R. v. THORN, 2013 NWTSC 8 S-1-CR-2012-000079

 IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

 IN THE MATTER OF:

 HER MAJESTY THE QUEEN

 - v -

 HERMAN PETER THORN

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 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

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 APPEARANCES:

 J. Porter, Ms.: Counsel for the Crown

 M. Martin, Esq.: Counsel for the Defence

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

 Criminal Code of Canada

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 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 Tremeear'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

 27 thing I needed to clarify, so I am now ready to

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 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

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 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

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 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

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 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

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 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

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 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

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 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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 1 CERTIFICATE OF TRANSCRIPT

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 5 I, the undersigned, hereby certify

 6 that the foregoing pages are a complete and

 7 accurate transcript of the proceedings taken down

 8 by me in shorthand and transcribed from my

 9 shorthand notes to the best of my skill and

 10 ability.

 11 Dated at the City of Edmonton,

 12 Province of Alberta, this 1st day of February,

 13 2013.

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 19 Christine Jacobson

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