

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

ROY KLONDIKE

Transcript of the Reasons for Sentence delivered by The Honourable Justice K. Shaner, sitting in Yellowknife, in the Northwest Territories, on the 30th day of March, A.D. 2012.

APPEARANCES:

Mr. B. MacPherson and

Ms. W. Miller:

Counsel for the Crown

Mr. S. Fix:

Counsel for the Accused

(Charge under s. 268 of the Criminal Code of Canada)

1 THE COURT: Good afternoon. Good
2 afternoon, Counsel. Mr. Klondike.

3 I am ready to give you reasons for sentence
4 on this matter following the verdict of guilty
5 that was returned by the jury yesterday and
6 following submissions by Crown and defence this
7 morning, which were extremely helpful. Thank you
8 very much.

9 I find it useful in giving reasons for
10 sentence to set out the facts in a very summary
11 form just so there is some context to the
12 reasons, so I am going to do that.

13 Sometime late on December 25th, 2010, in the
14 community of Nahanni Butte, Stephen Vital was
15 visiting the home of Joan Ekotla. Roy Klondike
16 and Ms. Ekotla were in a relationship at the time
17 and Mr. Klondike was living there. Ms. Klondike
18 and Ms. Ekotla were arguing at some point. She
19 was angry with him because he had gone out. All
20 three of Mr. Ekotla, Mr. Vital, and Mr. Klondike
21 had been drinking alcohol at various times
22 throughout the day, although the times and
23 amounts and the extent the inebriation of those
24 three varied. Shortly after Mr. Vital arrived at
25 her home, Ms. Ekotla took him into her daughter's
26 bedroom to drink and listen to music, and at some
27 point she locked Mr. Klondike out of the room.

1 Soon after, Mr. Klondike entered the room and
2 stabbed Mr. Vital in the back with a steak knife.

3 As set out in the Agreed Statement of Facts,
4 the wound was a serious one. Mr. Vital suffered
5 a collapsed lung, among other things, and he
6 spent a number of days in the hospital in
7 Yellowknife recovering.

8 Mr. Klondike has now been convicted of the
9 offence of aggravated assault by wounding,
10 contrary to Section 268 of the Criminal Code, and
11 that offence carries with it a maximum penalty of
12 14 years. It falls into the definition of a
13 serious personal injury offence and, thus, as the
14 Crown and defence both pointed out, a conditional
15 sentence order is not something that is available
16 for consideration. The only options are
17 incarceration, probation, or a combination of
18 those two.

19 The Criminal Code itself sets out principles
20 of sentencing with which I am sure Crown and
21 defence are very familiar, however, it is useful
22 to repeat them because they provide a framework
23 to guide the Court in imposing an appropriate
24 sentence.

25 Section 718 sets out the fundamental purpose
26 of sentencing, which is to contribute, along with
27 crime prevention initiatives, to respect for the

1 law and the maintenance of a just, peaceful safe
2 society by imposing just sanctions that have one
3 or more of the following objectives: to denounce
4 unlawful conduct; to deter the offender and other
5 persons from committing offences; to separate
6 offenders from society, where necessary; to
7 assist in rehabilitating offenders; to provide
8 reparations for harm done to victims or to the
9 community; and to promote a sense of
10 responsibility in offenders, and acknowledgment
11 of the harm done to victims and to the community.

12 Section 718.1 talks about the
13 proportionality principle in sentencing, which is
14 that "A sentence must be proportionate to the
15 gravity of the offence and the degree of
16 responsibility of the offender." Then Section
17 718.2 sets out other principles, two of which are
18 very germane to this case. Subsection (b) says
19 "a sentence should be similar to sentences
20 imposed on similar offenders for similar offences
21 committed in similar circumstances". And
22 subsection (e) says "all available sanctions
23 other than imprisonment that are reasonable in
24 the circumstances should be considered for all
25 offenders, with particular attention to the
26 circumstances of aboriginal offenders." Those
27 are the principles that I have to apply today.

1 As I stated earlier and as has been noted by
2 both counsel, aggravated assault is very serious.
3 Stabbing a person in the back with a knife, even
4 if it is done in a highly charged emotional
5 situation, is at the strong end of the continuum
6 of moral culpability and blameworthiness.

7 Mr. Klondike may well have been angry at
8 being lock out of the room, but the evidence was
9 that there had been no previous altercation or
10 arguments between Mr. Vital and Mr. Klondike that
11 evening, and it is fair to say that the attack
12 was, at the very least, completely unexpected by
13 the victim. This, as well as the extent of the
14 injury, are particularly aggravating
15 circumstances.

16 Mr. Klondike's personal circumstances and,
17 in particular, his aboriginal heritage are very
18 important considerations in this case as the
19 Supreme Court has stated in the Gladue case and,
20 more recently last week, in the Ipeelee case.
21 The law recognizes that there are systemic and
22 historical factors that have put aboriginal
23 people in Canada into circumstances that have
24 greatly increased the possibility of some of them
25 coming into conflict with the law and, as well,
26 contributed to there being a significant
27 over-representation of aboriginal people in our

1 correctional facilities.

2 This morning I heard submissions on
3 Mr. Klondike's personal circumstances, including
4 his upbringing. He has not had the benefit of
5 much education. His early family life was no
6 doubt very difficult with both of his parents
7 drinking heavily. From the representations of
8 counsel, it appears that he started supporting
9 himself working at a very young age, around 14 or
10 15. He, too, has struggled with alcohol
11 addiction, and I have absolutely no doubt that
12 many of these difficult circumstances and
13 challenges that had been faced by Mr. Klondike
14 have shaped his life and are directly related to
15 the legacy of residential schools and the impact
16 of poverty, alcohol, and isolation in so many of
17 our aboriginal communities.

18 That said, there are also some very positive
19 things about Mr. Klondike that we heard today.
20 Although Mr. Klondike has a criminal record, it
21 is very old. The last conviction was in 1993.
22 It was for sexual assault, which is also serious.
23 But the fact that that criminal record is so old
24 and there has been nothing since then suggests to
25 me that Mr. Klondike is well and very capable of
26 learning from his mistakes. We also heard that
27 Mr. Klondike struggled with alcohol but that he

1 maintained sobriety for 15 to 18 years. He is
2 now dealing with his addiction once again and has
3 made strides to do so during the time that he has
4 been on recognizance.

5 Unfortunately, this is not a crime for which
6 sanctions other than imprisonment are
7 realistically available notwithstanding what I
8 said earlier about probation. As I indicated
9 earlier, it is a serious offence and the
10 circumstances of this particular offence are very
11 serious.

12 The Crown is seeking a term of three to
13 three and a half years of imprisonment. Defence
14 counsel says that a term of six to nine months'
15 imprisonment followed by a lengthy period of
16 probation is more appropriate.

17 Ms. Miller, for the Crown, submitted two
18 cases to me this morning - the Morgan case and
19 the Gonzales case. In the Morgan case, Justice
20 Charbonneau noted that a sentence of thirty
21 months to five years is the range of sentence
22 typically given for this type of offence.

23 Now, while I agree with the Crown that
24 typically that is the case, I think that in this
25 case, including all of the personal circumstances
26 of Mr. Klondike, that there are more effective
27 ways than a three to three-and-a-half-year

1 sentence in jail to achieve the objectives, all
2 of the objectives, of the Criminal Code in
3 sentencing and, in particular, rehabilitation.

4 Mr. Klondike, can you please stand.

5 Mr. Klondike, I am sentencing you to a term of
6 imprisonment of 18 months. This will be net of
7 any one-to-one credit that you receive for time
8 spent in remand, and this sentence will be
9 followed by a term of probation of two years.

10 The terms of the probation order will
11 include those mandated by the Criminal Code as
12 mandatory conditions and, as well, it will
13 include the following conditions: That you will
14 report to a probation officer within seven days
15 of being released from jail and, thereafter,
16 report as directed by the probation officer; you
17 will remain in the Northwest Territories unless
18 you have written permission to go outside of the
19 Northwest Territories from the probation officer;
20 you will abstain completely from the consumption
21 of alcohol or other intoxicating substances; you
22 will abstain from the consumption of drugs except
23 in accordance with the directions of a licenced
24 medical practitioner. In addition, there will be
25 an order as required under the Criminal Code for
26 a DNA sample to be taken in accordance with
27 Section 487.051 and a firearms prohibition under

1 Section 109. Do you understand, Mr. Klondike?

2 THE ACCUSED: Yes.

3 THE COURT: There will also be an order
4 that following the expiration of the appeal
5 period, Exhibits 3 and 4, which I understand, if
6 I am -- just for clarity, are the T-shirt and the
7 knife, will be returned to the RCMP for
8 destruction at the end of the appeal period. You
9 can sit down, Mr. Klondike.

10 Is there anything else?

11 THE COURT CLERK: The length of the firearms
12 prohibition?

13 THE COURT: The length of the firearms
14 prohibition is ten years.

15 THE COURT CLERK: Thank you.

16 MR. FIX: Your Honour, I'm sorry, I
17 forgot to address that and I don't know if
18 there's anything that can be done, but obviously
19 a significant part of his subsistence is hunting
20 and trapping. If there's nothing that can be
21 done, then there is nothing that can be done.
22 But I don't know if there's -- and I apologize, I
23 didn't look into this. I didn't think of it
24 until this morning and I didn't address it in my
25 submissions. But given his income from
26 employment, he doesn't hunt or trap for sport,
27 Your Honour. Perhaps my friends can assist.

1 MS. MILLER: Your Honour, I'm not sure if
2 Mr. Fix is making application for the exemption
3 pursuant to Section -- I apologize, Your Honour,
4 I don't have my Code with me, but there is an
5 exemption --

6 THE COURT: Yes.

7 MS. MILLER: -- section on the firearms for
8 those who hunt for subsistence purposes and that
9 application can be made. The Crown's not taking
10 a position on it.

11 MR. FIX: Thank you. I thank my friend.
12 I would make that application, and I've just been
13 given a tip from the officer that she thinks it's
14 Section 113.

15 THE COURT: Well, given the -- I
16 understand what you are saying, Mr. Fix, but I do
17 not think that there is -- and I do not
18 disbelieve your client, but I do think there has
19 to be some -- or your submission, but I think
20 there has to be some evidentiary basis for making
21 that exemption. And I do note that the
22 provisions of the Criminal Code are that a
23 "competent authority may, notwithstanding that a
24 person is or will be subject to a prohibition
25 order, make an order authorizing the chief
26 firearms officer or the Registrar to issue ... an
27 authorization licence or registration

1 certificate." So --

2 MR. FIX: It doesn't have to be done

3 today.

4 THE COURT: It does not have to be done

5 today. So I will make the firearms prohibition,

6 and if you wish to bring an application to have

7 that lifted, then do so at the appropriate time.

8 MR. FIX: Thank you, Your Honour.

9 THE COURT: Is there anything else?

10 MS. MILLER: Not from the Crown, Your

11 Honour.

12 MR. FIX: Technically, I think the Court

13 may need to address the victim of crime

14 surcharge, but I would ask, given the

15 circumstances, that it be waived for hardship.

16 THE COURT: I think, given your

17 representations about Mr. Klondike's financial

18 circumstances, that I am inclined to waive the

19 victim of crime surcharge. So there will not be

20 one in this case.

21 MR. FIX: Thank you, Your Honour.

22 MS. MILLER: Thank you, Your Honour.

23 THE COURT: Thank you.

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Certified Pursuant to Rule 723
of the Rules of Court

Jane Romanowich, CSR(A)
Court Reporter