

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

EUGENE GORDON SABOURIN

Transcript of the Reasons for Sentence (Oral) delivered by
The Honourable Justice V.A. Schuler, in Yellowknife, in the
Northwest Territories, on the 22nd day of April, 2009.

APPEARANCES:

Ms. T. Nguyen: Counsel on behalf of the Crown

Mr. H. Latimer: Counsel on behalf of the Accused

Charges under ss. 85(1)(a) C.C.,
264.1(1) C.C. x 2 and 267(a) C.C.

1 THE COURT: Mr. Sabourin has entered pleas
2 of guilty to four counts in an Indictment
3 regarding events that occurred on October 11,
4 2007. The charges to which he has pleaded guilty
5 are using a firearm while committing the
6 indictable offence of uttering threats, contrary
7 to section 85(1)(a) of the Criminal Code;
8 uttering threats to cause serious bodily harm to,
9 and I will refer to the victims through most of
10 this by their initials, to M.M., contrary to
11 section 264.1(1) of the Criminal Code; uttering
12 threats to cause serious bodily harm to K.L.,
13 contrary to section 264.1(1); and assault with a
14 weapon on M.M., contrary to section 267(a) of the
15 Criminal Code. Having heard submissions from
16 counsel, it is now my duty to sentence Mr.
17 Sabourin for those offences.

18 The facts put before me and admitted by Mr.
19 Sabourin may be summarized as follows. On the
20 evening in question in Hay River, in the
21 Northwest Territories, Mr. Sabourin's common-law
22 wife K.L. was at her grandmother's, M.M., home.
23 Mr. Sabourin followed K.L. into the home to a
24 bedroom where he pushed her on the bed, slapped
25 her, and verbally abused her. Although he is not
26 charged with assaulting K.L., the facts submitted
27 indicate that he put his knuckle in her eye,

1 which was later observed by the police to be
2 swollen and discoloured. K.L. and M.M.
3 repeatedly asked Mr. Sabourin to leave the house,
4 but he refused. He told them he knew where guns
5 were and threatened to shoot M.M. He then
6 obtained a loaded shotgun from somewhere in the
7 house and went to where M.M. was trying to call
8 the police. M.M. was at the time 76 years old.
9 Mr. Sabourin pointed the gun at her head and told
10 her he would shoot her and K.L. At the time K.L.
11 was sitting on the sofa with her young son. M.M.
12 attempted to take the gun away from Mr. Sabourin,
13 they struggled, and Mr. Sabourin discharged the
14 shotgun into the ceiling of the room. He then
15 became agitated and twisted K.L.'s arm, saying he
16 would break it. M.M. tried to stop him by
17 hitting him with a brush, which he took away from
18 her and used to hit her on the side of the head,
19 knocking her to the ground. She was later
20 observed by the police to have a two-inch lump
21 and swelling on her temple. This latter incident
22 is the basis for the assault with a weapon
23 charge.

24 Another woman, who had heard the gun
25 discharge, came into the house, and after being
26 told what happened, ran to get the police. Mr.
27 Sabourin went in and out of the house a few times

1 and eventually was locked out by M.M. or K.L.

2 At the time of these events, Mr. Sabourin
3 was on an undertaking with conditions not to
4 contact K.L. arising from a pending charge of
5 assaulting her. He was also serving a term of
6 probation with the condition that he keep the
7 peace and be of good behaviour. Mr. Sabourin was
8 intoxicated at the time of these events.

9 I am advised that Mr. Sabourin is now 36
10 years old. He and K.L. have three children. He
11 is a South Slavey aboriginal man who, prior to
12 the events in question, was living in Hay River.
13 He has a high school level education which he
14 obtained through upgrading. His counsel advised
15 that he suffered severe abuse at a government
16 school in Fort Simpson in the mid 1980s where he
17 lost all knowledge of his aboriginal language.
18 He later suffered from alcohol problems. I infer
19 that there was also some violence in his family
20 as counsel indicated that he was taught by his
21 grandparents as a cultural matter that the man
22 dominates and the woman must obey, and in his own
23 family the men used violent language to the
24 women.

25 Mr. Sabourin has had employment in the past
26 but there is no information before me as to the
27 nature or duration of that employment.

1 Mr. Sabourin also has a lengthy criminal
2 record that extends from 1990, when he was a
3 youth, to early last year. There are many crimes
4 of violence on his record, including assault with
5 a weapon and robbery, as well as sexual assault.
6 In 1993, he was given a sentence of four years in
7 jail for the robbery. The convictions for
8 violent crimes extend from 1990 to 2002 when he
9 was convicted of assault causing bodily harm.
10 After that, his convictions are mainly for
11 breaching court orders, although there is a
12 resist arrest in 2006. In early 2008, he was
13 sentenced for the assault on K.L. that he was
14 awaiting trial on when he committed the offences
15 for which I am now to sentence him, and a charge
16 of breach of probation. He received a sentence
17 of four months' jail on the assault along with
18 one month consecutive on the breach, and a
19 further term of 12 months probation.

20 Now, of course, Mr. Sabourin has been
21 convicted of four more charges involving
22 violence. The record and the current charges
23 make it clear that the Court has to be concerned
24 that the public be protected from Mr. Sabourin.

25 Mr. Sabourin has been in custody since being
26 arrested on these charges on October 11, 2007.

27 From the court file, it appears that his

1 preliminary inquiry was held in February 2008 and
2 a jury trial was subsequently scheduled to take
3 place in March 2009. In January 2009, then Crown
4 and defence counsel, who are not the same counsel
5 here before me, advised the court that the matter
6 could not be resolved and the trial would proceed
7 as a judge alone trial, however in early March
8 2009 the accused changed counsel to his present
9 counsel and the trial was adjourned to June for
10 that reason. Mr. Sabourin was pursuing release
11 when I take it negotiations between Crown and
12 defence prompted him to plead guilty to most of
13 the charges in the Indictment.

14 Both M.M. and K.L. provided victim impact
15 statements. There is material in both statements
16 that should not be included in a victim impact
17 statement. The relevant section of the Criminal
18 Code, section 722, says that in such a statement
19 the victim is to describe the harm done to, or
20 loss suffered by, the victim arising from the
21 commission of the offence. The victim statements
22 in this case go far beyond that. So in looking
23 at the statements, I have taken into account only
24 the parts that conform with section 722.

25 M.M. speaks in her victim impact statement
26 of being severely traumatized emotionally,
27 mentally, physically, and spiritually as a result

1 of these events and still being fearful for her
2 life. She also says she lost her sense of safety
3 in her own home. It is not surprising at all
4 that she would feel this way - an elder attacked
5 in her own home by her daughter's spouse. She is
6 at the stage of her life where she has earned the
7 right to a peaceful and calm life, and what
8 happened has clearly left her feeling extremely
9 vulnerable and unsafe.

10 K.L. also speaks in her victim impact
11 statement of the serious impact on her and her
12 children of this traumatic event and how her
13 grandmother's home was the one place she felt
14 safe and she, too, has now lost that feeling of
15 safety.

16 Although, as counsel for Mr. Sabourin
17 pointed out, there is no evidence that either
18 M.M. or K.L. required medical attention after
19 these events, there is evidence that I have
20 already referred to that both were observed to
21 have physical injuries. It is clear from the
22 victim impact statements that the emotional and
23 psychological injuries are the more serious ones
24 and may affect them for quite some time to come.

25 The offence of using a firearm while
26 committing an indictable offence is an offence
27 for which parliament has decreed a punishment of

1 from one year minimum to 14 years maximum in
2 jail. The offence of uttering threats to cause
3 bodily harm does not carry a minimum punishment
4 but the maximum prescribed by parliament is five
5 years in jail. Finally, the offence of assault
6 with a weapon also has no minimum punishment but
7 is subject to a maximum of ten years'
8 imprisonment. So it is clear that parliament
9 considers all of these offences to be serious
10 ones for which substantial jail terms can be
11 imposed.

12 The law is also clear that even though the
13 charge of use of a firearm carries a minimum jail
14 term of one year, that term can be reduced below
15 a year to account for remand time if the
16 sentencing judge finds it appropriate. That
17 principle is set out in the case of R. v. Wust,
18 2001 Supreme Court Reports, page 455.

19 I want to talk about the positions of the
20 Crown and defence in a little more detail than
21 usual.

22 My understanding when counsel first
23 addressed this matter was that they had, or hoped
24 they had, a joint submission on sentence.
25 However after hearing their submissions, it is
26 clear to me that counsel did not have a joint
27 submission. They did have what might be called a

1 plea bargain in that they agreed in part on
2 aspects of the sentence that should be imposed on
3 Mr. Sabourin, and I infer that he agreed to plead
4 guilty at least in part because of the position
5 taken by the Crown. But Crown and defence
6 counsel do not agree on some important aspects of
7 the sentence, particularly how the remand time
8 should be dealt with. The position taken by each
9 of them would result in very different sentences
10 being imposed, as I will explain.

11 Crown counsel says that an appropriate
12 sentence in all the circumstances is one of 30
13 months in jail reduced to take into account the
14 remand time, plus three years' probation. Crown
15 counsel says that the remand time is the 18
16 months that Mr. Sabourin has been in jail
17 awaiting trial on these offences less the five
18 months he was sentenced to in early 2008, with a
19 further adjustment for the remission that would
20 normally apply to a sentence of five months,
21 making it about three months. Thus, Crown
22 counsel says deduct three months from 18 which
23 leaves 15 months of true remand time. Crown
24 counsel says Mr. Sabourin should not receive
25 credit for more than the 15 months because, to
26 use her words, "he breached his way into remand",
27 which I understand to mean that he ended up in

1 remand instead of being released on an
2 undertaking or other process because he had
3 breached the undertaking he was on for the
4 earlier charge of assault on K.L. In other
5 words, Crown says it was his own behaviour that
6 landed him in remand instead of being released.
7 Ultimately, the Crown says after deducting 15
8 months of remand time from the suggested sentence
9 of 30 months, I should impose another 15 months
10 jail to commence now. As terms of the suggested
11 three years' probation, the Crown seeks mainly
12 conditions that Mr. Sabourin not contact the
13 victims of these offences and that he be
14 supervised. She also seeks a number of ancillary
15 orders.

16 Defence counsel agrees that an appropriate
17 jail sentence before remand time is taken into
18 account is 30 months. He also agrees that the
19 remand time of 18 months should be reduced by
20 three months to account for the sentences served
21 while Mr. Sabourin was in remand. He differs,
22 however, from Crown counsel in that he argues
23 that the remaining 15 months of remand time
24 should be given double credit, in other words
25 given a value of 30 months, because no remission
26 is earned on remand time and it is considered
27 hard time because of the lack of programs

1 available to remand inmates. Defence counsel
2 points out that Mr. Sabourin has had access to
3 only a program not provided by the correctional
4 facility itself and a program that is dealt with
5 by the inmates themselves. In defence counsel's
6 submission, with the 15 months given double
7 credit, that would mean that Mr. Sabourin has
8 served the full 30 months suggested sentence and
9 should be sentenced now to time served.

10 Defence counsel says that the three years'
11 probation was not discussed in the negotiations
12 with the Crown but he agrees with it. He also
13 takes no issue with the ancillary orders sought.

14 As for any sentencing, the court is required
15 to consider both the mitigating and the
16 aggravating factors in the case. The only truly
17 mitigating factor is the guilty pleas. Although
18 they come a year and a half after the offences
19 occurred, I do give Mr. Sabourin credit for them
20 as they appear to have resulted, at least in
21 part, from a change in the Crown's position and
22 they mean the victims will not have to endure the
23 stress and discomfort of a trial, something that
24 is particularly important in the case of M.M. who
25 is now 78 years of age and for whom a trial would
26 I am sure be extremely difficult.

27 I should say that it is also mitigating that

1 Mr. Sabourin has expressed remorse in his remarks
2 here today and has sought to apologize to the
3 victims.

4 There are many aggravating factors, in other
5 words, factors that increase the seriousness of
6 these offences. The fact that Mr. Sabourin
7 attacked a 76-year-old woman, an elder, is
8 extremely aggravating. Her age makes her very
9 vulnerable and the consequences of, for example,
10 knocking her to the floor could have been much
11 worse than they were. The fact that Mr. Sabourin
12 attacked her in her own home while she was
13 attempting to protect her granddaughter from him
14 is aggravating. M.M. is entitled to feel safe
15 and secure in her home, not be threatened and
16 abused there. The fact that Mr. Sabourin
17 attacked his spouse K.L. is aggravating, and the
18 Criminal Code specifically says in section 718.2
19 that abuse of one's spouse is an aggravating
20 factor. The fact that Mr. Sabourin attacked her
21 in the presence of the child is an aggravating
22 factor. It is also an aggravating factor that he
23 had previously assaulted K.L., as confirmed by
24 his guilty plea to the earlier charge of assault.
25 And yet a further aggravating factor is that he
26 was on probation at the time of these offences.

27 The principles of sentencing are repeated

1 daily by courts all across this country. The
2 fundamental principle is that a sentence must be
3 proportionate to the gravity of the offence and
4 the degree of responsibility of the offender.
5 One way the court seeks to fulfil that principle
6 is by balancing the aggravating and mitigating
7 factors to arrive at an appropriate sentence.
8 The basic purpose of sentencing is to protect the
9 public by denouncing crime, deterring offenders,
10 and encouraging their rehabilitation.

11 The Criminal Code also requires that because
12 Mr. Sabourin is aboriginal, all available
13 sanctions other than imprisonment that are
14 reasonable in the circumstances should be
15 considered. That comes from section 718.2 of the
16 Criminal Code, sometimes referred to as the
17 Gladue principle, to which I will refer further
18 on.

19 Intoxication is not an excuse for what Mr.
20 Sabourin did. That is very clear. At the age of
21 36, with his criminal record, his rehabilitation,
22 while it may still be possible and it is not to
23 be ignored, is not as important an objective for
24 the court as protecting vulnerable people like
25 M.M. and K.L. and anyone else who may end up the
26 victim of Mr. Sabourin's behaviour. He is not a
27 young kid; he is a mature man with

1 responsibilities.

2 Through his counsel, it was said, and he has
3 indicated today, that he is concerned about
4 having a relationship with his twins and that he
5 wants to establish a good relationship with his
6 children. However, Mr. Sabourin needs to spend a
7 great deal of time thinking about what kind of
8 example he is setting and what kind of an example
9 he wants to set for his children, because his
10 treatment of M.M. and K.L. sets a terrible
11 example. A good father does not beat up on
12 elders and does not beat up on the mother of his
13 children.

14 As far as the Gladue factor goes, the Gladue
15 case itself makes it clear that for some offences
16 it is not appropriate to impose a different
17 sentence on an aboriginal person than would be
18 imposed on a non-aboriginal person, particularly
19 in cases of violence. In my view, the nature of
20 Mr. Sabourin's behaviour in this case is such
21 that his being aboriginal cannot justify
22 adjustment to what would otherwise be an
23 appropriate sentence. As a result, I need not
24 consider whether the factors defence counsel has
25 characterized as systemic should affect the
26 sentence to any significant degree. It would be
27 unacceptable, in my view, to treat Mr. Sabourin

1 with more lenience simply because he is
2 aboriginal when the behaviour he is here in court
3 for strikes at an important value that is often
4 referred to by aboriginal community leaders, and
5 that is respect for elders.

6 I take into account that these offences
7 occurred in what is really one continuing event
8 rather than a series of events separated by time.
9 I take into account the guilty pleas in
10 mitigation and also the aggravating factors.

11 As to the remand time, I have reviewed the
12 cases submitted by Mr. Latimer. As I have
13 indicated, the gist of his submissions before me
14 is that Mr. Sabourin is entitled to two-for-one
15 credit for the time he has been in remand because
16 of the lack of remission and lack of programs. I
17 quote from the Supreme Court of Canada decision
18 in Wust, which is often mistakenly, in my view,
19 relied on as pronouncing a rule that the court
20 must give credit of two-for-one for remand time.
21 That is not what Wust says. In speaking of
22 remand time, Justice Arbour said for the Court:

23 The credit cannot and need not be
24 determined by a rigid formula and is
25 thus best left to the sentencing
26 judge, who remains in the best
27 position to carefully weigh all the

1 factors which go toward the
2 determination of the appropriate
3 sentence, including the decision to
4 credit the offender for any time
5 spent in pre-sentencing custody.

6 That ruling has been reflected in several
7 cases in this court, for example recently in the
8 R. v. Rayworth, 2008 NWTSC 43, where Justice
9 Richard said "there is no automatic two-for-one
10 formula. Each case is to be assessed on its own
11 circumstances." And in that case, like this one,
12 the accused had a history of failing to comply
13 with court orders. In that case, like this one,
14 the accused was on release on another charge when
15 he committed the offence that Justice Richard was
16 sentencing him for. And as Justice Richard
17 observed in that case, it should be no surprise
18 to him that he did not get bail while awaiting
19 trial. Similarly, it should not have come as any
20 surprise to Mr. Sabourin that he did not get bail
21 on these charges when he committed the offences
22 after being released when charged with another
23 assault on K.L. He is not in the same position
24 as someone who has no other pending charges, has
25 not breached release conditions but is still not
26 granted bail. At the same time, it is true that
27 his remand time does not attract remission and I

1 am told he was not permitted to take all the
2 programs a sentenced prisoner would have access
3 to. Those circumstances are said in the Wust
4 case to underlie the two-for-one ratio but they
5 are not said to require a two-for-one ratio.

6 I accept that in all the circumstances,
7 having considered them very carefully, a sentence
8 of 30 months in jail as proposed by both counsel
9 is not unreasonable. In my view, balancing the
10 factors I have just referred to in connection
11 with the remand time, something less than a
12 two-for-one credit is appropriate for that remand
13 time.

14 I am going to deal, before I get to the
15 actual sentence, with the ancillary orders sought
16 by the Crown, none of which were objected to by
17 defence counsel.

18 First of all, under section 487.04 of the
19 Criminal Code, assault with a weapon is a primary
20 designated offence and so I have to make and I do
21 make an order for the collection of DNA samples
22 from Mr. Sabourin and that order will go in the
23 usual terms as a result of that offence.

24 Under section 109, the offences of assault
25 with a weapon and use of a firearm in the
26 commission of an indictable offence, require a
27 mandatory firearm prohibition order. Since this

1 is not Mr. Sabourin's first conviction and no
2 objection is taken to the lack of formal notice,
3 the prohibition will be for life.

4 The victim surcharge will also be waived.

5 Stand, please, Mr. Sabourin.

6 Mr. Sabourin, having taken into account the
7 remand time and credited it, I sentence you today
8 to a global sentence on all counts of one year in
9 jail. This will be followed by two years'
10 probation. In my view, three years is too long
11 for a man of your age. It will be two years'
12 probation, the conditions of which are that you
13 keep the peace and be of good behaviour and obey
14 the other statutory conditions; report to a
15 probation officer in Yellowknife within 36 hours
16 of your release from imprisonment and thereafter
17 as and when directed by the probation officer.
18 There will also be a condition that you take
19 counselling as recommended by the probation
20 officer. You are to have no contact direct or
21 indirect with M.M., and no contact direct or
22 indirect with K.L. I am not going to qualify the
23 no contact clause by leaving it to Ms. L. to
24 determine when and for how long contact takes
25 place, as was suggested. In my view, that is
26 simply a recipe for misunderstanding and possibly
27 disaster. If Ms. L. wants to have contact with

1 Mr. Sabourin, she can speak to his probation
2 officer about applying for a change in his
3 conditions. In her victim impact statement,
4 although it was written shortly after the
5 offence, she made it clear that she did not want
6 any contact with Mr. Sabourin so I do not make
7 any exception for that.

8 Now Mr. Sabourin, by the time you finish
9 both the jail portion, which obviously will
10 attract some remission, but by the time you
11 finish that and your probation you are going to
12 be close to 40 years old. So it is time, and in
13 fact I would say it is well past time, that you
14 leave behind this sort of, quite frankly,
15 disgraceful behaviour that you showed in this
16 case and that you start acting responsibly and
17 respectfully. Mr. Latimer is right when he said
18 that you are quite well-spoken. You obviously
19 have some intelligence, and I am sure that if you
20 try hard, you can put these things behind you and
21 be the kind of man and the kind of father that I
22 am sure that you would like to be. But only you
23 can do that. And as I say, I have to say it is
24 quite shocking to me that you would treat your
25 wife this way and, in particular, that you would
26 treat a 76-year-old woman this way, or any
27 76-year-old person. That is something that is

1 not acceptable in any culture on this planet, and
2 I am sure you know that. So you seem to have
3 started doing some right things by attending the
4 programs that you have attended. I hope you will
5 continue to take advantage of programs while you
6 finish off this jail term and I hope that you
7 will have learned something from all that and
8 that we will not see you back here again.

9 You may sit down.

10 Is there anything further that needs to be
11 addressed, counsel?

12 MS. NGUYEN: Your Honour, the only concern
13 the Crown would have is that there are obviously
14 young children involved here that Mr. Sabourin is
15 obligated to support so that I'm not sure if
16 contact would be appropriate but only if it's
17 made say through the probation services or social
18 services to enable the support of those children.

19 THE COURT: Why is contact necessary to
20 enable the support of the children?

21 MS. NGUYEN: My concern, Your Honour, is
22 just that he have some way of providing Ms. L.
23 with child support or other support for the
24 child. I'm not sure that contact would be
25 necessary but if it did become necessary that it
26 be done at least securely.

27 THE COURT: Well I want to be careful

1 because this order really should not be dealing
2 with family law issues which are a matter for
3 another forum, so I do want to be careful about
4 that. I think the most I could do is say that in
5 the event that any arrangements have to be
6 made -- in the event that Mr. Sabourin wishes to
7 make any arrangements regarding the children, he
8 is to do that through his probation officer. The
9 only concern I have is the probation officer may
10 say that's not my job.

11 MS. NGUYEN: Yes, Your Honour. I suppose
12 -- we could leave it as it is and if Mr. Sabourin
13 does want to make those arrangements, he should
14 just be able to understand he can bring the
15 matter back to court if that condition is needed
16 to be varied a little bit. Otherwise -- there is
17 the other process, Your Honour, you're quite
18 correct, there is another process in another
19 forum that can accomplish whatever he may need to
20 accomplish in respect to those children.

21 THE COURT: Do you have any comments on
22 that, Mr. Latimer?

23 MR. LATIMER: There's never been any problem
24 that I know of and -- there's never been any
25 problem. These are infants, they're only three
26 years of age. And we already indicated that if
27 he wishes to get visitation rights he's going to

1 do it through I think we indicated that -- he's
2 not going to see these children unless he's
3 legally got visitation rights and then I believe
4 he's even acknowledging that under the
5 circumstances they should be supervised. So he's
6 not going to be able to see these children until
7 something is laid out in the form of a court
8 order or some agreement. There's no issue here
9 at all to my knowledge.

10 THE COURT: So you're content with the
11 order the way I've worded it?

12 MR. LATIMER: Right.

13 THE COURT: All right. Well, in the
14 circumstances, I will leave it the way it is.
15 Thank you both and we'll close court.

16

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18 Certified to be a true and
19 accurate transcript pursuant
20 to Rule 723 and 724 of the
21 Supreme Court Rules of Court.

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Annette Wright, RPR, CSR(A)
23 Court Reporter

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