

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

JAKE LALIBERTE

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Transcript of the Reasons for Sentence by The Honourable  
Justice L. A. Charbonneau, sitting in Fort Simpson, in  
the Northwest Territories, on the 24th day of September,  
A.D., 2013.

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APPEARANCES:

Mr. A. Godfrey:	Counsel for the Crown
Mr. S. Petitpas:	Counsel for the Defence

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Charge under s. 151 Criminal Code of Canada

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1 THE COURT: This afternoon it is my  
2 responsibility to impose a sentence on Jake  
3 Laliberte for the serious offence that he has  
4 pleaded guilty to, the offence of having touched  
5 for a sexual purpose a person under the age of 16  
6 years old contrary to Section 151 of the Criminal  
7 Code.

8 This offence can cover a broad range of  
9 conduct, anything from simply touching someone  
10 over their clothes, all the way to more serious  
11 interferences with a person. In this case what  
12 was involved was an act of full intercourse  
13 with the victim. She was too young to be in  
14 law capable of consenting to sexual activity,  
15 and she was also highly intoxicated and, as the  
16 accused acknowledges, incapable of consenting  
17 for that reason even if she had been over the  
18 age of 16.

19 This offence can be punished by a maximum  
20 of ten years in jail and a minimum of one year  
21 in jail, which shows how seriously the law treats  
22 it. The case law and the decisions of this Court  
23 in this jurisdiction is to the same effect.

24 In this jurisdiction, where unfortunately the  
25 sexual assault of an intoxicated person is a  
26 very prevalent crime, it is treated seriously  
27 by the Courts even when the victim is an adult.

1 Obviously if the victim is not an adult it makes  
2 it all the more serious.

3           Sadly, the circumstances that I heard  
4 about earlier today are very common in this  
5 jurisdiction. I would say that almost every  
6 week the Courts deal with similar offences  
7 committed in circumstances where persons are  
8 under the influence of alcohol often times,  
9 and commit very serious violations upon others  
10 who are also under the influence of alcohol.

11           There is a long list of decisions from  
12 this Court and the Territorial Court dealing  
13 with just that type of scenario. People in  
14 these circumstances are sentenced for having  
15 sexually assaulted members of their own families,  
16 good friends, relatives, sometimes acquaintances,  
17 or other times, like here, people who simply  
18 happen to be in their home at the time.

19           It is very difficult to understand why  
20 these crimes are so prevalent here and why,  
21 despite their devastating impact, they continue  
22 to take place. These crimes have devastating  
23 impacts on the people who are assaulted, they  
24 have devastating impacts on people such as the  
25 accused here, who are young and will have to be  
26 sent away for a long time to jail because of what  
27 he has done, and obviously there is a devastating

1 impact on the families of everyone involved.

2 The Courts do not have the answer to the  
3 question of why these things keep happening, and  
4 the solution to these problems is not something  
5 that can come from the Courts. It is something  
6 that will have to come from the communities  
7 themselves, and hopefully one of the things  
8 that maybe could come out of a case like this  
9 one, one of the more positive things, is to raise  
10 awareness and be a motivation for people to take  
11 action to try to address some of the underlying  
12 issues that lead to these things. Because it  
13 is always sad and disturbing to deal with these  
14 types of crimes, but it is especially sad and  
15 disturbing to hear about these types of crimes  
16 committed against a young person.

17 The victim impact statement that was filed  
18 in this case illustrates in very simple terms  
19 the type of harm that these crimes can cause.  
20 Things that this particular victim refers to,  
21 the hurt that she feels, her loss of trust in  
22 others, the feeling that this hurt will never  
23 go away, I am sad to say, are the types of  
24 comments that victims often make in cases like  
25 this one. The Court can only hope that in time  
26 and with some help this young woman will be able  
27 to recover from these events.

1           I also hope, as I have referred to  
2           already, that this type of case, and this one  
3           in particular, will continue to cause things  
4           to be talked about in the community. The abuse  
5           of alcohol, the scars from the past, unhealthy  
6           relationships, are all things that are very  
7           difficult to talk about, but unless and until  
8           members of the community come together to  
9           grapple with these kinds of issues things  
10          will not change. They certainly cannot be  
11          changed by outsiders.

12          All that being said, in the meantime the  
13          Court does have the duty and the unfortunate  
14          task of dealing with the results of what has  
15          happened and decide what a fit sentence is  
16          every time a crime like this takes place, and  
17          it is not a happy task. There is nothing happy  
18          about sending a young man like this one, who  
19          obviously has valuable skills and can be a  
20          productive member of this community, to jail,  
21          especially knowing some of the hurdles that he  
22          has had to overcome to get to where he is today.

23          But in the face of such a serious crime  
24          it is the only response that the Court can  
25          have, and in this case the Crown and defence  
26          acknowledge this because the submission that  
27          they have presented jointly is for a significant

1 term of imprisonment to be imposed. I will say  
2 at the outset that I have decided to accept their  
3 recommendation and their joint submission as to  
4 what the sentence should be, at least as far as  
5 what the jail term should be.

6 But I do want to explain a little bit  
7 more why such a significant jail term has  
8 to be imposed. The law is well established  
9 in this jurisdiction that when dealing with  
10 serious sexual offences, and this is a serious  
11 sexual offence, the most significant sentencing  
12 principles are deterrence and denunciation.  
13 Deterrence means discouraging this accused  
14 and other persons from committing this type  
15 of offence. Denunciation means sending out  
16 the message that this type of conduct is  
17 wrong and unacceptable in this community.

18 The prevalence of this type of crime adds  
19 to the need for deterrence and denunciation.  
20 This is especially so when, as here, the offence  
21 is not at the more minor end of the scale of  
22 seriousness. This was not a minor interference  
23 with the victim, it was a serious violation of  
24 her personal and sexual integrity.

25 As was mentioned earlier this afternoon  
26 during submissions, in this jurisdiction the  
27 starting point on sentencing for serious sexual

1 assaults, such as an act of full intercourse  
2 without a person's consent or when the person  
3 is not capable in law of consent, is three years  
4 imprisonment. When that assault is committed on  
5 a child by a person who is in a position of trust  
6 or authority the starting point is actually four  
7 years.

8 Here we have a non-adult victim, but the  
9 accused I recognize was not in a parental role  
10 or in a position of authority towards her.  
11 So the appropriate starting point to use  
12 is somewhere between three and four years.

13 There are aggravating factors in this case.  
14 The first is the victim's age. The Criminal  
15 Code makes that an aggravating factor as a matter  
16 of law now, but it has long been treated as an  
17 aggravating factor in any event by this Court  
18 when the victim of a crime like this is a young  
19 person. This too fits somewhere on a scale.  
20 This victim was not a very young child, but  
21 the fact remains that she was a teenager,  
22 whereas the accused was an adult man.

23 All adults have a duty to protect and  
24 assist younger people, and even when a young  
25 person behaves in a way where perhaps they  
26 are not taking the best care of themselves or  
27 are not making the best choices to look after

1           themselves, there is an underlying duty in all  
2           adults to assist them, and certainly there is  
3           a duty not to take advantage of them. So her  
4           age is an aggravating factor here, especially  
5           considering that the accused was about 11 years  
6           older than her.

7                     It is also aggravating, in my view,  
8           that the victim was in an even more vulnerable  
9           position because of her state of intoxication.  
10          The accused was intoxicated as well, I recognize  
11          that, but still he took advantage of someone who  
12          was evidently not in any position to make proper  
13          decisions or take steps to protect herself.

14                    There are mitigating factors as well.  
15          The most significant one is the guilty plea.  
16          I recognize, based on the facts that were  
17          admitted, that there appears to have been  
18          a strong case against Mr. Laliberte. There  
19          was DNA confirming that sexual activity took  
20          place; the victim's age, making her consent not  
21          possible in law; evidence of her intoxication;  
22          and apparently people who saw at least some of  
23          what happened.

24                    But still, a guilty plea is always a  
25          significant mitigating factor. It provides  
26          a certainty of outcome for victims. It tells  
27          the community that the accused is willing to



1 take responsibility for his wrongdoing, and  
2 hopefully that can avoid or reduce the amount  
3 of blame that can be shifted onto the victim,  
4 because unfortunately in every community, it  
5 seems, there always are some people who, in  
6 a situation like this, prefer to focus on the  
7 victim's conduct instead of focussing on the  
8 conduct of the person who has committed the  
9 crime.

10 It takes courage to acknowledge our own  
11 wrongdoings, and it is beneficial to victims,  
12 in the Court's experience, to know that the  
13 accused does admit responsibility. That is  
14 why the guilty plea has such great value, and  
15 I think that value perhaps is even greater  
16 in a smaller community. And, of course, the  
17 guilty plea is an indication of true remorse.  
18 Giving up the right to have a trial is not a  
19 small thing.

20 This guilty plea was not an early guilty  
21 plea, it came just as we were about to begin  
22 jury selection. But I also know that this  
23 trial was to take place on matters involving  
24 two complainants, and the Crown is not proceeding  
25 with respect to the second one. That puts  
26 Mr. Laliberte's guilty plea into context too.  
27 It is somewhat similar to when a person pleads

1 guilty at the 11th hour, but to a charge that  
2 is less serious than what they were to be tried  
3 on. When the Crown is willing to change the  
4 jeopardy that a person faces, that goes some  
5 way to temper the lateness of the guilty plea.

6 I was advised that this victim did not  
7 have to testify at the preliminary hearing.  
8 This guilty plea this week has avoided the  
9 need for her to testify in front of 12 members  
10 of this community, and after seeing sexual  
11 assault victims testify very frequently I know  
12 that sparing someone from having to do that is  
13 sparing them a lot.

14 For all of those reasons I am of the  
15 view that this guilty plea should be given  
16 considerable weight and that Mr. Laliberte  
17 is entitled to significant credit for it  
18 even though it came late in the process.

19 He has a criminal record, but it is minor  
20 and marginally relevant. He has never been  
21 sentenced to jail before. It is to his credit  
22 that by and large he has not been in trouble with  
23 the law even though, as his counsel said, he has  
24 had some struggles with alcohol and drugs for  
25 several years, going back to when he was himself  
26 a teenager.

27 I have heard that he has never taken any

1 counselling to help him deal with those issues,  
2 and I do hope he will during the course of his  
3 sentence. Many people drink, but do not engage  
4 in this kind of conduct while intoxicated. If  
5 alcohol has contributed to this type of behavior  
6 once it could easily have the same effect in the  
7 future. In that sense, I certainly agree with  
8 what Mr. Laliberte's sister writes in her letter,  
9 which was made an exhibit, where she says that  
10 she hopes that these events will help teach  
11 everyone involved the effect of the excessive  
12 use of alcohol and what it can do to people.

13 I also take into account the fact that  
14 Mr. Laliberte has obviously done a lot to acquire  
15 training and skills, and he was a valued employee  
16 to the people he has worked for as of late. That  
17 is also clear from the materials that were filed  
18 at the sentencing hearing.

19 I take into account as well that this  
20 particular event happened shortly after he  
21 experienced the loss of his aunt. That is  
22 something that is not an excuse, but perhaps  
23 the beginnings of an explanation for how much  
24 out of control his drinking had been in the  
25 days that preceded these events. But that  
26 does not remove his responsibility for his  
27 actions.

1           I have already mentioned the letter  
2           prepared by his sister, and I have taken into  
3           account other things that she wrote in that  
4           letter, about what she knows of his character  
5           and what she writes about him more generally.  
6           I do not doubt that she knows him to be a good  
7           person, a helpful person, and that she finds  
8           it difficult to believe he would have harmed  
9           anyone or behaved in this way. The letter is  
10          dated September 20th, which is last Friday, and  
11          it is clear, especially from the last paragraph  
12          in the letter, that at the time it was written  
13          the author still thought this matter would go  
14          to trial.

15                 Now that Mr. Laliberte has admitted his  
16                 wrongdoing hopefully everyone, including his  
17                 family and loved ones, can come to terms with  
18                 what he has done and move on on that basis.  
19                 In sentencing hearings the Court often hears  
20                 that the person who committed the offence is  
21                 not a bad person, and it is important to make  
22                 that distinction between what a person did and  
23                 who a person is. I do not doubt, from everything  
24                 I have heard, that Mr. Laliberte has a lot of  
25                 skills and that a lot of good things can be said  
26                 about him, but unfortunately that night last year  
27                 he did a very bad and hurtful thing.

1           I have taken into account the fact that  
2           he is an aboriginal offender, the struggles  
3           that he faced in his family situation when  
4           he was growing up, which included the abuse  
5           of alcohol by both of his parents and the  
6           violence that his biological father used  
7           towards his mother and towards him. The  
8           Criminal Code and the binding jurisprudence  
9           require that I take those factors into account  
10          in determining what a fit sentence is. It is  
11          not a factor that can overtake all the others,  
12          but it is something that must be taken into  
13          account.

14           I have reviewed the two cases filed by the  
15          Crown. Both involve adult victims, and that is  
16          an important distinguishing factor between those  
17          cases and this one. But those cases do confirm  
18          what I have been talking about as far as the  
19          prevalence of sexual assaults generally in  
20          this jurisdiction.

21           The joint submission that I have been  
22          presented with is that I impose a sentence  
23          of two and a half years imprisonment, and as  
24          I have already said I have concluded that it  
25          should be followed. The law is well established  
26          that when the Court is presented with a joint  
27          submission that position must be given serious

1 consideration by the Court, and it should be  
2 followed unless the Court concludes that it is  
3 clearly unreasonable. Here I think that the  
4 position presented is not outside the range  
5 of what is reasonable. I think it is at the  
6 low end of the range, but in my view it is  
7 within that range and that is why I have  
8 decided to accept it.

9 I do, however, want to make it clear to  
10 Mr. Laliberte and to everyone else that given  
11 the age of the victim here he could very easily  
12 have been sentenced to a much longer jail term.  
13 Certainly after trial he could have been looking  
14 at a sentence as high as four years or close to  
15 it. I mean what I said when I talked about the  
16 mitigating effect of a guilty plea, and here of  
17 course, as I have said, while I think the joint  
18 submission is perhaps at the more lenient end  
19 of the spectrum I do think it is reasonable,  
20 particularly in light of all of the  
21 circumstances. Stand up please, sir.

22 For the offence that you have pleaded  
23 guilty to, sir, I am going to go along with  
24 the joint submission that was presented, and  
25 I have concluded that a sentence of two and a  
26 half years is appropriate. For the time that  
27 you have spent on remand, about 67 days that

1 I have heard, I will give you credit roughly on  
2 a one-to-one ratio. So there will be a further  
3 jail term of two years and four months. I am  
4 giving you two months credit for the remand  
5 time. You can sit down.

6 Mr. Petitpas, before I forget, you did  
7 not ask that I include any recommendation on  
8 the Warrant of Committal with respect to where  
9 the sentence should be served, but I have also  
10 heard that your client's ties are primarily  
11 Northern at this point. Did you want to make  
12 submissions on that?

13 MR. PETITPAS: Yes, Your Honour. I omitted  
14 to make those submissions previously, but the  
15 defence will be seeking a judicial recommendation  
16 that he be able to serve his time here in the  
17 Northwest Territories, and more specifically  
18 at the South Mackenzie Correctional Centre.

19 THE COURT: I will do part of what you  
20 asked. This decision is not up to me. I cannot  
21 order where you will serve your sentence, sir,  
22 but I know you have strong support here, and  
23 because this is a sentence in the penitentiary  
24 range I am going to direct the clerk to put an  
25 endorsement, a note on the Warrant of Committal  
26 with my very strong recommendation that you be  
27 permitted to serve your sentence in the North.

1           I am not going to go as far as saying  
2           which institution because I think that the  
3           availability of certain programs and some of  
4           the things that might be actually helpful to  
5           you may vary from place to place, and I think  
6           the Correction people are the people who are  
7           in the best position to make that decision.  
8           Of course, I am sure as part of their processes,  
9           they will find out from you what your preference  
10          would be and where your supports are. But  
11          certainly, Mr. Clerk, I want there to be a  
12          strong recommendation endorsed on the Warrant  
13          of Committal that Mr. Laliberte be permitted  
14          to serve his sentence here in the Northwest  
15          Territories.

16                 As far as the ancillary orders, many of  
17                 the ones that have been sought are mandatory  
18                 for a case like this. There will be a DNA order  
19                 because this is a primary designated offence.  
20                 There will be a firearms prohibition order  
21                 pursuant to Section 109 of the Criminal Code,  
22                 which will be in force for 10 years following  
23                 your release. I will direct that any firearms  
24                 be surrendered forthwith. Is that a problem,  
25                 Mr. Petitpas?

26         MR. PETITPAS:                 Mr. Laliberte has no firearms.

27         THE COURT:                    There will also be another



1 order that is mandatory on this type of case,  
2 and that is that you comply with the requirements  
3 of the Sexual Offender Information Registry  
4 Act for a period of 20 years. The clerk  
5 will explain to you what that means.

6 I have considered the request for an  
7 order under Section 161 of the Criminal Code.  
8 That type of order prevents persons from  
9 attending areas where young persons are likely  
10 to be present, such as swimming pools, parks,  
11 schools. The order can also include things  
12 like prohibiting someone from doing volunteer  
13 work in areas where they may come into contact  
14 with children.

15 I realize this was originally part of  
16 the joint submission. I have reviewed the  
17 provision, and considering the circumstances  
18 of this offence, the fact that there is no  
19 indication in the facts that there was any  
20 planning or deliberate effort by Mr. Laliberte  
21 to lure young people to his home and take  
22 advantage of them, considering the fact that  
23 he has nothing on his criminal record that  
24 is relevant to the abuse of young persons,  
25 and just considering the overall picture that  
26 is painted by the evidence, the facts and the  
27 other materials filed, I do not see the need

1 to restrict his movements in the way that  
2 they would be through a Section 161 order.  
3 This does not strike me as an event that  
4 discloses predatory tendencies or a significant  
5 concern that in general in his day-to-day  
6 life that Mr. Laliberte is a threat to children.  
7 In my estimation that is more the intended scope  
8 of Section 161 of the Criminal Code. For those  
9 reasons I am not going to make that order.

10 I will, however, make an order that you  
11 pay a victim of crime surcharge. That money  
12 goes into a general fund that is used to assist  
13 victims of crime. So given that you have been  
14 employed recently and regularly in the past  
15 several months it is appropriate that this  
16 order be made. The Criminal Code provides  
17 that the amount is \$100. Would 30 days be  
18 sufficient time to pay?

19 MR. PETITPAS: Your Honour, I believe  
20 he can pay it immediately.

21 THE COURT: So I will say seven days,  
22 and that is for the victim of crime surcharge.

23 There will be an order that any exhibits  
24 that were seized in this investigation be  
25 returned to their lawful owners if that is  
26 appropriate. If not, they can be destroyed,  
27 but that of course should only be at the

1 expiration of the appeal period.

2 I think I have addressed the various  
3 things you have raised. Is there anything  
4 I have overlooked, Mr. Godfrey, from the  
5 Crown's perspective?

6 MR. GODFREY: I don't believe so, Your  
7 Honour.

8 THE COURT: Is there anything I have  
9 overlooked from the defence perspective?

10 MR. PETITPAS: No, Your Honour.

11 THE COURT: I want to thank counsel for  
12 their work in dealing with this matter generally  
13 and specifically in arriving at a resolution and  
14 for your submissions on this matter. We will  
15 close court.

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17  
18 Certified to be a true and  
19 accurate transcript, pursuant  
20 to Rules 723 and 724 of the  
Supreme Court Rules.

21  
22 \_\_\_\_\_  
Joel Bowker  
23 Court Reporter

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