

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- vs. -

VERNON CARPENTER

Transcript of the Reasons for Sentence by The Honourable
Justice L. A. Charbonneau, at Yellowknife in the
Northwest Territories, on 28th November A.D., 2011.

APPEARANCES:

B. MacPherson, Esq.: Counsel for the Crown
T. Bock, Esq.: Counsel for the Accused

Charge under s. 271, 279(2) 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: Good afternoon, Mr.
2 Bock. Did you want Mr. Carpenter sitting with
3 you?

4 MR. BOCK: Yes please. Thank you,
5 Your Honour.

6 THE COURT: So I am ready to give my
7 decision on this matter. Before I give my
8 reasons, I just want to remind everyone that
9 there is a publication ban in effect which
10 prohibits the publication or broadcast of any
11 information that could identify the
12 complainant in this matter.

13 Mr. Carpenter has pleaded guilty to having
14 sexually assaulted his 20-year-old niece back
15 in March of 2011. Today it is my
16 responsibility to sentence him for this
17 offence. This morning I heard submissions,
18 and I do want to thank both of you, Counsel,
19 for your submissions because they were very
20 thorough, they were very reasonable, and they
21 were very balanced. The book of authorities
22 that was filed by Crown counsel was also very
23 helpful. Sentencing of course is an
24 individualized process. No two cases are ever
25 the same but it is always helpful to review
26 decisions made in cases that are similar in
27 nature which require balancing the same kinds

1 of considerations as the ones that I have to
2 balance today in arriving at my decision. So
3 I thank you for those authorities as well.

4 Sentencing is one of the most difficult
5 tasks for a sentencing Judge precisely because
6 it requires balancing a lot of things in
7 trying to arrive at a fit sentence for the
8 crime that was committed. Judges have to take
9 into account the crime that was committed, the
10 circumstances of the person who committed it,
11 and the general sentencing principles that are
12 set out in the Criminal Code.

13 Mr. Carpenter has admitted the
14 circumstances of this offence. He has
15 admitted that on March 1st, the victim and
16 four of her friends were at his residence,
17 that hard alcohol was consumed by all, that
18 she blacked out at one point. When she woke
19 up she was in his bedroom. She tried to leave
20 but he blocked the door and then she blacked
21 out again. The next time she regained
22 consciousness she was in his bed and he was
23 having sexual intercourse with her. At one
24 point she said something to him about needing
25 to get to the grocery store before it closed.
26 She put her clothes back on, her pants and her
27 underwear, and left the house. Those are the

1 circumstances of the offence.

2 Mr. Carpenter, I heard, is 30 years old.

3 He is an aboriginal man who has lived his

4 whole life in Tuktoyaktuk. I will get back to

5 the fact that he is an aboriginal offender in

6 a moment because that means I have a

7 responsibility to approach his sentencing in a

8 manner that takes into account any systemic

9 factors that he may have faced as an

10 aboriginal person that may have contributed to

11 his coming into conflict with the law or may

12 justify an approach in sentencing that would

13 be different than what might otherwise be the

14 case; but I have also heard that he has

15 maintained a good work record, working at

16 various jobs in his home community. He has

17 held a variety of different jobs available to

18 him in that community and has made productive

19 use of his time. I have heard that he has

20 always lived with his father and is very close

21 to him, and that he spent considerable time

22 over the years engaged in activities out on

23 the land, hunting and fishing more

24 specifically, and that is something that he

25 enjoys. There are other aspects about his

26 personal circumstances that I will refer to a

27 little bit later in these reasons.

1 As for the sentencing principles, as I
2 said at the start, any sentencing requires
3 balancing all of the principles that are set
4 out in the Criminal Code as well as those
5 developed in the case law. I am not going to
6 read out sections of the Criminal Code this
7 afternoon but I have reviewed them during my
8 deliberations. Sentencing has many objectives
9 and they include discouraging the offender and
10 others from committing crimes, and denouncing
11 crimes, which means making it clear that
12 society disapproves of the conduct in
13 question. Another objective is to
14 rehabilitate offenders because ultimately that
15 is the best way to protect the public. These
16 are only some of the sentencing objectives but
17 they are the ones that come to mind most in
18 this case.

19 To achieve these objectives there are a
20 number of principles that must guide the
21 Court. Proportionality is the fundamental
22 sentencing principle and it means that a
23 sentence should be proportionate to the
24 gravity of the offence and the degree of
25 blameworthiness of the offender. There are
26 other important principles. Aggravating and
27 mitigating factors must be considered. As I

1 have already alluded to, Courts are to pay
2 particular attention to the circumstances of
3 aboriginal offenders when deciding whether
4 gaol terms should be imposed and, if so, when
5 deciding the length of gaol terms to be
6 imposed. Parity has to be considered. This
7 means simply that when people of similar
8 circumstances commit similar offences, the
9 sentence that they receive should be similar.
10 And, as I have already mentioned, Courts must
11 never lose sight of the objective of
12 rehabilitation because that, if it can be
13 achieved, is the best way to protect the
14 public in the long term. So all of these
15 things must be taken into account and
16 balancing of these factors I must decide what
17 a fit sentence is for this crime.

18 The sentencing submissions I heard from
19 counsel are not that far apart and this
20 demonstrates that they have both approached
21 this case in a realistic, fair and reasonable
22 way. The Crown is suggesting that a sentence
23 of three years is a fit sentence for this
24 crime and that any credit given for the time
25 that Mr. Carpenter has spent on remand should
26 be on a ratio of one for one. Defence counsel
27 has suggested that the sentence could start

1 off at a bit lower point than three years and
2 that once the remand time is taken into
3 account, I could impose a sentence of a high
4 end of what is referred to as the territorial
5 range. This simply means a sentence under
6 two years because if the sentencing is under
7 two years it will be served in a territorial
8 institution. If it is over two years, in
9 theory at least, it would be served in a
10 federal penitentiary in southern Canada.
11 Although some offenders are sometimes
12 permitted to serve penitentiary sentences here
13 in the north, that is something that is up to
14 Corrections and over which the Court has no
15 control. The bottom line of the Crown's
16 position is that I impose a sentence of
17 28 months whereas the Defence position would
18 be something close to two years but under
19 two years.

20 The kind of incident that I heard about
21 this morning, and that I just referred to when
22 I summarized the facts, is extremely prevalent
23 in the Northwest Territories. I have had
24 occasion to comment on this, unfortunately,
25 several times in several different cases and
26 most recently, just last week, when I gave my
27 sentence in the case of R v. Lafferty 2011

1 NWTSC 60, which was a case arising from the
2 community of Behchoko. I have said then, and
3 I say again, that it boggles the mind how
4 prevalent this type of crime is. It has been
5 referred to in various ways by this Court over
6 the years. Words like "epidemic" and
7 "disease" have been used, and while some might
8 think this is a melodramatic or exaggerated
9 way to describe it, I do not think it is. The
10 sad reality is that these types of facts, the
11 sexual assault of a woman who is sleeping or
12 passed out, is a common occurrence in this
13 jurisdiction. The prevalence of this offence
14 is referred to in almost every decision that
15 is included in the Crown's book of
16 authorities. The Court referred to it at
17 paragraph 3 in R v. Kodzin [2011] N.W.T.J. No.
18 8; at paragraph 14 in R v. Beaverho [2009]
19 N.W.T.J. No. 59; at paragraph 19 in R v. Lomen
20 [2007] N.W.T.J. No. 69; at paragraph 17 in
21 R v. Bird [2005] N.W.T.J. No. 62; and finally,
22 our Court of Appeal recently commented about
23 it as well at paragraph 16 in the case of
24 R v. A.J.P.J. 2011 NWTCA 2, which was decided
25 in January of this year, and talking about the
26 issue the Court of Appeal said, "sexual
27 assaults committed against young women while

1 they are either passed out or asleep has been
2 and continues to be a serious problem in this
3 jurisdiction". And as I say, there are many
4 many more sentencing decisions of this Court
5 where similar comments have been made noting
6 the prevalence of this type of crime in our
7 communities all over this jurisdiction.

8 This is a crime that causes great harm.
9 As noted by Crown counsel in his submissions,
10 the harm to victims is very real. Sometimes
11 we hear about it in general terms, other times
12 victims describe it in very compelling ways in
13 Victim Impact Statements. The Victim Impact
14 Statement prepared by the victim in this case,
15 which was made an exhibit, is one of those
16 compelling ones. It talks about impacts which
17 unfortunately are very common for people who
18 are sexually abused. There is loss of self
19 esteem, loss of one's sense of personal
20 safety, fear of going out, fear of being
21 judged or criticized or harmed by others, a
22 sense of helplessness and depression, a deep
23 mistrust for others even people who are loved
24 ones and that victims used to be close to,
25 feelings of shame, loss of sleep, nightmares.
26 These are things that some victims have to
27 live with for many years after the events. It

1 is also true that the harm often extends to
2 others, to family members, to the community as
3 a whole, especially in a small community such
4 as the one where these events occurred.

5 The law is clear in the Northwest
6 Territories that because of the prevalence of
7 this type of crime, because of how serious it
8 is and because of the harm it does, the
9 paramount sentencing principles for the Court
10 are deterrence and denunciation, and it has
11 been consistently held, and recently
12 reaffirmed in the A.J.P.J. decision, that for
13 a sexual assault involving full intercourse
14 the courts should start considering a range of
15 three years imprisonment and then increase or
16 decrease the sentence to give effect to any
17 mitigating factors or aggravating factors that
18 are present.

19 There are aggravating factors in this
20 case. The first is that the victim was in an
21 especially vulnerable state because she was
22 passed out. Our courts have recognized that
23 this is aggravating. Next, there was an
24 element of breach of trust here because Mr.
25 Carpenter is the victim's uncle. The home in
26 question, I am told, was also the home where
27 her grandfather lived. This is a place where

1 she should have felt safe and been safe. This
2 is a place where she should have been able to
3 expect protection and not abuse. The third
4 aggravating factor is the criminal record that
5 Mr. Carpenter has. It does not include any
6 convictions for sexual misconduct but it does
7 include entries for crimes of violence, most
8 notably the last two entries which are for
9 assault causing bodily harm. The last
10 conviction was in July 2010 and the sentence
11 imposed was six months in gaol. So as noted
12 by counsel, Mr. Carpenter had not been out of
13 custody for that long before he committed this
14 offence in March 2011.

15 I must however be careful when dealing
16 with the criminal record as an aggravating
17 factor. It is an aggravating factor and it is
18 relevant to sentencing but it is important
19 that it not be overemphasized because it is
20 important that Mr. Carpenter not be punished
21 over and over again for past crimes for which
22 he has already served his sentences. So it is
23 simply a factor. In my view those are the
24 aggravating factors: the added vulnerability
25 of the victim because she was passed out, the
26 element of breach of trust, and the criminal
27 record.

1 As far as things that mitigate sentence,
2 Mr. Carpenter has been in custody for some
3 time on this charge. He was initially
4 released on a recognizance but that
5 recognizance was cancelled as a result of an
6 alcohol-related breach. Counsel advised that
7 there are eight months of remand that are
8 attributable to this charge and that are to be
9 taken into consideration on this sentencing.
10 Section 719 of the Criminal Code places limits
11 on a sentencing Judge's discretion as far as
12 how much credit can be given to someone for
13 remand time. Under certain circumstances,
14 credit can be given on a ratio of one and a
15 half for one but where a person is on remand
16 as a result of having breached release
17 conditions, my understanding of the
18 combination of subsections 719 (3) and (3.1)
19 is that I am limited to credit to a maximum
20 ratio of one for one.

21 Without doubt, the most significant
22 mitigating factor here is Mr. Carpenter's
23 guilty plea. People charged with criminal
24 offences are presumed innocent and they have
25 the right to have a trial. They have the
26 right to put the Crown to the proof of its
27 case. Those who choose to exercise that right

1 should never ever be punished for having done
2 so, but those who forego this right, those who
3 accept responsibility for crimes that they
4 have committed, deserve to get credit for
5 that, and this is so for a number of reasons.
6 One of them is that it is one way a person can
7 show they truly are sorry for what they have
8 done. Accepting responsibility and foregoing
9 a right to have a trial is a meaningful way a
10 person can show that they are sorry. Another
11 reason is that trials take time and they are
12 costly. This court holds jury trials in most
13 communities in this jurisdiction so there are
14 significant monetary costs attached to this,
15 and there is also a real human cost. A jury
16 trial can be quite divisive in a community.
17 It can be very hard on those community members
18 who are chosen to sit as jurors.

19 And finally, one very important reason why
20 a guilty plea has a strong mitigating effect
21 is that it spares the victim of the crime from
22 having to come to a courtroom and talk about
23 what happened. This Court sees enough people
24 testify at trials, particularly sexual assault
25 complainants, and has observed time and time
26 again how painful and difficult it sometimes
27 is for those people to talk about very

1 personal things, very traumatic events and be
2 asked numerous questions about every detail of
3 those events. Sparing someone from that is
4 significant.

5 In this case I am told by Crown counsel
6 that the preliminary hearing was a difficult
7 experience for this complainant. Mr.
8 Carpenter was there at the preliminary
9 hearing. Seeing her struggle through her
10 testimony, he could have done something
11 entirely different than what he did. He could
12 have sat back and just had his trial hoping
13 she would struggle even more or maybe even not
14 want to testify again and hope to get away
15 with what he did. But he did not do that; he
16 did just the opposite. He wanted to plead
17 guilty and it was his initiative, I am told,
18 at his initiative that the steps were taken to
19 have this matter brought forward to be dealt
20 with before a trial date was set.

21 The other thing a guilty plea does, and I
22 think this too is very important is this: it
23 removes any uncertainty about the outcome of
24 the case of course, but it also removes
25 lingering uncertainty quite apart from the
26 court process itself. What I mean is this:
27 When accusations like this are made, often

1 there are people who have a very hard time
2 believing that their loved one could have done
3 something like this. Complainants may get
4 accused of having made everything up, accused
5 of lying, and in fact there are references to
6 this in the Victim Impact Statement that was
7 filed in this case. And the reality is that
8 even when there is a trial and even when the
9 person is found guilty, there can always be
10 people who will continue to say that it cannot
11 be true and who will continue to blame the
12 victim instead of holding the offender
13 responsible.

14 But when a person pleads guilty, when a
15 person does what Mr. Carpenter did, it removes
16 that because then he says it himself that he
17 did do this, that he is responsible, and that
18 the victim is not lying. And in my opinion,
19 especially in a small community with large
20 families and lots of connections on both
21 sides, this is very, very important. It can
22 be the start of a healing process for all
23 involved. These are not easy things to
24 recover from for families and for communities,
25 but acknowledgment of responsibility on the
26 part of the wrongdoer is an important first
27 step and it is a step that only that person

1 can take.

2 So although this was not a guilty plea at
3 an early opportunity and although the
4 complainant was not spared completely from
5 having to testify because she had to testify
6 at the preliminary hearing, Crown counsel has
7 fairly acknowledged that Mr. Carpenter should
8 receive significant credit for his guilty
9 plea, and I completely agree for all those
10 reasons I have just mentioned. I am
11 satisfied, because of the plea, but also
12 because of the letter that he wrote that was
13 read by his counsel this morning, and because
14 of what he told me himself when he had an
15 opportunity to speak to the Court directly
16 this morning, that he is truly remorseful for
17 what he did. I also accept that some of the
18 things that he has already done, some of the
19 steps that he has already taken such as
20 attending AA meetings, thinking about what he
21 has done, thinking about what he needs to do
22 to ensure that nothing like this happens
23 again, are important steps toward his
24 rehabilitation. I also accept that the time
25 he has spent in custody already has been
26 isolating for him particularly because of the
27 death of his aunt and the death of his nephew

1 which occurred while he was in custody, and
2 also because he has always lived with his
3 father, is close to him, and was essentially
4 cut off from him. Matters being made more
5 complicated because Mr. Carpenter's father
6 does not have a phone.

7 I have also taken into account what I have
8 heard about his good work history. It seems
9 that when Mr. Carpenter stays away from
10 alcohol he has been able to be a productive
11 member of his community. He has spent time
12 engaged in traditional fishing, trapping and
13 hunting activities, he has helped elders in
14 his community. He is obviously quite capable
15 of being a contributing member of his
16 community, and all those things are in his
17 favour. There are things that give reason to
18 have hope that when he finishes serving his
19 sentence he can make the changes that he needs
20 to make to not be in trouble with the law
21 again and more importantly to not harm other
22 people again.

23 I have mentioned the fact that I must take
24 into account the fact that Mr. Carpenter is an
25 aboriginal offender. He does not appear to
26 have faced some of the same systemic problems
27 and dysfunction that we often hear about in

1 court. His was a family where alcohol was not
2 abused and there was no violence within the
3 family. But in any event, as I have already
4 said, this Court often deals with sentencing
5 of aboriginal men who have committed this type
6 of crime, and given the seriousness of these
7 offences a significant gaol term is usually
8 unavoidable. The importance of upholding the
9 dignity and personal safety of all members of
10 the community is an important value in both
11 aboriginal and non-aboriginal communities, so
12 I do not think it makes a significant
13 difference in the circumstances of this case
14 that Mr. Carpenter is an aboriginal offender.

15 In the final analysis, as I have already
16 said the submissions I have heard from counsel
17 are not that far apart. So the issue for me
18 really boils down to whether the sentence
19 should be over two years or not. Many
20 aboriginal offenders who receive sentences
21 higher than two years are able to serve their
22 sentences in a territorial facility here in
23 the Northwest Territories but that is
24 something that the court has no control over.
25 It is entirely up to Corrections.

26 I do not think that the Crown is out of
27 line at all in seeking a gaol term of

1 three years. That is a perfectly reasonable
2 range of sentence to be seeking for this type
3 of offence. At the same time, as I have said,
4 if I did that and gave eight months credit for
5 the remand time, the total sentence would be
6 28 months, two years and four months. On
7 balance I think that this is close enough to
8 two years, that it is an appropriate case for
9 me to exercise a lot of restraint and keep the
10 sentence to the territorial range, and this is
11 for a few reasons.

12 The first is because of the significant
13 mitigating impact that I think should come
14 from the guilty plea and the expressions of
15 remorse I heard this morning; secondly,
16 because of the efforts that Mr. Carpenter has
17 already made during his time at the North
18 Slave Correctional Centre to attend AA
19 meetings and start building a support network
20 to address his issues with alcohol and
21 whatever issues surface when he is under the
22 influence of alcohol; thirdly, because of the
23 potential isolation that he would experience
24 in the southern penitentiary if he ended up
25 being sent there; that isolation would be even
26 greater than what he already has experienced
27 and I think would be counterproductive as far

1 as his eventual rehabilitation; and finally,
2 because of some of the tragic events that have
3 happened in his family while he was on remand,
4 and here I refer again to the death of his two
5 relatives. Sometimes, there are punishments
6 that life hands out that are worse than
7 anything the criminal justice system can do.
8 I think that the hardship that must have been
9 experienced as a result of those events while
10 Mr. Carpenter was on remand is something that
11 I am entitled to consider when deciding what a
12 fit sentence is for this offence.

13 So these reasons leave me to conclude that
14 I do not need to impose a further gaol term
15 that is in excess of two years, although as I
16 have already said, the Crown's position is
17 well within the range of sentences that could
18 be imposed on the whole of the circumstances.

19 So I am going to deal with various orders
20 that the Crown has sought. First there will
21 be a Firearms Prohibition Order pursuant to
22 Section 109 of the Criminal Code that will
23 start today and expire ten years from the time
24 Mr. Carpenter is released. Any firearms are
25 to be surrendered forthwith, and I will,
26 pursuant to Section 113 of the Code, authorize
27 the chief firearms officer to issue an

1 authorization, when the time comes, on
2 conditions to be set by the chief firearms
3 officer, to permit Mr. Carpenter to possess a
4 firearm for employment or sustenance purposes.
5 I grant this authorization because no firearms
6 were used in the commission of this offence.
7 Nothing on Mr. Carpenter's criminal record
8 appears to be firearms related. Sexual
9 assault of course is a crime of violence but
10 based on the admitted facts, this was not a
11 case where Mr. Carpenter used force against
12 the complainant against her body apart from
13 what is inherent in the act of intercourse. I
14 am concerned about the part of the facts where
15 he prevented her from leaving but this is not
16 a case where there was gratuitous violence or
17 extraneous violence. I am also of course
18 taking into consideration that in my view
19 allowing him to resume his hunting, trapping,
20 fishing activities on the land is consistent
21 with his rehabilitation and the region where
22 he lives and where he is likely to carry out
23 those activities is one where firearms are
24 essentially essential to preserve one's safety
25 while one is out on the land.

26 The next order will be a DNA Order. Now I
27 did note from the criminal record that it

1 appears that Mr. Carpenter's DNA is already in
2 the data bank but it is up to peace officers
3 tasked with executing the order to verify that
4 this is the case. So Mr. MacPherson, I will
5 just ask you to make sure to bring that to
6 their attention. I am referring to
7 Section 487.07 (1) paragraph 2 of the Criminal
8 Code. It used to be that the court could not
9 make the order when someone's DNA was already
10 in the data bank and then that was changed and
11 now the orders are made but it is up to the
12 people executing them to make sure they do not
13 execute them if the DNA is already in the data
14 bank. So I just thought I would mention that.

15 The third order will be an order that
16 Mr. Carpenter comply with the provisions of
17 the Sexual Offender Information Registry Act.
18 This will be for a period of 20 years which is
19 the minimum under the Criminal Code.

20 I will also make an order for the return
21 of any exhibits that were seized to their
22 rightful owner if that is appropriate,
23 otherwise exhibits are to be destroyed at the
24 expiration of the appeal period of course.

25 And finally, given the length of the gaol
26 term I have imposed today, I am not going to
27 order that Mr. Carpenter pay the victim of

1 crime surcharge. I am satisfied that this
2 would result in hardship.

3 Mr. Carpenter, can you stand up please.

4 Mr. Carpenter, you have heard what I have
5 said. For the crime of sexual assault that
6 you have pleaded guilty to, I am sentencing
7 you to a further gaol term of two years less
8 one day which means that you will remain in
9 the north for sure. I am not going to put you
10 on probation when you are released. Again, I
11 heard what your lawyer said and that you want
12 a fresh start but that means that when you are
13 released it will be up to you to find those
14 support networks and to get the help you think
15 you need because there will not be a probation
16 officer calling you up and making appointments
17 with you, so it will be up to you.

18 You can sit down.

19 I just hope that you will be able to serve
20 your sentence, make the most of the help that
21 you can find in the gaol with AA, with other
22 programs that they might have and that you
23 will be able to make that fresh start when you
24 are released.

25 Madam Clerk, the Warrant of Committal
26 should say that this sentence is 32 months
27 less one day, eight months credit given for

1 the eight months of remand, so that the
2 sentence, gaol term actually imposed is
3 two years less one day.

4 Is there anything I have overlooked,
5 Counsel?

6 MR. BOCK: No, thank you, Your
7 Honour.

8 THE COURT: Anything from the Crown?

9 MR. MACPHERSON: Thank you, Your Honour.

10 THE COURT: All right. I thank you,
11 both of you again, Counsel, for your
12 submissions.

13 _____
14 PROCEEDINGS CONCLUDED

15 _____

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17
18 Certified to be a true and
19 accurate transcript pursuant
20 to Rules 723 and 724 of the
Supreme Court Rules,

21
22
23 "No Signature Available"

24 _____
25 Darlene Sirman,
26 Court Reporter

27