

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- vs. -

BRENT RICHARD NORN

Transcript of the Reasons for Sentence by The Honourable
Justice L.A. Charbonneau, at Hay River in the Northwest
Territories, on June 18th A.D., 2007.

APPEARANCES:

Mr. M. Himmelman: Counsel for the Crown
Mr. B. Norn: Counsel for the Accused

Charge under s. 255(2) Criminal Code of Canada

1 THE COURT: I am ready to deliver my
2 sentence, Mr. Norn. I wish I could look at you
3 the whole time that I am speaking but I have to
4 look at my notes. But I have given this a lot of
5 thought since we adjourned this morning so I hope
6 that what I am about to say will make sense to
7 you.

8 Mr. Norn has pleaded guilty to a charge of
9 impaired driving causing bodily harm. On October
10 15th, 2006, after a drinking party, Mr. Norn made
11 a very very bad choice. That choice would have
12 been a criminal offence even if Mr. Norn had made
13 it home without incident. But unfortunately that
14 choice did have terrible consequences and this
15 afternoon it is my difficult responsibility to
16 decide what sentence should be imposed on
17 Mr. Norn as a result of this event. Nothing that
18 I can do this afternoon can undo the harm that
19 was done. All that I can do is impose a sentence
20 that will adequately reflect the seriousness of
21 what happened and try to uphold the sentencing
22 principles and objectives that are set out in the
23 Criminal Code.

24 The facts were referred to in some detail
25 this morning when the Agreed Statement of Facts
26 was filed and I will not repeat them all but I do
27 want to summarize them.

1 Mr. Norn and Mr. Elleze were at the same
2 drinking party in the early morning hours on
3 October 15th, 2006. Mr. Elleze left on foot and
4 a short time later Mr. Norn decided to leave too.
5 People tried to prevent him from driving because
6 he was intoxicated but he did not listen to those
7 people and he did leave in a truck. He drove
8 some distance and according to a witness he was
9 "travelling pretty fast" on a poorly-lit road
10 where the speed limit is 30 kilometers per hour.
11 He hit Mr. Elleze and he did not stop.

12 Mr. Elleze was later found in the ditch and in
13 the statement that Mr. Norn later provided to the
14 police, he admitted that he hit something on the
15 road, he didn't stop because he was scared, and
16 then he drove home and told his common-law spouse
17 "I hit something, I hit somebody".

18 About three hours after the incident,
19 Mr. Norn submitted to a breathalyzer test. One
20 sample of breath provided a reading of 230
21 milligrams of alcohol in 100 millilitres of blood
22 and the other one provided a reading of 210
23 milligrams of alcohol in 100 millilitres of
24 blood, and that is close to three times the level
25 that constitutes a criminal offence. Mr. Elleze,
26 through luck only in my view, was found in the
27 ditch shortly after he was hit and he suffered

1 very serious injuries and at this point I will
2 refer to paragraph 19 of the Agreed Statement of
3 Facts which says that the injuries included a
4 lacerated liver, a contusion of the kidney, a
5 basal skull fracture, bleeding in the thorax, a
6 collapsed lung, multiple rib fractures, and two
7 fractured femur bones. He was resuscitated, he
8 was sent to Alberta, he has been undergoing
9 treatment for several months, and the Agreed
10 Statement of of Facts says that he is now a
11 paraplegic and is expected to require the
12 assistance of a wheelchair for the rest of his
13 life.

14 As Crown counsel has mentioned during his
15 submissions, the Criminal Code sets out the
16 objectives and fundamental purpose of sentencing.
17 And I just want to refer again to those
18 objectives which are referred to, among other
19 places, in Section 718 of the Criminal Code.

20 The objectives of sentencing include to
21 denounce unlawful conduct, to deter the offender
22 and other persons from committing offences, to
23 separate offenders from society when necessary,
24 to assist in rehabilitating offenders, to provide
25 reparations for harm done to victims or to the
26 community, and to promote a sense of
27 responsibility in offenders an acknowledgement of

1 the harm done to victims and to the community.

2 There are other principles in the Criminal
3 Code as well.

4 A sentence must be proportionate to the
5 gravity of the offence and the degree of
6 responsibility of the person who committed the
7 offence. Sentences should be similar to
8 sentences imposed for similar offenders
9 committing similiar offences. All available
10 sanctions have to be considered; that is, all
11 sanctions other than imprisonment with particular
12 attention to circumstances of aboriginal
13 offenders. And an offender should not be
14 deprived of liberty if less restrictive sanctions
15 are appropriate.

16 In this case the Crown argues that a
17 significant jail term must be imposed and defence
18 counsel essentially concedes as well that a
19 significant jail term has to be imposed and that
20 is, in my view, a very realistic position on the
21 part of defence counsel.

22 The primary, and by this I mean the most
23 important, sentencing objectives in this case are
24 denunciation and deterrence. That is not to say
25 that Mr. Norn's rehabilitation and his personal
26 circumstances are not important, because they
27 are. But the Court's main concern has to be that

1 this sentence discourage others from making this
2 bad destructive choice to drive when they are
3 impaired, to discourage Mr. Norn himself from
4 ever making that choice again, and to express
5 society's condemnation of this behaviour. In
6 other words, to demonstrate that society does not
7 accept this kind of behaviour.

8 One wonders what it will take to stop people
9 from drinking and driving. For years there have
10 been ads on television, on the radio, articles in
11 newspapers, that talk about the tragic things
12 that happen as a result of drinking and driving.
13 There are campaigns, there are marches, there are
14 people who give public talks, people who go to
15 the schools, Judges who impose sentences and
16 talk, much in the way that I am doing now, about
17 the devastating impacts of drinking and driving,
18 the ruined lives and the scars that it leaves
19 that can never completely heal. And yet the
20 carnage on the roads continues. People do get
21 behind the wheel of a car or a truck and they
22 kill or hurt other people very badly when they
23 are drunk and they are driving. Sometimes they
24 hurt little children. Sometimes they hurt little
25 children's mothers or fathers or both. Sometimes
26 they kill entire families. Sometimes, as in this
27 case, they hurt a life-long friend. When it

1 happens, everyone is sorry. Everyone sees the
2 waste and after the fact everyone can see how
3 preventable it was. And yet, probably every day,
4 somewhere people continue to make the bad choice
5 and the carnage continues. The Court has the
6 responsibility, then, to continue to try to deter
7 and denounce this conduct and unfortunately,
8 again, this is what I have to do today.

9 I have heard about Mr. Norn's personal
10 circumstances a little bit this morning. I have
11 heard that he has a stable relationship, two
12 children, and a steady work history. Unlike many
13 people who come before the Court, he has some
14 support. He has a lot to live for, a lot to look
15 forward to, even today as he faces a lengthy jail
16 term. His lawyer has said that Mr. Norn wants
17 this to be a turning point, to change his life
18 for the better, and I sincerely hope that that
19 will be the case. Obviously he has some skills
20 and he has some positive things in his life and
21 if he can stay focused on those during his
22 sentence and after, then maybe he can turn his
23 life around and be, from now on, a productive
24 member of society.

25 Mr. Elleze has prepared a Victim Impact
26 Statement. It was prepared last March, and it
27 has been made an exhibit in these proceedings.

1 Mr. Elleze has extended Mr. Norn an immense gift.
2 He says that he forgives him. Despite the pain
3 that he experiences in his legs, despite all the
4 efforts towards rehabilitating his body, despite
5 the terrible consequences for him and the
6 uncertainty about his own future, he has forgiven
7 him. It is an awesome gift and I hope that
8 Mr. Norn realizes and will prove worthy of this
9 forgiveness.

10 Every sentence must take into account legal
11 principles and the circumstances of the offence
12 and the circumstances of the offender.

13 There are mitigating factors in this case.

14 First, there is the guilty plea which the
15 Crown fairly treats as an early guilty plea. I
16 accept what has been said that Mr. Norn wanted to
17 plead guilty from the very beginning in these
18 proceedings. I completely accept that. It is
19 consistent with his behaviour when the police
20 spoke to him that very night. It is consistent
21 with his warned statement when he admitted what
22 he did. The police had a fairly strong case
23 early on identifying the vehicle but it was not
24 Mr. Norn's vehicle and he could have tried to
25 blame someone else or deflect the attention from
26 himself. He did not do that and I accept that.
27 Therefore, his guilty plea entitles him to the

1 maximum credit that he could get for it.

2 I also accept without hesitation that he is
3 truly remorseful about what happened and that the
4 letter that was filed this morning is a sincere
5 expression of how he feels about what he did to
6 his friend and also the impact that this will
7 have on his own family.

8 There are also aggravating factors, and I
9 refer to them in no particular order.

10 The first is the fact that, on the evidence
11 that I have, Mr. Norn was highly intoxicated
12 which is evidenced by the readings from the
13 breathalyzer tests. The Criminal Code says
14 specifically that at those levels this is an
15 aggravating factor but even if the Criminal Code
16 did not say that, these are very high readings
17 and I would consider them aggravating even if the
18 Code didn't specifically compel me to do so.

19 The second aggravating factor of course is
20 the significant harm done to the victim. In my
21 opinion these were dreadful injuries. Of course
22 they could have been worse. We can always think
23 of a worse scenario but they were significant
24 life-threatening and ultimately life-altering
25 injuries.

26 The third aggravating factor that I see in
27 this case could be grouped or referred to

1 generally as a high level of blameworthiness.
2 What I mean by that is in some ways the fact that
3 Mr. Norn was driving fast, the fact that he left
4 even when people tried to stop him, are things
5 that make this more serious. But the aspect of
6 this that is even more significant, I think, is
7 the fact that he did not stop after the accident.
8 This is something that I think is important for
9 Mr. Norn to realize. The harsh reality is that
10 Mr. Elleze ended up in the ditch and if there had
11 been no one come along shortly thereafter, he
12 could have easily died in that ditch. That is
13 one of the things that can happen when people do
14 not stop after an accident.

15 The fourth aggravating factor of course is
16 the criminal record. It's not a long record but
17 it is relatively recent. Mr. Norn received a
18 fine for a drinking and driving conviction.
19 Because the sentence imposed was a fine, and no
20 one has made specific submissions on this but I
21 can infer that this was probably a relatively
22 routine case with no accident, no one getting
23 hurt, I expect that probably the Judge who
24 sentenced Mr. Norn that day may have talked about
25 some of the consequences that can arise when
26 people drink and drive. So in that sense that
27 prior record is aggravating. I am also concerned

1 about the more recent conviction that Mr. Norn
2 has for failing to comply with the release
3 condition of not drinking while he was awaiting
4 disposition on this very serious matter.
5 Mr. Norn recognizes that he has a problem with
6 alcohol and recognizes that that problem played a
7 part in this tragic event which obviously it did.
8 It is disturbing that he would continue to drink
9 even in the face of this tragedy and hopefully
10 his resolve now will remain strong even after he
11 gets out of jail and he can continue on a more
12 healthy path for the rest of his life.

13 The cases that were filed by the Crown are
14 helpful in establishing the range of sentences
15 that are imposed in cases like this and some
16 portions of these cases were referred to by Crown
17 counsel this morning.

18 I noted in particular that many of these
19 cases refer to R. v. Horen 58 C.C.C. (3d) 418.
20 That's a case from the Alberta Court of Appeal
21 which, among other things, talks about the fact
22 that consequences are relevant in sentencing for
23 these kinds of cases, that deterrence is served
24 by warning drivers that they are taking an
25 unacceptable chance when they drink and drive and
26 that the risk they take, among others, is if they
27 injure someone or kill someone that the penalty

1 will be increased. So the cases are helpful to
2 set out these principles, they are helpful to set
3 out the range, but they do more than that. They
4 illustrate graphically the carnage that I talked
5 about earlier in my comments this afternoon. The
6 prosecutor referred to the facts in some of these
7 cases, and I will not belabour them, but I just
8 want to refer to them briefly in part for
9 Mr. Norn's benefit.

10 Martens, 13-year-old girl walking her
11 bicycle across the street, struck by a drunk
12 driver, very serious injuries, now in a
13 wheelchair.

14 Bockman, a young man on a motorcycle struck
15 by a drunk driver, motorcycle and young man catch
16 on fire, people have to put them out, serious
17 burns, amputated fingers. Another wrecked life.

18 Stewart, father and son injured by a drunk
19 driver. Family is completely devastated.

20 McLean, 77-year-old man walking his dog a
21 block from his house, otherwise healthy, serious
22 injuries. We do not know but probably at 77
23 years old that old man probably had a harder time
24 recovering.

25 So this happens. It happens a lot
26 everywhere and now it has happened to Mr. Elleze
27 and Mr. Norn is responsible for it. He is sorry,

1 I accept that, but probably Mr. Martens,
2 Mr. Brockman, Mr. Stewart, and Mr. McLean were
3 very sorry too.

4 A sentence should never be longer than what
5 is needed to achieve the purpose and goals of
6 sentencing and I do take into account what I have
7 heard about Mr. Norn and I would think that if he
8 truly wants to deal with his drinking problem and
9 other issues in his life and if he can help maybe
10 explain to others the damage that can come from
11 drinking and driving, maybe something good can
12 come out of this awful event. I believe, as I
13 have said already a few times, that Mr. Norn is
14 sorry for what he did. Mr. Elleze has shown his
15 character by forgiving Mr. Norn and one way
16 perhaps that Mr. Norn can show his character is
17 to continue to take responsibility for what has
18 happened and deal with these issues and complete
19 this sentence and essentially do what you have
20 said earlier this afternoon that you want to do
21 which is to move on with your life in a positive
22 way. Your wife is here supporting you and that
23 says a lot about her character. And, as I said
24 before, many people stand in this courtroom to be
25 sentenced completely alone with absolutely no one
26 who takes the time to support them. So even
27 though I am sure this is a hard day, in some ways

1 you should count your blessings.

2 Given the seriousness of this incident, this
3 crime, I could impose the sentence of three years
4 that the Crown is asking. It certainly is in the
5 range. Given what I have heard about you, given
6 your guilty plea for which I do give you the
7 maximum credit that I can, I have decided that I
8 do not need to impose the maximum sentence. By
9 this I mean the sentence that the Crown is
10 asking, I will exercise some restraint, but I am
11 unable to impose a sentence as low as what your
12 lawyer is asking simply because of the
13 seriousness of the consequences of your actions.
14 And I think a sentence higher than two years is
15 required to send the message that needs to sent
16 and hopefully will one day get through and put an
17 end to these kinds of offences that cause so much
18 harm to so many people.

19 So stand up please, Mr. Norn.

20 For this offence, Mr. Norn, I am going to
21 sentence you to 30 months imprisonment. I am
22 also going to impose a driving prohibition. The
23 maximum is ten years in addition to the jail term
24 so what I am going to do is I am going to, given
25 your work history will have more of an impact on
26 you, I am going to make it a seven and a half
27 year driving prohibition but starting today which

1 means of course that some of it will pass while
2 you are in jail and depending on how much time
3 you actually spend in jail it will probably work
4 into, I don't want to guess how much time you are
5 going to spend in jail but it will be a
6 significant driving prohibition but it is
7 required under the circumstances.

8 Please sit down.

9 I am also going to make a DNA order, this is
10 a secondary designated order. The Crown has
11 asked for the order, defence has not argued
12 against it, and given Mr. Norn's attempt to, well
13 the fact that he fled the scene, in my view it is
14 in the best interests of the administration of
15 justice to make such an order.

16 Having regard to the length of jail term
17 that I have imposed and Mr. Norn's family
18 circumstances, I will not make the order for
19 payment of a Victims of Crime surcharge.

20 Is there anything else required, counsel?

21 MR. HIMMELMAN: Nothing further from the
22 Crown, Your Honour.

23 THE COURT: Mr. Hansen, from you?

24 MR. HANSEN: No, ma'am.

25 THE COURT: Then I want to thank both
26 counsel for your very helpful submissions.

27 Mr. Norn, I wish you the best of luck when you

1 have completed your sentence.

2 THE ACCUSED: Thank you.

3 THE COURT: We will close court.

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Lois Hewitt, CSR(A), RPR, CRR
Court Reporter

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