

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

HERMAN PETER THORN

Transcript of the Reasons for Sentence held before
The Honourable Justice K. Shaner, sitting in Yellowknife,
in the Northwest Territories, on 21st day of
January, A.D., 2013

APPEARANCES:

J. Porter, Ms.: Counsel for the Crown

M. Martin, Esq.: Counsel for the Defence

Charges under Sections 268, 270(1)(A), 129(A)

Criminal Code of Canada

1 THE COURT: Good afternoon.

2 Mr. Thorn, would you like to join your
3 lawyer.

4 Ms. Porter and Mr. Martin, before I impose
5 sentence, I did want to clarify one thing. With
6 respect to the mandatory firearms prohibition,
7 correct me if you feel I am wrong, but the
8 Criminal Code seems to say that unless it is a
9 first conviction for that offence, it has got to
10 be a lifetime prohibition. Were you looking for
11 the lifetime prohibition, because I do notice
12 that there is another 268 conviction on
13 Mr. Thorn's criminal record?

14 MS. PORTER: Your Honour, I believe the
15 Crown would have to give notice of its intention
16 to rely on that previous conviction in order to
17 seek that greater penalty, but if I could have a
18 moment just to confirm with my colleague.

19 Your Honour, it appears from the annotations
20 in my copy of Tremear's, that the prosecutor
21 must give notice of its intention to seek a
22 mandatory lifetime prohibition under Section
23 109(3). And given that the Crown in this case
24 did not give notice, I don't believe that the
25 Court is able to impose a lifetime prohibition.

26 THE COURT: Thank you. That was the only

1 give reasons for sentence and to impose sentence.

2 This morning Mr. Thorn pled guilty to one
3 count of aggravated assault and one count of
4 assaulting a peace officer. Convictions were
5 entered, and the Crown withdrew Count 3 on the
6 indictment, which was a charge of resisting
7 arrest.

8 I heard joint submissions from the Crown and
9 defence with respect to an appropriate sentence
10 for Mr. Thorn, as well as submissions from
11 Mr. Thorn himself. The joint submission calls
12 for sentences of five years' incarceration for
13 aggravated assault, followed by six months'
14 incarceration for assault on the police officer.
15 The total time would be reduced by the time that
16 Mr. Thorn has already spent in remand awaiting
17 his trial, which defence counsel indicated is
18 234 days, but I will indicate in my reasons that
19 that may be off by one day, and I will let you
20 clarify that.

21 In addition to five-and-a-half years'
22 incarceration, there would be a mandatory
23 firearms prohibition to run ten years from the
24 date that Mr. Thorn is released, and an order

25 that authorizes taking bodily substances from
26 Mr. Thorn for DNA analysis.

27 I accept the joint submission, and I agree

1 that the amount of time sought for incarceration,
2 as well as the two other orders, are appropriate
3 in the circumstances.

4 The circumstances of both offences were read
5 into the record this morning by way of an Agreed
6 Statement of Facts, so I do not see the need to
7 go into them in detail. I will say, however,
8 that both of these offences are very serious and
9 resulted in injuries to both victims.

10 Mr. Thorn is 43 years old. He is
11 Aboriginal. He has a wife and two children. He
12 grew up in the Fort Qu'Appelle area of
13 Saskatchewan, and he was the third generation of
14 his family to attend residential school.
15 Although few details were given about his
16 experience there, he indicated through his
17 counsel that it was indeed a very difficult time
18 for him. Counsel also indicated that both of
19 Mr. Thorn's parents used alcohol frequently, and
20 when he was 10 Mr. Thorn's mother was killed by
21 his father. Mr. Thorn has had problems with

22 alcohol and drugs, and he considers himself to be
23 in recovery at present.

24 He has an extensive criminal record, dating
25 back to 1985 when he was a youth. It is largely
26 uninterrupted, and it contains many, many
27 convictions for violent offences, ranging from

1 simple assault to manslaughter. It also includes
2 convictions for theft, assaulting a peace
3 officer, and possession of weapons at various
4 times.

5 I have taken Mr. Thorn's Aboriginal heritage
6 into account in considering the appropriateness
7 of the submission, but in the circumstances there
8 is no alternative to incarceration. Five years
9 of imprisonment is a long time, but given the
10 objectives in the Criminal Code of sentencing,
11 particularly denunciation and deterrence and as
12 the Crown pointed out, public safety, as well as
13 the principle of proportionality, it is warranted
14 in these circumstances. There are a number of
15 highly aggravating factors and other things that
16 make it necessary to impose a term of
17 incarceration of the length proposed.

18 The attack resulted in a disfiguring facial

19 injury to Mr. Saliga. These were both painful,
20 and the facial injury, while largely healed, is
21 still visible and causes pain and stress to
22 Mr. Saliga. The attack was unprovoked, it was
23 extremely violent, and it came out of the blue.
24 More disturbing was the continuous nature of the
25 attack, after Mr. Saliga attempted to remove
26 himself from the situation and seek safety. But
27 for the location and the actions of the police, I

1 have no doubt that the injuries to Mr. Saliga
2 would have been far, far worse.

3 Mr. Saliga has been profoundly affected by
4 this as he related in his victim impact
5 statements. He has been affected
6 psychologically, socially, and he has been
7 affected financially in having to take time off
8 work.

9 I agree that Mr. Thorn's criminal record
10 coupled with the circumstances of the offence
11 here make it necessary to place the objective of
12 separating him from society very high on the list
13 of objectives in this case.

14 As I alluded to earlier, the proposed
15 sentence is consistent with the principle of

16 proportionality. Mr. Thorn bears a very high
17 degree of personal responsibility. His previous
18 record and the facts given show that he knows
19 what happens when he drinks, he knows that he is
20 without control, and yet he was drinking and he
21 engaged in this very violent act.

22 Mr. Thorn's guilty plea, which I consider to
23 be given, in the circumstances, at a very early
24 time, is mitigating. And it is also very
25 mitigating that he stood up, said he was sorry,
26 and expressed remorse here this morning.

27 I am also pleased to learn that while you

1 have been awaiting trial, Mr. Thorn, you have
2 used your time productively, particularly with
3 respect to your alcohol addiction and taking a
4 leadership role with the Alcoholics Anonymous
5 organization at NSCC. I note that you admitted
6 here today that you need to continue to deal with
7 your alcohol addiction.

8 As Crown counsel pointed out and as the
9 evidence from the cases that were filed,
10 aggravated assault carries with it a potential
11 penalty of 14 years' imprisonment, so the range
12 of sentence is very broad. This no doubt
13 reflects the fact that sentencing is a process

14 centered on individual circumstances, and it also
15 reflects that aggravated assaults can take a
16 variety of forms. As I indicated earlier in the
17 circumstances, I think that five years for the
18 aggravated assault is appropriate.

19 With respect to the six months of time to be
20 served subsequent to that for assaulting Corporal
21 Paddock, I agree that in the circumstances it is
22 appropriate. Given the direction in the
23 Criminal Code with respect to an assault on a
24 peace officer that deterrence and denunciation be
25 primary objectives of sentencing, one could
26 perhaps say that what is proposed is a bit on the
27 light side. But it will run following a period

1 of five years, and so adding six months to the
2 period of incarceration of five years is, in my
3 view, consistent with the totality principle, and
4 adding anything else might be inconsistent with
5 that.

6 Mr. Thorn, can you please stand up.

7 I sentence you to five years for the offence
8 of aggravated assault, followed by six months to
9 be served consecutively for the assault on a

10 peace officer. This will be reduced by the
11 amount of time you have already spent awaiting
12 trial in pretrial custody. There will be an
13 order prohibiting you from possessing a firearm
14 or other weapon listed in Section 109 of the
15 Criminal Code, and that order will run for ten
16 years from the date you are released. There will
17 also be an order permitting the taking of bodily
18 substances from you for the purposes of
19 conducting DNA analysis.

20 Mr. Thorn, you will be incarcerated for a
21 lengthy period of time. During that time,
22 wherever you are, there will no doubt be programs
23 and services available to you to help you to deal
24 with the problems that you have encountered to
25 date. Please, please avail yourself of those
26 programs. You are the only person who can change
27 your behaviour. You are only 43 years old. It

1 is not too late to change, it has been done, but
2 you are the only person who can do that. Use
3 those resources that are provided to you, and use
4 them wisely. You can sit down.

5 Is there anything else on this matter?

6 MS. PORTER: No, Your Honour. I believe

7 that's everything.

8 THE COURT: Mr. Martin?

9 MR. MARTIN: With respect to the victim of
10 crime surcharge.

11 THE COURT: Yes, that will be waived.

12 MR. MARTIN: Thank you.

13 And defence is certainly agreeable with
14 the 235 days credit proposed.

15 THE COURT: I will ask the clerk to make a
16 note that it is 235 days and he should be given
17 credit.

18 Thank you very much, Ms. Porter, Mr. Martin.
19 Good luck to you, Mr. Thorn. You can follow the
20 officer.

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22 PROCEEDINGS CONCLUDED

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I, the undersigned, hereby certify
that the foregoing pages are a complete and
accurate transcript of the proceedings taken down
by me in shorthand and transcribed from my
shorthand notes to the best of my skill and
ability.

Dated at the City of Edmonton,
Province of Alberta, this 1st day of February,
2013.

Christine Jacobson