

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

HENRY BASIL

Transcript of the Reasons for Sentence delivered by The Honourable Justice L.A. Charbonneau, sitting in Yellowknife, in the Northwest Territories, on the 29th day of May, A.D. 2013.

APPEARANCES:

Mr. A. Godfrey: Counsel for the Crown

Mr. C. Davison: Counsel for the Accused

(Charges under s. 253(1)(a) x2 Criminal Code of Canada)

1 THE COURT: Henry Basil has pleaded guilty
2 to having operated a vessel while the
3 concentration of alcohol in his blood was over
4 the legally permitted limit. I must now decide
5 what sentence should be imposed for that offence.

6 The Crown and the defence have presented me
7 with a joint submission as to what the sentence
8 should be. That joint submission is that I
9 should impose a fine of \$2,000 together with a
10 driving prohibition of 18 months.

11 As a rule, sentencing courts have a very
12 wide discretion in deciding what penalties should
13 be imposed for any given offence, but when a
14 joint submission is presented, the law says that
15 it should be followed unless it is clearly
16 unreasonable. Whether the joint submission
17 presented in this case is reasonable depends on
18 the facts of the offence, the circumstances of
19 the offender, and the interpretation of the
20 relevant sentencing principles that are set out
21 in the Criminal Code.

22 Dealing first with the facts of this offence
23 and the procedural history of the matter, the
24 events that led to this charge happened almost
25 three years ago. Mr. Basil had been at a camp on
26 an island in Yellowknife Bay near the community
27 of Dettah with two other people, Collin Lafferty

1 and Chris Bourke. On the evening of June 30th
2 and into the following day, the three of them
3 consumed alcohol. On July 1st, at 1:30 in the
4 afternoon, they left the camp in Mr. Basil's
5 boat. I heard that this is the boat he had
6 purchased recently when these events occurred.
7 The photographs that were filed as exhibits show
8 that it is an open boat with a removable cover,
9 and appears to be about 20 feet long.

10 It was a windy afternoon on July 1st, 2010,
11 and the waters were very rough. At some point,
12 and for an unknown reason, the boat suddenly
13 stopped. It quickly became swamped by waves
14 coming from the south, which would be the larger
15 opening of Great Slave Lake, and the boat sank
16 quickly thereafter. None of the three
17 individuals in the boat were wearing lifejackets.
18 Mr. Lafferty decided to try to get to shore using
19 a gas can as floatation. Mr. Bourke said that he
20 lost sight of Mr. Lafferty 15 to 20 minutes after
21 the boat sank. Mr. Lafferty did not make it to
22 shore and he drowned.

23 Mr. Basil and Bourke stayed with the sunken
24 boat which had, apparently, the bow sticking out
25 of the water still. Someone noticed from a house
26 on shore that there was something amiss on the
27 waters, realized what was happening and called

1 for help. Mr. Basil and the other man were
2 rescued when help arrived and they were taken to
3 hospital. Mr. Basil was treated for hypothermia.
4 I heard that to this day he continues to suffer
5 some physical consequences as a result of what
6 happened. I also heard that he continues to
7 suffer significant psychological consequences for
8 which he continues to take treatment. In fact,
9 it was to have better access to this treatment
10 that he relocated to Edmonton after these events.

11 While he was in the hospital that day,
12 though, blood samples were taken from Mr. Basil
13 and were analyzed. The amount of alcohol found
14 in his blood was determined to be 201 milligrams
15 of alcohol in 100 millilitres of blood, which is
16 almost three times the legal limit.

17 It took some time for the investigation into
18 this matter to be completed. Charges were
19 eventually laid against Mr. Basil in May 2011.
20 By then, he had already relocated to Edmonton.
21 Presumably because the authorities could not
22 locate him, a warrant was issued for his arrest.
23 I heard that once he learned of the existence of
24 that warrant, he turned himself into the custody
25 of police, was taken into custody and escorted
26 back to the Northwest Territories within a few
27 days to appear on these charges. As a result, he

1 spent a few days in custody before he was
2 released on bail.

3 Mr. Basil was charged with driving a vessel
4 with a concentration of alcohol in his blood that
5 was over the legal limit, with impaired driving,
6 and also under subsection (5.1), Section 253 of
7 the Criminal Code. That provision says that
8 every one who, while driving a motor vehicle or a
9 vessel with a concentration of alcohol in the
10 blood over the legal limit, causes an accident
11 resulting in the death of another person is
12 guilty of an offence.

13 Mr. Basil had his preliminary hearing on
14 those charges. I believe there may have been a
15 fourth charge on the original Information on
16 which he was discharged at the preliminary
17 hearing, but he was committed to stand trial on
18 the three others. In August 2012, the Crown
19 directed a stay of proceeding on the third count,
20 the one under Section 253(5.1) of the Criminal
21 Code.

22 At the sentencing hearing this morning, I
23 was provided with the agreed facts which were
24 reduced to writing. The Crown also filed
25 Mr. Basil's criminal record, photographs that
26 show the sunken boat as well as the boat once it
27 was taken out of the water. In addition, a

1 Victim Impact Statement prepared by
2 Mr. Lafferty's common-law spouse was marked as an
3 exhibit and I have reviewed it. That document
4 talks about the devastating consequences that
5 Mr. Lafferty's death had for his spouse and the
6 family emotionally, mentally, and financially.
7 The Court also heard this morning from
8 Mr. Lafferty's mother who expressed the depth of
9 the loss that she has felt as a result of this
10 and also told Mr. Basil directly that she
11 forgives him. Finally, defence counsel has filed
12 letters from the psychologist who assessed
13 Mr. Basil a month after the events -- or wrote
14 the letter a month after the events in August
15 2010 and sets out some of the symptoms that he
16 was experiencing then. There is also a letter
17 from his treating doctor that confirms that
18 Mr. Basil has been in his care since 2010.

19 Given some of the things that were said this
20 morning and some of the materials presented, I
21 think it is important for the Court to address
22 the question of whether Mr. Lafferty's death can
23 have a bearing on the sentence that I have to
24 impose today.

25 Drinking and driving is a serious problem in
26 this country and the ravages that it causes are
27 well known. For that reason, any charge

1 involving drinking and driving is considered to
2 be a serious matter. But, obviously, charges
3 that include having caused a person's death or
4 serious injuries are considered more serious than
5 charges that involve simply driving a motor
6 vehicle while impaired or with a blood alcohol
7 concentration that is over the legal limit. The
8 difference in seriousness between the two types
9 of charges is reflected in the maximum penalties
10 that can be imposed for these offences. For
11 example, driving with an alcohol concentration in
12 the blood that is over the legal limit is
13 punishable by a maximum of five years in jail if
14 the Crown proceeds by indictment. When the
15 charge is one involving impaired driving causing
16 death, the maximum penalty life imprisonment. In
17 addition, drinking and driving charges that do
18 not involve causing death or serious injury can
19 be proceeded summarily, which signals generally
20 less serious offences with less severe potential
21 penalties, whereas the charges that involve the
22 causing of death or serious injuries are
23 automatically indictable offences.

24 Here, the charge on which a stay of
25 proceedings was directed in August 2012 was by
26 far the most serious one that Mr. Basil faced.
27 The fact that this charge was stayed makes a

1 significant difference as far as what sentence
2 this court can impose today because it changes
3 the fundamental nature of what Mr. Basil is
4 admitting or acknowledging that he did and is
5 responsible for within the meaning of the
6 criminal law.

7 The decision as to what charge is proceeded
8 on is up to the Crown's office; it is not up to
9 the Court. In making its decisions as to which
10 charges should be proceeded on, the Crown follows
11 prosecution policies and guidelines which are a
12 matter of public record. Those policies are
13 publicly available. Those policies say that
14 matters are prosecuted when two criteria are met.
15 The first is that the evidence available to the
16 Crown is such that there is a reasonable prospect
17 of conviction on the charge. The second is that
18 a prosecution is in public interest. Having a
19 reasonable prospect of conviction means that the
20 evidence is strong enough to prove each element
21 of the offence charged beyond a reasonable doubt.
22 That is the standard of proof that applies on a
23 criminal case and it is a very high standard of
24 proof. It means that to have Mr. Basil convicted
25 of the count that was stayed, the Crown would
26 have had to prove something that is called
27 causation: that while his blood alcohol level

1 was above the legal limit, Mr. Basil caused an
2 accident that resulted in Mr. Lafferty's death.
3 There is a difference between what that means
4 within the context of criminal law and how people
5 understand causation in day-to-day life and this
6 was apparent this morning.

7 It is not surprising at all to the Court
8 that in the minds of Mr. Lafferty's family and
9 loved ones, Mr. Basil is responsible for
10 Mr. Lafferty's death. In fact, based on what he
11 has said, my impression is that Mr. Basil himself
12 seems to accept responsibility for that in that
13 sense, and I am not sure how this presents in his
14 mind. I am not sure if he thinks that if they
15 had only stayed on the island and waited for the
16 wind to die down, this would not have happened;
17 or if he wonders if he had taken some other route
18 to get back to shore, this would not have
19 happened; or if he feels responsible simply
20 because he was the one driving the boat.
21 Whatever it is, the fact is causation within the
22 meaning of criminal law means more than that. It
23 means looking into all of the circumstances, not
24 just what the accused person did but also what
25 everyone else did as well - and this is very
26 important - as well as outside factors that were
27 beyond anyone's control: in this case, factors

1 like the weather, the wind, the water
2 temperature, whatever caused the boat to stop,
3 everyone's conditions and decisions. Things of
4 that nature.

5 It is not for the Court to inquire why the
6 Crown made the decision it did to stay the count
7 that was stayed, but I will say for what it is
8 worth that based on the facts that were alleged
9 and admitted, it seems clear that there were many
10 factors at play that day that, very sadly, in
11 combination, led to this tragic result. These
12 included very rough water conditions on the lake;
13 it included whatever caused the boat to stop and
14 the conditions that were such that it became
15 swamped so quickly; the fact that there were no
16 lifejackets being used; the distance from shore
17 when the boat sank, which meant it was going to
18 inevitably take a while for someone to know what
19 was going on and for help to arrive; the fact
20 that the waters in the Great Slave Lake remain
21 very, very cold even in the summer. Based on all
22 the information that was presented this morning,
23 what I have been told overall, and although I do
24 not have the benefit of all of the evidence, I
25 have to say that it does appear that the Crown
26 would have had some problems establishing
27 causation beyond a reasonable doubt in this case.

1 That of course in no way changes or diminishes
2 the death and the loss experienced by
3 Mr. Lafferty's family. The Court recognizes
4 that, recognizes that loss and wants to express
5 its empathy for the family members, those who are
6 here today and those who are not here today.

7 There are all sorts of levels of
8 responsibility. There is criminal
9 responsibility, that can only be attributed based
10 on that very high standard of proof beyond a
11 reasonable doubt that I have already talked
12 about. There is civil responsibility, that can
13 be established on a lesser standard of proof.
14 And then there is moral responsibility, which is
15 not something that is dealt with or can be dealt
16 with by the courts.

17 Mr. Lafferty's family members, at least some
18 of the ones I heard from, hold Mr. Basil
19 responsible for what happened. As I have said,
20 Mr. Basil himself clearly feels responsible for
21 what happened. Those are normal human reactions.
22 But for the purposes of sentencing, I cannot take
23 into account, in the sentence I impose, the fact
24 that Mr. Lafferty died as a result of these
25 events because that is not what Mr. Basil has
26 pleaded guilty to. Even so, it is the Court's
27 hope that the fact that these proceedings took

1 place may play a part in helping those affected
2 by this in their own process of healing and
3 closure.

4 I have to say that the forgiveness expressed
5 to Mr. Basil by Mr. Lafferty's mother is
6 something that shows amazing character, required
7 a lot of personal courage, and was very
8 compelling and moving to hear.

9 Mr. Basil's apology and obvious distress
10 about what happened leaves no doubt about the
11 fact he is genuinely sorry, and hopefully that
12 can also be an important piece in healing from
13 all of this, although, of course, nothing can
14 change what has happened.

15 Having said all of that, I must turn to the
16 analysis that has to be undertaken to decide what
17 a fit sentence is for this offence.

18 In any sentencing decision, the Court must
19 take into account the principles and objectives
20 of sentencing that are set out in the Criminal
21 Code. It is well established that in dealing
22 with drinking and driving offences, the
23 principles of denunciation and deterrence are
24 very important.

25 Every time a person uses a motor vehicle or
26 a vessel while under the influence of alcohol,
27 the risk of serious injury or death being caused

1 is very real. The case books are full of such
2 tragic cases where lives have been ruined because
3 someone made the decision to drive when they
4 should not have been. Alcohol impairs judgment
5 and reflexes. Motor vehicles and motor-propelled
6 vessels are powerful and they should not be
7 operated by people whose faculties are
8 diminished.

9 The majority of drinking and driving cases
10 involve people who are driving cars. There are
11 fewer cases involving vessels, but that does not
12 mean that the risk of mixing alcohol and driving
13 motorboats should be underestimated. The mix of
14 alcohol and motorboats is every bit as dangerous
15 as the mix of alcohol and cars. Driving a
16 motorboat requires skills, knowledge, and good
17 reflexes. Conditions on the water can change
18 very quickly. The person driving a motorboat
19 needs all their wit, judgment, and reflexes.
20 They need to be able to react quickly to changing
21 conditions, to the weather, to obstacles they may
22 encounter on the water, and on a body of water
23 the magnitude of Great Slave Lake, that is
24 especially the case.

25 I think it is fair to say that public
26 awareness about the risks of driving cars while
27 impaired has increased a lot over the last 20 or

1 30 years. The problem of drinking and driving is
2 far from resolved on our roads, but there is more
3 awareness and more public outcry about the
4 possible consequences of this type of conduct.
5 Drinking and driving a car is certainly not
6 something that is generally considered to be
7 "cool" or acceptable in our society of today. I
8 am not convinced at all that the same awareness
9 exists about the risks of operating vessels while
10 intoxicated. For that reason, the Court has to
11 send a clear message about the seriousness of
12 that conduct because of the risk that it entails.
13 This is especially true in a jurisdiction like
14 ours where lakes are everywhere and many, many
15 people operate motorboats in the summer months.

16 In considering the importance of general
17 deterrence, I also take into account that the
18 detection of these offences regarding motorboats
19 is more difficult than with cars. It is much
20 harder for the police to monitor activities on
21 the many lakes in the Northwest Territories than
22 it is on the relatively few number of roads that
23 we have. The authorities, I know, do sometimes
24 patrol the navigable waters in the Yellowknife
25 area, but, realistically, I think people know
26 there is a greater risk of getting caught
27 drinking and driving a car than drinking and

1 driving a boat. And as I have already alluded
2 to, in a jurisdiction where water is everywhere
3 and many, many people go boating in the summer,
4 it has to be made very clear to people that if
5 they take the risk and get caught, there will be
6 severe consequences.

7 In addition to the sentencing principles,
8 the Court must also be focused primarily on the
9 specific facts that it is dealing with and take
10 into account aggravating and mitigating factors.
11 Here, the guilty plea and what I accept as
12 genuine, heartfelt remorse on Mr. Basil's part
13 are mitigating factors. So is the fact that
14 Mr. Basil recognizes that he needs to keep
15 alcohol out of his life and the steps that he has
16 taken to achieve this, which are to his credit.
17 But there are aggravating factors as well.
18 Mr. Basil has been convicted of drinking and
19 driving offences before and has a number of other
20 convictions on his criminal record. I recognize
21 that the related convictions are very dated and
22 that the last time he was convicted of anything
23 was 13 years ago, but, still, he does not come
24 before the Court as someone who has never been in
25 trouble with the law or never been convicted of
26 this particular type of crime. In addition, the
27 concentration of alcohol in his blood was very,

1 very high. The Criminal Code now makes that a
2 statutory aggravating factor, but readings as
3 high as these were always treated as an
4 aggravating factor by the courts in this
5 jurisdiction.

6 The minimum penalty for this offence is a
7 fine of \$1,000 and the maximum penalty is five
8 years in jail. Although this court does not
9 usually deal with these types of offences because
10 most of them are dealt with in the Territorial
11 Court, the Court is aware that absent significant
12 aggravating factors, fines are usually imposed
13 for a person who is convicted for the first time
14 of drinking and driving offences. For a
15 subsequent offence, even when the minimum
16 penalties are not triggered because the Crown has
17 not filed a Notice of Intention to Seek Greater
18 Punishment, jail is sometimes imposed even if it
19 is not mandatory. But obviously that depends on
20 the individual circumstances of each case and, to
21 an extent, on how dated the other convictions
22 are.

23 I have already talked about the sentencing
24 principles of deterrence and denunciation, but
25 another important sentencing principle is
26 restraint. That principle means that jail should
27 only be imposed where no other sanction will

1 achieve the sentencing goals set out in the
2 Criminal Code. Applying that principle, taking
3 into account that Mr. Basil has pleaded guilty,
4 his overall circumstances, the consequences he
5 has already faced and will continue to face
6 arising from these events, and the fact that he
7 did spend some time in custody after he turned
8 himself in in Alberta and was escorted back to
9 the Northwest Territories, I cannot in this case
10 say that a jail term is required to achieve the
11 goals of sentencing and I accept that the proper
12 penalty for the offence Mr. Basil has pleaded
13 guilty to is a fine. That fine, however, has to
14 be significant enough to address the concerns I
15 have talked about, to denounce his conduct and
16 deter others who may be inclined to behave in the
17 same manner, in particular in relation to
18 motorboats. Coincidentally, the boating season
19 is almost upon us. The message has to be clear
20 that driving motorboats and being intoxicated is
21 a potentially lethal mix every bit as much as
22 driving a car while intoxicated.

23 At first blush, given the aggravating
24 factors I have talked about and the other
25 principles I have talked about, I would have been
26 inclined to impose a fine higher than what is
27 being suggested by counsel. But in imposing a

1 fine, the Court must take into account the
2 offender's ability to pay. Here, based on what I
3 heard about Mr. Basil's situation, his health
4 problems and his limited income, I have concluded
5 that what is being jointly submitted by counsel
6 is, in fact, reasonable.

7 As I indicated this morning, I would also
8 normally be inclined to impose a victim of crime
9 surcharge in circumstances such as this because
10 no jail term is being imposed, but, again, I have
11 taken into account what defence counsel has said
12 generally about Mr. Basil's means and
13 specifically also the costs he has incurred to
14 return to the Northwest Territories to attend
15 these proceedings. I heard that it cost him
16 between six and seven hundred dollars to come to
17 Hay River and, given his means, that is not an
18 insignificant amount of money. So I have
19 concluded, under the circumstances, that there
20 should not be a victim of crime surcharge imposed
21 because it would result in hardship.

22 Mr. Basil, stand up, please.

23 Sir, for the charge that you have pleaded
24 guilty to, I hereby sentence you to a fine of
25 \$2,000 as was suggested by the lawyers. I will
26 give you 18 months to pay that fine or to work it
27 off, again, because of what your lawyer has told

1 me. In addition to that, you will be prohibited
2 from driving any motor vehicle for a period of 18
3 months. You can sit down.

4 Mr. Basil, I just want to say a few more
5 things to you. I believe you. I certainly
6 believe you when you say you are sorry about what
7 happened, and I know that living with this for
8 the rest of your life is a burden that is a lot
9 heavier than anything than I could have done
10 today as part of my sentence. I understand that.
11 I have heard that you do some volunteer work,
12 that you are involved in some community
13 organizations where you live. Maybe if you have
14 the opportunity ever when you do that kind of
15 work, you have the opportunity to share your
16 experience with people when you are ready to do
17 that, the importance of not mixing alcohol with
18 boats and vehicles, you can share some of what
19 you have lived through. It might be something
20 that could make a huge difference in someone's
21 life. Because of what happened, I am sure you
22 will be more convincing if you talked about that
23 than any ad than the government can put on the
24 radio or on television about what can happen. So
25 if you are ever able to do that, you might
26 actually be able to make a difference and avoid
27 someone living through what you have lived

1 through and what others have lived through. I
2 leave that thought with you. I am not ordering
3 you to do it, of course, I am just saying that
4 that is something perhaps, if you are ever able
5 to do, you could. That might actually make a
6 significant difference to someone on some lake.
7 But in the same way as I have expressed my
8 empathy for Mr. Lafferty's loved ones who are
9 here today and shared their loss, in the same way
10 that I said that I hope today's process will help
11 them with their process and closure, I hope that
12 in some way it will help you in that process as
13 well.

14 There will be an order that any exhibits
15 seized as part of this investigation can be
16 either returned to their rightful owners or
17 destroyed if that is more appropriate.

18 Is there anything else, Counsel, that I have
19 not addressed that needs to be addressed?

20 MR. DAVISON: Not that I can think of.

21 Thank you.

22 MR. GODFREY: Nothing I can think of, Your
23 Honour.

24 THE COURT: Before we close court, I want
25 to thank the people who attended today and I want
26 to thank those who shared what they could today
27 as part of this process. I want to thank counsel

1 for their work in resolving this difficult case.

2 With that, we can close court.

3 THE COURT CLERK: Thank you, Your Honour. All

4 rise. Court is now closed.

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8 Certified Pursuant to Rule 723
9 of the Rules of Court (transcribed
from audio recording)

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12 Jane Romanowich, CSR(A)
13 Court Reporter

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