

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- vs. -

WALTER SANFORD NAEDZO

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Transcript of the Reasons for Sentence by The Honourable  
Justice J.E. Richard, at Behchoko in the Northwest  
Territories, on August 28th A.D., 2007.

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APPEARANCES:

Ms. C. Gagnon:

Counsel for the Crown

Mr. M. Hansen:

Counsel for the Accused

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Charge under s. 255(3) Criminal Code of Canada

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THE COURT:

Today, it is the Court's

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responsibility to impose an appropriate sentence

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upon Walter Naedzo for a drinking and driving

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offence which occurred a year ago here in

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Behchoko. There were tragic consequences to

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Mr. Naedzo's crime, and he will have to live with

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that for the rest of his life. But today is the

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time to bring to a resolution, or a conclusion,

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the legal proceedings, which resulted from the

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commission of this crime, by imposing an

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appropriate sentence, as Mr. Naedzo has pleaded

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guilty to this crime and says that he wants to

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take responsibility for what he has done.

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Mr. Naedzo is 40 years of age and is

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originally from Deline, however he has lived in

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this community of Behchoko for the past 13 years

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or so with his common-law wife Beatrice Quitte.

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Mr. Naedzo has a Grade 10 formal education and

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has worked in recent years in the construction

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field both here in Behchoko and also at the Ekati

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mine site.

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Mr. Naedzo has a criminal record. He was

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convicted of three property offences when he was

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a younger man and still living in Deline. On two

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occasions, in 1998 and in 2003, he was convicted

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of assault here in Behchoko. And more

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significantly, in July 1999 he was convicted in

1 Yellowknife of a drinking and driving offence and  
2 at that time he was assessed a fine and also  
3 prohibited from driving for a period of one year.

4 The circumstances of Mr. Naedzo's crime are  
5 that he was driving a pickup truck in which his  
6 84-year-old grandmother, Cecile Tetso, was a  
7 passenger, on the road outside of Behchoko at 3  
8 o'clock in the morning on July 14th, 2006.  
9 Mr. Naedzo was intoxicated. He picked up two  
10 hitchhikers who later told the police that  
11 Mr. Naedzo was consuming alcohol while he was  
12 driving.

13 At one point Mr. Naedzo lost control of the  
14 vehicle and it went off the road, through the  
15 ditch, and into a nearby pond where it sank. The  
16 hitchhikers got out and went to get help.  
17 Mr. Naedzo and one of the hitchhikers got the  
18 elderly Ms. Tetso out of the vehicle and the pond  
19 and dragged her to the edge of the pond and  
20 covered her with a blanket. Ms. Tetso was taken  
21 to hospital in Yellowknife and, tragically, died  
22 24 hours later at the hospital as a result of  
23 this accident.

24 Mr. Naedzo's blood alcohol readings, taken a  
25 few hours after the accident, were 200 milligrams  
26 percent and 190 milligrams percent.

27 The Court has been advised in the

1 pre-sentence report and in defence counsel's  
2 submissions that this offender Walter Naedzo has  
3 been guilt-ridden, emotionally distraught, and  
4 full of shame since this tragic accident, as he  
5 says he was very close to his grandmother Cecile  
6 Tetso and indeed had invited her in July 2006 to  
7 come from Deline to visit him in Behchoko.

8 In the days and weeks following the  
9 accident, he turned to alcohol in an effort to  
10 numb the pain that he was feeling. Eventually,  
11 with the encouragement of his spouse and others,  
12 he sought some professional assistance in his  
13 healing process. I am told that earlier this  
14 year he enrolled in the 28-day drug and alcohol  
15 program in Hay River, that he successfully  
16 completed that program, and that he has not  
17 consumed alcohol these past three months.

18 Today Mr. Naedzo appears in court here in  
19 Behchoko and pleads guilty to this charge, this  
20 serious charge.

21 I accept that he is genuinely remorseful for  
22 his crime, for what he did that caused his  
23 grandmother's death. He says that he wants to  
24 take responsibility for her death. I am satisfied  
25 that he means that even if it means that he must  
26 be incarcerated.

27 I believe him when he says that family is

1 important to him and also when he says that he  
2 will live with his role in the death of his  
3 grandmother for the rest of his life.

4 The offence which Mr. Naedzo committed,  
5 impaired driving causing death, carries a maximum  
6 sentence of life imprisonment. There is no  
7 minimum sentence for this particular offence,  
8 which is a bit of an anomaly in the law, given  
9 that impaired driving simplicitor does have a  
10 minimum sentence. The sentence to be imposed  
11 must be one determined in accordance with the  
12 purpose and principles of sentencing as  
13 prescribed by Parliament and in accordance with  
14 earlier binding decisions of the courts.

15 I have considered carefully the submissions  
16 of counsel. I have reflected carefully on the  
17 principles of sentencing; in particular, the  
18 principles of denunciation, deterrence, and  
19 proportionality. And I have considered the  
20 personal circumstances of Walter Naedzo,  
21 including the fact that he seems to be otherwise  
22 well-regarded by members of the community both in  
23 Behchoko and in Deline.

24 Quite apart from the tragic consequences of  
25 this crime, there are aggravating features.

26 Firstly, there is the fact that Mr. Naedzo  
27 has previously been convicted of drinking and

1 driving. Secondly, there are the high readings  
2 of 200 milligrams percent and 190 milligrams  
3 percent. Section 255.1 of the Criminal Code  
4 requires that that fact be considered to be an  
5 aggravating factor in the determination of  
6 sentence.

7 On the mitigating side, there is  
8 Mr. Naedzo's genuine remorse and also his plea of  
9 guilty although, as I indicated to his counsel, I  
10 do not view it as an early guilty plea.

11 Taking into account all of these matters and  
12 circumstances, in my view the appropriate  
13 sentence for this offender for this offence is a  
14 term of imprisonment of 12 months followed by a  
15 period of probation.

16 Defence counsel has submitted that a  
17 conditional sentence, as that term is used in the  
18 Criminal Code, would be appropriate in the  
19 circumstances of Mr. Naedzo's case. The law  
20 allows the Court to impose a conditional  
21 sentence, that is, to serve a term of  
22 imprisonment in the offender's home community,  
23 subject to certain restrictive conditions, in an  
24 appropriate case if the statutory prerequisites  
25 are met.

26 The statutory prerequisites are set out in  
27 Section 742.1 of the Criminal Code and they are:

1           (1) that the offence is not one punishable  
2 by a minimum term of imprisonment;

3           (2) that the sentence of imprisonment to be  
4 imposed is less than two years;

5           (3) that the Court is satisfied that serving  
6 the sentence in the community would not endanger  
7 the safety of the community;

8           (4) that serving the sentence in the  
9 community would be consistent with the  
10 fundamental purpose and principles of sentencing  
11 that are set out in the Criminal Code.

12           I am satisfied that the first three of these  
13 prerequisites are met; however I am not similarly  
14 satisfied with respect to consistency with the  
15 principles of sentencing. In particular, I am  
16 unable to say that a community-based sentence in  
17 the circumstances of this offence and this  
18 offender adequately addresses the objectives of  
19 denunciation, or deterrence, or the fundamental  
20 principle of proportionality.

21           Mr. Naedzo is not a youthful offender who  
22 had a momentary lapse in judgment. He is 40  
23 years of age. He has been to court before for  
24 drinking and driving and was ordered off the road  
25 for a year. Yet, he drank to the point of  
26 intoxication and then got behind the wheel of his  
27 pickup truck. He drove his pickup in an

1           intoxicated condition while his elderly  
2           grandmother was a passenger. He continued to  
3           consume alcohol while he was driving, and tragic  
4           consequences resulted.

5           His moral culpability is high. He  
6           acknowledges that point in his own words to the  
7           Court today. In these circumstances, his conduct  
8           cannot be adequately denounced, in my respectful  
9           view, short of punishing him with a period of  
10          incarceration, depriving him for a time of his  
11          liberty and of the comfort of his family and his  
12          community.

13          I note the following statement in 1996 by  
14          Chief Justice Lamer in the C.A.M. case referred  
15          to by counsel regarding the principle of  
16          denunciation.

17          The object of denunciation mandates  
18          that a sentence should also  
19          communicate society's condemnation  
20          of that particular offender's  
21          conduct. In short, a sentence with  
22          a denunciatory element represents a  
23          symbolic collective statement that  
24          the offender's conduct should be  
25          punished for encroaching on our  
26          society's basic code of moral values  
27          as enshrined within our substantive



1 criminal law.

2 I also would repeat here what was said by  
3 the British Columbia Court of Appeal in the  
4 Johnson case.

5 Drinking-driving causing death or  
6 bodily harm offences are senseless  
7 crimes because they are so easily  
8 avoided and at the same time they  
9 are so easily committed by ordinary  
10 citizens. They are unlike any other  
11 crimes in the sense that nothing  
12 much can be offered to justify  
13 driving drunk. Crimes of theft may  
14 be motivated by poverty, crimes of  
15 assault may be motivated by fear,  
16 but what excuse can be offered for  
17 driving drunk except that alcohol  
18 allowed the offender to lose all  
19 sense of judgment. It is for this  
20 reason that communities, rightfully,  
21 express outrage when victims are  
22 killed or injured as a result of  
23 such conduct. It is for this reason  
24 that both deterrence and  
25 denunciation are legitimate  
26 objectives to pursue for this type  
27 of offence.

1           Although I fully recognize, as I see that  
2           the community of Behchoko does, Mr. Naedzo's  
3           genuinely-felt guilt, shame and remorse, a  
4           conditional sentence in the circumstances of this  
5           case is not appropriate. The sentence must fit  
6           the crime.

7           I note that the decision of the Supreme  
8           Court of Canada in the year 2000 in the case  
9           R. v. Proulx, considered to be a seminal decision  
10          on the matter of conditional sentences, involved  
11          a criminal charge very similar to the charge  
12          before this Court today. In the final analysis,  
13          the Supreme Court of Canada upheld the decision  
14          of the trial Judge to decline to impose a  
15          conditional sentence for reasons not unlike the  
16          reasons that I have just mentioned.

17          Please stand, Mr. Naedzo.

18          Walter Naedzo, for the crime that you have  
19          committed, impaired driving causing death, it is  
20          the sentence of this Court that you serve a term  
21          of imprisonment of 12 months.

22          In addition, I direct that you comply with  
23          the following conditions prescribed in a  
24          probation order for a period of 12 months  
25          following your release from prison: keep the  
26          peace and be of good behaviour; appear before  
27          this Court when required to do so; notify your

1           probation officer in advance of any change of  
2           name, change of address, change of employment;  
3           report to a probation officer within two working  
4           days of your release from jail and thereafter as  
5           required by the probation officer; abstain from  
6           consumption of alcohol; submit to a breath test  
7           upon the reasonable demand of an RCMP officer or  
8           your probation officer; and that you perform 100  
9           hours of community service during your 12 months  
10          of probation, including speaking to school  
11          children and other youth groups, as recommended  
12          by your probation officer, about the perils of  
13          drinking and driving and about your personal  
14          experience that brought you to court today.

15                        Finally, pursuant to Section 259(2) of the  
16          Criminal Code, an order will issue prohibiting  
17          you from operating a motor vehicle on any street,  
18          road, highway, or other public place in Canada  
19          for a period of four years commencing on today's  
20          date.

21                        In the circumstances, there will be no  
22          Victim Fine surcharge.

23                        Have a seat, sir.

24                        Now, counsel is there any clarification  
25          required?    Crown?

26          MS. GAGNON:                        No, Your Honour.

27          MR. HANSEN:                        No, sir.

1 THE COURT: Fine. I want to thank counsel  
2 for their submissions.

3 Mr. Naedzo, I know this is difficult for  
4 you, and being away from your family for the next  
5 little while, but you will have to come to grips  
6 with all of this and try and get on with your  
7 life, and I wish you well in that endeavour.

8 THE ACCUSED: Thank you, Your Honour.

9 THE COURT: Close court.

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13 Certified to be a true and  
14 accurate transcript pursuant  
15 to Rules 723 and 724 of the  
16 Supreme Court Rules,

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

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