would
23 create a hardship.

24 Finally, I will make an order for the return
25 of the exhibits. Ms. McGuire, I am inclined to
26 say to the RCMP at the expiration of the appeal
27 period, unless you have another suggestion

1 MS. MCGUIRE: No, that's fine. Thank you.
2 THE COURT: Okay. So at the expiration of
3 the appeal period.
4 Have I overlooked anything from the
5 perspective of the Crown?
6 MS. MCGUIRE: No. Thank you.
7 THE COURT: Have I overlooked anything
8 from the perspective of the defence?
9 MS. TAYLOR: Nothing, Your Honour.
10 THE COURT: All right. I want to thank
11 both counsel for their submissions.
12 Mr. Morgan, I hope that after you have
13 finished serving your sentence you will be able
14 to follow through on what you said this morning
15 and that we and other courts will not see you
16 again.
17 We will close court.
18
19
20
21 Certified to be a true and
22 accurate transcript pursuant
23 to Rules 723 and 724 of the
24 Supreme Court Rules.
25 _____
26 Jill MacDonald, CSR(A), RPR
27 Court Reporter