

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- vs. -

PAUL PAYOU

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Transcript of the Reasons for Sentence by The Honourable  
Justice J.E. Richard, at Fort Simpson in the Northwest  
Territories, on April 5th A.D., 2012.

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APPEARANCES:

Ms. D. Vaillancourt: Counsel for the Crown  
Mr. T. Boyd: Counsel for the Accused

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Charge under s. 271 Criminal Code of Canada

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

1 THE COURT: The offender before the  
2 Court is a 60-year-old aboriginal man from  
3 Fort Liard, Northwest Territories. Yesterday  
4 he was convicted by a jury of his peers of a  
5 serious crime of sexually assaulting an  
6 intoxicated unconscious woman. Today it is my  
7 responsibility to impose a fit sentence.

8 The circumstances of the offence are as  
9 follows:

10 On February 6th, 2011, the victim, a  
11 32-year-old aboriginal woman, living in her  
12 home community of Fort Liard, was drinking  
13 alcohol with friends and family at two  
14 different residences in Fort Liard and, by  
15 early evening, was becoming intoxicated. She  
16 then went to the community health centre with  
17 her friend C. as C. required medical  
18 attention. The offender, who is C.'s  
19 father, drove them to the health centre in his  
20 vehicle. The offender waited in his vehicle  
21 outside the health centre. There was alcohol  
22 in his vehicle.

23 During the time while C. was waiting  
24 for or receiving medical attention, the victim  
25 had several more drinks of alcohol at or in  
26 the offender's vehicle. When the victim  
27 decided to leave the health centre to go home,

1 she asked the offender to drive her home.  
2 There was no more alcohol in the offender's  
3 vehicle and so the offender offered to take  
4 the victim to his home where she would have  
5 more to drink and then he would drive her  
6 home.

7 At the offender's home, he made her a  
8 mixed vodka drink and then he gave her three  
9 shooters of straight vodka. This would have  
10 been nine or 10 o'clock in the evening.

11 After drinking the shooters, the victim  
12 remembers nothing until she woke up the next  
13 morning. She was laying on a bed in the  
14 offender's livingroom, her pants were lowered,  
15 and the offender was sitting beside her. The  
16 victim said "what the hell's going on?" to  
17 which the offender responded "nothing, you  
18 just passed out, that's all".

19 The victim pulled up her pants and went to  
20 the bathroom. She noticed blood on her pants,  
21 and testified that she was on her monthly  
22 period at that time. She also noticed hickeys  
23 on her neck and breast. The offender drove  
24 the victim to her home. After speaking with  
25 family members at her home, she called the  
26 police. She was later taken to the health  
27 centre where a sexual assault kit was

1 completed. While the victim remembers nothing  
2 of what happened to her during the night, she  
3 learned from the police as a result of  
4 forensic analysis that the offender had had  
5 sex with her that night.

6 The victim knew the offender as she says  
7 that he was friends with her own father and  
8 also because she had babysat the offender's  
9 children in the past.

10 The 60-year-old offender testified at his  
11 trial that in February 2011, he and this  
12 younger woman, the victim, were "very much in  
13 love with each other". And that they had  
14 consensual sex that night. By their verdict,  
15 it is obvious that the jury did not believe  
16 his evidence. By their verdict, the jury  
17 found that the victim was not capable of  
18 consenting to sexual activity because of her  
19 gross intoxication. Having heard the trial  
20 evidence, I am satisfied that this offender  
21 intentionally supplied excessive amounts of  
22 alcohol to an already intoxicated woman so  
23 that he could have sex with her.

24 The personal circumstances of this  
25 offender are as follows:

26 He is 60 years of age. He grew up in Fort  
27 Nelson, British Columbia, in a large family

1 after his parents had relocated there from  
2 northern Alberta. His parents, now deceased,  
3 at some point had lost their treaty status  
4 with the result that Mr. Payer and his  
5 siblings did not regain treaty status and are  
6 considered nonstatus aboriginal.

7 At a young age, this offender and his  
8 siblings were taken away from the parents into  
9 foster care. This offender spent much of his  
10 youth, until age 15, in many foster homes away  
11 from his family in Fort Nelson, and he lost  
12 the aboriginal language that he had learned  
13 from his parents, and he did not receive the  
14 parental care and guidance usually associated  
15 with a traditional family unit.

16 After age 15, he apparently got in with a  
17 bad crowd and had a troubled life thereafter,  
18 often in conflict with the law and indeed he  
19 has an extensive criminal record between 1968  
20 and 1987, primarily for property offences and  
21 drinking and driving offences.

22 He gave up drinking alcohol in 1987 and he  
23 says that he has not had a drink since that  
24 time.

25 In 1988, Mr. Payer commenced a  
26 relationship with a woman in Fort Liard,  
27 Northwest Territories and they had three

1 children. That relationship lasted until the  
2 year 2000.

3 Mr. Payer did not have much formal  
4 schooling beyond Grade 8; however, to his  
5 credit, he has upgraded himself by taking  
6 trades training when he could and he  
7 eventually took courses which resulted in him  
8 getting his Grade 12 GED diploma. I am told  
9 that Mr. Payer has always had steady  
10 employment and in recent years has worked for  
11 the municipal government in Fort Liard  
12 providing water and sewer services to the  
13 community.

14 In November of 2009, in Fort Liard, Mr.  
15 Payer sexually assaulted a young girl. That  
16 case came into this court in April 2011 when  
17 he was convicted of sexual assault and  
18 sentenced to three years imprisonment. He is  
19 presently serving that sentence in Bowden  
20 Institute in the province of Alberta.

21 That is a summary of this offender's  
22 personal circumstances.

23 I turn now, briefly, to the victim in the  
24 present case.

25 The victim in this case was quite  
26 emotionally upset and distraught when  
27 testifying at this trial, and understandably

1 so. She filed a brief victim impact statement  
2 with the Court and I will read it into the  
3 record.

4 Madam Clerk, I am going to ask you to mark  
5 this document as Exhibit S-2 in these  
6 proceedings.

7 The victim states as follows, and I  
8 quote:

9 I feel so stupid for taking shots  
10 with him, the accused. I am so  
11 embarrassed for drinking with him.  
12 Nothing like this has ever  
13 happened to me before. I now keep  
14 my thoughts to myself. I am too  
15 embarrassed about this. I feel  
16 everyone knows about this. My  
17 family has to put up with my bad  
18 moods. I felt safe with him, the  
19 accused, because we, friends and  
20 family, drank his booze before.  
21 He always had booze in his truck  
22 and his home. But he never drank  
23 with us. Since he did not drink,  
24 I felt safe. I never thought he  
25 would hurt me. I want this to be  
26 over so I can go home to my  
27 family. I want no contact with

1           him.

2           One of the principles of sentencing which  
3 guides a sentencing Judge is sometimes  
4 referred to as parity. This principle is  
5 described in the Criminal Code in these words:  
6 "a sentence should be similar to sentences  
7 imposed on similar offenders for similar  
8 offences committed in similar circumstances".

9           When I have regard to those latter words,  
10 "similar offences committed in similar  
11 circumstances", I am mindful of the prevalence  
12 of this very type of offence in this  
13 jurisdiction. And by "this type of offence",  
14 I am referring to the sexual assault of a  
15 woman who is unconscious or passed out because  
16 of alcohol consumption.

17           Regrettably, we have had many many many  
18 similar cases come before the courts of this  
19 jurisdiction for years, and it continues to be  
20 a serious social problem in this jurisdiction  
21 today. The Judges of this Court and of the  
22 Court of Appeal have commented on this  
23 situation over and over. One recent case  
24 where this was highlighted was the decision of  
25 this Court in R. v. Keith Roy Michel where a  
26 young aboriginal offender was sentenced for a  
27 similar offence which he committed in the



1           aboriginal community of Lutsel K'e.

2           The prevalence of this type of offence in  
3           the communities of this jurisdiction is simply  
4           appalling. Because of that situation, in my  
5           view the sentencing objectives of denunciation  
6           and deterrence require a fit and appropriate  
7           sentence with those particular objectives in  
8           mind.

9           The starting point, when considering a fit  
10          sentence for an offence of this nature, is  
11          three years imprisonment in a federal  
12          penitentiary. During the consideration of a  
13          fit sentence in each individual case, that  
14          starting point can then be adjusted to reflect  
15          the presence or absence of any aggravating or  
16          mitigating circumstances.

17          In the determination of a fit sentence in  
18          this case, I have considered the fundamental  
19          purpose and the objectives of sentencing as  
20          set forth by Parliament in the Criminal Code.

21          I acknowledge the fundamental sentencing  
22          principle of proportionality, that is, that a  
23          sentence must be proportionate to the gravity  
24          of the offence and the degree of responsibility  
25          of the offender.

26          In this case this offender's degree of  
27          responsibility is high. Himself a nondrinker,

1 he deliberately plied an intoxicated woman  
2 with more booze so that he could have sexual  
3 gratification. His behaviour was egregious.  
4 He displayed an appalling lack of regard for  
5 the personal and bodily integrity of another  
6 human being.

7 I have also considered other sentencing  
8 principles set forth in Section 718.2 of the  
9 Criminal Code. As Mr. Poyou is an aboriginal  
10 offender, I have had particular regard to  
11 paragraph (e) of Section 718.2.

12 As required by the decisions of the  
13 Supreme Court of Canada in Gladue and Ipeelee,  
14 as sentencing Judge I take judicial notice of  
15 the history of colonialism in this country,  
16 the historical displacement of some aboriginal  
17 peoples in Canada, the sad legacy of the  
18 residential school system in Canada. These  
19 are matters that have led to, and continue to  
20 lead to, lower educational attainment by  
21 aboriginal peoples generally, higher rates of  
22 unemployment, higher rates of substance abuse  
23 and social problems among aboriginal people  
24 generally, and also higher levels of  
25 incarceration of aboriginal people in Canada  
26 as a whole. I take this context and these  
27 historical circumstances into account when I

1           consider what sanctions are appropriate and  
2           reasonable when imposing a fit sentence for  
3           this aboriginal offender in this case.

4           In addition, in this case defence counsel  
5           has provided to the Court some case-specific  
6           or individual information about this  
7           aboriginal offender's background, information  
8           that I have referred to earlier. It shows  
9           that his parents lost their children as a  
10          result of the then state policies on  
11          apprehension of children from aboriginal  
12          families and aboriginal communities and, as a  
13          result, his parents were prevented from  
14          providing the usual parental care, love and  
15          guidance that is associated with a traditional  
16          family unit. This led to a dysfunctional  
17          lifestyle by a young Paul Payou which  
18          continued into his adult years. He did  
19          however, as I have said, eventually grow out  
20          of the dysfunctional lifestyle and he did  
21          improve himself and was, for years, a  
22          productive member of society.

23          Those, then, are some of the unique  
24          circumstances of this aboriginal offender  
25          which I take into account or into  
26          consideration when I have regard to the  
27          direction of Parliament in paragraph (e) of

1 Section 718.2.

2 However, at the end of the day, I regret  
3 in all of the circumstances of this case that  
4 I am unable in this case to impose a sanction  
5 short of incarceration. I am unable to  
6 conclude that the unique circumstances of  
7 aboriginal offenders generally, or the  
8 case-specific information about this  
9 aboriginal offender, is of such a mitigating  
10 nature as to impose a sanction short of  
11 incarceration.

12 This was a very serious crime of violence.  
13 Mr. Payer's conduct vis-à-vis this young  
14 aboriginal woman was despicable. His moral  
15 blameworthiness is high. His unique systemic  
16 or background circumstances as an aboriginal  
17 offender before this Court cannot and does not  
18 diminish his moral culpability for this  
19 serious crime of violence which is so  
20 prevalent in this jurisdiction.

21 After much consideration, I have  
22 determined that the principles of sentencing,  
23 including proportionality and including the  
24 Gladue principles contemplated by paragraph  
25 (e) of Section 718.2, lead me to impose a fit  
26 sentence for this aboriginal offender, Paul  
27 Payer, that is similar to the sentences that

1 have been imposed upon similar aboriginal  
2 offenders in this jurisdiction who have  
3 committed a similar offence in similar  
4 circumstances.

5 There are aggravating features to this  
6 crime.

7 Mr. Poyou's criminal record is an  
8 aggravating feature although I take note that  
9 most of it is dated and unrelated. It is an  
10 aggravating factor in the determination of  
11 sentence that the offender was, on February 7,  
12 2011, on bail awaiting his trial a few months  
13 later on a sexual assault charge in which the  
14 complainant was a young girl in Fort Liard.

15 I find that there are no mitigating  
16 circumstances in this case. I detect no  
17 remorse on the offender's part for what he did  
18 in committing this offence in February 2011.

19 There is another sentencing principle that  
20 I must consider and that is sometimes referred  
21 to as the totality principle. The law  
22 requires that when the Court imposes a  
23 sentence that is consecutive to another  
24 sentence, the Court must be careful not to  
25 impose a combined sentence that is unduly long  
26 or unduly harsh.

27 In my view, a consecutive sentence is

1 appropriate in this case. Also, in my view, a  
2 fit sentence for the present offence is one of  
3 four years imprisonment. The principle of  
4 totality requires that I take a "hard look" at  
5 the combined sentence which would now mean a  
6 further six years in penitentiary for this  
7 60-year-old aboriginal offender, that is, the  
8 two years remaining on the sentence that he is  
9 now serving plus the four years consecutive  
10 which would be imposed. I find that that  
11 combined sentence is harsh, perhaps unduly  
12 harsh, and as a result I will reduce somewhat  
13 the consecutive sentence that I impose today.

14 I will just state for the record that I am  
15 advised by counsel that this offender has no  
16 pre-trial custody for which I must consider  
17 any credit in the determination of sentence.

18 Please stand now, Mr. Payout.

19 Paul Payout for the crime that you have  
20 committed, the sexual assault on Donna  
21 Klondike contrary to Section 271 of the  
22 Criminal Code, it is the sentence of this  
23 Court that you be imprisoned for a term of  
24 imprisonment of three years consecutive to any  
25 other sentence presently being served.

26 In addition, I grant the mandatory  
27 firearms prohibition order under Section 109

1 of the Criminal Code for a period of ten years  
2 consecutive to the existing firearms  
3 prohibition order.

4 Next, I grant the mandatory order under  
5 Section 487.051 of the Criminal Code requiring  
6 you to provide a DNA sample.

7 Also, an order will issue under Section  
8 490.012 requiring that you comply with the  
9 provisions of the Sex Offender Information  
10 Registration Act for life.

11 In the circumstances of the lengthy term  
12 of incarceration to be served by Mr. Payer,  
13 there will be no victim of crime surcharge.

14 Take a seat, sir.

15 Counsel, is there anything further on this  
16 case?

17 MS. VAILLANCOURT: Nothing from the Crown, Your  
18 Honour.

19 MR. BOYD: Nothing from the defence.

20 THE COURT: Fine, we will close court.

21 \*EXHIBIT S-2: Victim Impact Statement

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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