

S-1-CR2013000022

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- vs. -

STEIN RANDALL BOURQUE

Transcript of the Reasons for Sentence by The Honourable
Justice V. A. Schuler, at Yellowknife in the Northwest
Territories, on June 20th A.D., 2013.

APPEARANCES:

Mr. D. Praught: Counsel for the Crown

Ms. C. Wawzonek: Counsel for the Accused

Charge under s. 267(b) Criminal Code of Canada

1 THE COURT: Mr. Bourque has pled guilty
2 to, and is now convicted of, assault causing
3 bodily harm contrary to Section 267(b) of the
4 Criminal Code. Mr. Bourque admits that he bit
5 off the end of the victim's nose.

6 He admits, as further detailed in the
7 agreed statement of facts, that late on the
8 night of Friday, February 24th, 2012, he was
9 at the Raven Pub here in Yellowknife. He was
10 intoxicated. The victim, Frank Anderson, and
11 his girlfriend Alice Maudsley were also at the
12 Raven. Mr. Bourque and Ms. Maudsley went to
13 school together in Fort Smith but had not seen
14 each other for about three years at that time.

15 Mr. Bourque made sexually suggestive
16 remarks to Ms. Maudsley and said that she
17 would be going home with him notwithstanding
18 that she told him that she was there with her
19 boyfriend. The remarks were made several
20 times over the course of an hour, following
21 which Mr. Anderson and Ms. Maudsley decided to
22 leave the pub.

23 As they were standing on the sidewalk,
24 Mr. Bourque came out of the pub and approached
25 them, and again made sexual remarks to
26 Ms. Maudsley. Mr. Anderson got between them
27 and began to defend his girlfriend. He and

1 Mr. Bourque began shouting at each other and
2 Mr. Bourque pushed Mr. Anderson on his
3 shoulders. Mr. Anderson responded by grabbing
4 Mr. Bourque by his shoulders and they began to
5 wrestle.

6 After about a minute Mr. Anderson ended up
7 on the ground on his back with Mr. Bourque on
8 top holding him down. Mr. Bourque then, to
9 quote the agreed statement of facts, "moved in
10 and bit off the end of Mr. Anderson's nose".

11 While witnesses pulled Mr. Bourque off
12 Mr. Anderson, Mr. Bourque spat the severed
13 piece of nose at Mr. Anderson and it landed on
14 his jacket. Mr. Bourque ran away and jumped
15 in a taxi. Mr. Anderson got up, discovered
16 what had happened to his nose, and fainted.

17 Mr. Bourque was arrested about an hour
18 later at his mother's home. He was
19 intoxicated, agitated, and spoke of harming
20 himself when told the reason for his arrest.

21 Mr. Anderson was taken to the hospital.
22 Examination revealed that the inferior distal
23 portion of his nose had been removed exposing
24 the nasal cartilage. Fortunately a witness
25 had retrieved the severed part of the nose and
26 it was reattached shortly after arrival at the
27 hospital, however Mr. Anderson spent four or

1 five days there and then it was several weeks
2 before he was weaned off morphine that he had
3 been given for the pain.

4 Victim impact statements were provided by
5 both Mr. Anderson and Ms. Maudsley.
6 Mr. Anderson remembers nothing of the assault
7 but is reminded daily of it by seeing the scar
8 and says also that he is asked about the
9 disfigurement daily. He was unable to work
10 for at least two weeks and says that he lost a
11 promotion because he could not deal with
12 hiring new people.

13 In his second victim impact statement
14 dated June 12, this year, he says that he
15 still has the scar and suffers from anxiety
16 and sometimes pain.

17 Crown counsel advised that Mr. Anderson
18 may yet have reconstructive surgery.

19 Ms. Maudsley's victim impact statement
20 talks about how traumatic the event was for
21 her, that it has left her feeling fearful and
22 unsafe and also that her daily life with
23 Mr. Anderson is affected because of what
24 appears to be his increased sensitivity to
25 smells and tastes. She describes watching
26 what happened as like watching a horror movie.

27 I have no doubt that it was very traumatic

1 for both her and Mr. Anderson.

2 Mr. Bourque was 22 years old at the time
3 of the offence. He is 23 now. He has
4 somewhere between a Grade 10 and 11 education.
5 He is originally from Fort Smith, where he was
6 raised by his great-aunt and uncle because his
7 mother had addictions and was unable to raise
8 him. Although he has no relationship with his
9 biological father and his relationship with
10 his mother is problematic due to unresolved
11 background issues arising from her abuse of
12 alcohol, his extended family is supportive of
13 him and his great-aunt says that he is taking
14 steps to deal with his issues more than he has
15 in the past.

16 Mr. Bourque is of Métis descent. He has
17 had his own struggles with alcohol.

18 After this offence he obtained work in
19 British Columbia. Because he did not appear
20 in court on this charge, he was arrested there
21 and brought back to the Northwest Territories.
22 After his release in August of 2012, he stayed
23 in Fort Smith where he has been working at
24 Northwestern Airlines where he is reportedly
25 well-regarded as an employee.

26 As related by defence counsel, his family
27 members seem to agree that alcohol is a poison

1 to Mr. Bourque and he should not drink. And
2 that is something that he needs to listen to
3 and pay attention to.

4 The court record indicates that
5 Mr. Bourque was originally released on a
6 recognizance on February 25, 2012 with several
7 conditions, including that he not consume or
8 possess alcohol. After going to British
9 Columbia, as I have indicated he failed to
10 appear in the Northwest Territories on this
11 charge in March 2012 and was arrested in
12 August 2012 and released a couple weeks later.
13 He was not convicted of failing to appear and
14 there is no indication that he has been
15 charged for that so I will assume that
16 whatever explanation he offered was accepted.

17 For the past several months, since August
18 24, 2012, he has been on a recognizance with
19 several conditions, including a ban on alcohol
20 and a curfew. In January, he breached the
21 curfew condition and was fined and given time
22 served. Otherwise, it appears that he has
23 been able to comply with the recognizance.

24 Mr. Bourque does have a prior criminal
25 record. In 2008, he was convicted of uttering
26 threats and was given a suspended sentence
27 with probation for one year. That is the only

1 conviction on his record relating to violence.
2 In May of 2009 he was convicted of resisting
3 or obstructing a peace officer, causing a
4 disturbance, and two counts of breach of
5 probation. He received fines. In June of
6 2009 he was convicted of two more counts of
7 breach of probation, again receiving fines.
8 In March of 2011 he was convicted of resisting
9 or obstructing a peace officer for which he
10 was sentenced to 60 days in jail. At the same
11 time he was convicted of possession of
12 marijuana and received a fine.

13 Mr. Bourque takes the position that his
14 prior record reflects his struggles with
15 alcohol rather than a path to criminality. I
16 will accept that it reflects his struggles
17 with alcohol but it also means that
18 Mr. Bourque has been brought before the court
19 before, he is aware that he gets into trouble
20 when he drinks, he is aware of what the
21 consequences can be. His record is not a
22 lengthy one but it is not a negligible one
23 either. And with this conviction for assault
24 causing bodily harm, the record has become
25 increasingly serious over the last five years.

26 In sentencing Mr. Bourque, as in any other
27 case, I have to consider the aggravating and

1 mitigating factors.

2 The main and significant mitigating factor
3 is the guilty plea. It means that Mr. Bourque
4 is remorseful, that he takes responsibility
5 for what he has done. Because he waived the
6 preliminary inquiry and there was no trial,
7 the witnesses did not have to testify. This
8 not only saves them from having to take time
9 out of their schedules to testify in court but
10 in a case like this (involving a traumatic
11 incident) it means that Mr. Anderson and also
12 Ms. Maudsley did not have to testify about and
13 relive this event. So the guilty plea is a
14 significant mitigating factor even though it
15 comes over a year after the offence was
16 committed and therefore cannot be described as
17 an early guilty plea. And I do accept that
18 Mr. Bourque is truly remorseful for what he
19 has done.

20 Mr. Bourque's youth has been referred to.
21 He is only 23, and I take that into account.
22 Rehabilitation is very much a consideration at
23 that age. However, I would not put
24 Mr. Bourque into the same category as the
25 youthful first offenders that were referred to
26 in some of the cases cited. He is not a
27 teenager. He is not a first offender. I have

1 no doubt that he received the benefit of being
2 a youthful first offender when he was
3 sentenced in the past. But, he has gone
4 beyond that now and cannot claim any longer to
5 be in that category.

6 I take into account the letters that have
7 been filed that speak well of Mr. Bourque and
8 indicate that the offence that he has
9 committed is considered to be out of character
10 for him by people who know him. But as so
11 often happens, the Mr. Bourque who is a good
12 employee and looks after other people's
13 children and animals now has to suffer the
14 consequences of what the intoxicated
15 Mr. Bourque did. At the same time, the fact
16 that Mr. Bourque has done quite well since the
17 offence and trying hard to make a stable life
18 for himself does bode well for the future.

19 As for aggravating factors, I will start
20 by acknowledging that Mr. Bourque is not here
21 to be sentenced for being rude and obnoxious
22 to Ms. Maudsley. However, his behaviour
23 toward her is part of the background to this
24 offence. He was persistent and aggressive in
25 the sense of repeatedly making suggestive
26 remarks to Ms. Maudsley even after she had
27 left the Raven Pub and to the point where

1 Mr. Anderson eventually intervened. It was
2 Mr. Bourque who then escalated things into the
3 physical by pushing Mr. Anderson.

4 Although there was a struggle between the
5 two men, it is clear that Mr. Bourque got the
6 the better of Mr. Anderson. He held him down
7 on the ground and it was then that he bit off
8 the end of Mr. Anderson's nose. So in my view
9 it is clear, and I find, that Mr. Bourque was
10 the aggressor and he displayed that aggression
11 by an act that is quite unusual and, indeed, I
12 think fairly described as repugnant and that I
13 am sure Mr. Bourque cannot believe and does
14 not want to believe that he actually did, and
15 that is reflected by what he said to the
16 police officer on arrest. But the fact
17 remains that Mr. Bourque admits that he did do
18 it.

19 It's hard to understand why he did it. On
20 the facts, as I have noted, Mr. Anderson was
21 down on the ground at that point so I can only
22 think that perhaps it was extreme anger or
23 jealousy. But, in any event it does not help
24 to speculate. On the facts that are admitted,
25 there cannot have been any understandable
26 reason, if ever such an act could be
27 understandable such as in self-defence.

1 The assault itself is a serious one and it
2 had and continues to have serious
3 consequences. Bruises fade and eventually
4 disappear but in this case the victim has a
5 disfigurement on a prominent part of his face
6 so he will always be reminded of the trauma
7 associated with it. Also, the potential
8 dangers of a human bite are well known.
9 Mr. Anderson had to undergo HIV and other
10 tests which fortunately turned out to be
11 negative.

12 In my view the location of the bite is
13 aggravating. Any bite is serious but to
14 actually bite someone right on the face (on
15 the nose) is even more serious. The
16 consequences cannot be hidden or disguised
17 with a hat or hair as Crown counsel pointed
18 out.

19 Because Mr. Bourque is of Métis descent,
20 Section 718 of the Criminal Code is relevant.
21 It requires that I consider all available
22 sanctions other than imprisonment that are
23 reasonable in the circumstances, with
24 particular attention to the circumstances of
25 aboriginal offenders. This means that I must
26 consider any systemic or background factors
27 that Mr. Bourque has been affected by and that

1 have contributed to him coming into conflict
2 with the law. And I must also consider
3 whether there are alternative sentencing
4 approaches that might be more effective or
5 better suited to him.

6 Mr. Bourque's family life has obviously
7 been negatively affected by alcohol. His
8 counsel has described how he was not raised by
9 his mother because of her addiction and
10 drinking in her home. He himself has also
11 abused alcohol, and he was intoxicated at the
12 time of the offence that he is now being
13 sentenced for. And as I have also noted, his
14 family members have indicated that alcohol is
15 a poison to him so obviously they are
16 concerned about his abuse of alcohol. So I
17 accept that Mr. Bourque, as so many people in
18 the north and perhaps in particular aboriginal
19 people, is affected by the rampant misuse and
20 abuse of alcohol, and I bear that in mind.
21 But I also note that the law does not say that
22 this automatically means a reduction in
23 sentence from what a sentence would otherwise
24 be. And in cases of violence, other
25 principles such as denunciation and deterrence
26 and protection of the public must play a
27 significant role.

1 Almost every day in this court, we deal
2 with young people, mostly men, aboriginal and
3 non-aboriginal, who drink too much. Their
4 self-control is affected and they take out
5 their anger or whatever emotion they are
6 feeling on other people - victims who suffer
7 physically and very often psychologically. So
8 a sentence for a violent offence has to have,
9 as one of its objectives discouraging the use
10 of violence by others. Mr. Bourque has a
11 record, and although rehabilitation is still
12 important because of his age, the sentence
13 should also be such as to discourage him from
14 committing further crimes, whether violent or
15 not.

16 The fundamental principle of sentencing is
17 that a sentence should be proportionate to the
18 gravity of the offence and the degree of
19 responsibility of the offender. Here the
20 offence is serious for the reasons that I have
21 outlined. I do note that Mr. Bourque was
22 charged and is now convicted of assault
23 causing bodily harm and not aggravated
24 assault, which is the charge in the other
25 biting cases that were cited. So I do bear in
26 mind that he is convicted of the less serious
27 offence and that's what I am sentencing him

1 for.

2 Mr. Bourque's degree of responsibility is
3 reflected in the fact that he started the
4 whole series of events that led to this
5 assault.

6 Under the Criminal Code, the maximum
7 sentence for assault causing bodily harm is
8 ten years imprisonment. There is no minimum
9 sentence however a conditional sentence is not
10 available.

11 Crown counsel seeks a sentence of 15 to 18
12 months with credit for the two weeks that
13 Mr. Bourque spent in remand after being
14 arrested in British Columbia. Crown counsel
15 also submits that the sentence should be
16 followed by two or three years of probation.

17 Defence counsel submits that a sentence of
18 90 days intermittent followed by three years
19 probation would be appropriate in this case.

20 I have reviewed the cases that were
21 provided by counsel. All cases, of course,
22 are different and sentencing is a very
23 individualized process in our system of
24 justice.

25 In the Lidstone case, a 1997 decision of
26 the British Columbia Court of Appeal, which
27 dealt with biting an ear, the majority in the

1 Court of Appeal talks about a range of
2 sentence although it doesn't actually say what
3 that range is, except that it puts two years
4 less a day at the high end of the range but
5 appropriate in that particular case. The
6 other cases cited range from two months in the
7 Pearson case, which is a case that I heard in
8 2000, to just under two years when remand time
9 was taken into account in Kirkpatrick, which
10 is a 2006 decision of the British Columbia
11 Provincial Court.

12 All of those cases involved biting an ear
13 and therefore did not involve as prominent and
14 disfiguring an injury as in this case. Some
15 of the accused had more serious records than
16 Mr. Bourque. Some did not plead guilty so
17 they did not have the benefit of that
18 mitigating factor.

19 In Kirkpatrick, there was a history of the
20 accused breaching court orders to stay away
21 from her husband, who was the victim of the
22 bite, although the sentencing Judge stopped
23 short of finding that she had assaulted him in
24 the past.

25 On the facts, I view this case as more
26 serious than the Pearson case, not only
27 because of the location of the bite but also

1 because in Pearson the struggle was ongoing at
2 the time of the bite. The victim was not down
3 on the ground being held there as the facts
4 indicate in this case. On the other hand,
5 there was no guilty plea in that case.

6 So in coming to a decision about the
7 appropriate sentence in this case, which I
8 will say has been a difficult one, I have
9 tried to balance all these different factors
10 and considerations. In all the circumstances,
11 I think that the sentence that is requested by
12 the Crown is too high but the sentence that is
13 proposed by the defence is too low to reflect
14 the seriousness of the offence.

15 In this case, because there will be a jail
16 term, the victim surcharge will be waived.

17 Because assault causing bodily harm is a
18 primary designated offence, there will be a
19 DNA order in the usual terms.

20 There will also be the mandatory firearm
21 prohibition order in the usual terms. It will
22 begin today and will expire ten years after
23 Mr. Bourque's release from imprisonment. Any
24 firearms and other items prohibited by the
25 order are to be surrendered to the RCMP
26 forthwith.

27 Stand up, please, Mr. Bourque.

1 I am sure, Mr. Bourque, that it has been a
2 shock to you to learn that you have it in you
3 to do such a terrible thing with such severe
4 consequences while you are under the influence
5 of alcohol. And it seems to me that what you
6 have to ask yourself is if you continue to
7 drink, what else might you do when you are
8 intoxicated? What other terrible things could
9 you do? So that is a concern, because this
10 is a very unusual type of assault. And it
11 means that the Court has to be concerned about
12 protecting the public. And the solution, and
13 you have heard it from your lawyer when she
14 has repeated what your aunts have said, is
15 don't drink. And I know that's not easy for a
16 young man to not drink at all, and I am not
17 saying that it would be easy for you not to do
18 that. But essentially, if you don't want to
19 spend large chunks of your life in jail,
20 that's what you have to do, is just stop
21 drinking.

22 Your lawyer has also said to the Court
23 that your family has made the observation that
24 you have matured. So you need to demonstrate
25 that that is in fact true by continuing the
26 work that you have done in these past months
27 to try to make your life better and not

1 letting other people lead you into trouble.
2 In other words, you have to take control of
3 your own life.

4 I have considered and I have credited the
5 two weeks of remand time, which I will credit
6 as three weeks.

7 In my view an appropriate sentence,
8 Mr. Bourque, for what you did in this case
9 would be in the range of eight to ten months
10 in jail. With credit for the remand time and
11 your guilty plea, and considering that the
12 victims, and by that I mean Mr. Anderson and
13 Ms. Maudsley, have not had to testify at all,
14 the sentence that I am imposing today is six
15 months in jail.

16 On release from that sentence, you will be
17 on probation for two years. Along with the
18 statutory conditions, you will have no contact
19 directly or indirectly with Frank Anderson and
20 Alice Maudsley. You will report to a
21 probation officer within two days of your
22 release from jail and thereafter as directed
23 by the probation officer. You will take such
24 counselling as your probation officer directs,
25 and it is the recommendation of this Court
26 that the counselling include anger management,
27 grief and alcohol abuse counselling. And for

1 the two years of your probation, and obviously
2 as well while you are in jail, you are to
3 abstain absolutely from the possession and
4 consumption of alcohol.

5 Now, counsel, I don't know whether it is
6 something that the correctional authorities
7 would consider but I am prepared to make the
8 recommendation that Mr. Bourque serve his time
9 in Fort Smith so that he can be close to his
10 family supports. I just don't know whether
11 this is the type of sentence that would
12 normally be considered there.

13 MS. WAWZONEK: I don't know if it is
14 either, Your Honour, but it certainly can't
15 hurt. He will likely have to go through the
16 application process one way or the other.

17 THE COURT: Because it does appear that
18 you have been helped by your family support
19 and that's where it is, I will direct the
20 clerk to endorse the warrant with the
21 recommendation that you serve your time in
22 Fort Smith.

23 You can have a seat, Mr. Bourque.

24 Is there anything else, counsel?

25 MR. PRAUGHT: No, Your Honour.

26 MS. WAWZONEK: No, Your Honour, thank you.

27 THE COURT: Thank you very much for your

1 submissions then, and we will close court.

2 (ADJOURNED)

3 -----

4

5

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

9

10

11

12

13

Lois Hewitt,
Court Reporter

14

15

16

17

18

19

20

21

22

23

24

25

26

27