

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

ANDREW DRASKOCZI

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 January, A.D. 2013.

APPEARANCES:

Ms. W. Miller: Counsel for the Crown

Mr. S. Petitpas: Counsel for the Accused

(Charge under s. 221 of the Criminal Code of Canada)

1 THE COURT: Mr. Draskoczi pleaded guilty
2 this morning to a charge of criminal negligence
3 causing bodily harm. The events that led to this
4 charge are relatively straightforward and
5 happened about a month and a half ago in
6 Hay River.

7 I heard this morning that Janice Sabourin
8 and the accused know each other. On December 12,
9 2012, in the early evening, they had an
10 interaction while he was in his truck behind the
11 arena in Hay River. The facts that were alleged
12 and admitted by him are that she had given him
13 money but wanted it back. She was trying to get
14 the money back through the driver's window of the
15 vehicle. At that point, he drove away. She hung
16 onto the window of the vehicle and fell off when
17 he made a right turn on a street. So she fell
18 off the vehicle and rolled down the road,
19 something that a passerby was able to see. She
20 was taken to the hospital, I heard, and was
21 treated for a broken nose and a broken rib. She
22 also suffered abrasions and scratches to her face
23 and knee which are visible in the photographs
24 that were filed as exhibits. I heard that she
25 did not have to remain in the hospital and,
26 fortunately, has not suffered any long-lasting
27 injuries. I do not know anything more about the

1 impact that this event had on her because she has
2 chosen not to prepare a Victim Impact Statement.

3 The injuries that Ms. Sabourin suffered were
4 not minor injuries, but she, and the accused, are
5 very, very lucky that they were not far worse. It
6 goes without saying that hanging onto the window
7 of a moving vehicle is not a good idea, but to
8 drive off and continue driving when someone is
9 hanging onto one's vehicle is extremely dangerous
10 and negligent. It is beyond negligence, in fact;
11 it is a crime, and I know that Mr. Draskoczi
12 understands that because he has pleaded guilty to
13 the charge.

14 Motor vehicles are everywhere around us in
15 our communities. They are a very useful tool.
16 We use them all the time to get around. They can
17 also be very, very dangerous weapons. We often
18 say this in the context of sentencings for
19 drinking and driving offences: In the hands of
20 an intoxicated driver, a car is a lethal weapon.
21 In the hands of someone who makes the kind of
22 decision that was made in this case by the
23 offender, a car is just as much a lethal weapon.

24 The objective seriousness of this offence is
25 reflected by the fact that the Criminal Code
26 provides that a maximum penalty for it is ten
27 years. I point out that criminal negligence

1 causing death is punishable by life imprisonment.

2 The difference here between this offender
3 facing sentencing for one type of charge instead
4 of the other, I think, is really a matter of pure
5 luck. What I mean by that is that it is mostly
6 luck that makes the difference between someone
7 being seriously injured, or injured a little
8 less, or killed when motor vehicles are used in
9 an inappropriate way. I really do hope this
10 offender takes stock of having been very
11 fortunate this time, and that he never acts this
12 way at the wheel of a motor vehicle ever again.

13 I think the Crown counsel is correct in
14 noting that the range of sentences that are
15 imposed for these types of offences is very
16 broad. That is because the factual scenarios
17 that can lead to a charge of criminal negligence
18 causing bodily harm covers a very wide range of
19 situations. I also agree that this particular
20 incident fits neither at the top end nor at the
21 bottom end in the range of seriousness that this
22 crime can imply; but I emphasize again that I
23 think where it fits on the range is in large part
24 a matter of luck and that for the exact same
25 conduct, much more serious consequences could
26 have unfolded.

27 The criminal record that has been filed as

1 Exhibit 2 is an aggravating factor. Courts are
2 always concerned when we deal with individuals
3 who have a steady pattern of involvement with the
4 criminal justice system that goes on for years,
5 as is the case here; it is very useful to know
6 that the last entry on the record from 2011
7 actually relates to an incident that dates back
8 to many years before. It means, if one wants to
9 be optimistic, that there was a small gap in this
10 offender's criminal record by the time this
11 incident happened. So hopefully that is the
12 direction that he will take in his life. He is
13 the only one who has control over that.

14 The record, in addition to the fact it spans
15 over many years, is a concern specifically in
16 this case because there are prior convictions for
17 offences that have to do with driving (the misuse
18 of motor vehicles, or their use in circumstances
19 where he should not have been driving); but at
20 the same time, it is very important that people
21 not be punished over and over again for the same
22 crimes by having too much emphasis placed on
23 their criminal record. Because that is not fair.

24 There are mitigating factors in this case.
25 This happened not very long ago, as I said (just
26 a month and a half), and I heard that discussions
27 were ongoing from an early stage with a view of

1 resolving this matter without a trial. It is a
2 matter of record that the preliminary hearing was
3 waived. So there was court time that was saved
4 that would have otherwise have been required to
5 deal with this matter. But more importantly,
6 Ms. Sabourin and other witnesses did not have to
7 come to court to talk about this incident, be
8 cross-examined about it, be asked about minute
9 details of everything that happened that day. It
10 is hard for witnesses to come to court and talk
11 about dramatic events, and the Court knows that
12 because, when trials do proceed, we see the
13 effect it has on witnesses. So whenever someone
14 spares people who have already been hurt from
15 having to go through that, they deserve credit
16 for it, and that is why a guilty plea, and
17 especially an early one, is a significant
18 mitigating factor.

19 The time that Mr. Draskoczi spent on remand
20 has to be considered also. As defence counsel
21 noted, how much credit is given for time spent on
22 remand is a question for the Court's discretion.
23 There is no mathematical formula to be used.
24 There are limits now provided for in the Criminal
25 Code as to how much credit can be given, but how
26 much credit is given is really driven by the
27 specific facts of each case.

1 I heard from defence counsel, and it is not
2 disputed by the Crown, that this particular
3 offender was not a management problem for the
4 jail in the short time he was there, he worked in
5 the kitchen, and that he was someone who, if he
6 had been serving a sentence, would have earned
7 remission. That is a factor to take into
8 account. I have concluded that he should be
9 given credit for the remand time on more than a
10 one-for-one ratio, although I am not prepared to
11 go to a ratio of one to one and a half, which is
12 the maximum permitted under the law. I am not
13 convinced that this is necessarily a case for it;
14 but I accept that he should be given credit for
15 his remand time on a higher ratio than one for
16 one.

17 The Crown and defence are not very far apart
18 in their positions. Those positions are well
19 considered and it is obvious counsel have given
20 this some thought. Crown is saying a range of
21 four to six months' imprisonment would be
22 appropriate, defence is suggesting that a range
23 of four to five months would be appropriate. It
24 goes without saying that without his early guilty
25 plea, the Court would be looking at a much longer
26 range than that as far as a sentence.

27 I have heard that the offender had been

1 working in Hay River before this happened and has
2 plans to become a commercial fisherman. I really
3 hope that this plan will come true and that when
4 Mr. Draskoczi has finished serving his sentence,
5 he will turn away from any activity that will
6 bring him into contact with the justice system.
7 He is still a young man. As we get older, I
8 suppose that people that are younger than us
9 always seem very young. But he is not an old
10 man. He has a lot of years ahead of him to do
11 constructive things, if he chooses, instead of
12 staying on the very destructive path he seems to
13 have been on for many years; but whether he does
14 that is completely up to him.

15 Taking into account all of the circumstances
16 and the need to send a clear message in the
17 community about how dangerous this type of
18 conduct is, and also taking into account the fact
19 that it is not the first time that this
20 particular offender misuses a motor vehicle, I
21 have concluded that a fit sentence for this
22 offence is six months' imprisonment. By my
23 count, he has 47 days in pre-trial custody, and
24 taking into account what I heard from his
25 counsel, I will give him credit for two months.

26 Stand up, please. Sir, you have heard what
27 I said. I hope I do not see you in court again

1 and that you can use your skills and your talents
2 in a useful, constructive way from this point on.
3 I have concluded that the sentence should be six
4 months. Because I am giving you credit for the
5 remand time, there will be only be a further four
6 months to serve.

7 I am also going to impose a driving
8 prohibition. In my view, it is required under
9 the circumstances. Because of the jail term I
10 have imposed, I am going to make the driving
11 prohibition commence today and expire one year
12 and four months from today's date. Given the
13 past convictions for similar offences, I view
14 this as the absolute minimum, because it is the
15 same length of prohibition, essentially, that was
16 given on other occasion.

17 I considered what your lawyer said about the
18 surcharge, sir, and because of what I heard about
19 the kind of salary you were making before you
20 were taken into custody, because you are
21 obviously able to work, and because you have not
22 been on remand for a very long time, nor will you
23 be in jail for a very long time, I will impose
24 the victim of crime surcharge. It is a hundred
25 dollars. It is not a huge amount of money, but
26 that money goes to a fund that is there to help
27 victims of crime. The Code says that I have to

1 impose it unless I determine it would be a
2 hardship. If I send you to jail for a longer
3 time, that probably would be the case. But under
4 the circumstances, I will make that order. I
5 will give you seven months to pay it, which means
6 that you can have several months after your
7 release to get working again and pay that.

8 Is there anything that I have overlooked?

9 MS. MILLER: No. Thank you, Your Honour.

10 THE COURT: Anything I have overlooked?

11 MR. PETITPAS: No, Your Honour.

12 THE COURT: Well, good luck to you, sir.

13 I thank both counsel for their submission on this
14 case. They were very helpful.

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Certified Pursuant to Rule 723
of the Rules of Court

Jane Romanowich, CSR(A)
Court Reporter