

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

CHRISTOPHER WANDERINGSPIRIT

Transcript of the Reasons for Sentence heard before The Honourable Justice V. A. Schuler, in Yellowknife, in the Northwest Territories, on the 2nd day of July, 2013.

APPEARANCES:

Mr. M. Lecorre: Counsel on behalf of the Crown

Mr. T. Boyd: Counsel on behalf of the Accused

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Charge under s. 268 C.C.

1 THE COURT: Mr. Wanderingspirit pled  
2 guilty today to this charge of aggravated assault  
3 that is before the Court and he has now been  
4 convicted of that offence.

5 The facts that he admits are that he and Mr.  
6 Camsell went to the home of Wade Kapakatoak.  
7 They went there with Mr. Kapakatoak's sister.  
8 There was a party in progress at the home. Mr.  
9 Kapakatoak, who was 18 at the time, had been  
10 drinking. He tried to kick Mr. Wanderingspirit  
11 and Mr. Camsell out of the apartment because they  
12 were both drunk and loud. Mr. Camsell held Mr.  
13 Kapakatoak by the front, while Mr.  
14 Wanderingspirit put him in a chokehold. Mr.  
15 Kapakatoak remembers tasting blood when put in  
16 the chokehold. He was also hit in the face by  
17 the two men and afterwards his jaw felt funny and  
18 he could not eat or drink. When he went to the  
19 hospital a day or so later, it was discovered  
20 that his lower jaw was detached and broken in two  
21 places. He needed surgery to wire his jaw shut  
22 and was in the hospital for about four days.

23 Mr. Camsell was sentenced for his role in  
24 the offence in June of 2012. The citation for  
25 that decision is 2012 NWTSC 55. The sentencing  
26 judge indicated that Mr. Camsell's sentence  
27 should be in the range of 18 months in jail and

1 gave him credit for 13 months in remand, leaving  
2 five months to be served as at the date of  
3 sentencing. A period of probation for one year  
4 was also ordered. Mr. Camsell was in his mid 20s  
5 at the time of the offence and had a criminal  
6 record although mostly not for crimes of  
7 violence.

8 Turning to Mr. Wanderingspirit, he is now 36  
9 years old. He is from Fort Providence where  
10 other family members reside. He is optimistic,  
11 according to his counsel, that he can obtain  
12 employment with the Giant Mine Remediation  
13 Project and if so, he also has family support  
14 here in Yellowknife with a sister.

15 Mr. Wanderingspirit has a criminal record  
16 going back to 1991 when he was a youth. As an  
17 adult, he has many convictions for property  
18 offences and failures to comply with court  
19 orders. He also has two convictions for assault  
20 with a weapon, one in 1999 for which he was  
21 sentenced to 15 months in jail and one in 2005  
22 for which he was sentenced to five months in  
23 jail, with probation for one year. He also has a  
24 conviction for simple assault in 1999. Those are  
25 his only convictions for violence.

26 The aggravating circumstances of this case  
27 are, first, that the victim, who is quite a bit

1 younger than Mr. Wanderingspirit, was attacked in  
2 his own home while trying to get Mr.  
3 Wanderingspirit and the other offender to leave.  
4 It is also aggravating that they both attacked  
5 him at once. The injury to the victim's jaw was  
6 a serious one and required surgery.

7 The guilty plea is a mitigating factor even  
8 though it comes two years after the offence was  
9 committed and on the eve of the second trial date  
10 set for this matter. Notwithstanding that it  
11 does come quite late, it did come in time that  
12 the witnesses did not have to appear and testify  
13 at trial and did not have to travel to  
14 Yellowknife, so it has saved them the  
15 inconvenience and the stress of testifying. It  
16 means that Mr. Wanderingspirit is now taking  
17 responsibility for what he did. A guilty plea,  
18 even a late one, is always worth some credit. I  
19 take those factors and also Mr. Wanderingspirit's  
20 past record into account.

21 I also take into account, as I am obliged to  
22 by law, that systemic factors have caused many  
23 aboriginal people like Mr. Wanderingspirit to  
24 come into conflict with the law, particularly  
25 when excessive alcohol consumption is involved.  
26 Mr. Wanderingspirit's father is, I am told, a  
27 residential school survivor. Mr. Wanderingspirit

1 has, in speaking to the Court, just talked about  
2 the alcohol abuse in his background and all of  
3 this no doubt has had an impact on his life.  
4 These circumstances are relevant to whether I  
5 should consider a sanction other than  
6 imprisonment in this case.

7 Essentially, both Crown and defence are  
8 saying in this case that imprisonment is the  
9 appropriate sanction but that Mr. Wanderingspirit  
10 has already served an adequate and appropriate  
11 jail sentence through his remand time. I will  
12 talk about the remand time in a moment, but I  
13 will first note that aboriginal people also have  
14 the right to feel safe in their homes and safe  
15 from violence, and I am assuming from Mr.  
16 Kapakatoak's name that he, too, is aboriginal.  
17 Such a serious act of violence being perpetrated  
18 by someone who already has a criminal record  
19 involving violence normally does result in a jail  
20 term whether the offender is aboriginal or not.

21 In the Camsell decision, Justice Charbonneau  
22 referred to some sentences in some similar  
23 Northwest Territories cases. I will not repeat  
24 them here.

25 Crown and defence counsel have made a joint  
26 submission for a sentence of time served which  
27 they have calculated as 19 months, plus one year

1           probation. Where, as here, there is a joint  
2           submission, the Court is obliged to give it  
3           consideration. Here, as I understand it, counsel  
4           have based the jail time portion of the proposed  
5           sentence on a calculation as to the remand time  
6           that Mr. Wanderingspirit has accumulated. On a  
7           one-to-one calculation, that time amounts to just  
8           over 500 days; and on a calculation that would  
9           give a 1.5 credit to part of the remand time, it  
10          amounts to approximately 579 days.

11                 Defence counsel made submissions about the  
12          circumstances under which some of the remand time  
13          was served, for example Mr. Wanderingspirit  
14          having to sleep on the floor of his cell. I note  
15          in the material that was filed that there is no  
16          confirmation of that from the North Slave  
17          Correctional Centre, but on the other hand Crown  
18          counsel does not take issue with the submission.

19                 In any event, as between crediting the later  
20          remand time at 1 or 1.5, the difference is  
21          between two and three months so it is not  
22          substantial. Either way, whether the credit to  
23          the later remand time is simply a credit of 1 or  
24          1.5, the resulting sentence would be in the area  
25          of 17 to 19 months if either of those  
26          calculations is used and it is in the range, in  
27          my view, of what would be appropriate considering

1 the aggravating and mitigating factors in this  
2 case and the principles of sentencing and parity  
3 with the sentence imposed on Mr. Camsell. So I  
4 will accept the joint submission and the record  
5 will note the remand time credited at 19 months.

6 Stand up please, Mr. Wanderingspirit.

7 Mr. Wanderingspirit, I am sentencing you  
8 then to time served, which will be credited as 19  
9 months. You will be on probation for a period of  
10 one year, starting today. The conditions of your  
11 probation are that you are to keep the peace and  
12 be of good behaviour and obey the other statutory  
13 conditions. For that period of one year while  
14 you are on probation, you are to have no contact  
15 directly or indirectly with Wade Kapakatoak and  
16 no contact directly or indirectly with Jamie  
17 Kapakatoak.

18 There will be a firearms prohibition order  
19 in the usual terms beginning today and continuing  
20 for ten years, and any firearms or other items  
21 covered by the order are to be surrendered to the  
22 RCMP forthwith.

23 There will also be a DNA order in usual  
24 terms.

25 Because you have been in jail for several  
26 months now, the victim surcharge is waived.

27 Mr. Wanderingspirit, even before I heard you

1 speak today, I was going to say that you should  
2 look at this as a fresh start and I think that is  
3 essentially what you said, is that you want a  
4 fresh start, you want to start over. So you will  
5 be out of jail, you will be on probation. There  
6 are not a lot of conditions in that probation  
7 order but obviously you have to obey the  
8 conditions that are there. Apparently you have  
9 the prospect, the possibility of a good job from  
10 what was said here today, so it seems to me this  
11 is a good time to take the opportunity and make a  
12 new life for yourself and to leave behind the bad  
13 habits that are reflected by your criminal  
14 record. I am encouraged by what you said here  
15 today because it makes me think that that is what  
16 you want to do, too, is to start over again. So  
17 I do hope that you will do that and that you will  
18 not end up coming back here before the court.  
19 You are 36 years old, it is time to get on with  
20 life and leave all of these troubles and the  
21 things that you have been doing to other people  
22 and in many ways doing to yourself as well. I  
23 hope that you will take that advice and that you  
24 will think about what you said here today and  
25 take it seriously and change things around.

26 You may have a seat.

27 Is there anything further, counsel?



1 MR. LECORRE: Not from the Crown.  
2 MR. BOYD: Not from defence, Your Honour.  
3 THE COURT: All right, thank you both very  
4 much and we will close court then.

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

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Annette Wright, RPR, CSR(A)  
12 Court Reporter  
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