

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- vs. -

GERALD BEAULIEU

Transcript of the Reasons for Sentence by The Honourable
Justice L. A. Charbonneau, at Yellowknife in the Northwest
Territories, on June 26th A.D., 2009.

APPEARANCES:

Ms. T. Nguyen: Counsel for the Crown
Mr. S. Fix: Counsel for the Accused

Charge under s. 271 Criminal Code of Canada

An order has been made banning publication of the identity
of the Complainant/Witness pursuant to Section 486.4 of
the Criminal Code of Canada

1 THE COURT: Yesterday, Mr. Beaulieu
2 pleaded guilty to a charge of sexual assault that
3 occurred on May 2nd, 2008 and these are my
4 reasons for sentence on this charge. Before I
5 begin I want to reiterate that yesterday I issued
6 an order prohibiting the publication or broadcast
7 of any information that could identify the
8 complainant in this matter.

9 The facts that I heard yesterday are that
10 the complainant was 69 years old when this
11 incident happened. She lived in a house with two
12 of her children and one adult who was a relative
13 of the accused. She had agreed to let the
14 accused stay in her house because there was
15 nowhere else for him to stay at the time.

16 On the day this happened, the complainant,
17 the accused, and two other people were at the
18 house and consumed considerable amounts of
19 alcohol. The complainant fell asleep on the bed
20 where she ordinarily slept and sometime later the
21 accused went to her bed, took her pants and
22 underwear down, and touched her in her genital
23 area. She woke up while he was touching her,
24 screamed, told him to stop, and called for help.
25 One of the other adults in the residence came,
26 pulled the accused off the bed and threw him out
27 of the house. The police were called and the

1 matter was reported. The accused was charged and
2 detained on this charge. He has been in custody
3 since then, so he has spent some 14 months on
4 remand.

5 The accused has an extensive criminal record
6 that includes convictions for a variety of
7 offences. The first entries are in 1977 and,
8 sadly, continue on fairly steadily over the
9 following 30 years. There are convictions for
10 property offences, crimes against people,
11 breaches of court orders. The sentences imposed
12 include fines, probation, jail terms of varying
13 lengths. The convictions most relevant to this
14 matter are the last entries because they are for
15 sexual offences. There are convictions for two
16 counts of sexual assault in February 2007 and one
17 conviction on May 27th, 2008 for an offence of
18 indecent assault which was committed in 1975 when
19 the accused was still a youth.

20 It is important for the purposes of the
21 record to clarify something about the document
22 that was filed by the Crown as Exhibit 2 on the
23 sentencing hearing, that document having been
24 filed as the accused's criminal record.

25 The document is not complete because it does
26 not include the May 27th conviction for indecent
27 assault. It is also somewhat misleading or, at

1 least confusing, about the nature of the sentence
2 that was imposed in February 2007. On its face,
3 it suggests that the accused received a jail term
4 of three years on that date which of course
5 raises questions about how he could have been at
6 large in May of 2008. But when I inquired about
7 this yesterday, I was advised that in fact he had
8 been remand for some time before he was sentenced
9 in February of 2007 so what he was sentenced to
10 that day was 14 months in jail, having been given
11 credit for 22 months because of his remand time.
12 And this of course explains why he was at large
13 in May 2008.

14 In deciding what a fit sentence is for this
15 offence I must, as in all cases, consider the
16 sentencing principles that are set out in the
17 Criminal Code, the circumstances of the offence,
18 and the accused's personal circumstances and
19 background including his aboriginal background
20 and any particular systemic problems that he
21 faced which contributed to his coming into
22 conflict with the law. And in this case, I must
23 also give serious consideration to the fact that
24 counsel have presented me with a joint
25 submission.

26 They jointly submit that I should not impose
27 any further jail term on the accused because of

1 the time that he has already spent on remand.
2 They suggest that that time amounts to a fit
3 sentence for this offence when the usual credit
4 is given to him for the remand time.

5 The type of crime that the accused committed
6 in May 2008 is, sadly, a very prevalent crime in
7 this jurisdiction. This Court has to deal with
8 sentencings on cases of this sort at a frequency
9 that is disturbing. These types of offences, and
10 by this I mean taking advantage sexually of a
11 person who is sleeping, are so prevalent in this
12 jurisdiction that the phenomenon has been labeled
13 by some as a veritable epidemic. Because of
14 this, Courts emphasize the principles of general
15 deterrence and denunciation when dealing with
16 these cases.

17 In this case, it is apparent that personal
18 deterrence is also an important factor because
19 the accused's conduct on this occasion shows that
20 his previous convictions and sentences for
21 similar offences did not deter him from acting in
22 this way again. I am told that he was released
23 from the sentence imposed in February 2007 on
24 December 6th, 2007. So he served ten months of
25 that 14 month sentence and he had been at large
26 for less than five months when he committed this
27 sexual assault.

1 I must in this case, as I would in any
2 other, take into account aggravating factors and
3 mitigating factors that are present.

4 Dealing first with the aggravating factors,
5 I agree with the Crown that it is aggravating
6 that this offence occurred in the victim's home.
7 In an ideal world, a person should be and feel
8 safe wherever they are but even in our not so
9 ideal world, a person should be the safest when
10 they are within their own home. This should be
11 true whether a person has consumed alcohol or
12 not. A person sleeping in their own bed,
13 intoxicated or not, should not have to be
14 concerned about their personal and sexual
15 integrity being violated in this way.

16 I also agree with the Crown that it is
17 aggravating that the accused had been invited to
18 stay at the complainant's home and that this
19 injects an element of breach of trust in this
20 case. Like many things, there are different
21 ranges of breaches of trust but the complainant
22 let the accused stay at her home out of
23 generosity. Presumably if she had not trusted
24 him she would not have let him do so. Presumably
25 she did not expect to have to fear him, otherwise
26 she would not have let him stay there. And I
27 note he was a relative of someone who was already

1 living in the house. The accused proved very
2 unworthy of that trust and I do find that this is
3 an aggravating feature this case.

4 I have considered the victim impact
5 statement that was prepared by the victim a short
6 time after this happened. The effect that this
7 offence had on her is explained in simple but
8 eloquent terms in that document. Her comments
9 are consistent with what we know to be generally
10 true about these types of crimes. Even sexual
11 assaults that do not involve the most serious of
12 physical violation have an impact on victims.
13 They rob them of their sense of security and of
14 their dignity.

15 This particular complainant, I am told,
16 passed away from an illness in December 2008, and
17 it is truly awful to think that, in addition to
18 coping with her illness in those last months of
19 her life, she and her family also had to cope
20 with the impact that this crime had on her.

21 I have to take into account mitigating
22 factors.

23 The accused has pleaded guilty and that is
24 to his credit. Guilty pleas are traditionally
25 considered mitigating because they spare
26 witnesses, and in particular victims of crime,
27 from having to testify in a public courtroom

1 about difficult matters. They are considered
2 mitigating because they avoid the costs and time
3 of a trial . And they are considered mitigating
4 because they indicate remorse on the part of the
5 offender.

6 The first factor does not apply here. The
7 victim of this crime was not spared anything by
8 this guilty plea. She had to testify at the
9 preliminary hearing and talk about this, and was
10 subjected to cross-examination. As I have
11 already alluded to, she spent her last living
12 months with the uncertainty about what might
13 happen on this case so she was spared nothing.

14 The guilty plea did avoid the need for a
15 jury trial and saved resources; and the guilty
16 plea does demonstrate a willingness by the
17 accused to take responsibility for what he did.
18 And this, I agree with counsel, takes on a
19 special connotation in this case because the
20 complainant's passing created additional
21 challenges for the Crown in proving its case
22 beyond a reasonable doubt. Even if the
23 application to use the preliminary hearing
24 evidence had been successful, the trier of fact,
25 in this case a jury, would not have had the
26 benefit of seeing and hearing the witness
27 recounting the events and this may well have had

1 an impact on the weight that they would have been
2 prepared to give to that the evidence. So I
3 accept that the fact that the accused has pleaded
4 guilty, knowing of those potential challenges in
5 the Crown's case, is something that must be
6 acknowledged and he should be given credit for
7 that.

8 I also acknowledge and recognize that by
9 pleading guilty the accused has removed the
10 uncertainty of outcome that is always present
11 when a matter goes to trial and may have been
12 more prevalent in the circumstances of this case.
13 And although that submission was not specifically
14 made to me, I imagine that for the complainant's
15 surviving family it must have removed some
16 anxiety about the outcome of this whole matter
17 and may help to bring some closure for them.

18 The next issue that I must consider is the
19 credit to be given for the time that the accused
20 spent on remand. The accused is entitled to be
21 given credit for the time that he has spent on
22 remand. Counsel submit to me that that credit
23 should be given to him on a ratio of two for one.
24 Credit given to remand time is in the Court's
25 discretion. Various factors have an impact on
26 how discretion should be exercised and I want to
27 comment here briefly on the submissions that were

1 made with respect to that aspect of the case.

2 First, I disagree with the suggestion that
3 the accused's consent to remaining in custody
4 should increase or have any impact on the credit
5 that he is to be given for the time that he has
6 spent on remand. The jurisprudence is fairly
7 clear that the rationale for giving credit for
8 remand time on more than one-for-one ratio is
9 based on a recognition that prisoners on remand
10 do not earn remission and also to account for the
11 fact that in some jurisdictions and in some
12 facilities the detention conditions for remand
13 prisoners are harsher than those experienced by
14 serving prisoners. This includes things like
15 overcrowding, having access to only a limited
16 portion of the facility, and the lack of access
17 to the programs. I simply do not see how the
18 fact that a person has consented to their remand
19 should weigh in the balance.

20 In this particular case, with the accused's
21 record - his related convictions and recent
22 convictions for similar matters and his numerous
23 convictions for breaches of court orders - the
24 fact that he did not try to get bail, in my view,
25 simply reflect the fact that he and his counsel
26 were realistic about the prospects of being
27 successful in obtaining bail.

1 The issue of his access to programs is one
2 where I must say I found the information provided
3 to the Court less than satisfactory. There is a
4 contradiction about whether, for example, he
5 would have been able to have access to AA. Both
6 he and his counsel presented the Court with a
7 submission that he could not. The Crown said
8 that the AA program is available inside the
9 facility to serving prisoners as well as to
10 prisoners on remand. And then there is the
11 question of the availability of other programs to
12 prisoners who are on remand.

13 I am disturbed by this and comment on it
14 because, as I said yesterday, I have recently
15 heard in another case, the case of R. v. Avadluk
16 which proceeded in Hay River about five or six
17 weeks ago, very detailed submissions about the
18 access to programming for remand prisoners at the
19 Yellowknife correctional facility. What I was
20 told in that case was that, with the exception of
21 programs that are offered outside the facility,
22 remand prisoners have access to all of the same
23 programs as serving prisoners although serving
24 prisoners are sometimes given priority which may
25 mean that a remand prisoner may apply for
26 something and not be accepted into the program.
27 So some of the things that I heard in that case

1 seem inconsistent with some of the submissions I
2 heard in this case.

3 I make mention of this because the issue of
4 what programs are or are not accessible is an
5 important one and needs to be presented to the
6 Court, especially in a case where a person has
7 spent a significant period of time on remand.
8 This Court gets told on a regular basis that in
9 this jurisdiction, at least at the North Slave
10 Correctional Centre, there is very very little
11 difference in the detention conditions that
12 remand prisoners face versus the detention
13 conditions that serving prisoners face. So if
14 there are disagreements about the facts
15 surrounding things like accessibility to programs
16 and things that the parties are not agreed on,
17 then the Court is left in the dark. It must be
18 remembered that two-for-one credit for remand
19 time is not in law automatic, at least not in
20 this jurisdiction. There are several examples of
21 cases where credit is given on a different ratio
22 for a variety of reasons. So it is crucial for
23 the Court to have the necessary information about
24 this, so it can exercise its discretion on this
25 point in a principled and consistent way. In
26 future cases the Court might be inclined to have
27 evidence presented on its own motion to resolve

1 the types of inconsistencies and contradictions
2 that emerged in this type of hearing because
3 surely there is someone who knows the answer to
4 that question, someone from the correctional
5 facility who can say authoritatively what the
6 situation is in that facility.

7 All that being said, it's clear that the
8 accused is entitled to credit for the time that
9 he has spent on remand. It is also clear that it
10 is often the case that credit is granted on a
11 two-for-one ratio and I suppose in an instance
12 where the information is not conclusive one way
13 or another, the accused is entitled to the
14 interpretation that is more favourable to him.
15 So notwithstanding what I have said, and despite
16 the fact that I really would have preferred to
17 have more information to base this decision on, I
18 am prepared to accept that he should be given
19 credit on a two-for-one ratio for the 14 months
20 that he has spent on remand.

21 As I said at the outset, I must also take
22 into account the accused's personal
23 circumstances. His counsel explained that the
24 accused was removed from contact with his family
25 at a young age, first by being placed in
26 receiving homes and later being sent to
27 residential schools. Counsel seemed to suggest

1 that I might infer from this and from the
2 accused's conduct that he was abused in those
3 facilities. I do not think that it is
4 appropriate for me to speculate or infer that he
5 was the victim of abuse. But I certainly do
6 accept that being cut off from his family had an
7 negative impact on him and contributed to his
8 subsequent problems.

9 His record demonstrates that he has
10 struggled his whole life and constantly has been
11 in and out of court and in and out of jail. It
12 is difficult to assess what, if anything, this
13 Court could do as part of a sentencing to assist
14 the accused with his own rehabilitation. He is
15 already on probation arising from his last
16 conviction and he will be on probation for some
17 time. So even though there is no resident
18 probation officer in the community of Jean Marie
19 River, where the accused proposes to go back when
20 he is released, one can only hope that Probation
21 Services will be able to, despite these
22 challenges, to meaningfully supervise him and
23 assist him in accessing the programs and support
24 systems that he needs to remain out of trouble.

25 The Court has serious concerns about the
26 protection of the public in this case. It should
27 be, and should have been for some time, very

1 clear to the accused that the consumption of
2 alcohol is something that gets him into trouble.
3 I am not convinced that it can be said that his
4 problem is an alcohol problem because, as I
5 commented on yesterday, a lot of people get
6 intoxicated and do not commit crimes and do not
7 commit sexual crimes. But it is clear that the
8 consumption of liquor is one ingredient that
9 leads this one particular individual into
10 trouble. And despite this, only a few months
11 after being released from his last sentence he
12 made the choice to consume alcohol and committed
13 this further sexual assault. Even though there
14 was no penetration in this case, in my view it
15 was still a serious assault perpetrated on a
16 somewhat elderly woman in her own home and
17 someone who was in a particularly vulnerable
18 position. So, although I have no doubt that the
19 accused's intentions to try to grapple with his
20 issues are sincerely held, I have significant
21 concerns about whether he will hold true to those
22 intentions. But I also bear in mind that it is
23 inappropriate and unfair to overemphasize a
24 criminal record at a sentencing hearing. A
25 person should not be punished over and over again
26 for the same crimes by the record being
27 overemphasized. I am also mindful that I have to

1 give due weight to the principle of
2 proportionality and to the principles of parity,
3 that sentences imposed for similar crimes
4 committed by similar offenders should be similar.
5 And I must also, as I have already said, take
6 into account that I have been presented in this
7 case with a joint submission.

8 Sentencing is ultimately the responsibility
9 of the sentencing Judge but a joint submission is
10 deserving of serious consideration by the Court
11 and unless it is unreasonable, it should be
12 followed.

13 The Crown has said that a sentence of two
14 years less a day would be appropriate in the
15 circumstances and this is why, with the credit
16 given to the remand time, they are in agreement
17 with defence that no further jail term is
18 imposed. In my view that is a position that is
19 quite generous to the accused in all
20 circumstances, particularly the very recent
21 related conviction and the very short amount of
22 time that the accused was at large before he got
23 himself intoxicated and committed this further
24 offence. On the other hand, I recognize that the
25 complainant's passing puts the accused's guilty
26 plea in a unique context as I have already said.
27 So upon careful reflection, although I find that

1 the joint submission is very much on the lenient
2 side, I cannot say that it is out of range or
3 completely unreasonable so I will accept it. I
4 am not going to put the accused on probation
5 because he is already on probation. But more
6 importantly, at this point in his life what
7 happens from now on is really up to him. I am
8 confident that Probation Services will do
9 everything that they can to assist him in his
10 struggles and dealing with his issues and on the
11 path that he wants to be on from this point on.
12 I am sure Probation Services will do their best
13 to help him and I hope that the accused makes as
14 much use of their help, supervision, and support
15 as he can. But I am also certain that
16 Mr. Beaulieu has heard many lectures from many
17 Judges and many probation officers, many case
18 management officers in jails, and he doesn't need
19 another lecture from me. What happens in his
20 life from this point on is really really up to
21 him.

22 So Mr. Beaulieu, please stand.

23 Mr. Beaulieu, you have heard what I have
24 said. I have given this matter a lot of thought
25 and I have decided to agree with what the lawyers
26 have suggested. I am sure they have put a lot of
27 thought into their position. I am sure they have

1 considered everything and have really considered
2 all sorts of things that maybe I do not know. So
3 for that reason, although, you have heard me, I
4 think you are getting a sentence that is at the
5 very very low end of what could have happened in
6 this case, I am not going to impose any further
7 jail on you today. I am going to sentence you to
8 one day in jail but that will be considered
9 served by your attendance here today. So after
10 we are done here today, you will be free to go
11 and I really hope that you will be able to come
12 to terms with the things that you need to come to
13 terms with and that I or any other Judge will not
14 see you again.

15 All right, you can sit down.

16 THE ACCUSED: Yes.

17 THE COURT: I am also going to make an
18 order that any exhibits that are still in the
19 possession of the RCMP will, if appropriate, be
20 returned to their lawful owners otherwise they
21 are to be destroyed at the expiration of the
22 appeal period.

23 And finally there is a number of other
24 orders, Mr. Beaulieu, that I am going to make.

25 So, first, is an order, a DNA order pursuant
26 to Section 487.051(2) of the Criminal Code.

27 Sexual assault is a primary designated offence

1 that is included at paragraph a.1 of
2 Section 487.04 but I have not heard any
3 submissions suggesting that that order should not
4 be made so I am making that order. Madam Clerk
5 will explain to you these things when we are done
6 here.

7 Also, because of the type of charge this is,
8 it is mandatory that I make an order prohibiting
9 you from possessing firearms and other items.
10 Because an order like that was already made, the
11 Criminal Code says that on a subsequent
12 conviction that order would be for life except,
13 Ms. Nguyen, I was looking at it this morning and
14 as is the case for, by analogy drinking and
15 driving offences, there is no notice of intention
16 to seek greater punishment in this case.

17 MS. NGUYEN: Yes, the accused hasn't been
18 served with that so the firearms order should be
19 treated as if this were a first order.

20 THE COURT: So it will be for ten years
21 after today. Normally it is ten years after a
22 person is released but you will be released today
23 so that will be ten years.

24 There will also be an order that you have to
25 register, you have already been subjected to an
26 order like this but there will be another one, to
27 the Sexual Offender Information Registration Act,

1 which essentially means that you have to provide
2 certain information to the registry and keep them
3 aware of your address and things of that sort.
4 And the order, I am sure your lawyer can help you
5 in understanding what your obligations are.
6 Because you are already subject to an order like
7 this, it is automatic that this order be
8 applicable for life so that will be an order
9 pursuant to 490.013(4) of the Criminal Code.

10 And finally, pursuant to Section 737 of the
11 Criminal Code, on an indictable matter the Court
12 is to impose on you payment of what is called a
13 Victim of Crime surcharge. It is \$100. That
14 money goes into a fund that is designed to assist
15 victims with various things. I have heard your
16 counsel explain that when you have not been in
17 jail you have been able to work, that you are
18 going back to Jean Marie River and that you
19 expect to have employment, and for that reason I
20 don't see any reason why I should not make the
21 order that you pay the surcharge. But I am going
22 to give you two months to pay it to give you a
23 chance to go home and start working and get
24 yourself organized again.

25 THE ACCUSED: Okay.

26 THE COURT: Have I overlooked anything?

27 MS. NGUYEN: Nothing, Your Honour.

1 THE COURT: Mr. Fix, have I overlooked
2 anything?

3 MR. FIX: No, My Lady -- I apologize,
4 Your Honour. Just two things, firstly, I
5 apologize for not having better information with
6 respect to the programs available to him. I
7 didn't know it was in a state of flux. Secondly,
8 the Court made a comment yesterday with respect
9 to my having an agent here for his appearance and
10 I just wish to address that just briefly because
11 I had made arrangements for that appearance
12 yesterday through court administration and I was
13 advised --

14 THE COURT: -- yesterday you mean?

15 MR. FIX: Yesterday's appearance I had
16 made previously.

17 THE COURT: I was talking about Tuesday.

18 MR. FIX: Yes, and I wish to address
19 that, because Tuesday I was first of all told
20 that -- given information that the appearance was
21 to be for Monday but Monday was a holiday so it
22 was directed for Tuesday. When I contacted court
23 administration to say that, you know, we might as
24 well only do this once, I can be here, like when
25 can I be here to do this. So it was arranged for
26 Thursday afternoon. I was told at the time, and
27 I am not particularly used to removal orders, but

1 that the removal order for Tuesday had been
2 directed by the Court. I was asked, or I asked
3 if the Court would direct then a removal order
4 for Thursday. I was told that would not happen,
5 that the removal order for Tuesday would be
6 cancelled and that he would not appear and I was
7 to generate a removal order for Thursday. So on
8 that information I didn't retain an agent, I was
9 on the understanding that he wouldn't appear on
10 Tuesday. So it is not a case of me neglecting to
11 hire an agent, I was operating under obviously
12 misinformation but information that he would not
13 attend. It is not my practice to have my clients
14 appear in court alone.

15 THE COURT: The Court was told on Tuesday
16 that they were expecting you to have an agent
17 which fed into, that's what I was told on
18 Tuesday.

19 MR. FIX: My apologies.

20 THE COURT: That's not the main item, it's
21 really a side issue I think. The matter got
22 dealt with and that's what matters but thank you
23 for clarifying that.

24 MR. FIX: My apologies, because there
25 was -- I understood that I needed an agent for
26 the other matter.

27 THE COURT: The other matter?

1 MR. FIX: The matter that's in
2 Territorial Court this morning, to get it
3 directed there, so I apologize for any
4 miscommunication and certainly for not having an
5 agent here for my client.

6 THE COURT: Thank you for clarifying.
7 Anything further?

8 MR. FIX: No, thank you.

9 MS. NGUYEN: There is one other thing, Your
10 Honour. Mr. Beaulieu is on probation. The
11 probation officer has indicated she would want
12 him to report to her immediately. So if he could
13 be directed to do that. There is currently no
14 direction under the probation order for a
15 particular date for him to report under that.

16 THE COURT: Well the problem of course is
17 that probation order is on another file in
18 another court, the Youth Court even, and I am not
19 placing him on probation so I am not able to do
20 that. But let's put it this way, Mr. Beaulieu.
21 Technically, I have sentenced you to one day
22 which is served so technically I don't really
23 have jurisdiction to order you to do anything.
24 But there is a probation officer here, it's in
25 your interests to be in touch with them so they
26 can try to assist you. So although I am not
27 going to order you to report to her, and you may

1 want to talk to Mr. Fix about this, but
2 especially if you are planning on leaving, I
3 would strongly suggest that you touch base with
4 her before you go if only to sort out how this is
5 all going to work for your meetings, your
6 appointments, the programs that you might want to
7 try to take. It is not an order. You have heard
8 the Crown, the probation officer is sitting right
9 there, and the overall objective of all of these
10 people is to try to help you. So in the spirit
11 of you helping yourself, I leave it with you to
12 make your choice there. The first choice that
13 you have to make after the end of these
14 proceedings is whether you will or not.

15 So on that note, counsel, thank you, I have
16 kept you further than 9:30 but you can tell
17 whoever who is presiding over in Territorial
18 Court that it is my fault.

19 -----

20
21 Certified correct to the best
22 of my skill and ability,
23
24

25 _____
26 Lois Hewitt, CSR(A), RPR, CRR
27 Court Reporter