

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

FRED JUNIOR GRUBEN

Transcript of the Reasons for Sentence delivered by The Honourable Justice A. Germain, sitting in Tuktoyaktuk, in the Northwest Territories, on the 15th day of August, A.D. 2013.

APPEARANCES:

Mr. B. Demone: Counsel for the Crown

Mr. T. Boyd: Counsel for the Accused

(Charges under s. 267(a) and 268 Criminal Code of Canada)

1 THE COURT: Mr. Fred Junior Gruben was
2 tried this week in his home town of Tuktoyaktuk
3 before a jury composed of his peers.

4 At the time when the jury was to hear their
5 final addresses by counsel, their jury charge,
6 and to commence deliberations, Mr. Fred Gruben
7 Junior entered a plea to a lesser and included
8 offence of assault causing bodily harm. Counsel
9 agreed that I should encourage the jury to return
10 a verdict of guilt to that count and they have
11 done so. In result, Mr. Gruben today is not
12 being sentenced for aggravated assault nor
13 assault with a weapon, he is being sentenced only
14 for assault causing bodily harm.

15 Assault causing bodily harm can be just
16 barely over a trifling matter such as a black eye
17 or a sore jaw or a swelling or a bruise, and it
18 can proceed in gradation until it almost
19 constitutes attempted murder or wounding, which
20 is aggravated assault. In this particular case,
21 Mr. Gruben's offence comes perilously close to
22 the line between assault causing bodily harm and
23 aggravated assault.

24 Mr. Gruben is an aboriginal and, in result,
25 the principles of sentencing under Section 718 of
26 the Criminal Code, which are sometimes difficult
27 to reconcile, specifically direct me, under

1 Section 718.2(e), to take into account his
2 situation in the community and in the jail
3 community of the issues that confront
4 aboriginals. We are disproportionately
5 represented in our jails by aboriginal offenders,
6 and some of the roots of aboriginal offenders
7 result from the limitations that society has
8 imposed on aboriginals, not deliberately or not
9 intentionally, but we have a history in this
10 country, in Australia, in the United States, in
11 other democratic countries, a history of
12 well-meaning people ending up inflicting
13 significant abuse and ill effects on the
14 aboriginal citizens.

15 Our Alberta Court of Queen's Bench R. v.
16 Gouda, 2013 ABQB 121 has recently suggested that
17 even in a joint submission of sentence, a
18 Gladue-Ipeelee type report prepared by a
19 probation officer should be prepared in all
20 cases. A more liberal and generous way of
21 interpreting that Alberta decision is to remind
22 judges that even in joint submissions Section
23 718.2(e) must be explored.

24 In the Northwest Territories, with the
25 isolated communities, the fly-in judges, the lack
26 of resources for adult probation services, and
27 the extremely competent and well-prepared legal

1 counsel who are live to these issues, it would
2 seem to me that if it becomes the rule of law in
3 the territories that there be an actual written
4 Ipeelee-Gladue report in every case, as correctly
5 pointed out by learned counsel Mr. Boyd, the
6 system would quickly become constipated and would
7 bog down and that people would be prejudiced
8 because while awaiting sentence, they would often
9 serve more time than their sentence and there
10 would be inherent delays, particularly when the
11 Court is imposed in part by travelling judges who
12 attend from other parts of Canada and who have
13 their own workload back home. Mr. Boyd reminds
14 me that while I am sitting as territorial judge,
15 the decisions of the Alberta Courts should be
16 highly persuasive but are not binding on me as
17 they might be in the Province of Alberta. I also
18 prefer to interpret the Alberta Court decision in
19 Gouda as not creating an absolute requirement to
20 order an Ipeelee-Gladue type report from
21 Probation Services when that information can be
22 gleaned elsewhere, through submissions from the
23 client or his competent counsel. Therefore, I
24 will not adjourn this case for an Ipeelee
25 decision. I am fortified in that by Mr. Boyd's
26 eloquent submissions and the fact that a joint
27 submission has been reached.

1 The joint submission in this case basically
2 starts with a global sentence of around fourteen
3 months. The parties have asked that I impose an
4 additional sentence of new time of six months.
5 In my respectful view, legal counsel have got it
6 right. Although Mr. Lucas was badly injured and
7 although Mr. Gruben's guilty plea was a late
8 train coming, it still nevertheless reflects
9 remorse and it reflects a willingness to stand up
10 in the community and admit wrongdoing.

11 I think we all wish that the community had
12 not been torn apart like this with people bearing
13 witness against loved ones, and jurors who know
14 the Gruben family, work for the Gruben family,
15 and are heavily knowledgeable about the important
16 things the Gruben family has done in this area of
17 the territory, didn't have to go through the
18 turmoil that they went through. But in any
19 event, Mr. Gruben still has pled guilty. In
20 light of that, I intend to accept the joint
21 submission of sentence.

22 Mr. Gruben, would you please stand. I
23 sentence you to a period of fourteen months in
24 prison, but I declare that eight months of it has
25 already been served by the time you have spent in
26 custody, and the official record today will
27 reflect that you are to serve six months of new

1 time.

2 Under Section 109 of the Criminal Code of
3 Canada, you are now facing a lifetime firearms
4 ban of all firearms, including handguns,
5 restricted weapons, and even non-restricted
6 weapons. However, I recognize and do accept,
7 notwithstanding the learned objections of Crown,
8 that there is an opportunity for you to
9 sustenance hunt, and if you are out in the --
10 away out on the land, away from the built-up
11 communities, it would be, in my view, dangerous
12 to prohibit you from having a firearm to hunt or
13 trap in order to sustain you or your person's
14 family. So under Section 113(1) of the Criminal
15 Code, I will lift the prohibition order for
16 sustenance or employment. But the firearm that
17 you have must be a long rifle, never a handgun,
18 you must have no alcohol whatsoever on the trip,
19 and you cannot hold or possess a firearm (someone
20 will have to bring it with them) while you are
21 within two miles of a circle around any built-up
22 community in the Northwest Territories. So it
23 has to truly be out on the land.

24 In addition, while in prison, a sample of
25 you DNA will be taken for future crime-fighting.
26 It will be a scrape from the inside of your cheek
27 or a fingernail. It will be ordered by me to be

1 in the least invasive way possible.

2 Counsel, have I missed anything?

3 MR. DEMONE: No, Your Honour. Thank you
4 from the Crown.

5 THE COURT: I want to conclude by --

6 MR. BOYD: Surcharges waived, sir.

7 THE COURT: The surcharge in this
8 circumstance is waived. This individual is
9 unemployed. Mr. Boyd, can you assure me the date
10 of this offence predates the new rules where I
11 can no longer waive the surcharge, I can only now
12 refer the individual to the fine workout options?

13 MR. BOYD: Yes. My understand is that in
14 the recent past, well after the offence date --

15 THE COURT: Yes, in that case, we will
16 waive the victim fine surcharge.

17 I want to conclude court -- Mr. Gruben, you
18 can be seated. I want to conclude court by
19 thanking legal counsel for their assistance this
20 week. I also thank my Clerk of the Court and my
21 court reporter who have done a wonderful job. We
22 appreciate it very much, Counsel. We may not say
23 it enough as judges, but I appreciate the help
24 you have given me very much. And I thank my
25 clerk and my court reporter for putting up with
26 my idiosyncrasies and helping me survive in a
27 land that I clearly would not survive in for ten

1 minutes on my own. So with that, we will stand
2 adjourned.

3 Mr. Gruben, I am not going to give you a
4 lecture. You know what is going to happen if you
5 drink. All I am going to say is good luck.

6 THE ACCUSED: Thank you.

7 THE COURT CLERK: All rise.

8 THE COURT: We're adjourned.

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12 Certified Pursuant to Rule 723
13 of the Rules of Court

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Jane Romanowich, CSR(A)
Court Reporter

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