

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES
IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

MICHAEL ALEXANDER PASCAL

Transcript of the Reasons for Sentence delivered by The Honourable Justice K. M. Shaner, in Yellowknife, in the Northwest Territories, on the 27th day of April, 2012.

APPEARANCES:

Ms. J. Patterson: Counsel on behalf of the Crown

Mr. M. Hansen: Counsel on behalf of the Accused

Charges under ss. 268 C.C. and 264.1(1)(a) C.C.

1 THE COURT: I am now in a position to
2 deliver reasons for sentence and to impose
3 sentence upon Mr. Pascal.

4 On April 23rd, 2011, which was this past
5 Monday, Michael Pascal pled guilty to aggravated
6 assault and uttering a threat, contrary to
7 section 268 and 264.1(1)(a) of the Criminal Code
8 respectively. Convictions were entered, and
9 today it is my responsibility to impose a
10 sentence on Mr. Pascal.

11 We heard at the hearing that Mr. Pascal is
12 an aboriginal individual who is 40 years of age.

13 An Agreed Statement of Facts was entered as
14 an exhibit on April 23rd, and Ms. Patterson read
15 it into the record. I am not going to repeat
16 that process, but I am going to summarize those
17 facts as it is important that there be context
18 for this sentence.

19 On August 12th, 2011, Mr. Pascal and two
20 other people were drinking alcohol in a shed
21 outside of his residence in Fort McPherson,
22 Northwest Territories. From the photographs of
23 the shed that were filed on consent as Exhibit
24 S-2, it appears that the shed is a small building
25 approximately the size of a large bedroom, with a
26 wood stove, a small sitting area with a couch,
27 and an eating area that contains a modestly-sized

1 table. Sometime between 7 and 8 o'clock that
2 night, the victim, Miller Kasook, who was then 17
3 years old, and his friend arrived and started to
4 drink with the men who were in the shed,
5 including Mr. Pascal. Mr. Pascal was heavily
6 intoxicated at the time, and he appeared angry
7 with Mr. Kasook. He went outside briefly and
8 then returned; and when he did, he grabbed a
9 hunting knife from the cupboard and said, "I'm
10 going to sharpen my knife." Shortly after this,
11 he moved towards where Mr. Kasook was sitting and
12 swung the knife at him. Mr. Kasook was stabbed
13 in the chest. The wound was later determined to
14 be three to four centimetres long and one
15 centimetre wide. The depth was unknown.

16 Mr. Kasook tried to evade Mr. Pascal, but
17 Mr. Pascal locked the shed and yelled "I'm going
18 to kill you, you're going nowhere" at Mr. Kasook.

19 The victim was yelling for help during the
20 attack. Mr. Pascal's sister, who happened to be
21 outside of the shed - I am not sure where but she
22 was not inside the shed - heard this and she
23 broke the door open. At this point Mr. Pascal
24 stopped his attack. He said, "I'm not going to
25 go to jail" and he left the shed, threw the knife
26 into some bushes and he ran away. Mr. Pascal's
27 sister told everyone to leave.

1 Mr. Kasook, the victim, received assistance
2 from community members outside of another
3 residence, and Mr. Kasook was later transported
4 by RCMP and received medical treatment in Fort
5 McPherson. He was later flown to Inuvik for
6 treatment at the hospital there, and it was there
7 that the wound was sutured.

8 At approximately 10 to 10 that same night,
9 Mr. Pascal called his boss to say he would not be
10 coming to work because "the boy is dead" and he
11 had to run. Mr. Pascal was crying during that
12 call.

13 Approximately a half hour later the RCMP saw
14 Mr. Pascal at an intersection. They arrested
15 him. He appeared intoxicated.

16 The RCMP made an audio recording during the
17 arrest and transport. They attempted to read Mr.
18 Pascal his rights and the police caution, and Mr.
19 Pascal made a number of utterances (which were
20 read into the record on Monday) about the death
21 of his daughter Charleigh Amber Pascal. Later
22 while in cells, he asked the jail guard if the
23 boy had died, and then said, "He's the one who
24 took my daughter Charleigh to the lake."

25 In a statement he gave to RCMP the next day
26 on August 13th, 2011, Mr. Pascal advised that his
27 daughter had frozen to death on March 22nd, 2008,

1 at the age of 15, and he believed that Mr. Kasook
2 and another member of the Kasook family were
3 responsible.

4 He also told the RCMP that he recalled
5 drinking the day before with Mr. Nerysoo, but
6 that he did not recall stabbing Mr. Kasook and he
7 did not believe he would do something like that.

8 The Criminal Code provides that the
9 fundamental purpose in sentencing is to
10 contribute to respect for the law, and the
11 maintenance of a just, peaceful and safe society
12 by imposing just sanctions that have one or more
13 of a number of stated objectives. Those
14 objectives are set out in the Criminal Code.
15 They are: denunciation; specific and general
16 deterrence; where necessary, separation from of
17 an offender from society; rehabilitation of
18 offenders; reparation for harm done to victims or
19 to the community; and promotion of a sense of
20 responsibility in offenders, and acknowledgement
21 of the harm done to victims and to the community.

22 Proportionality is another principle in
23 sentencing which is specifically set out at
24 section 718.1. The sentence must be
25 proportionate to the gravity of the offence and
26 the degree of responsibility or what is also
27 called the moral blameworthiness of the offender.

1 There are two other principles found in
2 section 718.2 that are highly relevant in this
3 case; namely, that like offenders and offences
4 should be treated similarly, and also what is
5 known as the Gladue principle which is stated in
6 the Criminal Code as follows:

7
8 All available sanctions other than
9 imprisonment that are reasonable in
10 the circumstances should be
11 considered for all offenders, with
12 particular attention to the
13 circumstances of aboriginal
14 offenders.

15
16 Both of the charges to which guilty pleas
17 were entered are very serious ones. Aggravated
18 assault carries with it a maximum penalty of 14
19 years of imprisonment, which signifies the
20 seriousness with which Parliament treated it, and
21 uttering threats carries with it a maximum of
22 five years.

23 Aggravated assault falls into the definition
24 of a serious personal injury offence and as such,
25 the only options in sentencing are incarceration,
26 probation, or a combination of those two.

27 On Monday, the Crown indicated that it is

1 seeking a sentence of three to three and a half
2 years. Ms. Patterson submitted a number of cases
3 on the appropriate range of sentence which
4 suggests that a term of imprisonment of 30 months
5 to five years is what is typically given in cases
6 like this.

7 Mr. Hansen, for the defence, pointed out
8 that the sentences in those cases were imposed
9 after trial, which is not the case here. He also
10 filed a number of authorities where the court
11 imposed sentences in the lower range, including
12 R. v. Lennie where the sentence was two years
13 less a day; R. v. Theriault where the sentence
14 imposed was 22 months; and R. v. Lafferty where a
15 one year sentence was imposed. The facts in R.
16 v. Dillon, which was also tendered by defence,
17 are quite different and combined with the
18 requirements now found in the Criminal Code for
19 sentencing in a case of this nature, the Dillon
20 case is distinguishable and is not of much use in
21 this circumstance.

22 In this case there are some mitigating
23 factors:

24 First, Mr. Pascal has taken responsibility
25 for his actions and he entered guilty pleas. I
26 realize that this did not come before the start
27 of the preliminary inquiry and so the victim did

1 have to testify there, but I am satisfied with
2 the explanation that was given by Mr. Hansen
3 about the time it took to change the plea to
4 guilty. In summary, it was after additional
5 information was acquired and disclosed by the
6 Crown about the events of that night. Mr. Pascal
7 acted very quickly after that information came to
8 his attention and it did save the victim the
9 grief of having to go through another round of
10 testimony in a trial.

11 As well, through his counsel on Monday and
12 again today, Mr. Pascal offered an apology to the
13 victim, his friends and his family, and I am
14 satisfied that he is truly remorseful for his
15 actions.

16 There are a number of very aggravating
17 circumstances here as well though:

18 The victim was very young. He was 17 years
19 old at the time, compared to the accused who was
20 at the time 39 or 40.

21 There is the nature of the threat that was
22 made to the victim. Mr. Pascal threatened to
23 kill him.

24 Mr. Pascal locked the door to the shed which
25 prevented Mr. Kasook from leaving.

26 The use of the knife in this attack is
27 particularly aggravating because of the risk it

1 introduced. In submissions on Monday, Mr. Hansen
2 urged that the injury suffered by Mr. Kasook was
3 not life threatening and perhaps not that
4 serious. But looking at the photographs of the
5 wound that were tendered as Exhibit S-3, as well
6 as the description in the agreed facts, I have to
7 disagree. The victim was stabbed, and stab
8 wounds are serious. I do recognize that Mr.
9 Pascal is not to be punished for what might have
10 happened, but nevertheless it bears mentioning
11 that the outcome in this case could have been
12 much worse.

13 Mr. Hansen also indicated that one of the
14 factors underlying the attack was that Mr. Pascal
15 blames the victim for the death of his, Mr.
16 Pascal's, daughter in 2008. What happened to Mr.
17 Pascal's daughter is nothing short of tragic, and
18 I do not think any one of us in this room could
19 begin to imagine how painful this must have been
20 for Mr. Pascal. Nevertheless from the victim's
21 perspective, the attack was entirely unprovoked
22 and certainly it was unexpected. This is highly
23 aggravating. Similarly, the evidence that Mr.
24 Pascal was perhaps motivated to attack Mr. Kasook
25 because he blamed him for his daughter's death is
26 also highly aggravating.

27 Mr. Hansen provided some information about

1 Mr. Pascal's life. Mr. Pascal is trained in a
2 number of trades and he has a very strong and
3 positive work history. From Mr. Hansen's
4 submissions, it appears that Mr. Pascal himself
5 had a difficult childhood. Both of his parents
6 attended residential school, and Mr. Pascal
7 attended residential school, too. His father
8 drank and was not around. His mother was
9 responsible for the family and although she did
10 not drink, Mr. Hansen indicated that the home was
11 a violent one.

12 After Mr. Pascal lost his daughter, who was
13 15 at the time, he went on a six month drinking
14 binge. After that, he attended treatment on his
15 own and counselling in a 45 day program.

16 Through his lawyer, he represented that he
17 does not feel he has too many problems with
18 alcohol although he admits on the day in question
19 here he drank too much. And again, he said he
20 would not have done this had he been sober.

21 He realizes that he has to deal with the
22 death of his daughter and he has to deal with his
23 grief. He has expressed a desire and willingness
24 to do so.

25 I have also taken Mr. Pascal's criminal
26 record into consideration. It includes five
27 convictions for assault - in 1991, 1993, 1995 and

1 1997. There is a conviction for assault causing
2 bodily harm from 1997, and a break and enter with
3 assault in 2003, along with a number of
4 convictions resulting from non-compliance with
5 probation orders and undertakings. I note,
6 however, that there have been no convictions of
7 any kind since 2003.

8 The importance of the Gladue principle which
9 I spoke of earlier was recently enforced by the
10 Supreme Court of Canada in R. v. Ipeelee. At
11 paragraph 59, Justice LeBel stated the following:

12
13 When sentencing an Aboriginal
14 offender, a judge must consider:
15 (a) the unique systemic or
16 background factors that may have
17 played a part in bringing the
18 particular Aboriginal offender
19 before the courts; and (b) the types
20 of sentencing procedures and
21 sanctions which may be appropriate
22 in the circumstances for the
23 offender because of his or her
24 particular Aboriginal heritage or
25 connection. Judges may take
26 judicial notice of the broad
27 systemic and background factors

1 affecting Aboriginal people
2 generally, but additional
3 case-specific information will have
4 to come from counsel and from the
5 pre-sentence report.

6
7 As Justice Charbonneau pointed out in the
8 Lennie case which was filed by Mr. Hansen, there
9 are limits on how these factors in Gladue impact
10 the sentence, and the need to discourage violence
11 in aboriginal communities is just as important as
12 it is anywhere else.

13 Mr. Kasook, a 17 year old boy, had a right
14 to be and feel safe amongst older adults. The
15 circumstances of this case are such that there
16 has to be a strong message sent through
17 sentencing to both Mr. Pascal and, in general,
18 that what happened was wholly unacceptable.
19 Certainly this falls on the high end of moral
20 blameworthiness.

21 That said, I have absolutely no doubt that
22 Mr. Pascal's upbringing and experience of both
23 himself and his parents in the residential school
24 system have contributed to his past involvement
25 with the criminal justice system, his alcohol
26 use, and his stated inability to deal with the
27 loss of his daughter. It, no doubt, contributed

1 to this very sad and very senseless event.

2 The Crown's position on the need for a
3 sentence that both denounces and deters this
4 conduct is well taken. However, I do still
5 believe that that can be achieved through a
6 lesser period of incarceration than what is
7 sought, combined with a probationary period.
8 Given the nine year gap between these offences
9 and the last offence, Mr. Pascal's voluntary
10 entry into treatment after the death of his
11 daughter in 2008, as well as his strong work
12 history over the past few years, I sincerely
13 believe that he is capable of change and that he
14 is capable of taking responsibility for his life.
15 In fairness, I think he should have that
16 opportunity.

17 Mr. Pascal, can I ask that you please stand.

18 You are sentenced to a period of 20 months
19 of imprisonment, which is net of the one-to-one
20 credit for time spent in remand, which will be
21 followed by a term of probation of two years for
22 the charge of aggravated assault.

23 For the charge of uttering a threat, you are
24 sentenced to a period of six months' imprisonment
25 to run concurrently with the 20 month term for
26 aggravated assault.

27 The terms of the probation order will be

1 that you will, in addition to the mandatory
2 conditions which your lawyer can explain to you,
3 report to a probation officer within seven days
4 of being released and thereafter as directed by
5 the probation officer; abstain completely from
6 consumption of alcohol or other intoxicating
7 substances; abstain from the consumption of drugs
8 except in accordance with directions of a
9 licenced medical practitioner. You will not have
10 any contact with Mr. Miller Kasook.

11 Mr. Pascal, while you are in prison you will
12 no doubt have opportunities for treatment to help
13 you deal with the issues that have led to you
14 coming to this point. I urge you to take
15 advantage of anything that is offered to you. It
16 is completely up to you to change the direction
17 of your life.

18 Do you understand the sentence that I have
19 imposed?

20 THE ACCUSED: Yes.

21 THE COURT: You can sit down, Mr. Pascal.

22 In addition, there will be an order for a
23 DNA sample to be taken in accordance with section
24 487.051 of the Criminal Code, and there will be a
25 firearms prohibition under section 109. Given
26 your counsel's submissions both on Monday and
27 today and what I heard about your reliance on

1 hunting and your traditional lifestyle, as well
2 as the fact that your criminal record does not
3 contain any firearms offences that I could see, I
4 will make the order under section 113(1) of the
5 Criminal Code that would authorize the chief
6 firearms officer or Registrar to issue a
7 certificate for you to possess and use firearms
8 for the purposes of subsistence hunting. But
9 again, the decision to issue that licence is not
10 for me; it is within the purview of either the
11 Registrar or the chief firearms officer.

12 There will be no victims of crime surcharge.

13 Finally, Mr. Homberg, with respect to the
14 wish of Mr. Pascal to serve his prison term in
15 Whitehorse, I cannot see that I have any
16 authority to make that kind of an endorsement or
17 to order it, but I do think that it is open to
18 either yourself or Mr. Hansen to contact
19 Corrections officials here in the Northwest
20 Territories and see if those arrangements can be
21 made through the correctional system. Certainly
22 given Mr. Hansen's submissions about the family
23 connections and support system that your client
24 would have in Whitehorse, I think that it would
25 be worthwhile to pursue that. If it is helpful
26 for the Corrections service, then certainly I
27 would recommend ordering a transcript and

1 providing that to the Corrections officials.

2 MR. HOMBERG: Thank you, Your Honour. I
3 will pass on your comments to Mr. Hansen.

4 THE COURT: Thank you. And finally with
5 respect to the request for the forfeiture order,
6 that order is granted, Ms. Patterson.

7 MS. PATTERSON: Thank you, Your Honour. Would
8 you like me to follow up with a paper order for
9 Your Honour's signature?

10 THE COURT: Yes, please.
11 Is there anything else?

12 MS. PATTERSON: I can't recall whether we had
13 come to an agreement about the amount of time
14 served that Mr. Pascal had spent in relation to
15 this matter. But I would ask, if possible, that
16 if we could come to a decision what that is so
17 that it may be recorded accurately on the record
18 of proceedings.

19 THE COURT: All right. Mr. Homberg, was
20 that resolved?

21 MR. HOMBERG: The note that I had received
22 from Mr. Hansen indicated that this individual
23 had, or that Mr. Hansen had at least asked for
24 four months credit, and Mr. Pascal says plus he
25 did two months house arrest as well.

26 MS. PATTERSON: Yes, Your Honour. I think
27 that with respect to the two month house arrest,

1 I think the submission, if I recall correctly,
2 from Mr. Hansen was that that would be for Your
3 Honour to consider in terms of the length of
4 sentence to impose. But in terms of actual time
5 served, my recollection of the discussion on the
6 record was that he was remanded in custody on
7 December the 5th, had been -- sorry, December the
8 2nd he was in custody initially. A show cause
9 hearing was held, decision was given on December
10 the 5th. But he was sentenced to 15 days on a
11 breach so that should be removed from that, the
12 amount of time served. So my submission would be
13 that it would be from December 2nd, 2011, until
14 today's date less 15 days.

15 THE COURT: Less 15 days. Okay, so that
16 is approximately four and a half months.

17 MS. PATTERSON: I think very close to it, yes,
18 Your Honour.

19 THE COURT: Well, if that is the case. I
20 was working from the assumption that it was four
21 months, which is why the sentence of 20 months
22 was imposed. But since the warrant has not been
23 signed yet, I think it is still open to correct
24 that. Just so that that is reflected
25 appropriately, we will revise that 20 month
26 sentence to be a 19 month plus 15 day sentence.

27 MS. PATTERSON: Thank you, Your Honour.

1 THE COURT: Is there anything else?

2 MR. HOMBERG: No, Your Honour.

3 THE COURT: All right. We will close
4 court. Thank you very much.

5

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7 Certified to be a true and
8 accurate transcript pursuant
9 to Rule 723 and 724 of the
Supreme Court Rules of Court.

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Annette Wright, RPR, CSR(A)
12 Court Reporter

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