

R. v. Michel, 2012 NWTSC 17

S-1-CR2010000219

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- vs. -

KEITH ROY MICHEL

Transcript of the Reasons for Sentence by The Honourable
Justice L. A. Charbonneau, at Yellowknife in the Northwest
Territories, on February 24th A.D., 2012.

APPEARANCES:

Ms. J. Andrews: Counsel for the Crown

Mr. T. Bock: Counsel for the Accused

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

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1 THE COURT: Before I give my decision on
2 this matter, I just want to remind everyone
3 that yesterday I made an order prohibiting the
4 publication or broadcast of any information
5 that could reveal the identity of the victim
6 in this matter. So that order is in force and
7 applies, obviously, to what I am going to say
8 as part of my decision on sentencing.

9 I also want at the outset to thank both
10 counsel for their submissions and for the book
11 of authorities that was filed. I found those
12 submissions and those authorities very helpful
13 in arriving at a decision in this case. These
14 cases are never easy, and it is always helpful
15 to have thorough submissions and reminders
16 about the principles of law that apply.

17 This afternoon it is my responsibility to
18 impose a sentence on Mr. Michel for the
19 serious offence that he pleaded guilty to
20 earlier this week. This crime happened in the
21 community of Lutsel K'e on September 15th,
22 2010.

23 That evening the victim, who was 17 years

24 old at the time, went to the house of Mr.
25 Michel and his common-law spouse to babysit
26 their two young children. Mr. Michel's spouse
27 is the victim's cousin and the victim had

Official Court Reporters 1

1 babysat for them in the past.

2 Mr. Michel's spouse returned to the
3 residence at 2:30 in the morning. She was
4 intoxicated and she asked the victim to stay
5 at the house overnight to watch over the
6 children. The victim agreed. She went to a
7 bedroom which was next to the children's
8 bedroom, and she went to sleep with all of her
9 clothes on.

10 She woke later to Mr. Michel touching her
11 on her legs, her inner thighs and buttocks
12 area. He was touching her over her clothes
13 but underneath the blanket that was covering
14 her. He was intoxicated. He asked her if she
15 wanted to smoke marijuana and a cigarette with
16 him. She refused and asked him to leave,
17 which he did.

18 She was able to fall back to sleep but was

19 awoken once again by Mr. Michel who, this
20 time, was in the process of removing her pants
21 and underwear. After he took those off, he
22 kissed her on her genitals and then had forced
23 sexual intercourse with her. She felt
24 helpless and did not fight back and did not
25 say any words to Mr. Michel. He left the
26 bedroom after he was finished having
27 intercourse with her.

Official Court Reporters 2

1 The next morning she left the house and
2 went to see a friend and told her what had
3 happened. She then went to see her mother who
4 noticed right away something was wrong. The
5 victim told her mother what happened. Her
6 mother took her to the medical clinic in the
7 community. The victim was examined, samples
8 were taken from her body and were sent out for
9 analysis. The testing confirmed that Mr.
10 Michel had had intercourse with her because it
11 was determined that semen found on one of the
12 exhibits (a vaginal swab) contained his DNA.

13 This was a serious crime - a very serious
14 violation of the victim. And as her victim

15 impact statement shows, it has had severe
16 consequences for her.
17 She missed a year of school. She
18 describes herself as damaged emotionally,
19 behaviorally, and with respect to her
20 interpersonal skills. She has harmed herself
21 since this has happened. She has attempted
22 suicide more than once. She wants to move
23 from the community because being there is a
24 constant reminder of what happened to her.
25 She has suffered from isolation. She used to
26 love to look after children and now she is
27 afraid to do so. She is afraid to leave her

Official Court Reporters 3

1 community but she is also afraid that if she
2 stays, when Mr. Michel comes back all her
3 fears will come back and, in her words, "mess
4 her up" again. She concludes her victim
5 impact statement by writing:

6 In all of this I will never be me.
7 I will be always a scared little
8 teenager within me who will always
9 have a hard time enough getting

10 through this but I will never get
11 over it.

12 Unfortunately, what is in this victim
13 impact statement is consistent with what we
14 know about the harm that being sexually
15 assaulted does to people. The impacts that
16 this particular victim describes, sadly, are
17 quite common in these types of cases. We know
18 they are common because we often read similar
19 descriptions in the victim impact statements
20 that are filed with the Court. And we also
21 know these impacts because, for many years
22 now, they have been documented in literature,
23 in studies conducted by experts on these
24 matters, and more and more the Courts are
25 referring to those types of studies.

26 The impacts of being sexually assaulted
27 include (this is not necessarily for everyone

Official Court Reporters 4

1 in every case but some of the things that are
2 commonly referred to as impacts) loss of
3 self-esteem, loss of one's sense of personal
4 safety, fear of going out, fear of being
5 judged, criticized or harmed by others, a

6 sense of helplessness, depression, suicidal
7 thoughts or actual suicide attempts, a deep
8 mistrust in others, an inability to form
9 healthy relationships, loss of sleep,
10 nightmares, a struggle to cope and continue
11 with ones normal activities whether it is to
12 go to ones job, go to school or taking care of
13 ones family. These crimes have a devastating
14 impact on the victims.

15 That impact often extends also to the
16 victim's families and to the community. The
17 victim impact statement from the victim's
18 mother shows that this is the case here too.

19 She confirms much of what her daughter
20 says about the impact that this event has had
21 on her education, the fact that she suffers
22 from depression, anger, and low self-esteem,
23 and that she has been suicidal and could not
24 be out in public for a long period of time
25 after this happened.

26 The mother writes that she wants to move
27 her daughter somewhere else because she cannot

1 stay in this community. There are too many
2 bad memories and too much harassment so she
3 wants to make arrangements for her to move
4 away to finish her education somewhere else.
5 And, she writes that she cannot move the whole
6 family, she can't afford to do that, so the
7 family is being torn apart by this. The
8 concluding words of her victim impact
9 statement are simple but they speak volumes.

10 She writes:

11 My daughter will never be the
12 same. I can only pray she will
13 survive.

14 These victim impact statements are
15 compelling and they are heartbreaking to read.

16 It is also disturbing to read that the
17 person who was the victim of this assault was,
18 after the assault, harassed. Unfortunately
19 this is also something that we frequently hear
20 about in the courts. One would hope that
21 communities would pull together and support
22 people who have been hurt. Yet, sometimes the
23 victim gets blamed. That is not fair. This
24 was not the victim's fault.

25 Yesterday, Mr. Michel accepted
26 responsibility for what he did. He said it
27 was entirely his fault, and he is right about

1 that. He has had the courage to stand up and
2 say so publicly in this courtroom. The Court
3 can only hope that this message - the fact
4 that he takes responsibility for this, that he
5 says it is his fault - will be taken back to
6 his community somehow so that everyone in that
7 community realizes that the only person who is
8 responsible for this the only person who is
9 responsible for the fact that he has been
10 charged, taken into custody away from the
11 community, away from his spouse and away from
12 his children, is him and him alone.

13 As I have just been saying, the
14 circumstances of this offence and its
15 seriousness are beyond doubt and must be
16 taking into account at this sentencing.

17 It is also important, though, that I take
18 into account, as well, the personal
19 circumstances of Mr. Michel himself and the
20 things that I have heard about him in the
21 submissions from his lawyer yesterday.

22 Because he did a very bad thing that night but
23 there is more to him than the crime that he
24 committed.

25 He is now 23 years old. He has a
26 common-law spouse and two children. Despite
27 his horrendous behaviour on that night, his

Official Court Reporters 7

1 spouse is still supportive of him and so are
2 his family members. Some of them were here
3 yesterday and are here again today. He is
4 very lucky to have that support. We, in the
5 courts, see a lot of offenders who come before
6 the Court facing sentencing and essentially
7 standing alone without any support from
8 anyone.

9 Mr. Michel is a Dene man. Both his
10 parents attended residential schools and there
11 appear to have been consequences to that for
12 them as adults. I heard that Mr. Michel was
13 exposed to violence and alcohol consumption in
14 the home at a young age. His parents
15 separated when he was nine or ten years old
16 and for a time after that he was back and
17 forth between both homes and other places. He
18 did not have a sense of a secure and stable
19 home.

20 He moved back with his mother when he

21 was 12. She was loving towards him but she
22 was still struggling with her own issues with
23 alcohol, and this affected him.

24 Mr. Michel dropped out of school in
25 Grade 7. When he decided to try to go back to
26 school a few years later he was placed, I am
27 told, in Grade 9 because of his age. Of

Official Court Reporters 8

1 course I do not have all of the details of the
2 circumstances that led to that decision. On
3 its face, it seems to be a rather strange
4 decision to have put him two grades ahead of
5 the one he dropped out of. Not surprisingly,
6 he struggled and could not keep up, which is
7 not difficult to understand, and this led to
8 more frustration and more failures for him.

9 On the positive side, he did attend
10 something that his counsel referred to as
11 "bush school", which is training that takes
12 place by spending several months on the land.
13 He won a youth award for trapping so he
14 obviously learned some important skills when
15 he took that training. And, he is a proud of

16 that and rightfully so.

17 I also heard yesterday that Mr. Michel has
18 experienced a fair bit of loss over the last
19 few years. Several people close to him have
20 passed away, some of them people that he used
21 to go out on the land with. He has also lost
22 one close relative who committed suicide.

23 He is described as a good father to his
24 children. And he says this is one of his
25 objectives for the future - to be a good
26 father to them. He did not say this directly
27 himself but his counsel said that that was one

Official Court Reporters 9

1 of the things that was important for him when
2 he thinks about his future.

3 He recognized that alcohol is a problem
4 for him and that he has to deal with it. He
5 has started doing some of that while on
6 remand. He has been able to access several
7 programs and has been described as very
8 motivated.

9 When he spoke in court yesterday, he
10 expressed his remorse. He said several times
11 that he did not think that he would have been

12 able to stand up in court and speak without
13 some of the programs that he has taken. But
14 he also seemed to be realistic in that he said
15 that he was just starting to heal. So he
16 seems to realize that the work that he has
17 started on himself is a long-term process. To
18 continue with that process is something we can
19 all encourage him to do. But ultimately, it
20 will up to him.

21 Mr. Michel does have a criminal record.
22 It is not a significant one but it does
23 include one conviction for a crime of
24 violence, from June 2011, for assault. For
25 that offence he received one day in jail and
26 was placed on probation. I note that on the
27 sentence on that matter, the probation order

Official Court Reporters 10

1 included a no-contact order with the person
2 who was named yesterday as being his
3 common-law spouse. So it appears that that
4 assault was a case of domestic violence, but
5 that the couple have continued their
6 relationship.

7 If, as it appears, Ms. Catholique was the
8 victim of that assault, which she must have
9 been if a no-contact order was made as part of
10 the sentencing, I reiterate that Mr. Michel is
11 very lucky that even after that, and after the
12 sexual assault that he committed in 2010, she
13 is still supportive of him.

14 The other convictions on the record are
15 breaches of court orders. His counsel said
16 that the breaches were mostly alcohol-related.
17 The last three breaches occurred after the
18 sexual assault. They were breaches of his
19 release conditions on this charge.

20 The sentencing principles and objectives
21 that are set out in the Criminal Code must
22 guide my decision today as they guide the
23 exercise of the sentencing powers for any
24 Judge on any case. I am not going to read out
25 the sections of the Criminal Code today, but I
26 have reviewed them and considered them
27 carefully.

1 I do not think that there is much issue
2 between counsel as to which sentencing

3 principles are most relevant to this matter.
4 The law in this jurisdiction, and in others,
5 is clear that deterrence and denunciation are
6 paramount and most important sentencing
7 principles when dealing with this type of
8 crime.

9 Deterrence means that the sentence that I
10 impose today must attempt to discourage not
11 only Mr. Michel, but also others, from
12 committing this type of offence. Denunciation
13 means expressing the Court and society's
14 strong disapproval of this conduct.

15 Parity is also an important principle. It
16 means that offenders of similar circumstances
17 who commit similar crimes should receive
18 similar sentences. That is a matter of
19 consistency in sentencing and of fairness to
20 all.

21 Restraint is important because Mr. Michel
22 is still young and also because the Criminal
23 Code says that Judges have to approach the
24 sentencing of aboriginal offenders in a way
25 that takes into account systemic factors that
26 they faced which may have contributed to their
27 coming into conflict with the law.

1 Restraint simply means that sending
2 someone to jail is something that the Court
3 should only do when other types of sentences
4 cannot achieve the sentencing objectives and
5 uphold the sentencing principles. Restraint
6 also means that when a jail term is imposed,
7 it should never be more than what is necessary
8 to achieve these objectives and uphold these
9 principles.

10 Another important principle is the
11 importance not to overlook Mr. Michel's
12 rehabilitation. If his rehabilitation can be
13 achieved, it is the best way to protect the
14 public.

15 And finally, the fundamental sentencing
16 principle is proportionality. That means that
17 a sentence must be proportionate to the
18 seriousness of the offence and to the degree
19 of blameworthiness of the offender.

20 So those are the principles that I must
21 apply taking into consideration the
22 circumstances of this offence and the
23 circumstances of Mr. Michel.

24 The crime of sexual assault when proceeded
25 by indictment, as is the case here, is
26 punishable by up to ten years imprisonment.

27 This shows how serious Parliament considers it

Official Court Reporters 13

1 to be. But this is a crime that covers a wide
2 range of conduct.

3 An act of forced intercourse and also the
4 kissing of a person's genitals are serious
5 kinds of sexual assaults because they involve
6 a serious violation of the victim's personal
7 and physical integrity. These kinds of sexual
8 assaults have been described in the case law
9 as "major sexual assaults". The law in this
10 jurisdiction, as set out in many many
11 decisions of this Court and also decisions of
12 our Court of Appeal, is that when sentencing a
13 person for that type of sexual assault, the
14 Court must begin at a starting point of three
15 years imprisonment and then adjust the
16 sentence to reflect any aggravating or
17 mitigating factors that are present.

18 It is a sad fact that this particular type
19 of sexual assault (the sexual assault of a
20 woman who is sleeping - sometimes as a result
21 of passing out from alcohol consumption but

22 other times simply sleeping, as was the case
23 here) is very prevalent in this jurisdiction.
24 Comments about this are made in almost all the
25 cases that were filed by the Crown in this
26 case and I had, unfortunately, occasion to
27 comment about this relatively recently in the

Official Court Reporters 14

1 decision of R. v. Carpenter 2011 NWTSC 61. I
2 will simply repeat here what I said there at
3 paragraph 11 of the decision:
4 The kind of incident that I heard
5 about this morning, and that I
6 just referred to when I summarized
7 the facts, is extremely prevalent
8 in the Northwest Territories. I
9 have had occasion to comment on
10 this, unfortunately, several times
11 in several different cases and
12 most recently, just last week,
13 when I gave my sentence in the
14 case of R. v. Lafferty 2011 NWTSC 60,
15 which was a case arising from the
16 community of Behchokã. I have
17 said then, and I say again, that

18 it boggles the mind how prevalent
19 this type of crime is. It has
20 been referred to in various ways
21 by this Court over the years.
22 Words like "epidemic" and
23 "disease" have been used, and
24 while some might think this is a
25 melodramatic or exaggerated way to
26 describe it, I do not think it is.
27 The sad reality is that these

Official Court Reporters 15

1 types of facts, the sexual assault
2 of a woman who is sleeping or
3 passed out, is a common occurrence
4 in this jurisdiction. The
5 prevalence of this offence is
6 referred to in almost every
7 decision that is included in the
8 Crown's book of authorities. The
9 Court referred to it at paragraph 3
10 in R. v. Kodzin [2011] N.W.T.J.
11 No. 8; at paragraph 14 in R. v. Beaverho
12 [2009] N.W.T.J. No. 59; at

13 paragraph 19 in R. v. Lomen [2009]
14 N.W.T.J. No. 69; at paragraph 17
15 in R. v. Bird [2005] N.W.T.J. No. 62;
16 and finally, our Court of Appeal
17 recently commented about it as
18 well at paragraph 16 in the case
19 of R. v. A.J.P.J. 2011 NWTCA 2,
20 which was decided in January of
21 this year, and talking about the
22 issue the Court of Appeal said,
23 "sexual assaults committed against
24 young women while they are either
25 passed out or asleep has been and
26 continues to be a serious problem
27 in this jurisdiction". And as I

Official Court Reporters 16

1 say, there are many many more
2 sentencing decisions of this Court
3 where similar comments have been
4 made noting the prevalence of this
5 type of crime in our communities
6 all over this jurisdiction.
7 That is the end of the quote from
8 R. v. Carpenter and every single word applies

9 to this case.

10 As I have already mentioned, the starting
11 point for this type of offence is three years
12 imprisonment.

13 A starting point is not to be confused
14 with a minimum sentence. Rather, it is an
15 expression of what range of sentence would
16 generally be required to give effect to the
17 principle of proportionality and reflect the
18 serious blameworthiness of this type of
19 conduct and the harm that it causes. The
20 sentencing Court must then weigh aggravating
21 and mitigating features of the case to decide
22 what a fit sentence for this specific crime
23 committed by this specific offender should be.

24 Here, apart from the inherent seriousness
25 of the offence, there are aggravating factors
26 to be considered.

27 The first is the age the victim. She was

Official Court Reporters 17

1 only 17 years old.

2 The second is an element of breach of
3 trust as she was not only a relative of Mr.

4 Michel's common-law but was in his house that
5 night babysitting their children. She was
6 asked to spend the night there by Mr. Michel's
7 common-law because she, the common-law, had
8 been drinking. These are circumstances where
9 the victim should have felt safe and been
10 safe - circumstances where she ought to have
11 been able to count on Mr. Michel for
12 protection, not be abused by him.

13 The third aggravating factor is the fact
14 that the victim was asleep both times when she
15 was assaulted. Because she was sleeping, she
16 was in a more vulnerable position.

17 The fourth aggravating factor is that Mr.
18 Michel showed some persistence in his conduct.
19 He went to the room where the victim was the
20 first time, started touching her sexually, and
21 she in no uncertain terms told him to leave.
22 That would have been bad enough, but he did
23 not stop there. Sometime later he returned to
24 the room and this time proceeded to commit
25 very serious sexual assaults on her. He
26 behaved in a way that showed complete contempt
27 and complete disregard for her personal

1 integrity. And that conduct had the
2 consequences that are described by both victim
3 of this crime and her mother, as I have
4 already referred to, in their victim impact
5 statements.

6 The last aggravating factor is the
7 criminal record although, in my view, it is
8 not a significant aggravating factor. The
9 effect of the record really is that Mr. Michel
10 cannot be treated as a first-time offender.

11 The breaches more or less confirm what I have
12 heard about the fact that he has a major
13 problem with alcohol. For him to breach those
14 conditions of release when he knew his freedom
15 was at stake shows that, at least at that
16 time, his issues with alcohol were out of
17 control. So I do not really consider the
18 record to be a significant aggravating factor.

19 But the other aggravating factors are
20 significant and if there was nothing
21 mitigating in this case, I would be required,
22 I think, to impose a jail term going well
23 beyond the three year starting point. But
24 there are some mitigating elements in this
25 case. And without doubt, the most significant
26 one is Mr. Michel's guilty plea.

27 Mr. Michel initially elected to have his

1 trial before a jury. Last week he filed a
2 notice that he intended on re-electing his
3 mode of trial to Judge alone. And shortly
4 thereafter his counsel communicated to the
5 Court that this matter was going to be
6 resolved without the necessity of the trial.

7 It was on Monday of this week that he entered
8 his actual guilty plea.

9 This guilty plea cannot be characterized
10 as an early guilty plea. Once the notice of
11 re-election was filed, the Court was able to
12 issue a notice advising people who had
13 received jury summonses for this week that
14 they would not need to come to the courthouse
15 Monday morning for jury selection. But it did
16 not avoid the process of getting the jury
17 summonses issued and served on several members
18 of this community because, of course, that
19 takes place well before the week that the jury
20 trial is scheduled for.

21 Similarly, while the Crown was able to
22 cancel its witnesses and the complainant was
23 spared from having to testify at trial, she

24 was not spared completely as she did have to
25 testify at the preliminary hearing which would
26 not have been the case if Mr. Michel had been
27 willing to acknowledge his responsibility for

Official Court Reporters 20

1 this crime sooner than he did. All that being
2 said, a guilty plea on a matter like this one,
3 even when it is entered at the 11th hour,
4 still has considerable mitigating effect in my
5 opinion.

6 The first reason is that it avoids the
7 necessity of a trial so in that sense it
8 avoids time and expenses associated with that.

9 The second reason, much more important, is
10 that it does spare the victim of the assault
11 from the ordeal of having to come to a public
12 courtroom to testify about these events in
13 front of a jury. That is a very important and
14 significant factor. The Court, because it
15 regularly sees complainants testify in these
16 kinds of cases, knows only too well how
17 difficult it can be for them. As I have said,
18 this complainant had to testify at a

19 preliminary hearing so she was not entirely
20 spared. But avoiding her having to speak
21 about this again in front of a jury is still
22 something that is of great value.

23 The third reason, also important, is that
24 a guilty plea removes the uncertainty of
25 outcome for all involved and it avoids the
26 added stress that comes with that uncertainty.
27 And it may help with the aftermath of the case

Official Court Reporters 21

1 also.

2 Here I get back to what I said earlier
3 when I was referring to the comments made in
4 the victim impact statements about the victim
5 of this crime having faced harassment in her
6 community. I do not have any details about
7 that and I will not speculate, but there is no
8 question that an event like this and the fact
9 that a charge is laid can cause great division
10 in a small community. Where there are
11 relationships and connections between the
12 people affected by an event like this one,
13 some may well be inclined to disbelieve the
14 complainant. It may just be too difficult to

15 accept that a loved one could have done such a
16 terrible thing as what is alleged. And even
17 if Mr. Michel had been found guilty after
18 trial, he could have continued to deny that he
19 did this or claimed that the victim consented
20 to this, and he could have gotten support from
21 his loved ones in that regard even if he had
22 been convicted. Some offenders do just that
23 and the effect can be to prolong the
24 ostracization of the victim. But by pleading
25 guilty and by admitting what happened and what
26 he did, he has not just admitted his guilt to
27 this Court. He has admitted his guilt to the

Official Court Reporters 22

1 victim herself, to her family, to his own
2 family, to his friends, and to his whole
3 community. He is admitting that he did this
4 to her, and that it was wrong, and that he is
5 taking full responsibility for it. That is
6 very important. And as I said already,
7 hopefully his decision to own up to what he
8 did and to have the courage to do so and
9 apologize publicly for it will be helpful to

10 the complainant and will help the community
11 understand that she is not to blame.

12 The fourth reason why a guilty plea is
13 important, which is tied to what I have just
14 said, is that pleading guilty and taking
15 responsibility for one's action is one way to
16 show remorse. Being truly remorseful and
17 truly sorry about one's action is an important
18 step because once that acknowledgment is made,
19 the road is open for change and for trying to
20 deal with the underlying causes of the
21 behaviour.

22 So for all of those reasons, this Court
23 accords a significant mitigating impact to
24 this guilty plea and it justifies a
25 considerable reduction from the sentence that
26 would otherwise have been imposed on Mr.
27 Michel.

Official Court Reporters 23

1 The second aspect that mitigates this
2 sentence is of course the time that Mr. Michel
3 has already spent in custody. The Criminal
4 Code says that the Court is entitled to take
5 this into account at his sentencing and reduce

6 the sentence that would otherwise be imposed
7 to take into account the fact that there has
8 been pre-trial custody. In deciding how much
9 credit, if any, should be given to an offender
10 for the time that is spent in pre-trial
11 custody the Court has to look at all of the
12 circumstances.

13 Here, Mr. Michel was arrested on September
14 16th, 2010. He was released by a Territorial
15 Court Judge on conditions on the 5th of
16 October, 2010. But he breached the conditions
17 of that release order and was arrested again.
18 Despite that, he was released again on April
19 28th on more strict conditions with surety.
20 But he did not comply with that court order
21 either and he was taken back into custody.
22 This time he was not released and his
23 detention was later confirmed by this Court at
24 a bail review that was held last October.

25 I am told, and it shows from the criminal
26 record, that he has been convicted for those
27 breaches. The bottom line is that counsel are

1 in agreement that there are 230 days of remand
2 time to be taken into consideration as part of
3 his sentencing today.

4 A person who faces a charge, even a
5 serious one, is presumed innocent and this is
6 why often people are released on bail before
7 their trial. And this is what happened to Mr.
8 Michel. He was released the first time and
9 released again even after it was alleged that
10 he had breached the first set of conditions.
11 So he had the full benefit of the bail
12 provisions of the Criminal Code. He ended up
13 in pre-trial custody as a direct result of his
14 failure to comply with the promise that he
15 made to those two Territorial Court Judges.

16 How much credit to give for the time that
17 he spent on remand as a result of this is a
18 matter for the Court's discretion, subject to
19 certain restrictions that are now in the
20 Criminal Code about the ratio that can be used
21 when credit is given.

22 From what I heard yesterday, Mr. Michel
23 had the benefit of several programs while he
24 was on remand. It is to his credit that he
25 chose to make use of those opportunities but
26 it does mean that he was not deprived from
27 programs while in custody. I must also take

1 into account that one does not earn remission
2 for time spent in custody on remand. And I
3 also heard in this case that there were
4 periods of time where Mr. Michel was held in a
5 cell with two other inmates whereas ordinarily
6 it would be two people, not three, in those
7 types of cells.

8 So all things considered, I have decided
9 to give Mr. Michel credit for the time that he
10 has spent in pre-trial custody on a ratio of
11 one on one approximately, and I will give him
12 credit for eight months for that remand time.

13 I also have to take into account the fact
14 that Mr. Michel is an aboriginal offender. As
15 I have already referred to briefly, and based
16 on what his counsel has said, I accept that
17 there are, in his case, systemic factors that
18 he has faced as he was growing up that
19 contributed to his coming into conflict with
20 the law. There was alcohol and violence in
21 the home. Both his parents attended
22 residential schools, and it's not uncommon for
23 the Court to hear that for some that
24 experience has left very deep scars that have

25 interfered with their ability to parent their
26 own children in addition to leading to all
27 sorts of other social problems.

Official Court Reporters 26

1 Mr. Michel is quite young and already he
2 has become an alcoholic by his own admission.
3 Also by his own admission, he has anger
4 issues. He dropped out of school and
5 experienced all sorts of difficulties that we
6 commonly hear are faced by many young
7 aboriginal people in this jurisdiction. That
8 being said, the question is what impact this
9 can have on sentencing.

10 When dealing with a serious offence, there
11 is less of a possibility that the sentence
12 imposed on an aboriginal offender will be
13 different than the sentence imposed on a
14 non-aboriginal offender. The importance of
15 upholding the dignity and personal safety of
16 all members of the community is an important
17 value both in aboriginal communities and in
18 non-aboriginal communities.

19 Mr. Michel's counsel has conceded that a
20 significant jail term must be imposed for this

21 offence so this is not a case where jail can
22 be avoided. In my view, balancing everything,
23 the fact that he is an aboriginal offender and
24 some of the things that he faced during his
25 upbringing are mostly relevant to the other
26 aspect of the principle of restraint, that is,
27 that the sentence should not be any longer

Official Court Reporters 27

1 than what is absolutely necessary to achieve
2 the sentencing objectives and uphold the
3 sentencing principles.
4 I am not losing sight of the fact that Mr.
5 Michel is quite young and that his
6 rehabilitation is an important factor to
7 consider. So is restraint, which is always
8 important when dealing with a young person who
9 does not have a significant criminal record
10 and, for reasons that I have already
11 mentioned, especially significant when dealing
12 with an aboriginal offender. At the same
13 time, the seriousness of Mr. Michel's conduct
14 demands a denunciatory sentence.
15 Many of the offenders who come before the

16 Court convicted of this type of offence are
17 young men, just like him, with their whole
18 future ahead of them - some with very good
19 prospects. Why so many young men, and
20 sometimes not so young men, act this way
21 towards the women in their communities is
22 difficult to understand. The prevalence of
23 this type of crime in our communities in the
24 Northwest Territories is simply appalling.
25 The Court's role is to protect the public, or
26 try to protect the public, and to try to send
27 a clear message each and every time that this

Official Court Reporters 28

1 conduct is appalling, that it causes great
2 harm, and that it must stop.
3 The Crown is asking the Court to impose a
4 jail term in the range of two and a half to
5 three years minus the credit to be given for
6 the remand time. For his part, Mr. Michel's
7 counsel suggests that a jail term be kept
8 essentially at the lower end of the range that
9 the Crown is seeking. Once remand time is
10 credited, that would bring the sentence at the
11 high end of "territorial time" - a sentence

12 under two years. After giving much thought to
13 this, I think there is merit to the defence's
14 plea that the sentence that I impose today be
15 kept to a length that will allow Mr. Michel to
16 serve it within the Territories.

17 There are programs available to him at the
18 North Slave Correctional Centre. He has
19 already spent a number of months there. He
20 has already tapped into some of those programs
21 and resources. He has a counsellor there. He
22 knows some of the people there. He has family
23 support here in the Northwest Territories.

24 Being sent to a penitentiary in southern
25 Canada to serve a federal sentence would mean
26 that he would have to start over again
27 building connections and support in that

Official Court Reporters 29

1 facility. It would cut him off from his
2 family supports. There is no guarantee that
3 he would be sent to a federal penitentiary but
4 if the sentence that I impose today is over
5 two years, there a risk that that could happen
6 and there the Court has absolutely no control

7 over it.

8 A second reason why, in my view, there is
9 merit to have the sentence that I impose today
10 be under two years is that if that is the
11 case, I am permitted to order that Mr. Michel
12 be on probation after his release. As I said
13 yesterday, for someone like him who, in his
14 own words, has started to heal but has a ways
15 to go to deal with his issues, going from the
16 completely structured environment of a jail to
17 complete freedom and no supervision at all may
18 not be the best thing for his own
19 rehabilitation and it may not be the best
20 thing to ensure the protection of the public.

21 So for those reasons and although - and I
22 hope Mr. Michel understands this - a sentence
23 in the penitentiary range could clearly,
24 clearly, be justified for this offence, even
25 with the guilty plea and even with the remand
26 time, I have decided to exercise considerable
27 restraint and impose a sentence that, once the

Official Court Reporters 30

1 remand time has been taken into account, will
2 keep today's sentence of a length that it can

3 be served in the Northwest Territories.

4 I will deal first with the ancillary
5 orders that the Crown has sought.

6 First, there will be a firearms
7 prohibition order pursuant to Section 109 of
8 the Criminal Code. That is mandatory on a
9 charge like this. The order will commence
10 today and expire ten years after Mr. Michel's
11 release. Any firearms are to be surrendered
12 forthwith.

13 I listened carefully when Mr. Michel's
14 counsel was talking about his activities on
15 the land and his trapping activities. Those
16 are constructive and useful things that are
17 consistent with his rehabilitation. But I
18 have decided not to grant the Section 113
19 authorization at this time. This is something
20 Mr. Michel could apply for at a later date if
21 he needs a firearm for employment or
22 sustenance purposes. But I do not see a basis
23 for granting the authorization today and I
24 have some concerns, because of the prior
25 assault conviction and because of what I heard
26 about Mr. Michel's issues with anger and with
27 alcohol, that it is not advisable to make an

1 order like that at this stage. The Code
2 mandates that I consider his criminal record,
3 his safety, and the safety of others in
4 deciding whether a Section 113 exemption
5 should be granted. And, on the whole, I am
6 not satisfied that it should be at this stage.

7 The second order that I am going to make
8 today is a DNA order. It is a mandatory order
9 because sexual assault is a primary designated
10 offence.

11 There will also be an order that Mr.
12 Michel comply with the Sexual Offender
13 Information Registry Act for a period of 20
14 years.

15 I have to consider, as I would in every
16 case, the imposition of a victim of crime
17 surcharge. These surcharges go to a fund that
18 is used to assist victims of crime and it is
19 certainly my practice to make that order
20 whenever I think it is reasonable to do so.

21 But under the circumstances, as I am imposing
22 a lengthy jail term today, I am satisfied that
23 there would be hardship to Mr. Michel so I am
24 not going to make an order for a surcharge.

25 And finally, there will be an order for
26 the destruction of any exhibits seized in this

27 matter; or, if appropriate, their return to

Official Court Reporters 32

1 their lawful owner. All this of course only
2 at the expiration of the appeal period.

3 Stand up please, Mr. Michel.

4 Mr. Michel, for the reasons that I have
5 given, I am not going to send you to a federal
6 penitentiary but I am going to impose a
7 further jail term of two years less one day,
8 which means that you stay here in the
9 Northwest Territories.

10 You can sit down.

11 I also am going to order that you be on
12 probation after your release. It will be a
13 term of probation for 18 months and there will
14 be conditions on that order. The first few
15 are automatic, part of the Criminal Code.
16 They are fairly straightforward.

17 During your probation you are to keep the
18 peace and be of good behavior. That means
19 stay out of trouble.

20 You are to report to the Court when and as
21 directed. You probably won't be asked to

22 report to the Court but if you are, you have
23 to come.

24 I am going to direct that you report to
25 Probation Services within 48 hours of your
26 release, in other words as soon as, and you
27 can arrange that with your case manager I am

Official Court Reporters 33

1 sure. They might even be able to arrange for
2 you to report to someone before you are
3 released.

4 I am going to direct that you take any
5 alcohol, anger management, or any other
6 counselling recommended by your probation
7 officer. This is to help you, it is not to
8 punish you.

9 I am also going to order that you have no
10 contact directly or indirectly with
11 Morningstar Catholique unless she gives you
12 permission to do so in writing through your
13 probation officer. And here I want to be very
14 clear.

15 And Ms. Andrews, I would appreciate if you
16 could make sure this is communicated to the
17 right people. This condition is not intended

18 to put any pressure on the victim to give her
19 consent to any form of contact. I am simply
20 doing this in case she thinks it might assist
21 her with her own process of healing and
22 eventually, because of the family connections,
23 to the restoration of some of those
24 connections. If it is possible, I want there
25 to be a mechanism whereby she can do so. But
26 it is not to put any pressure on her. It may
27 be that things cannot be restored. But it

Official Court Reporters 34

1 would be unfortunate if the Court
2 inadvertently prevented something positive
3 from happening between these people when the
4 time is right for it. So Mr. Michel, she may
5 well never want this to happen so this is
6 something that you would find out through your
7 probation officer if it is to happen.

8 The other condition that I will put in
9 there is that you perform 150 hours of
10 community service work under the supervision
11 of your probation officer. This essentially
12 means working for free for the benefit of the

13 community and it is for two reasons:
14 I could have imposed a longer, much longer
15 jail term to you today so the fact that you
16 have to do some work for the community for
17 free in a way is part of the punishment. But
18 more importantly it is to try to have you give
19 something positive back to the community
20 because the community has been harmed by what
21 has happened.
22 Those will be the probation conditions.
23 You will get a copy of the order. This will
24 be explained to you, and I am sure that your
25 lawyer can assist you if there is anything
26 that is not clear.
27 For the purposes of the warrant of

Official Court Reporters 35

1 committal, Madam Clerk, because the Criminal
2 Code requires that it indicate what the
3 sentence would have been and the credit and
4 all of that, the sentence would have been 32
5 months imprisonment but for the remand time;
6 for the 230 days of remand time, I am giving
7 credit for eight months plus a day; so this
8 brings the sentence actually imposed to two

9 years less one day.

10 The clerk is going to prepare this
11 probation order, Mr. Michel. It will come
12 into force when you are released. You must
13 obey these conditions. Largely the probation
14 order is something that I have included in my
15 sentence in the hope that will help you.
16 Obeying conditions has not always been easy
17 for you this past year. I have not put a no
18 alcohol condition in there because I do not
19 want to set you up for a breach.

20 For what it is worth, I think that you
21 should continue to go to AA and you should
22 continue to think about the harm that alcohol
23 has done to you and your family and make your
24 decisions about alcohol accordingly. I did
25 not put the condition in there because I know
26 we hear it all the time in court how hard it
27 is to beat an addiction like this. It takes

Official Court Reporters 36

1 time but I do hope that you win your battle
2 because when you are released, if you win that
3 battle, then you will be able to get your

4 education upgraded to what you want to do and
5 you will be able to be a good father to your
6 children.

7 Is there anything that I have overlooked,
8 counsel?

9 MR. BOCK: No, thank you, Your Honour.

10 MS. ANDREWS: Nothing from the Crown, Your
11 Honour.

12 THE COURT: Thank you again for your
13 submissions, counsel. And we will close
14 court.

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17 Certified to be a true and
18 accurate transcript pursuant
19 to Rules 7 23 and 7 24 of the
Supreme Court Rules,

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24 Lois Hewitt,
25 Court Reporter

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