S-1-CR-2007-000029
S-1-CR-2007-000030

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- vs. -

JONAH KEYUAJUK

Transcript of the Reasons for Sentence by The Honourable Justice L. Charbonneau at Yellowknife in the Northwest Territories, on Friday, August 24 A.D., 2007.

APPEARANCES:

Ms. C. Gagnon: Counsel for the Crown

Mr. D. Rideout: Counsel for the Accused

Charge under s. 267(b) x 2 and 267(a) of the Criminal Code of Canada

THE COURT: Good morning, everyone.

MR. RIDEOUT: Good morning, Your Honour. I would ask that my client be able to sit next to me.

THE COURT: The Crown's position is the same as earlier this week?

MS. GAGNON: It is, Your Honour.

THE COURT: You can come forward, Mr. Keyuajuk.

Counsel, I am ready to give my decision but I thought I would ask you first, Ms. Gagnon, if you were able to confirm the situation with respect to the DNA order.

MS. GAGNON: I have, Your Honour, and DNA has been obtained in the past.

THE COURT: Thank you very much.

Well, Mr. Keyuajuk, I am now going to deliver my reasons for sentence and I will talk for sometime and I need to look at my notes so if you will bear with me.

Mr. Keyuajuk has pleaded guilty to three serious offences. The first is an assault on Leeveena Turqtuq, his common-law spouse, in the early morning hours of June 13th, 2006, that assault having caused bodily harm to her. The other two charges, both from November 23rd, 2006 are for having assaulted Susie Ahegona and

causing bodily harm to her and having assaulted Walter Goose with a weapon, namely a metal pipe. It is now my responsibility to sentence Mr. Keyuajuk for these crimes.

The circumstances of these offences were recorded in Agreed Statement of Facts that were made exhibits at the sentencing hearing and were read by the Crown prosecutor. It is important to recount what those facts are to put my sentencing remarks in their proper context.

The first crime was the one involving Mr. Keyuajuk's spouse. On the night this happened, they had rented a room at a hotel in Yellowknife. During the night there was an argument over a bottle of liquor. Mr. Keyuajuk punched his spouse several times in the head, causing her to go unconscious. In the meantime, there had been a complaint about noise in the room so security personnel from the hotel went to the room. The victim tried to open the door but someone was keeping it shut from the inside. The personnel said they would call the police, and a short time later the victim was seen running naked from the room. Her face was bloody and swollen.

She said that while she was in the room with Mr. Keyuajuk he said he was going to kill her but she was able to get away. She was taken to the

hospital. The right side of her face was injured. She had a cut behind her ear, her cheek was swollen and her cheekbone was fractured. She also had bruising to her arm.

The police were not able to find Mr. Keyuajuk after this incident so a warrant for his arrest was issued on June 26th. That warrant remained outstanding for over four months. There is no evidence before me as to where Mr. Keyuajuk was during those months, whether he knew there was a warrant out for his arrest, whether any efforts were made to locate him, but the warrant was executed on November 13, 2006. The authorities decided to release him on a promise to appear with an undertaking to a peace officer. The only conditions on that undertaking were that he have no contact with the victim of the assault, that he not attend her residence and that he report to the RCMP once a week.

Just 10 days later, on November 23rd, 2006, the other two offences were committed. That day Mr. Keyuajuk had spent time with Walter Goose collecting bottles around town to take them to the recycling depot and also doing some shovelling to earn money. They bought some liquor and then walked to a location behind the Explorer Hotel. Mr. Goose at the time was

staying in a tent that was set up at that location.

They did not stay there for very long. By then they had consumed the liquor they had bought and they went back into town and did more shovelling and eventually went to a local bar, each going their separate ways.

Mr. Goose ran into Ms. Ahegona in the bar. She did not have a place to stay so he said she could come back and stay at the tent for the night. Mr. Goose and Ms. Ahegona walked back to the tent. By then it was around 11 p.m. When they got there, Mr. Keyuajuk was already there. They began drinking liquor together. Mr. Goose and Mr. Keyuajuk also shared some marijuana. They got quite high. For no known or apparent reason, Mr. Keyuajuk became very aggressive. Mr. Goose was trying to sleep apparently and Mr. Keyuajuk started shoving him and pulling at him to get him up. He leaned over and punched Mr. Goose several times in the face. He got on top of Mr. Goose and continued to punch him and he also started punching Ms. Ahegona in the face.

Mr. Keyuajuk then armed himself with a metal pipe and started hitting Mr. Goose with it in various parts of his body. Mr. Keyuajuk told Mr. Goose that Mr. Goose was going to die that night.

Mr. Goose found a knife and he was able to cut his way out of the tent and ran away. As he was leaving the tent he could see that Ms. Ahegona's face was full of blood.

Mr. Goose came upon people on the street when he got out of the bush and asked for their help. The police were called. Mr. Keyuajuk was seen walking out of the bush a short time after and the police arrested him without incident.

Ms. Ahegona was seriously injured as a result of this attack. One of her ribs was fractured, she had injuries to her jaw, the inside of her lip, the back of her head and her forehead. She had cuts that required stitches to the inside and outside of her lip, her chin, her forehead and her cheek, and she also had to have several staples put on the top of her head. The photographs that were filed at the sentencing hearing show the injuries and are further evidence of the level of violence that was used in this attack. Ms. Ahegona was in hospital for a number of days and eventually checked herself out against medical advice. She remembers nothing of how she got injured.

Mr. Goose was also taken to the hospital for his injuries. He had a cut under his eye and abrasions to his neck, both his shoulders and

elbow, a large bump on his head and significant bruising to his ankle, and again photographs showing those injuries were filed at the sentencing hearing.

The recital of these facts is a sad but necessary account of what happened of what Mr. Keyuajuk did in his intoxicated unexplained rage.

Any time a court has to impose sentence it has to take into account the circumstances of the offence, the circumstances of the offender and the general principles and purposes of sentencing that are set out in the Criminal Code.

Dealing first with the offence, these were three violent attacks. There were many aggravating factors or features to them, things that increased Mr. Keyuajuk's blameworthiness, in my view. The first is that death threats were made while these assaults were taking place. It is clear that the victims took those threats seriously and it is not hard to understand why they did. Mr. Keyuajuk's spouse was so afraid that she ran out of the hotel room naked. As for Mr. Goose, he cut his way through a tent and left his friend behind knowing she was injured and at risk because presumably he thought that it was the only way he could save himself and get help for her.

The next aggravating feature is the extent of the injuries. In my view, those are not at the minor end of the scale of what constitutes, in law, bodily harm. I consider them to be at the higher end of what constitutes bodily harm but still falls short of the legal definition of wounding.

The first victim's cheekbone was broken, so was Ms. Ahegona's rib. Ms. Ahegona was hospitalized and would have been in the hospital longer if she had followed medical advice. I do not need to repeat the details of the injuries here but I would say they were extensive.

Next I consider the persistence of Mr. Keyuajuk in assaulting his victims. This again is a feature of both these incidents. In the first case, the intervention of security people from the hotel did not appear to stop things. They were prevented from coming inside the room. In the second case, the attack went on for some time and was escalated by Mr. Keyuajuk arming himself with a weapon. I do not think it is a stretch to say that using a metal pipe to hit someone in the head and elsewhere could have easily led to much more serious injuries. In that sense Mr. Goose was lucky and indirectly Mr. Keyuajuk was lucky.

With respect to the first assault, another aggravating factor is that the victim was Mr. Keyuajuk's spouse, someone who should have been able to trust him, to turn to him for assistance, support and protection. Long before this was specifically made an aggravating factor in the Criminal Code, this court considered that the fact that a crime of violence is perpetrated against a spouse is an aggravating factor.

With respect to the assault on Ms. Ahegona, she appears to have been asleep, either through all or through part of the incident. She would have been in a particularly vulnerable position, unable to see this coming, unable to defend herself, unable to try to escape, and I find this aggravating as well.

I have also taken into account what she wrote in her Victim Impact Statement that she prepared and was read in court by the Crown prosecutor. Ms. Ahegona talks about the effect this crime had on her. Because she was in hospital she lost her job as a dishwasher at a local restaurant. She reports feeling things that victims of violence often report feeling - a sense of loneliness, of not being able to talk about what happened. What she wrote is sadly familiar and is consistent with what we often

hear about the impact that violence has on victims.

Finally, these offences were all committed at a time when Mr. Keyuajuk was on probation. That probation order was made when he was sentenced for another crime of violence, assault causing bodily harm. That sentencing took place in Nunavut in December of 2005. He received a six-month gaol term followed by probation at that time. He was released in April of 2006, so he had only been at large for about two months when the first of these crimes was committed, and that is highly aggravating as well.

Submissions were made about the significance, if any, that I should attach to the four months or so where Mr. Keyuajuk was at large while the arrest warrant was outstanding. I have thought about the submissions that I heard and in the end I consider this to be a neutral fact because I really have no evidence that he was deliberately trying to evade the authorities during that time.

I must add that it seems surprising, at first blush at least, that despite his criminal record, despite the history of breaches and his recent release from serving his last sentence, and the existence of a probation order, that the

authorities chose to give Mr. Keyuajuk a promise to appear and have him give an undertaking to a peace officer when that June arrest warrant was finally executed.

Mr. Keyuajuk had not been found for over four months, he appeared to have a limited connection to Yellowknife, he had a bad record and he was facing a serious charge for an assault on his spouse. Of course, the arrest warrant had been endorsed so it was open to the authorities to put him on the form of process that they did, but the endorsement would not have precluded other courses of action.

That being said, I am aware and I recognize that I do not know what information was available then or what the decision was based on. I make these remarks mostly to underscore and to make sure that it is clear that the fact that a warrant has been endorsed permits this form of release but it does not mandate it.

The next area I must take into consideration, as I said at the outset, are the circumstances of Mr. Keyuajuk. He is of Inuit descent, born in Pangnirtung in Nunavut and still has family there. He has many siblings and he has a 15-year-old son. Counsel has conveyed to the court information that was provided to him

about Mr. Keyuajuk's youth by one of Mr. Keyuajuk's sisters.

There was reference made to the fact that he and other family members may have suffered some abuse at some point. I have also heard that until his early teenage years, Mr. Keyuajuk seems to have been a happy, healthy child who enjoyed going out on the land with his family. Something, it is not at all clear what, seems to have happened at some point. I have heard that Mr. Keyuajuk started suffering fainting spells when he was about 13 and that in the same time frame it is reported that he started having some behavioural changes but, as I have said, much remains unclear about what happened to him and, of course, I cannot speculate about that.

What is also clear is that when he was still relatively young, he started getting in trouble with the law. Initially this trouble consisted of property offences but unfortunately later on Mr. Keyuajuk began committing crimes of violence. He received relatively short gaol terms in 1993 and 1995 for assault and assault with a weapon. He received a day in gaol for a sexual assault in 1996, eight months in gaol for an assault with a weapon later that same year, and then in 1997 he received a penitentiary term of seven years for

the very serious crime of aggravated sexual assault.

While in gaol he was convicted for a further assault, and after his release from that long sentence he was convicted for various other offences including uttering threats in 2005 and, as I have mentioned, that last conviction in December of 2005 for assault causing bodily harm.

This criminal record is highly aggravating. Not because courts can or should punish a person over and over again for crimes that appear on their records but because the record shows a consistent pattern of violence over several years. From that pattern and from what I have heard about the June and November offences, it seems that alcohol, drugs and maybe the mix of the two trigger or unleash something in Mr. Keyuajuk that makes him very, very explosive and dangerous to those around him.

Turning now to the sentencing principles that must guide me, they are set out mainly in section 718 to 718.2 of the Criminal Code, but also in some other sections. I will not read them all now but I have considered them. I will simply emphasize those principles that in my view are the most relevant to this case.

The first one is the protection of the

public. As I have already said, the evidence before me suggests that this can be a very dangerous person to those around him. Personal deterrence or the need to deter, discourage Mr. Keyuajuk from acting this way is also relevant. Denunciation - that is, the expression of society's disapproval of gratuitous violence - is also very relevant in this case, and separation is relevant. Until Mr. Keyuajuk, with the help of professionals, addresses the issues that underlie his conduct and the addictions that contribute to making him act this way, separating him from society seems to be the only way to protect the public.

Because I am sentencing him for several offences, I must also be mindful of the principle of totality. That principle requires me not to simply add the three sentences that would be imposed for each of these offences but to also consider the cumulative and global impact of those sentences so that the final and total result is not one that is excessive.

Mr. Keyuajuk is of Aboriginal descent and for that reason I must also take into consideration section 718.2(e) of the Criminal Code. This provision requires the court to consider all available sanctions other than

imprisonment that are reasonable in the circumstances, with particular attention to the circumstances of Aboriginal offenders.

The Supreme Court of Canada has provided guidance about the effect of this provision and what it requires sentencing judges to do. The purpose of the provision was to address the overrepresentation of Aboriginal people in gaol. It directs the court to approach sentencing of an Aboriginal offender in a way that acknowledges the unique circumstances of Aboriginal people and, in particular, the unique systemic or background factors that may have played a part in bringing the person before the court, as well as the type of sentencing procedures or sanctions that might be appropriate because of the offender's heritage.

Mr. Keyuajuk's counsel advised, when I raised this issue, that he was not aware of any particular background or systemic factors that Mr. Keyuajuk faced that ought to impact on sentencing in this case, and I also gather from the submissions that I heard that counsel recognize in any event that given the seriousness of these offences, this is not a case where those types of systemic considerations could operate to mitigate or reduce the sentence that must be

imposed. The Supreme Court of Canada in its analysis of this provision did say that the more serious the offence, the less likely the ultimate sentence is to be affected by these types of considerations, and I am sentencing this offender today, as I have already said, for very serious offences. So I have given consideration to this factor but I find that in the circumstances of this case it has minimal impact.

I want to speak now about the mitigating factors. I have spoken at length about some of the aggravating factors that are present in this case but I must not overlook the mitigating factors. There are two really - the time that Mr. Keyuajuk spent in pretrial custody and the fact that he has pleaded guilty. Mr. Keyuajuk deserves to be given considerable, and I emphasis this, considerable credit for his guilty pleas. It has saved the costs and time of holding trials into these matters, but beyond any material costs that have been avoided a significant human cost has been avoided as well.

Accused persons have the right to rely on the presumption of innocence and have a trial. They have the right to have the Crown call witnesses to prove beyond a reasonable doubt that they are guilty. Giving up that right is a very

significant thing. Anyone who has seen a criminal trial unfold knows that they are very hard on witnesses. There is the uncertainty of the outcome, of course, but there is much more. Most people find it extremely difficult to come to a public courtroom and talk about traumatic things that have happened to them. To look at pictures of their own bruised and swollen faces and confirm that, yes, this a picture that shows what they looked like after the incident, reliving it all, being asked numerous questions about all the details.

Sparing someone from that experience is something that is worth recognizing and that is why courts give such significant credit to guilty pleas. In this case, although the guilty pleas were not entered at the first available opportunity, based on the submissions I have heard I am satisfied that they should be treated as early guilty pleas. The matters were set for preliminary hearings but the hearings were waived. Defence counsel communicated this to the Crown ahead of the date, which I infer means that witnesses knew ahead of time that they would not be required to testify.

I also accept that the Crown may have faced certain challenges in prosecuting these matters.

I know from the facts that I heard and from the submissions that were made that the whereabouts of Ms. Ahegona are not currently known, that she had no recollection of how she got hurt, that alcohol was involved in both incidents, which often results in memories of witnesses being less clear that might otherwise be the case.

Those things must be factored in when assessing the mitigating impact of a guilty plea. If a person is inescapably caught that is one thing, but giving up a right to a trial when there are live issues is another thing. So for all of those reasons, I consider the guilty pleas as very significant. Without those guilty pleas, Mr. Keyuajuk would be facing a much, much longer sentence today.

Next I must turn my attention to the remand time. The Criminal Code says that in imposing sentence, courts may take into account time that has been spent in pretrial or presentence custody. Whether credit is given for presentence custody and the extent of the credit given are matters within the sentencing judge's discretion. That discretion has to be exercised on a case-by-case basis but there is case law that guides judges in the exercise of that discretion. The case of R. v. Wust, a decision from 2000 by

the Supreme Court of Canada, has settled some of the points of controversy in this area and since that case was decided other cases have provided further guidance. Some of those cases were filed by the Crown prosecutor.

There is no dispute, it seems, between the Crown and the defence in this case that there is a general practice to credit remand time on a ratio of two to one. This sometimes surprises members of the public. Why should a person get double credit for remand time? The reasoning that most courts seem to adopt, and certainly that the Supreme Court of Canada has endorsed, is that the basic reasons are that remand time is considered harder time because remand prisoners often do not have access to the same types of programs and facilities than prisoners who are serving sentences. Conditions in remand centres are often more harsh; for example, overcrowding is a frequent problem in some areas. People who serve sentences have the benefit of early release programs and remission, which usually results in them being released before the end of their sentence. Remission and early release does not apply to remand time.

Because those are the underlying reasons for granting enhanced credit for remand time, courts

have found sometimes it is appropriate for a sentencing judge to give credit for remand time on a greater ratio than two for one; for example, if the remand conditions are particularly harsh or if there have been extensive delays in proceedings or other unusual circumstances.

On the other hand, the courts can reduce the level of credit given and the factors that are used to justify this are usually that the person on remand has, in fact, had access to the same programs as they would have if they had been serving prisoners, or if their history of incarceration is such that it is unlikely they will get the benefit of remission or early release, or if they are seen to pose a serious danger to society.

In this case, the Crown acknowledges that Mr. Keyuajuk should receive some credit for the nine months he has spent on remand since November of 2006, but argues that the circumstances of this case justify a departure from the usual two-to-one ratio. The Crown is suggesting that a one-for-one ratio should be used. The Crown is not relying on factors related to the availability of programs but says that the criminal record of Mr. Keyuajuk shows a history that shows that he poses a serious danger to

society and that he may not benefit from early release programs.

The Crown points in particular to the fact that the record shows he was granted statutory release on the seven-year sentence imposed in 1997 but was recommitted to custody because of the breach of the release conditions.

Defence counsel is asking me to apply the usual two-to-one ratio when calculating the credit to be given on the remand time. He advises that the revocation of the early release in 2002 was for smoking marijuana and characterized this as a relatively minor breach, all things being relative, so defence counsel argues that this is not a case where there is any reason not to give Mr. Keyuajuk double credit for his remand time.

As Crown counsel acknowledged, I cannot speculate what the National Parole Board will do or how it will administer Mr. Keyuajuk's sentence. I note that his significant criminal record did not prevent him from getting early release from his 1997 sentence. The same record and the fact that he violated his release conditions then did not prevent him from being released before the expiration of the sentence that was imposed in December 2005, although I

realize that that sentence would have been administered by territorial correctional authorities and not the federal ones.

So Mr. Keyuajuk's incarceration history is unenviable, but I cannot say it is so bad that he is unlikely to benefit from any form of early release on the sentence I impose today. I am sure many factors will impact on this, including the efforts that he makes while in custody to deal with his issues and how the authorities perceive he is doing on that front, but I simply do not know.

The next thing the Crown argues on this issue is that Mr. Keyuajuk poses a serious danger to society and of that I am satisfied. Hopefully this will change, but for the reasons I have already mentioned the evidence before me leads me to the conclusion that currently he does pose a risk and a danger to society.

The Crown does not argue that Mr. Keyuajuk benefited from the usual programs available to serving prisoners and I accept that that is another consideration I must look at. I heard that he was able to work at the kitchen of the correctional facility for a large portion of the time he spent on remand, so he was not locked up in a cell all day during his remand time. I

mention this because in some of the case law that is a factor that the courts look at when looking at the detention conditions, so those are all things I have to take into account.

Having balanced those factors, I have decided that Mr. Keyuajuk's circumstances are such that it is appropriate to reduce, to a degree, the amount of credit he will receive for the time he spent on remand but I am not convinced that this reduction should be to the extent that the Crown has suggested.

In my view, something between a ratio of one-for-one and two-for-one is appropriate in the circumstances, so for the nine months Mr. Keyuajuk has spent on remand, I will give him credit for 13 months.

As I have already said, I cannot and should not punish Mr. Keyuajuk all over for his past crimes. That would not be fair. But I can and I must look at his criminal record and add these offences as evidence that for several years now he has committed crimes against people. He has used violence, he has hurt people. He has not addressed what underlies this behaviour. It is essential that he does so if his life is to take a more positive course. I am not suggesting that that would be an easy process or one that can be

completed quickly, but it is essential that he undertake it for the sake of others but also for his own sake, because the simple reality is that he has built up a record now that makes him a candidate for longer and longer sentences to be imposed if he commits further violent crimes. It could also lead the Crown to apply to have him declared a dangerous offender and become the subject of an indeterminate sentence. Those are not happy prospects for him.

But Mr. Keyuajuk is not an old man. He could still have many productive years ahead him. This case can either be one more item in the pattern of violence that has existed until now or it could be where that pattern changes. I know it is not the sentence I impose or the words that I use in imposing it that will determine which of the two it will be. Mr. Keyuajuk is the only one who has control over which of the two it is going to be. It is all up to him.

In the letter he wrote to the court and again when he was given the opportunity to speak at the end of his counsel's submissions, Mr. Keyuajuk said he was sorry and that he wished this had not happened and that he does not like hurting people. As I have said already, he has pleaded guilty and spared his victims from having

to come to court and testify. I accept that he is sorry now for what he has done, but that does not change the fact that these were vicious, persistent and apparently unprovoked attacks. Alcohol or drugs may be part of what triggers this but they do not explain that level of violence. There must be other underlying issues and it is obviously far beyond the knowledge or expertise of the court to know what these might be or how they could be addressed. Mr. Keyuajuk says he wants to get help to deal with those issues, he wants to deal with them, and I sincerely hope he does that and persists because if he does not it is only a matter of time, no matter what I do today, before another judge has to deal with him.

Counsel say that a global range of four to five years is appropriate for these crimes. Although they disagree as to how much credit should be given for the remand time, they present this range as a joint submission. When a court is presented with a joint submission, the law says it must be followed unless the joint submission is unreasonable or unfit, that it is outside the range. I accept what defence counsel has said about there being a broad range of sentences available for these types of crime.

Bearing in mind that these are three very serious offences committed by someone with an extensive related record a short time after being released from the last sentence and while on probation, in my view, a global range of four to five years for these three offences is at the very low end of the range of what is a proper global range, but counsel, I know, have given careful thought to their position. They have explained some of the considerations that have formed part of their discussions. I accept that for various reasons these cases may have presented some challenges for the Crown had they gone to trial, as I alluded earlier when I was talking about the mitigating effect of the guilty pleas.

The ultimate responsibility to impose sentences that are fit and consistent with the principles and purposes of sentencing rests with the sentencing judge but, as I have already said, the joint submission must be given careful attention by a sentencing judge.

Because of the submissions I have heard and because of the highly mitigating effect of the guilty pleas, I will accept the range that counsel have jointly submitted but because of the seriousness of these offences and my concerns

about the threat that Mr. Keyuajuk presently poses to the public, I find that my sentence must be at the high end of that range.

As I have already said, I must give effect to the principle of totality. It would certainly be appropriate for the sentences imposed for the November offences to be consecutive to the sentence I will impose for the June offence. One way of avoiding an over-all crushing effect when consecutive sentences are to be imposed is to reduce each of them so that the total is not excessive. But in this case I prefer not doing that. I want to ensure that each of the sentences I impose reflect the seriousness of each of the offence. I do not want the sentences to be diluted by the operation of the principle of totality. I do not want the seriousness of these incidents to ever get lost in the translation, as it were. I want anyone looking at these matters in the future to know how seriously this court viewed all of these offences.

And so to achieve this while still giving effect to the principle of totality, I have decided to impose concurrent sentences for these crimes.

Mr. Keyuajuk, please stand. Mr. Keyuajuk,

for the assault on Leeveena Turqtuq I am going to sentence you to three and a half years' imprisonment. For the assault on Susan Ahegona, I am going to sentence you to five years' imprisonment, but because of the 13-month credit I am giving you for the remand time that leaves a gaol term of 47 months, which is three years and 11 months, and that will be served at the same time as the first one. Finally, for the assault on Mr. Goose, again I am going to impose a sentence of five years' imprisonment but because I am giving you credit for 13 months for your remand time it brings it to 47 months as well and that will also be concurrent. So in simple terms it is a further gaol term of three years and 11 months. You may be seated.

Mr. Keyuajuk, I know I have already talked for a long time. I know you know what you did was serious. Maybe you have seen the photographs of Ms. Ahegona and Mr. Goose, and they speak more loudly than any words that I could use this morning. You have told me through your letter - and I have read your letter a number of times this week - and also when you spoke, that you were sorry, that you do not like to hurt people. You said that in your letter and you repeated it in court. You have also said, both in your

letter and in court, that if you could turn back the time you would and you wish these things had not happened. None of us can turn back the time but you always have your choices for the future. You can use your time in gaol to work on yourself and try to find ways to not hurt people anymore, or you could serve your time, do nothing and get out and then you will probably get yourself into trouble again. So I hope you will be able to make the most of the help that will be available to you while you are in custody.

You have also written, and your lawyer has said, that you would like to go to Fenbrook Institution. In your letter you say it is the "Mother Institution for Nunavut". I do not have the power to direct where you are going to serve your sentence. That is up to the correctional authorities. They will know what programs are where and they will have a transcript of this hearing so they will know what your lawyer has said on your behalf, and they will know that you would like to go to that institution.

What I am going to do is I am going to ask the clerk to write on the Warrant of Committal simply that I am recommending that they consider your request when they choose where to send you, so I am not recommending anything and I cannot

order anything, and they probably would consider your request in any event, but this will make sure that their attention is drawn to the fact that this is where you think you should go. But it will be up to them. They will have more information than I have and really more information than you have about where is the best place for you. So I hope that ultimately they will send you somewhere where you can get the help that you need.

There are other orders that I must make in the circumstances of this case. The first is a firearm prohibition order under section 109 of the Criminal Code. It is mandatory for these type of offences. The minimum is 10 years and the maximum is life. The Crown is not asking for the maximum but is asking for more than the minimum.

Defence counsel is asking me to show some restraint to foster Mr. Keyuajuk's eventual rehabilitation, preserving his abilities to hopefully return to some of the practices of traditional activities on the land if he is to return to Nunavut eventually. Of course, rehabilitation is not the primary sentencing goal in this case but that does not mean it should be ignored.

I am satisfied under the circumstances that something more in the minimum should be imposed, so the order will begin today and expire 14 years after Mr. Keyuajuk's release. I assume he does not currently possess any firearms because he is already under the scope of the prohibition order so the order should say that firearms that he has should be surrendered forthwith.

Having heard what I have heard from the Crown prosecutor this morning, I will not make a DNA order. Normally, because these are primary designated offences, I would make one but the Criminal Code also says that when a person's profile is already in the databank the court should not make a further order, for obvious reasons, so since there already has been a DNA order with respect to Mr. Keyuajuk, I will not make a further one.

Section 727 of the Criminal Code says that a person convicted of an offence must be ordered to pay what is called a victim surcharge. That money goes to a fund to assist victims of crime. When the sentence imposed is not a fine, as is the case here, and is an indictable offence, the surcharge is in the amount of $100, so with three offences here the amount of the surcharge would be $300.

That section of the Code also gives the sentencing judge discretion not to impose a surcharge if the person being sentenced establishes that hardship could result. Mr. Keyuajuk's counsel has made that submission based on Mr. Keyuajuk's limited means and also, of course, the fact that he faces a lengthy gaol term and the Crown does not dispute the submissions, so under the circumstances I agree that the imposition of a surcharge would create hardship and for that reason I make an order exempting Mr. Keyuajuk from having to pay it.

Now, counsel, do you require any order with respect to the disposition of exhibits?

MS. GAGNON: Your Honour, I would ask basically that they be destroyed. I understand as a matter of semantics that nothing was entered as in the course of a trial so that all we have are exhibits on sentence. However, whatever items had been seized by the police, Crown would ask that they have permission to destroy them.

THE COURT: Yes, anything that was filed as part of the sentencing will remain on the court file but sometimes there are personal items that are asked to be returned to their rightful owners, but I what I will do is I will make an order authorizing the destruction of the exhibits

still in the possession of the RCMP - that is of course at the expiration of the appeal period - and I will leave it to the authorities' discretion if any of the items are such that they should be returned to any of the victims or witnesses then they can do that as well.

Is there anything else that is required that I have overlooked?

MS. GAGNON: Not on behalf of the Crown, Your Honour.

THE COURT: Mr. Rideout?

MR. RIDEOUT: Nothing further, Your Honour.

THE COURT: Okay. Well, I want to thank both counsel for their thorough submissions, for the material they have filed and for their help in this case.

And, Mr. Keyuajuk, I wish you luck in your efforts to deal with these difficult and serious issues. We will close court.

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

_____

Janet Harder, CSR(A)
Court Reporter