

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

NICHOLAS COLTON

Transcript of the Reasons for Sentence delivered by The Honourable Justice K. M. Shaner, in Inuvik, in the Northwest Territories, on the 9th day of April, 2013.

APPEARANCES:

Mr. K. Onyskevitch: Counsel on behalf of the Crown

Mr. S. Petitpas: Counsel on behalf of the Accused

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Charge under s. 348(1)(a) C.C.

1 THE COURT: Defence counsel, Mr. Petitpas,  
2 confirms that Mr. Colton was advised of the  
3 consequences of his plea and that he has  
4 complied, as a lawyer, with the provisions of  
5 section 606 of the Criminal Code, and I am  
6 satisfied that the plea of guilty that Mr. Colton  
7 submitted this morning was made voluntarily.

8 Crown and defence made a joint submission  
9 for a conditional sentence of nine months,  
10 followed by 12 months of probation. I agree with  
11 the joint submission. I agree that that is an  
12 appropriate sentence in the circumstances. I am  
13 going to expand upon my reasons for that  
14 presently.

15 Mr. Colton is 23 years old. He is  
16 Inuvialuit and European by heritage. He was born  
17 and raised in Inuvik. He has no criminal record.

18 The circumstances of the offence are that he  
19 entered a business premises with two other  
20 individuals. They used a crowbar to gain entry.  
21 Mr. Colton stole 13 or 14 telephones. He was  
22 arrested shortly thereafter and upon being  
23 arrested, he admitted to what he had done.

24 Net of insurance proceeds, the business  
25 itself is out about \$8,000 in damages.

26 The principles and objects of sentencing are  
27 set out in the Criminal Code. The objects of

1 sentencing include rehabilitation, as well as  
2 denunciation and deterrence. The overarching  
3 principle of sentencing in the Criminal Code is  
4 proportionality, in other words, the sentence has  
5 to fit the crime.

6 There are other principles, however, that  
7 the Court must bear in mind. When imposing a  
8 sentence, it must take into account aggravating  
9 and mitigating circumstances. I find that there  
10 is nothing aggravating in this case, and I do  
11 find it mitigating that Mr. Colton readily  
12 admitted what he had done upon arrest and that he  
13 has pleaded guilty here today.

14 There are also the principles of parity  
15 which I will address and which Mr. Onyskevitch  
16 set out as an issue in this case, and the  
17 principle of restraint, which means that the  
18 sentence should not be any more harsh than is  
19 absolutely needed in the circumstances to attain  
20 the objects of sentencing.

21 Finally, there is what we call the Gladue  
22 principle, and that is that courts are required  
23 to take into account the circumstances of an  
24 aboriginal offender in determining what sentence  
25 is suitable and, in particular, to determine  
26 whether there are alternatives to incarceration  
27 that can be imposed and which will still be

1 effective. The reason for that is that we have  
2 in this country a significant overrepresentation  
3 in our prisons of aboriginal offenders for a  
4 variety of reasons.

5         Crafting a sentence that is going to meet  
6 all of these principles and objects requires that  
7 the Court address each case individually and that  
8 the Court takes a good, long look at the  
9 circumstances of the offence and the  
10 circumstances of the offender and comes up with a  
11 sentence that will achieve those goals within the  
12 parameters of the law of sentencing.

13         In my view, as I indicated earlier, the  
14 sentence that was proposed, that being a nine  
15 month conditional sentence order or house arrest,  
16 coupled with 12 months of probation, handily  
17 meets the principles and objectives of sentencing  
18 that are set out in the Criminal Code. There was  
19 a presentence report that was filed and it was  
20 extremely helpful in shedding light on what an  
21 appropriate sentence should be with respect to  
22 Mr. Colton, the circumstances of the offence, and  
23 Mr. Colton's background and present  
24 circumstances.

25         Mr. Colton indicated in his interviews for  
26 the presentence report that he accepts  
27 responsibility for what he did and he knows what

1 he did was wrong, and that carries a lot of  
2 weight in determining whether a conditional  
3 sentence order is going to serve a rehabilitative  
4 purpose.

5 Property crimes are serious. Even though  
6 there might not be physical injury to somebody,  
7 they are very serious in the stress and damage  
8 that they cause. In this case they can slow the  
9 ability of a business to do business. They have  
10 financial consequences. Often, the victims of  
11 those crimes are left to pick up the pieces,  
12 which requires a significant investment of time  
13 and energy as well as an investment of financial  
14 resources on their end.

15 This is a case of a crime that seems to stem  
16 from bad choices by Mr. Colton.

17 Some view conditional sentences as perhaps  
18 lighter or not as harsh as a jail sentence, but  
19 in many ways a conditional sentence is far more  
20 difficult than a jail sentence. A conditional  
21 sentence imposes significant restrictions on  
22 personal freedoms. A person who is the subject  
23 of a conditional sentence order has to have  
24 permission to do those things that the rest of us  
25 take for granted - buying groceries, going to the  
26 post office, going out to the video store to get  
27 a video.

1           In addition to imposing those restrictions,  
2           unlike jail where inmates are directed for the  
3           most part in virtually all aspects of their life  
4           - when to get up, when to eat, and what programs  
5           to attend - a person who is subject to a  
6           conditional sentence order has to make choices  
7           for themselves and some of those choices have to  
8           do with compliance. If the right choice is not  
9           made, then there are consequences.

10           Since, as I indicated, this crime was about  
11           bad choices and since Mr. Colton recognizes that  
12           he made bad choices, I think a conditional  
13           sentence that requires him to make choices on his  
14           own will assist him in his rehabilitation.

15           The other thing about a conditional sentence  
16           order is that unlike incarceration, there is no  
17           remission and there is no enhanced time off. In  
18           other words, you have to serve the entire nine  
19           months as opposed to someone who is incarcerated  
20           who will only have to serve a portion of that  
21           time, subject to certain exceptions. The  
22           conditions that are proposed here in the joint  
23           submission are very, very restrictive.

24           I think as well that the proposed sentence  
25           also serves the principle of restraint and the  
26           principles in Gladue and Ipeelee. It was noted  
27           earlier that Mr. Colton had a very good

1           upbringing and comes from a very good family, and  
2           he was not subject to the horrors of residential  
3           school and it does not appear that he lived in a  
4           home that was adversely affected by residential  
5           schools. However, I think the very fact that he  
6           is aboriginal means that as a judge I need to  
7           take that into account because, as I indicated  
8           earlier, the whole purpose of 718.2(e) is to  
9           address the significant overrepresentation of  
10          aboriginal people in our prisons, so I do take  
11          that into account in considering whether a  
12          conditional sentence order, as opposed to a  
13          period of incarceration, is appropriate. And I  
14          do find that it is appropriate.

15                 I am going to impose a conditional sentence  
16          order, followed by probation.

17                 Mr. Colton, can you please stand.

18                 I sentence you to a period of house arrest,  
19          a conditional sentence order of a period of nine  
20          months commencing today. That will be followed  
21          by a period of probation of 12 months.

22                 Do you understand --

23          THE ACCUSED:                 Yes.

24          THE COURT:                    -- this sentence? Yes?

25                 Sorry.

26          THE ACCUSED:                 Yes.

27          THE COURT:                    Thank you. You can sit down

1 and I am going to explain what the terms of that  
2 will be.

3 The conditional sentence order will run from  
4 today until January 9th, 2014. From today until  
5 April 16th, 2013, or earlier if that is the case,  
6 you will reside at 25 Dolphin Street in Inuvik,  
7 Northwest Territories. After April 16th, 2013,  
8 or earlier, if you return to Yellowknife earlier,  
9 and until the conditional sentence order expires  
10 on January 9th, 2014, you will reside at number  
11 35009 - 47th Street, Yellowknife, Northwest  
12 Territories. You will inform your sentence  
13 supervisor in advance of when you are leaving  
14 Inuvik for Yellowknife.

15 During the term of the conditional sentence  
16 order, you will be subject to all of the  
17 mandatory statutory requirements that are set out  
18 in the Criminal Code. As well, you will be  
19 subject to the following:

20 You will be required to appear in court as  
21 required;

22 You will report to the probation supervisor  
23 or his or her designate within four days of  
24 today's date by telephone;

25 You will remain in the Northwest Territories  
26 unless you have permission in writing from the  
27 probation supervisor or their designate to leave



1 for required medical or dental treatment;

2 You will have no contact with Bernard  
3 MacNeil, you will have no contact with Haji  
4 Descalzo Ferland, and you will have no contact  
5 with Angus Elias;

6 You will not be within ten meters of the  
7 business premises of the entity known as Arctic  
8 Digital Ltd.;

9 You will perform 90 hours of community  
10 service work at the rate of not less than ten  
11 hours per month as directed and approved by your  
12 sentence or probation supervisor or their  
13 designate;

14 You will not leave your residential premises  
15 either in Inuvik or Yellowknife except for the  
16 following purposes:

17 To attend court as required;

18 To perform community service work;

19 To attend personal business and then only on  
20 Mondays, Wednesdays, and Fridays, from 11 a.m.  
21 until 1 p.m.;

22 To go to work;

23 To go to a job interview or screening  
24 process;

25 For a medical emergency;

26 To attend a spiritual service;

27 Or to attend a meeting with your sentence or

1           probation supervisor or their designate.

2           You will need to obtain prior permission  
3           from your sentence supervisor to leave for any of  
4           these reasons, except in the case of a medical  
5           emergency in which case you must advise that  
6           sentence supervisor as soon as possible and as  
7           soon as you are able to do so.

8           During the term of the conditional sentence  
9           order, you will have to present yourself at the  
10          door of your residence to a peace officer or  
11          sentencing supervisor or their designate as  
12          required.

13          Commencing January 10th, 2014, and  
14          continuing until January 9th, 2015, you will be  
15          on probation. The terms of the probation order,  
16          in addition to the statutory terms that are set  
17          out in the Criminal Code, will be these:

18                 You will report to a probation officer  
19                 within four days of January 10th, 2014, and then  
20                 as directed by that probation officer;

21                 You will remain in the Northwest Territories  
22                 unless you obtain prior permission to leave from  
23                 your probation officer;

24                 You will keep the probation officer advised  
25                 of any change in your name, address, or  
26                 occupation;

27                 You will attend in court as required;

1           You will have no contact with Bernard  
2           McNeely, Angus Elias, or Haji Ferland;

3           You will do 60 hours of community service  
4           work at a rate of not less than five hours a  
5           month as directed and approved by your probation  
6           officer;

7           And you will not be within 50 meters of the  
8           business premises known as Arctic Digital Ltd.

9           In addition to the conditional sentence  
10          order and the probation order, there will also be  
11          a restitution order that will require you to pay  
12          \$2,666.67 to Arctic Digital Ltd.

13          Now, you will have to figure out how you are  
14          going to pay that and you may want to consider a  
15          payment plan for it, because the effect of a  
16          restitution order is that it becomes a judgment  
17          of the court and it can be enforced as a judgment  
18          of the court through garnishee of wages or other  
19          proceeds that might be coming to you.

20          There will be no victim of crime surcharge.

21          Given that this is a secondary designated  
22          offence, the imposition of an order requiring Mr.  
23          Colton to provide a DNA sample is discretionary  
24          and then only on the application of the  
25          prosecutor. The prosecutor has not made that  
26          application in this case.

27          Now Mr. Colton, there will be some paperwork

1           that you will have to sign and so I will ask that  
2           you make contact with the clerk here just as soon  
3           as we are finished these proceedings this  
4           afternoon so that you can sign that paperwork and  
5           have it explained to you.

6                    Is there anything else?

7       MR. ONYSKEVITCH:           Your Honour, simply there is a  
8           stand alone restitution order, and as a stand  
9           alone restitution order I wonder if there needs  
10          to be a date that it needs to be paid by before  
11          it becomes enforceable.

12       THE COURT:                 What are you proposing for a  
13          date?

14       MR. ONYSKEVITCH:           I don't know, Your Honour, I'm  
15          certainly in the Court and my friend's hands. I  
16          just note that the other restitution order was  
17          imposed on the 28th, or the, yes, the 28th of  
18          December -- the 28th of September, 2012, with a  
19          due date of September 27th, 2014. Again, I leave  
20          it to the Court and to my friend as to when  
21          restitution is to be paid by or if in this  
22          jurisdiction restitution orders, when they are  
23          stand alone, have due dates.

24       THE COURT:                 All right. Mr. Petitpas, do  
25          you wish to have a provision in the order that  
26          enforcement, that there be an opportunity for  
27          your client to pay the restitution order before

1           it becomes enforceable?

2       MR. PETITPAS:               Based on his personal  
3           circumstances that may be a moot point, Your  
4           Honour. He doesn't have much in assets. The  
5           defence would have no objection that it be  
6           enforceable immediately if that is, if that's the  
7           preference of the Court and the Crown.  
8           Alternatively, perhaps a period of six months  
9           might be appropriate.

10       THE COURT:                 The other restitution order  
11           was with respect to both -- those were the other  
12           two restitution orders, Mr. Onyskevitch, for Mr.  
13           Elias and Mr. Ferland?

14       MR. ONYSKEVITCH:         Your Honour, I have a copy of  
15           the restitution order of Mr. Ferland. I imagine  
16           there is a restitution order for Mr. Elias but I  
17           don't have a copy of it.

18       THE COURT:                 All right. In the  
19           circumstances and given what I heard about Mr.  
20           Colton's circumstances and the principle of  
21           parity, I think it would be fair to provide Mr.  
22           Colton with the same amount of time to try and  
23           pay that order before it becomes enforceable by  
24           way of writ of execution.

25           That order will include a provision that it  
26           is payable within two years of today's date, so  
27           April the 9th, 2015, failing which steps can be

1 taken to enforce it.

2 MR. ONYSKEVITCH: Thank you, Your Honour.

3 THE COURT: Is there anything else?

4 MR. PETITPAS: Just one item, Your Honour.

5 In the probation order you mention that he is not  
6 to be within I believe it was -- was it 50 meters  
7 from Arctic Digital?

8 THE COURT: That what was I had down in my  
9 notes as the submission from counsel on the joint  
10 submission.

11 MR. PETITPAS: Okay.

12 MR. ONYSKEVITCH: My apologies, Your Honour. I  
13 misspoke. It was to be ten, the same as the  
14 distance during the conditional sentence order.

15 THE COURT: All right.

16 MR. ONYSKEVITCH: And also while on my feet,  
17 Your Honour, one other issue that escaped my  
18 attention. There was, finally, the issue of Mr.  
19 Colton's travel from Inuvik to Yellowknife and  
20 there would be need I think for one further  
21 allowance for him to be out of his house and  
22 perhaps that can be simply with the approval of  
23 his supervisor for the purposes of travelling  
24 from Inuvik to Yellowknife.

25 THE COURT: I believe I did put that in  
26 the order, that he is to inform the sentence  
27 supervisor in advance of when he is leaving to

1           move to Yellowknife.

2       MR. ONYSKEVITCH:           Thank you, Your Honour. My  
3           apologies, I failed to note that.

4       THE COURT:                 So you want in both the  
5           conditional sentence order and in the probation  
6           order a provision that he is not to be within ten  
7           meters of the premises of the business known as  
8           Arctic Digital Ltd.

9       MR. ONYSKEVITCH:           Yes, Your Honour.

10      THE COURT:                 So if you can amend my earlier  
11           dictation, Mr. Clerk. Thank you.

12                 Is there anything else? Ma'am, do you have  
13           something you need to say?

14      THE PROBATION OFFICER: I'm Beverly Arey with Inuvik  
15           Probation Services.

16      THE COURT:                 Yes.

17      THE PROBATION OFFICER: On one of the conditions on  
18           the conditional sentence order it says to report  
19           by telephone. May we also add "or in person as  
20           directed"?

21      THE COURT:                 Do have you any objection to  
22           that, Mr. Onyskevitch?

23      MR. ONYSKEVITCH:           Nothing from the Crown, Your  
24           Honour.

25      MR. PETITPAS:             No, Your Honour.

26      THE COURT:                 So that can be amended to  
27           report by telephone or in person.

1 THE PROBATION OFFICER: And also the curfew, "to  
2 present yourself at the door or by telephone",  
3 because at times we do phone our clients that are  
4 on curfew checks. Not at all given times we  
5 conduct our curfew checks in person, so if he can  
6 present himself to the door or to the telephone.

7 THE COURT: Mr. Onyskevitch, this is  
8 highly unusual that we hear submissions from  
9 Probation directly. Do you have any concerns  
10 with that?

11 MR. ONYSKEVITCH: I have no concerns, Your  
12 Honour. If I might have a brief indulgence, I  
13 can canvass any other concerns Probation may have  
14 and relay them to the Court.

15 THE COURT: All right. I just indicate  
16 this is very unusual. This is work that should  
17 be done beforehand.

18 MR. ONYSKEVITCH: Yes. My apologies, Your  
19 Honour.

20 MR. PETITPAS: If I might just have a brief  
21 indulgence with my friend.

22 MR. ONYSKEVITCH: My apologies, Your Honour. If  
23 I might have the indulgence to canvass with  
24 Probation any other concerns. My apologies again  
25 for that, Your Honour.

26 THE COURT: All right. How long do you  
27 think you need?



1 MR. ONYSKEVITCH: One minute.

2 THE COURT: Okay, why don't we just sit  
3 and you can just...

4 MR. ONYSKEVITCH: Thank you, Your Honour.

5 Thank you for that, Your Honour. The only  
6 issue that Probation has is that on occasion, as  
7 was indicated, they do curfew checks by phone so  
8 that they present themselves either at the door  
9 or by phone.

10 THE COURT: All right. Then amend that  
11 provision -- or sorry, we will include a  
12 provision in the conditional sentence order that  
13 Mr. Colton will present himself at the door or on  
14 the telephone as required by a peace officer or  
15 sentencing probation supervisor or designate as  
16 required. So that means, Mr. Colton, that if the  
17 probation supervisor telephones you, makes a  
18 phone call to your home to see if you are there,  
19 then you have to answer the phone, but if they  
20 come in person then you go to the door.

21 MR. PETITPAS: Your Honour, this just came up  
22 during the sentencing of Mr. Colton. He advises  
23 me that there may be monetary issues of getting  
24 back to Yellowknife by April the 16th. He's  
25 wondering if the date can be amended to some time  
26 at the beginning of May, the first working day in  
27 May, perhaps by I believe it would be May 2nd,

1 the first Monday in May, if he may have that  
2 extension over to May instead of April 16th. He  
3 tells me, he just told me that he might have a  
4 problem travelling back to Yellowknife by next  
5 April 16 which is Tuesday.

6 THE COURT: Well other than the fact that  
7 he has a residence in Yellowknife and he has a  
8 residence here where he can stay, is there any  
9 issue about where exactly he is? I am just  
10 concerned that that issue is not going to resolve  
11 itself by May. If you are not able to resolve it  
12 by April, I do not know what a further two weeks  
13 would do so it might be better to just leave that  
14 open, because it is a term of the order that he  
15 is residing at either one of those places and  
16 that he has to advise his sentence supervisor  
17 prior to moving from Inuvik to Yellowknife.

18 I will hear from you, Mr. Onyskevitch.

19 MR. ONYSKEVITCH: Your Honour, the Crown has no  
20 issue with either an extension or advising his  
21 sentence supervisor. Perhaps, and this is not  
22 necessary nor was it something discussed between  
23 Crown and defence, what could be done here is  
24 order that Mr. Colton is to reside at 25 Dolphin  
25 Street subject to the terms and conditions that  
26 were listed, or any other residence approved of  
27 in writing by his supervisor subject to those

1 same terms and conditions. This would then  
2 allow, should there be an issue in Yellowknife  
3 with number 35009, rather than coming back to  
4 court, reporting to his supervisor, gaining his  
5 or her permission, and then relocating on those  
6 same terms and conditions, but I leave that to  
7 Your Honour.

8 THE COURT: Mr. Petitpas, is that  
9 satisfactory to you?

10 MR. PETITPAS: Yes.

11 THE COURT: That sounds like a better  
12 solution.

13 So Mr. Colton, that would mean that you are  
14 to stay at 25 Dolphin Street; and if you decide  
15 to move to Yellowknife, you will have to get the  
16 place where you are living and permission to  
17 leave approved by the sentence supervisor or  
18 probation officer as the case may be. Do you  
19 understand that?

20 THE ACCUSED: Yes.

21 THE COURT: All right. But you do not  
22 have to do it by April 16th.

23 So the conditional sentence order will say  
24 that from today Mr. Colton will reside at 25  
25 Dolphin Street, Inuvik, Northwest Territories;  
26 and should he choose to move to another location  
27 in the Northwest Territories, he must advise the

1 sentence supervisor or his or her designate and  
2 obtain the approval of the residence from the  
3 sentence supervisor or his or her designate prior  
4 to moving to the other location.

5 Just for clarity, when I have used "sentence  
6 supervisor" or "probation officer", I have used  
7 those interchangeably because depending on where  
8 you are there may be a different term.

9 Is there anything else?

10 MR. ONYSKEVITCH: Not from the Crown, no, Your  
11 Honour. Thank you.

12 THE COURT: Mr. Petitpas?

13 MR. PETITPAS: No, Your Honour, thank you.

14 THE COURT: Ms. Arey?

15 THE PROBATION OFFICER: No.

16 THE COURT: Thank you for bringing those  
17 matters to the Court's attention, Ms. Arey.

18 Thank you, Mr. Colton.

19 .....

20

21 Certified to be a true and  
22 accurate transcript pursuant  
23 to Rule 723 and 724 of the  
Supreme Court Rules of Court.

24

25 \_\_\_\_\_  
Annette Wright, RPR, CSR(A)  
26 Court Reporter

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27