

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- vs. -

NEAL GLADUE

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Transcript of the Reasons for Sentence of The Honourable  
Justice L. A. Charbonneau, at Yellowknife in the Northwest  
Territories, on May 5th A.D., 2011.

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APPEARANCES:

Mr. A. Godfrey: Counsel for the Crown  
Mr. T. Boyd: Counsel for the Accused

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Charge under s. 267(a) Criminal Code of Canada

1 THE COURT: Neal Gladue has pleaded  
2 guilty this morning to a charge of assault  
3 with a weapon contrary to Section 267(a) of  
4 the Criminal Code, and now it is my  
5 responsibility to impose a sentence on him for  
6 that crime.

7 The circumstances of the offence that I  
8 heard about this morning were that on the date  
9 of the offence, June 21st, 2009, Mr. Gladue  
10 had been consuming alcohol and, for some  
11 unknown reason, got into an argument and a  
12 fight with Mr. Fabian, the victim in this  
13 matter. It appears that other people who were  
14 around were able to break up that fight, which  
15 took place near Mr. Gladue's residence, but  
16 then he went inside the house and came back  
17 out with a golf club and started swinging it  
18 at Mr. Fabian. He tried to hit Mr. Fabian,  
19 who put up his arm to protect himself, and as  
20 a result of being struck with the club  
21 suffered a puncture injury to his arm. It  
22 appears that Mr. Gladue continued to try to  
23 hit Mr. Fabian with the golf club but  
24 eventually Mr. Fabian got the golf club away  
25 from him and then he started hitting  
26 Mr. Gladue with it, and he struck him on the  
27 head causing a gash on Mr. Gladue's head that

1 required some sutures.

2 This came to an end again because other  
3 people intervened. No one seems to remember  
4 what the fight was even about.

5 Everyone is very lucky that there were not  
6 more severe consequences to either men. A  
7 person, especially an intoxicated angry out of  
8 control person, can cause another person a lot  
9 of damage and very serious injuries with  
10 something like a golf club. And this Court  
11 occasionally, unfortunately, has to deal with  
12 matters that are actually manslaughter charges  
13 based on someone being killed in one of those  
14 types of senseless fights that seems to have  
15 occurred in this case. Even when people don't  
16 intend on causing death to others, when doing  
17 things like hitting them with golf clubs or  
18 using any kind of weapon, that unfortunately  
19 is sometimes the consequence. Fortunately  
20 that was not the case here and no one was  
21 seriously injured, but I make this comment to  
22 underscore the seriousness of the type of  
23 offence and which explains why Courts tend to  
24 treat them seriously and more often than not,  
25 impose jail terms to those who are convicted  
26 of them.

27 Mr. Gladue had a preliminary hearing in

1 the Territorial Court and he was committed to  
2 stand trial. After that he indicated his  
3 intention to plead guilty, which was done  
4 before this Court, and a pre-sentence report  
5 was ordered.

6 I have read that pre-sentence report a  
7 number of times this morning. I read it  
8 before court and I have read it again while I  
9 was considering my decision.

10 It is a very thorough pre-sentence report  
11 and I really want to commend its author Ms.  
12 Beck for it. I found it extremely helpful in  
13 dealing with this matter.

14 It is everything that a pre-sentence  
15 report should be. It goes in a great deal  
16 deal over Mr. Gladue's personal circumstances,  
17 his family history, the circumstances of his  
18 growing up and his present situation. And it  
19 is a PSR that is very positive towards him.  
20 It describes the obstacles that he has had to  
21 overcome and how, despite some of those  
22 challenges, instead of doing what some  
23 do - turn against others and do to them what  
24 was done to him - he took charge of his life.  
25 He worked hard. He developed what appears to  
26 have been a very positive relationship with  
27 his girlfriend and has done what he could to

1 provide for his family. All of this of course  
2 is to his credit and bodes very well for his  
3 prospects of rehabilitation.

4 As I have said, though, the crime that he  
5 has committed is a serious one. It is  
6 punishable by a maximum of ten years in jail  
7 and that in and of itself shows how seriously  
8 Parliament treats it. Getting into physical  
9 fights is not a good thing, assaulting other  
10 people is not a good thing and is a crime in  
11 and of itself. But introducing a weapon into  
12 a fight is even worse. It escalates things.  
13 It increases greatly the potential for serious  
14 injury. Because of that, deterrence and  
15 denunciation - that is, trying to discourage  
16 him from acting this way and also sending a  
17 message to the public that the conduct is  
18 wrong - are often the two sentencing  
19 principles that are given priority when a  
20 crime of violence is committed.

21 In any sentencing, other factors are also  
22 important and rehabilitation of the offender  
23 is one of them.

24 By all accounts, Mr. Gladue is a good  
25 candidate for rehabilitation. And because he  
26 is an aboriginal offender, the Criminal Code  
27 requires me to approach his sentencing by

1           considering the systemic factors that may have  
2           contributed to his getting into conflict with  
3           the law, as well as whether sentencing tools  
4           other than incarceration might be more  
5           appropriate to achieve the goals and purposes  
6           of sentencing.

7           Another sentencing principle that I must  
8           be mindful of is parity, and it was referred  
9           to this morning. Parity simply means that  
10          people who are in similar positions and commit  
11          similar crimes can expect to receive similar  
12          sentences.

13          Mr. Fabian was sentenced to two years less  
14          a day in jail and then was given some credit  
15          for some remand time, and of course what is  
16          being suggested here is very different from  
17          that. Here the two men were involved in the  
18          fight, they each used a weapon. Mr. Gladue  
19          was the one who introduced the weapon into the  
20          fight, which is aggravating, but I also have  
21          to recognize that the circumstances of these  
22          two people are very different.

23          Mr. Fabian, I am told, had an extensive  
24          criminal record spanning over a few decades  
25          with numerous convictions for crimes of  
26          violence. He had been sent to jail on several  
27          occasions, twice receiving a penitentiary

1 sentence. By contrast, Mr. Gladue is 22 years  
2 old. He has no criminal record at all. So  
3 that places these two offenders in very  
4 dissimilar circumstances even though the  
5 actual offence they committed could be  
6 considered to be quite similar.

7 Counsel have presented me with a joint  
8 submission on this matter. The law is clear  
9 that a joint submission should be followed by  
10 the Court unless it is clearly unreasonable.  
11 The law expects sentencing Judges to give  
12 considerable weight to a position that is  
13 arrived at by two counsel who are intimately  
14 familiar with the case and who have given the  
15 various considerations that come into play  
16 some serious thought.

17 I am satisfied, based on what I have heard  
18 this morning, that this is a position that was  
19 arrived at after both the Crown and defence  
20 gave it some serious consideration and  
21 discussion. And in addition, I certainly do  
22 not think that what is being proposed is  
23 unreasonable. It is not the type of sentence  
24 that we see frequently, in this Court at  
25 least, for crimes of violence, but that does  
26 not mean that it is unreasonable in the  
27 circumstances of this case.

1           I agree that this is a proper way to deal  
2           with this matter. A jail term is required  
3           because of the seriousness of the offence and  
4           the other factors that I have referred to but,  
5           in the circumstances of this case, I think it  
6           is appropriate to allow Mr. Gladue to serve  
7           that sentence in the community.

8           Just briefly, the Criminal Code provides  
9           some criteria that have to be met before a  
10          conditional sentence can be imposed, and I  
11          have considered them.

12          First of all, it is only appropriate to  
13          use that sentencing tool if the sentence the  
14          Court would impose would be a sentence of less  
15          than two years, and that is clearly the case  
16          here. That is evidenced by the fact that the  
17          other person involved who, as I have already  
18          mentioned, had a very significant criminal  
19          record got a sentence of less than two years.  
20          So that requirement is met.

21          The second requirement is that a  
22          conditional sentence would not endanger the  
23          safety of the community. That is usually the  
24          requirement that gives the Courts more  
25          difficulty. But based on everything that has  
26          been adduced, presented in the pre-sentence  
27          report and in submissions about Mr. Gladue,



1 the fact that this seems to have been  
2 completely out of character for him, and all  
3 of the other positive things that he has going  
4 for him, I do not think that allowing him to  
5 serve his sentence in the community is going  
6 to endanger the public in Hay River or  
7 anywhere else. Specifically, I have  
8 considered the following mitigating factors in  
9 arriving at this conclusion:

10 I have considered the guilty plea. I have  
11 considered the fact that Mr. Gladue was  
12 cooperative with the investigation from the  
13 start, as confirmed by the police officer  
14 interviewed for the pre-sentence report who  
15 said that Mr. Gladue gave a statement. I have  
16 taken into account his young age and his  
17 family circumstances. He has a stable  
18 relationship and a new child, and I am  
19 confident that he will want to direct his  
20 efforts towards supporting them, not getting  
21 himself into trouble.

22 I have given great consideration to the  
23 pre-sentence report which talks at length  
24 about his personal circumstances and  
25 specifically recommends a community-based  
26 sentence. A recommendation in a pre-sentence  
27 report is not determinative obviously, but

1 given the circumstances that are set out in  
2 this pre-sentence report, it reinforces me in  
3 my opinion that it is an appropriate outcome  
4 for this case.

5 I have also taken into account Mr.  
6 Gladue's remorse which I accept as genuine.

7 And I have taken into account the fact  
8 that he was charged for this offence a long  
9 time ago, he has been on process since, and  
10 there is no indication that there have been  
11 any problems or that he has not complied with  
12 his release terms. In fact, again the police  
13 officer interviewed for this pre-sentence  
14 report confirmed that he had never had any  
15 problems with him before this and he has not  
16 had any difficulties with Mr. Gladue since.  
17 And that also says a lot coming from an  
18 officer of the agency that is responsible for  
19 maintaining peace in a community.

20 So Mr. Gladue, please stand up.

21 For the reasons that I have given,  
22 Mr. Gladue, I am going to agree with the  
23 suggestion that was made by the lawyers, and I  
24 am going to impose a jail term of one year but  
25 I will permit you to serve that jail term in  
26 the community. So there are a few conditions  
27 that I have to read so you can sit down and I

1 will list them out for you.

2 THE ACCUSED: Sit down?

3 THE COURT: You can have a seat, yes.

4 Pursuant to the Criminal Code, there are  
5 mandatory conditions any time the Court  
6 imposes a conditional sentence order.

7 The first is that he keep the peace and be  
8 of good behaviour;

9 that he appear before the Court when  
10 required to do so by the Court;

11 that he report to a supervisor within two  
12 days of today's date which means, Mr. Gladue,  
13 when you go back to Hay River you go and see  
14 Probation Services and they will assign you a  
15 conditional sentence supervisor. Actually  
16 today is Thursday so I will make that within  
17 four days of today's date, just in case that  
18 you have a problem finding them before the  
19 weekend. And thereafter you will report to  
20 the conditional sentence supervisor when and  
21 as directed by that supervisor. They will  
22 decide how often they will need to see you.

23 Next, you will remain in the jurisdiction  
24 of this Court, that is the Northwest  
25 Territories, unless written permission to go  
26 outside the jurisdiction is obtained from the  
27 Court or from your supervisor. So if you need

1 to go visit family for example in Alberta, you  
2 need to get written permission from your  
3 conditional sentence supervisor first.

4 And you will notify the Court or the  
5 conditional sentence supervisor of any change  
6 of name or address and changes in employment  
7 or occupation. So if you are able to get your  
8 own house, you need to let your conditional  
9 sentence supervisor know your new address and  
10 you need to keep that conditional sentence  
11 supervisor advised about what is going on with  
12 your work. And you will need to do that for  
13 other reasons related to the other conditions  
14 that I am going to include, that I am about to  
15 tell you about.

16 The other conditions will be that you  
17 abstain absolutely from the possession or  
18 consumption of alcohol or drugs. You were  
19 very honest with the author of the  
20 pre-sentence report and you acknowledged that  
21 you have been using marijuana. Marijuana is  
22 still an illegal substance and in any event it  
23 is probably better for you not to consume  
24 anything of that nature because it seems that  
25 alcohol was a factor in this incident with  
26 Mr. Fabian. So for the duration of this  
27 conditional sentence order -- well no drugs is

1 always the case really under the law, but  
2 there will be a no alcohol condition.

3 The next condition is that you will take  
4 counselling as directed. I leave it up to you  
5 and the conditional sentence supervisor to  
6 discuss what, if anything, can be done to help  
7 you to work out some of the issues that you  
8 may still have in your life. So that  
9 condition is simply to follow the directions  
10 of the supervisor in that regard.

11 You will provide support for your spouse  
12 and your child. That is simply continuing to  
13 do what you have been doing until now,  
14 obviously within your capacity and your  
15 ability to do so.

16 You will have no contact with Brian  
17 Fabian, and I am going to put an exception  
18 here because of a comment that you made in the  
19 pre-sentence report. The exception is you can  
20 have indirect contact with him for the  
21 purposes, if you wish, I am not ordering you  
22 to do so, but if you wish to give him a  
23 written apology for what you did, I am giving  
24 you permission to do that. But it has to be  
25 in writing and it will have to be delivered to  
26 him through a third party, possibly the  
27 conditional sentence supervisor or someone

1       else. I emphasize this - I am not ordering  
2       you to apologize. I don't believe in ordering  
3       people to apologize. But in the pre-sentence  
4       report you said that because of the no-contact  
5       order you hadn't been able to apologize. So  
6       if you want to, for that you can have contact  
7       with him.

8             The next condition is that you will  
9       perform 200 hours of community service work.  
10       And that is something that will be worked out  
11       with your conditional sentence supervisor.  
12       That's work for free for the benefit of the  
13       community, usually. Your supervisor will be  
14       able to tell you what it can be, but it is a  
15       way to emphasize that you broke the law, you  
16       did something that society does not approve  
17       of, and that you are making amends. And  
18       hopefully it will be work that will benefit  
19       somebody.

20            The next condition is that you reside at  
21       House 213 Wolf Drive unless and until you are  
22       able to get your own house. I am not wanting  
23       to interfere with your efforts to get your own  
24       house. The point is this is your address for  
25       now so you have to stay there. And if it  
26       changes you let your supervisor know.

27            The next thing is that you have to be

1           inside that residence between 11 p.m. and 6  
2           a.m., that's a curfew essentially, except if  
3           for employment reasons your conditional  
4           sentence supervisor gives you written  
5           permission not to be there. So it complicates  
6           things a bit but that's what a conditional  
7           sentence is. You are not a free man. So when  
8           you know more, if you know that your  
9           employment requires you to go either to the  
10          fire fighting camp or somewhere else, you let  
11          her know, or him, if it is a him, and get  
12          written permission to not comply with the  
13          curfew. Otherwise it is in force. And it is  
14          the same for the house arrest.

15                 I am going to impose a house arrest  
16          condition for the first four months of the  
17          conditional sentence. This is not for the  
18          full year, it is just for the first four  
19          months. But for the first four months you  
20          have to remain in your residence basically all  
21          the time except for medical emergencies, with  
22          the same exception - unless for employment  
23          purposes your conditional sentence supervisor  
24          gives you written permission to do otherwise.

25                 So the curfew is for the whole year, the  
26          house arrest is for the first four months.  
27          And in both cases if for employment purposes

1           you need an exception, then you can ask for  
2           it.

3           Now if you decide that you want to plan a  
4           trip to visit your family with your child, you  
5           will have to ask the Court's permission. I  
6           don't want to leave this as an open-ended for  
7           any reason your conditional sentence  
8           supervisor can lift these conditions. Because  
9           the alternative is that you would be sitting  
10          in jail and you would have had no freedom. So  
11          if you decide within this timeframe you want  
12          to go on a trip, then you will have to ask  
13          permission for that. It can be done by  
14          consent. If the Crown doesn't oppose the  
15          request then an order can be submitted by  
16          consent so that the Court will grant you that  
17          permission. I am putting that condition in  
18          because it is important that everyone  
19          understand that this is a meaningful, that it  
20          is not as though you were just on probation or  
21          completely free and you can do, go about your  
22          life the normal way. Because this is kind of  
23          an exceptional sentence for this type of  
24          offence. So do you understand all of that?

25        THE ACCUSED:            Yeah.

26        THE COURT:             If you have any trouble  
27          understanding any of these conditions, speak



1 to Mr. Boyd and I am sure that the conditional  
2 sentence supervisor will be able to help you  
3 out as well. All right, you understand all of  
4 that?

5 THE ACCUSED: Yeah.

6 THE COURT: Now, I will also make a  
7 firearms prohibition order. It is mandatory  
8 in my opinion under Section 109 of the  
9 Criminal Code. But, because of the evidence  
10 that is before the Court about your hunting  
11 activities and the fact that you have provided  
12 sustenance for your family through that, I  
13 authorize, pursuant to Section 113 of the  
14 Criminal Code, the chief firearms officer to  
15 issue you an authorization on certain  
16 conditions. So there is a firearms  
17 prohibition order in place but the firearms  
18 officer has this Court's permission to decide  
19 on what conditions you can, for sustenance  
20 purposes, provide for your family, so you can  
21 have hunting activities.

22 There will also be a DNA order which is  
23 because this is a primary designated offence.

24 And the last thing is there is going to be  
25 a victim of crime surcharge. You will be  
26 working, it sounds like, and so that money  
27 goes into a fund that is used to assist

1 victims of crime, not necessarily the victim  
2 of this crime but victims of crime in general.  
3 And when people have the means to pay it, it  
4 is part of what the Criminal Code contemplates  
5 is to happen. I think for indictable matters  
6 it is \$100.

7 MR. GODFREY: I believe that's correct.

8 THE COURT: So I will give you 60 days  
9 to pay that. It is a hundred dollars but I  
10 don't know what your situation is. I will  
11 give you 60 days. Again if that presents a  
12 problem for whatever reason, speak to  
13 Mr. Boyd.

14 Mr. Godfrey, have I overlooked anything?

15 MR. GODFREY: No, I believe that's  
16 everything.

17 THE COURT: Mr. Boyd, have I overlooked  
18 anything?

19 MR. BOYD: No, Your Honour, thank you.

20 THE COURT: Has everything that I have  
21 said clear?

22 MR. BOYD: Yes, and if it isn't I will  
23 explain to Mr. Gladue.

24 THE COURT: It is clear to you at least?

25 MR. BOYD: Yes, it is.

26 THE COURT: That's a start. Well, thank  
27 you, counsel, for your submissions on this

1 case, and good luck to you, Mr. Gladue.

2 (ADJOURNMENT)

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

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Lois Hewitt,  
Court Reporter

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