

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- and -

THOMAS LEE CAMSELL

Transcript of the Oral Reasons for Sentence held
before the Honourable Justice L.A. Charbonneau,
sitting at Yellowknife, in the Northwest Territories,
on June 29th, A.D. 2012.

APPEARANCES:

Mr. M. Lecorre: Counsel for the Crown
Mr. P. Fuglsang: Counsel for the Accused
(Charge under s. 268 Criminal Code)

1 THE COURT: Earlier this week, Mr. Camsell
2 pleaded guilty to a charge of aggravated assault
3 and I must now sentence him for that offence.

4 The events that led to this charge date back
5 to May 31st, 2011 and took place in Yellowknife.
6 There was a party that night at a residence in
7 Yellowknife. The victim, who was 18 years of age
8 at the time, was in his room playing video games
9 with friends when his sister came home with Mr.
10 Camsell and another man. They had been drinking.
11 The victim had been drinking that evening, as
12 well, and had at that point consumed a 26-ounce
13 bottle of vodka.

14 At around 10 p.m. the victim tried to get
15 Mr. Camsell and the other man to leave because
16 they were drunk and they were loud. Mr. Camsell
17 and the other man apparently took offence to
18 being told to leave and they attacked the victim.
19 Mr. Camsell held him by the front while the other
20 man put him in a chokehold from the back. The
21 victim remembers tasting blood in his mouth when
22 he was being held in the chokehold. He also
23 remembers being hit by both men. The victim fell
24 down at one point and everyone else in the
25 apartment apparently piled on top of him trying
26 to get the two men off of him.

27 The victim's jaw felt strange after all of

1 this and he could not eat or drink. A few days
2 later he went to the hospital and it was
3 discovered that his jaw was broken. He had to
4 have surgery and have his jaw wired shut. He was
5 released from hospital three days later.

6 Mr. Camsell was arrested for this offence on
7 June 3rd and has been in custody since, which as
8 of today's date adds up to almost 13 months; one
9 year and 26 days, to be exact. He did have a
10 Show Cause Hearing on August 22nd, 2011 and he
11 was ordered detained at that time. The warrant
12 of committal issued on that date is endorsed
13 pursuant to section 515(9.1) of the Criminal Code
14 indicating that he was detained primarily because
15 of his criminal record. As a result, pursuant to
16 section 719(3.1) of the Criminal Code, any credit
17 granted to Mr. Camsell for the time he has spent
18 on remand must be on a ratio of one-for-one; that
19 is, no more than one day of credit for each day
20 he spent in pre-trial custody.

21 The other person involved in this assault
22 has also been charged. His matter is still
23 pending in this court and the matter is currently
24 scheduled to proceed to a Judge alone trial, I
25 believe.

26 The sentencing principles that provide the
27 framework for any sentencing decision are set out

1 in the Criminal Code. The fundamental sentencing
2 principle is proportionality. A sentence should
3 be proportionate to the seriousness of the
4 offence and the degree of responsibility of the
5 offender. Aggravated assault is punishable by a
6 maximum of 14 years' imprisonment. This shows
7 that it is an offence that Parliament deems to be
8 very serious.

9 In my view, the degree of responsibility of
10 Mr. Camsell for this offence is high. Ganging up
11 on someone in this way is highly reprehensible,
12 even more so when it happens in a person's home,
13 the place where they should feel safest. The
14 fact that the victim asked these people to leave
15 and that this was what prompted these events is
16 in no way mitigating. People who are guests in a
17 home and who are asked to leave must leave. It
18 is as simple as that. The victim had every right
19 to ask these men to leave. Their response was
20 completely unjustified and disproportionate.

21 The Criminal Code sets out other sentencing
22 principles which, in different ways, all flow
23 from that fundamental principle of
24 proportionality. I will not refer to all those
25 principles here, but I have considered them.

26 Mr. Camsell's personal circumstances must be
27 considered in deciding what the sentence should

1 be for this offence. He is still a young man, 26
2 years old. I heard that he was raised by his
3 mother, who had struggles with alcohol after her
4 husband died when Mr. Camsell was still quite
5 young. I heard that Mr. Camsell found himself
6 being moved back and forth between homes.

7 Mr. Camsell has had problems with the law as
8 a youth and has accumulated a criminal record of
9 some significance, although most of that record
10 is not for crimes of violence. There are a large
11 number of convictions for breaches of court
12 orders which Mr. Camsell says were largely
13 related to the consumption of alcohol when he was
14 on conditions not to drink. From this, I infer
15 that alcohol is a serious problem for him. He
16 seems to recognize this, as well, based on what
17 he told the Court when he spoke at the end of the
18 sentencing hearing on Monday.

19 He does have a conviction for assault with a
20 weapon dating back to 2004. That conviction is
21 somewhat dated and it was in the Youth Court, but
22 it is still a concern to know that this is not
23 the first time that Mr. Camsell has behaved in a
24 violent way. He told the Court he is not a
25 violent person and usually walks away from
26 fights. Obviously, that may well be true most of
27 the time, but it is clear that it is not always

1 the case.

2 There are aggravating features stemming from
3 the circumstances of this offence that I have
4 already alluded to. The first is that the victim
5 was assaulted in his own home as he was trying to
6 get people to leave, and he had every right to
7 ask these people to leave. It is also
8 aggravating that he was attacked by two people
9 who joined forces in beating him up.

10 It is implicit in a charge of aggravated
11 assault by wounding that serious injury is
12 involved. That is what distinguishes that
13 offence from a charge of assault causing bodily
14 harm. But, as Mr. Camsell himself recognized
15 when he spoke to the Court, having a jaw broken
16 is a significant injury. It creates an enormous
17 amount of discomfort for a period of time. So
18 the injury inflicted here was serious even though
19 it was not a life-threatening one.

20 There are also mitigating factors. The most
21 significant one is that Mr. Camsell has taken
22 responsibility for his role in this offence and
23 has pleaded guilty. In so doing, he has avoided
24 the time and expense associated with running a
25 jury trial. He has avoided the need for the
26 victim of the offence and other witnesses to have
27 to come to court and testify about what happened.

1 The guilty plea was not an early guilty plea
2 - there was a Preliminary Hearing in this matter
3 - but counsel advised that Mr. Camsell expressed
4 a desire to resolve this matter without the
5 necessity for a trial shortly after the
6 Preliminary Hearing held in September, 2011 and
7 that the delay in making this happen was
8 primarily related to counsel's schedule and other
9 commitments. The Crown acknowledges that Mr.
10 Camsell should get significant credit for this
11 guilty plea.

12 What Mr. Camsell said when he spoke to the
13 Court directly earlier this week confirms that he
14 is remorseful and willing to take responsibility
15 for what he has done. He apologized to the
16 victim. He himself has suffered a broken jaw
17 some time ago, so he knows what that feels like.
18 He also said he has done a lot of thinking while
19 he was in custody and he wants to turn his life
20 around, because he recognizes that he could do
21 something more constructive than drink, get into
22 trouble and be in and out of jail, as he has been
23 doing for the last few years.

24 He mentioned he lost his mother during one
25 of the times where he was in jail and he knows
26 she would want him to do something better with
27 his life, and he says he wants to try. I hope he

1 does, because he seems to be a healthy young man
2 who could do a lot of useful things with his time
3 and energy, and it truly is a shame to have this
4 time and energy wasted away inside a jail.

5 I have taken into consideration the fact
6 that Mr. Camsell is Metis. I take judicial
7 notice, as I am required to, of systemic factors
8 that have, unfortunately, caused a lot of
9 aboriginal people to struggle and find themselves
10 in conflict with the law. The circumstances in
11 which Mr. Camsell grew up, the abuse of alcohol
12 by his mother, the instability in his living
13 conditions when he was growing up, his own
14 struggle with alcohol are things we commonly hear
15 about in this jurisdiction. They are part of the
16 challenges often faced by some aboriginal people
17 and part of why many find themselves in conflict
18 with the law.

19 As far as sanctions other than imprisonment
20 that could adequately achieve the objectives of
21 sentencing, having regard to these
22 considerations, unfortunately, I have not been
23 presented with any other option, and, besides,
24 the type of violence used in this case requires
25 denunciation and deterrence. Every person's need
26 and right to feel safe in their own home is as
27 important a value to uphold in aboriginal

1 communities as it is in non-aboriginal
2 communities; so is the need to denounce violence
3 generally and denounce conduct where more than
4 one person gangs up on a single victim. In this
5 case, the defence has acknowledged that a jail
6 term is the appropriate sentence for this crime.

7 The Crown says that a fit sentence would be
8 in the range of 18 to 24 months. Defence counsel
9 has asked that I consider a lower range, between
10 12 and 15 months.

11 One of the sentencing principles I must
12 examine and apply is parity. Similar offences
13 committed by similar offenders in similar
14 circumstances should result in similar sentences.
15 Counsel have not provided me with any other court
16 decision dealing with sentencings on aggravated
17 assault cases, but there are quite a few from
18 this jurisdiction, including a number in this
19 court. Many of those cases involve circumstances
20 where a weapon was used, which is not the case
21 here, and, of course, the use of a weapon is a
22 factor that is significantly aggravating, because
23 it considerably escalates the risk for serious
24 and sometimes fatal injuries.

25 There are two cases I want to refer to that
26 I have found helpful in assessing what the
27 sentence should be in this case; R. v. Catholique,

1 2010 NWTSC 37 and R. v. Mitchell, 2009 NWTSC 52.

2 In Catholique, two men got into a fight
3 outside a residence. Both were intoxicated and
4 had a very limited recollection of what took
5 place and events had to be reconstituted from the
6 observations of various other people. The two
7 men got into a loud argument which escalated into
8 a physical fight. That fight was described as a
9 "fair fight" in the facts presented to the Court.
10 At one point in the fight the accused threw the
11 victim down a few steps. The Court concluded
12 this was probably when the victim sustained his
13 most significant injury, which was a broken jaw.
14 The fight continued for some time and ended a
15 short time after. Neither the victim nor the
16 accused in that case realized that the victim's
17 jaw was broken until sometime later.

18 The accused was a young man and at the time
19 of the offence had no record. A pre-sentence
20 report was prepared and showed that the accused
21 realized that excessive and continuous
22 consumption of alcohol was at the root of some of
23 his problems. The accused had entered a plea of
24 guilt, but just prior to the commencement of the
25 jury trial. Counsel presented the Court with a
26 joint submission for a sentence of 15 months'
27 imprisonment followed by probation and the Court

1 went along with that submission.

2 The second case, R. v. Mitchell, arose after
3 a street fight between two groups of people up in
4 Inuvik. Apparently, the accused had initially
5 tried to help stop the fight, but he eventually
6 became an aggressor, knocked the victim to the
7 ground and kicked him three times in the chin
8 area. The victim in that case suffered a broken
9 jaw in two places.

10 Mr. Mitchell was convicted after trial by
11 Judge and jury. He was 23 years old at the time
12 of sentencing and had a criminal record,
13 including several findings of guilt as a youth
14 and a few convictions as an adult, including one
15 for assault.

16 The sentencing positions presented to the
17 Court in the Mitchell case were much further
18 apart than they are in this case. The Crown was
19 seeking a jail term in the range of 12 to 15
20 months and defence was asking the Court to impose
21 a non-custodial sentence. In the end, the Court
22 sentenced Mr. Mitchell to 12 months in jail.

23 No two cases are alike, of course, but there
24 are similarities as to the nature of the injuries
25 inflicted and the age of offenders as between
26 this case and these two other cases. There are
27 also distinctions. Mr. Mitchell did not have the

1 benefit of the mitigating effect of a guilty plea
2 and the assault he committed appears to have been
3 more violent and involved a higher level of
4 blameworthiness, because it involved kicks to the
5 head area. But then, again, the facts of that
6 case were that Mr. Mitchell initially had been
7 trying to stop the fight. So those facts were
8 somewhat unusual.

9 In the Catholique case, the broken jaw
10 occurred in what was described as a fair fight.
11 The Court even noted that but for the serious
12 injury that resulted, it may be that no charges
13 would have arisen at all from the incident,
14 because it was essentially a consent fight.
15 Nevertheless, the sentence imposed for that
16 offence on a guilty plea was 15 months in jail.

17 In my opinion, the circumstances of the case
18 I am dealing with today are closer to the facts
19 in the Catholique case, but somewhat more serious
20 because of the aggravating factors that I have
21 referred to; namely, the fact that the assault
22 happened inside the victim's home and the fact
23 that the victim was attacked by two people who
24 ganged up on him. This warrants the imposition
25 of a sentence that is more significant than what
26 was imposed in the Catholique case. However,
27 keeping in mind the principle of restraint, I do

1 not think that imposing a sentence at the higher
2 end of the range sought by the Crown is necessary
3 to achieve the purposes of sentencing.

4 Mr. Camsell, if you could please stand. On
5 the charge of aggravated assault, I have decided
6 that the sentence should be in the range of 18
7 months in jail. I am going to give you credit
8 for the almost 13 months you have already spent
9 on remand. So the further jail term that I
10 impose today will be a jail term of five months.
11 You may sit down.

12 Following your release, I am going to place
13 you on probation for a period of one year. There
14 will not be many conditions on that order,
15 because I do not want to set you up for further
16 breaches. I will direct that you report to a
17 probation officer within 72 hours (three days) of
18 your release. That will give you a contact
19 person. The only other condition of that
20 probation order is that you have no contact
21 directly or indirectly with Wade Kapakatoak, the
22 person you assaulted.

23 I am not going to include any other
24 conditions in the order, but that does not mean
25 that you cannot speak to your probation officer
26 about some of the things you want to do to help
27 yourself. You have said you want to change your

1 ways and, in particular, deal with your issues
2 with alcohol, and I am sure you know that is not
3 an easy battle. You will need help, and while
4 you serve the rest of your sentence you will have
5 access to some programs in the jail. You will
6 have access to AA and you may have access to
7 other things that could help you, but you won't
8 have a lot of time. So you are going to have to
9 start quickly if you want to benefit from those
10 things.

11 After you are released there might be
12 services you can access, and that is part of why
13 I want you to report to a probation officer, at
14 least when you are released, so that you have a
15 contact who can help you sort out how best to
16 organize yourself and try to line up the help you
17 need. But I am not putting a lot of structure on
18 this. I am leaving it up to you to choose your
19 path.

20 In addition to the jail term, there will be
21 a firearms prohibition order pursuant to section
22 109 of the Code. That order will commence today
23 and expire 10 years after Mr. Camsell's release.
24 Because aggravated assault is a primary
25 designated offence, there will be a DNA order
26 pursuant to section 487.051(1) of the Criminal
27 Code.

1 Because I am imposing a further jail term
2 and because Mr. Camsell has been in custody for
3 some time already, I am not going to order the
4 payment of a victim of crime surcharge, because
5 in this case I am satisfied that this would
6 result in hardship.

7 If any exhibits were seized during the
8 course of this investigation and it is
9 appropriate to return them to their rightful
10 owner, that will be my order. Otherwise, they
11 are to be destroyed, but all of this, of course,
12 at the expiration of the appeal period.

13 Madam Clerk, for the purposes of the warrant
14 of committal, the Criminal Code requires me to be
15 very specific about the sentence, so this is what
16 it should say: The sentence imposed before
17 remand time is considered would have been 17
18 months and 26 days. I am giving 12 months and 26
19 days' credit for the time spent on remand, which
20 is why the sentence imposed today is five months'
21 imprisonment.

22 Is there anything I have overlooked,
23 counsel?

24 MR. LECORRE: No, Your Honour.

25 THE COURT: Mr. Fuglsang?

26 MR. FUGLSANG: No, Your Honour.

27 THE COURT: All right. I thank counsel

1 for your submissions, and good luck to you, Mr.
2 Camsell.

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

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Jill MacDonald, RMR-RPR
Court Reporter

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