

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

AUGUSTINE DANIEL MINOZA

Transcript of the Oral Reasons for Sentence by The
Honourable Justice L. A. Charbonneau, sitting in Hay
River, in the Northwest Territories, on the 10th day
of October, A.D., 2013.

APPEARANCES:

Mr. M. Lecorre: Counsel for the Crown
Mr. S. Petitpas: Counsel for the Defence

Charge under s. 271 Criminal Code of Canada

INITIALS USED TO PROTECT THE IDENTITY OF THE COMPLAINANT
PUBLICATION BAN PURSUANT TO SECTION 486.4 CRIMINAL CODE

1 THE COURT: Augustine Daniel Minoza
2 was found guilty yesterday of having committed
3 a sexual assault on M. S. back on September
4 11th, 2009. It is now my responsibility to
5 decide what his sentence should be for that
6 crime.
7 I want to summarize briefly some of the
8 procedural history of this matter because it
9 has taken an unusually long period of time
10 for this matter to get to trial.
11 Ms. S. made her complaint to the police
12 about this incident the same morning that it
13 happened and Mr. Minoza was charged a few days
14 later. Yet here we are, over four years later,
15 dealing with this case.
16 After Mr. Minoza was charged there were
17 various appearances in Territorial Court.
18 Mr. Minoza at that point was not represented
19 by counsel. The preliminary hearing proceeded
20 in July of 2010 and Mr. Minoza was committed
21 to stand trial. For that proceeding the Court
22 appointed counsel to do the cross-examination
23 of the complainant.
24 This Court then arranged for a pre-trial
25 conference to be held because Mr. Minoza's
26 election was to be tried by a judge and jury.
27 Because he had no counsel there was an in-court

1 pre-trial conference in Fort Providence in June
2 of 2011. Various matters were discussed at that
3 time, including steps that Mr. Minoza should
4 take to get counsel. He was also advised that
5 day that there was a likelihood that a further
6 pre-trial conference would be held.

7 The Court did convene that further
8 pre-trial conference for September 27th,
9 2011, in Yellowknife, and a summons was
10 served on him requiring his attendance at
11 that pre-trial conference. Mr. Minoza did
12 not appear in response to the summons and
13 a warrant was issued for his arrest. That
14 warrant remained outstanding for a long time.
15 I do not know why it took so long for it to
16 be executed, but it was not executed until
17 June 6th, 2012, almost nine months later.

18 After the warrant was executed Mr. Minoza
19 was brought before the Court, and he was
20 released on the Crown's consent on a recognizance
21 on June 11th, 2012. There was a further in-court
22 pre-trial conference held in July of 2012, and
23 on that day the Court set the trial to proceed
24 in Fort Providence starting January 14th, 2013.

25 The Crown proceeded with its application
26 to have counsel appointed to conduct the
27 cross-examination of the complainant at the

1 trial. That appointment was done, but as
2 it turns out that counsel became counsel
3 for Mr. Minoza.

4 The Court did travel to Fort Providence
5 to hold the jury trial in January of 2013,
6 but unfortunately a jury could not be selected
7 that day. Seven jurors were selected before the
8 panel was exhausted. The Crown made application
9 for talesmen, additional people were summonsed,
10 but even at the end of that process it was not
11 possible to constitute a full jury and a mistrial
12 was declared. At that point the matter was
13 scheduled to proceed to trial here in Hay
14 River, and this is what happened this week.

15 I mention all of this because there is
16 no question that it is very unfortunate it has
17 taken so long for this matter to come to trial.
18 There were a few contributing factors to this
19 delay. One was Mr. Minoza's failure to attend
20 the pre-trial conference in September of 2012.
21 Another was how long it took for the warrant
22 to be executed, something which to my knowledge
23 was never explained. Another was the fact that
24 the first attempt to hold the jury trial on this
25 matter was not successful.

26 This Court has a tradition of attempting
27 to hold jury trials in the community where the

1 events leading to the charge are alleged to
2 have taken place, but sometimes it is simply
3 not possible to get a jury because of the close
4 connections between the various people that live
5 in some of our smaller communities. When that
6 happens, of course, it causes further delays.

7 The net result of all of this is that I must
8 now sentence Mr. Minoza for events that occurred
9 over four years ago. In this particular case it
10 means that the impact on him will be different
11 because in the intervening period he has had
12 a son, and I am very mindful of the difference
13 that this must make to him as far as the prospect
14 of being sent to jail for a long time.

15 I also know he has completed some training
16 in carpentry and now has his ticket for that
17 trade, which would presumably make him more
18 employable than he might have been before.
19 But that too will have to be on hold now.
20 Mr. Minoza is in part responsible for these
21 delays, but he is not entirely responsible
22 for them.

23 At the same time, the fact that it has
24 taken a long time for this matter to get to
25 trial does not take anything away from the
26 seriousness of the crime for which he has
27 been found guilty.

1 For the jury to have found Mr. Minoza
2 guilty they had to have rejected his evidence
3 and accepted the evidence of Ms. S. She said
4 that she had been drinking on the evening of
5 September 10th, 2009, and eventually went to
6 sleep in her bed. The next morning she woke
7 up to someone having anal intercourse with
8 her. She turned around and saw that it was
9 Mr. Minoza. She jumped up off the bed, he
10 walked out of the room. She then came out of
11 the room and found him sitting at a table where
12 another man, Matthew Sabourin, was also sitting.
13 Matthew Sabourin testified at the trial that
14 he had arrived at Ms. S.'s house a short time
15 earlier. Ms. S.'s boyfriend and another man
16 were passed out on a futon in the living room.
17 Ms. S. yelled at Mr. Minoza, pulled his
18 hair and kicked him out of the apartment. She
19 then went to her place of work and talked to one
20 of her co-workers about what happened. Together
21 they went to the Health Centre and the matter
22 was reported to police. Ms. S.'s co-worker
23 testified at the trial that Ms. S. was upset
24 that morning. She described her as being
25 angry, quite agitated, nervous and scared.
26 Ms. S. has prepared a victim impact
27 statement. Her statement in fact is directed

1 directly at Mr. Minoza. She tells him she is
2 not able to trust him and does not feel safe
3 around him, that he should not have done this,
4 and she also talks about the affect that this
5 event had on her common-law spouse, who she
6 says feels guilty about this. Presumably,
7 this is because he was passed out in the
8 house when this happened.

9 I turn to the circumstances of Mr. Minoza
10 himself, which obviously must be taken into
11 account in deciding what his sentence should
12 be. He is 31 years old. He is in a common-law
13 relationship and has been for some time. He has
14 a 28-month-old child. He has taken training in
15 carpentry and has done his apprenticeship with
16 the Fort Providence Housing Corporation, and
17 now has his ticket as a carpentry journeyman.
18 Before that he worked at various odd jobs in
19 Fort Providence. He does not have a criminal
20 record. He is of Slavey descent.

21 According to his counsel, while there
22 was one isolated incident of domestic violence
23 in his home as he was growing up, as well as
24 occasional drinking, Mr. Minoza speaks highly
25 of his parents. There is no indication that
26 they were ever abusive to their children. But
27 they both attended residential school. There

1 is little doubt that this had an impact on them,
2 and consequently some impact on their children.

3 Mr. Minoza reports that as a child he
4 was the victim of sexual abuse at the hands
5 of a babysitter. This was never reported to
6 the authorities, and the person in question
7 apparently still lives in the community.

8 I heard that Mr. Minoza started
9 experimenting with alcohol when he was 15 or
10 16 years old and that alcohol became a problem
11 for him as a young adult. He has struggled
12 with this problem ever since but has never
13 sought counselling or treatment for it.
14 He reports having been able to reduce his
15 consumption of alcohol since the birth of
16 his child. Hopefully he will make the most
17 of whatever opportunities there are during
18 his incarceration to get help to deal with
19 this issue. It is also the Court's hope that
20 he will be able to get counselling and assistance
21 in dealing with having been sexually abused
22 himself when he was young. This would assist
23 him, quite probably, in dealing with that event.
24 It might also help him gain more insight with
25 his troubles with alcohol and into his behavior
26 on September 11th, 2009.

27 The principles of sentencing that I must

1 apply today are set out in the Criminal Code.
2 The fundamental principle of sentencing
3 is proportionality. A sentence should be
4 proportionate to the seriousness of the
5 offence and to the degree of responsibility
6 of the offender.

7 Parity is also an important sentencing
8 principle. It means that similar crimes,
9 committed by similar people, should lead
10 to the imposition of similar sentences.

11 Restraint, in my view, is a very important
12 sentencing principle as well. It means first
13 that imprisonment should be the last resort
14 on sentencing people, but it also means that
15 when imprisonment must be imposed the length of
16 the sentence should never be more than what is
17 required to achieve the objectives of sentencing.

18 Those objectives are set out in the Criminal
19 Code, and they are to denounce unlawful conduct,
20 to deter the offender and others from committing
21 crimes, to separate offenders from society when
22 necessary, to assist in rehabilitating offenders,
23 to provide reparations for the harm done to
24 victims or to the community, and to promote
25 a sense of responsibility in offenders and
26 acknowledgment of the harm done to victims
27 and to the community.

1 The circumstances of this offence, most
2 unfortunately, are very common in the Northwest
3 Territories. This Court frequently has the task
4 of sentencing men who, often while intoxicated
5 themselves, sexually assault women who are passed
6 out or sleeping. The prevalence of this type
7 of crime was recognized not only by our Court
8 of Appeal in R. v. A.J.P.J., 2011 NWTCA 02,
9 which was referred to by the Crown, but also
10 in numerous sentencing decisions of this Court.
11 It is sad to say that several times each year
12 this Court has to impose sentences for this
13 type of crime.

14 The prevalence of this type of offence is
15 very disturbing and its root causes are difficult
16 to understand. In R. v. Lafferty, 2011 NWTSC 60,
17 also referred to by the Crown, I referred to the
18 prevalence of this type of offence at paragraph
19 37, and I simply want to repeat here what I said
20 there:

21
22 "Sexual assault is a crime that is
23 terribly prevalent in the Northwest
24 Territories. This Court, sadly, has
25 cause to comment on this fact very
26 often because this Court very often
27 has the task of sentencing people
 for the crime of sexual assault.
 These cases seem to be happening
 in almost every community in this
 jurisdiction. They are committed
 by young people, middle-aged
 people, sometimes older people.

1 In particular, sexual assaults
2 committed against women or
3 young girls who are passed out
4 or intoxicated to the point of
5 not being able to resist, and
6 also sometimes of women or young
7 girls who are quite simply asleep
8 in their own bed, are very frequent.
9 I have said in other cases that
10 it boggles the mind how often
11 it happens and why it happens.
12 What makes a person decide to
13 treat another person with such
14 complete disregard and contempt
15 for their personal integrity?
16 The fact that it happens so
17 frequently does not make it
18 any more understandable, does
19 not make it any less disturbing,
20 and certainly does not make it
21 any less wrong."

22
23 Whatever the reasons are, and no matter
24 how much it boggles the mind, the fact is
25 that this is a very frequent occurrence in
26 this jurisdiction. It is one of the reasons
27 why this Court has no choice but to emphasize
28 deterrence and denunciation in sentencing for
29 this type of crime. The Court cannot, through
30 its sentences, get to the root causes of these
31 crimes. It is obvious from the years and years
32 of the sentencing regime whereby significant
33 jail terms have been imposed for these offences,
34 that the sentences of this Court cannot in and
35 of themselves effect the changes that need to
36 happen in the communities to put an end to the
37 harm that these crimes cause. All the Court

1 can do is continue to repeat the same message
2 about how serious and wrong this conduct is
3 and that there are serious consequences for
4 those who engage in it.

5 When a type of crime becomes too
6 prevalent one of the risks is that people
7 will get desensitized to just how serious
8 it is. That they will just accept that these
9 types of occurrences are a fact of life. It
10 would be tragic, in my view, if people started
11 to think of this kind of event as just par for
12 the course, what happens inevitably when people
13 are drinking or drinking to excess. This is
14 not normal behavior, it is not healthy behavior,
15 and it is criminal behavior.

16 Sexual assault is punishable by a maximum
17 of ten years imprisonment and it covers a wide
18 range of possible behaviors, from simply touching
19 someone, to more intrusive conduct. This type
20 of sexual assault, forced intercourse, is very
21 serious. It is a very serious violation of the
22 victim's personal and sexual integrity. It is
23 the type of assault that engages the starting
24 point of three years in jail on sentencing that
25 was described, among other cases, in the decision
26 of R. v. Arcand, 2010 ABCA 363, of the Alberta
27 Court of Appeal, which itself was adopted by our

1 Court of Appeal in R. v. A.J.P.J.

2 The Crown has argued that there are several
3 serious aggravating factors in this case that
4 require the Court to impose a sentence above the
5 starting point. In my view, some of the things
6 that were referred to by the Crown, for example,
7 the nature of the act and the effect on the
8 victim, are not truly aggravating factors.
9 Rather, they are some of the hallmarks of
10 what constitutes the type of sexual assault
11 that engages the starting point of three
12 years. It is because these types of assaults
13 are inherently serious and can be presumed to
14 have significant impact on the victims that
15 such a significant starting point has been
16 developed in the first place.

17 In my view, the two aggravating factors
18 that are present here are first the fact that
19 Ms. S. was in her own home, in her own bed when
20 she was assaulted. She was in a place where she
21 should have felt the safest, and that makes the
22 assault on her more serious.

23 The second aggravating factor is the fact
24 that she was asleep, which means that she was
25 in a particularly vulnerable position. She
26 was in no position to see this coming or to
27 take steps to protect herself or to defend

1 herself. The Crown has referred to the fact
2 that Mr. Minoza was in the bedroom for a period
3 of time. My assessment of the evidence is that
4 although, based on Mr. Sabourin's testimony,
5 it is clear that Mr. Minoza was in the room for
6 more than a few seconds, I thought the evidence
7 was relatively unclear as to exactly how long
8 Mr. Minoza was in the bedroom. So I am not
9 able to make a finding that he was assaulting
10 Ms. S. for a specific duration of time. All
11 that we know is that she woke up and that
12 as soon as she did the assault ended.

13 I do agree with the Crown that there are
14 no mitigating factors in this case. However,
15 there are certain things which, while not
16 mitigating factors, in my opinion are reasons
17 for the Court to give particular effect to the
18 principle of restraint. One of those factors
19 is that Mr. Minoza was, until these unfortunate
20 events, not someone who had been found guilty of
21 any offence. He had a good work record. This is
22 out of character for him. I accept this was an
23 opportunistic act as opposed to a premeditated
24 plan. Again, this is not mitigating, it just
25 reflects the absence of what would otherwise
26 be an aggravating factor, but it is consistent
27 with this being out of character for him.

1 Mr. Minoza is aboriginal, and the Criminal
2 Code, as interpreted by the Supreme Court of
3 Canada, requires me to take this factor into
4 account. In fact, it requires me to approach
5 his sentencing with a different lens and to
6 take into account systemic and background
7 factors that have impacted on aboriginal
8 people generally in this country, as well
9 as any specific systemic issues that he
10 himself has faced. I must consider, in
11 light of those factors, whether any sentencing
12 options are available to me, other than jail,
13 that would be better suited to Mr. Minoza
14 given his aboriginal heritage. And if jail
15 is required, I must consider whether those
16 factors justify lessening the length of his
17 sentence.

18 The systemic factors referred to may
19 to an extent reduce an offender's level of
20 blameworthiness, but approaching a sentencing
21 with this different lens does not always lead
22 to a different result as far as what the ultimate
23 sentence is. There are situations where it
24 simply cannot because of the seriousness of the
25 crime committed. Mr. Minoza is an aboriginal
26 person, but his crime was committed against
27 another aboriginal person in an aboriginal

1 community. There are many such communities
2 in this jurisdiction, and the people who live in
3 those communities are entitled to the protection
4 of the law. They are entitled to go to bed in
5 their homes and feel safe.

6 The seriousness of this offence is such
7 that really the Court has no choice but to
8 impose a significant jail term today, and it
9 is clear from counsel's submissions that they
10 recognize that. But as I have already said,
11 taking nothing away from the seriousness of
12 what Mr. Minoza did, I think that there are
13 in this case reasons to exercise restraint.
14 To those that I have already mentioned, I would
15 add the fact that in his specific circumstances,
16 the fact that he is being sentenced today for
17 something that happened four years ago will have
18 a particularly significant impact on him given
19 some of the intervening events that have occurred
20 in his life, primarily the birth of his son.

21 The ranges of sentences suggested by counsel
22 are not that far apart really. The Crown seeks
23 a sentence in the range of three and a half to
24 four years imprisonment. The defence is asking
25 me to keep the sentence to a lower range of three
26 years.

27 As counsel noted, no two cases are exactly

1 alike, but still, keeping in mind the principle
2 of parity, it can be useful to refer to other
3 cases. In Lafferty I referred to many of the
4 legal principles that I have referred to here
5 today, which I am sure other judges of this
6 Court refer to and apply when dealing with
7 cases like this. These are principles that
8 are well-established principles of law in this
9 jurisdiction: the seriousness of this conduct;
10 the harm it causes; the starting point that
11 applies in cases like this; the fact that
12 denunciation and deterrence are the paramount
13 sentencing principles in dealing with these
14 cases; the importance of not turning the
15 absence of an aggravating factor into a
16 mitigating factor; and the requirement to
17 take into account the special circumstances
18 of aboriginal offenders.

19 In Lafferty the sentence imposed after
20 trial was three years and eight months. This
21 was for an act of forced intercourse that clearly
22 engaged the three-year starting point. Having
23 re-read the decision this afternoon, I am of the
24 view that there were more aggravating features
25 in that case than there are in this one.

26 A significant difference was that the victim
27 in Lafferty was a 14-year-old girl. It is well

1 established that when the victim of a sexual
2 assault is a child or a young person that is a
3 significant aggravating factor. The Criminal
4 Code now makes it a specific aggravating factor,
5 but even before it was in the Criminal Code it
6 was a principle that Courts in this jurisdiction,
7 and I expect Courts in every jurisdiction,
8 applied.

9 Another aggravating factor that was noted
10 in Lafferty was that the offender in that case
11 used force to subdue the victim. So there was
12 force used aside from the force inherent in the
13 act. She attempted to resist and he overcame
14 her in order to sexually assault her. This
15 force resulted in her having soreness in her
16 ribs and abdomen following the events. Here
17 the evidence is that as soon as Ms. S. woke up
18 Mr. Minoza made no attempt to continue what he
19 was doing. He used no force other than what
20 is inherent in the act of sexual intercourse.

21 An additional aggravating factor was that
22 in Lafferty, not only were there the physical
23 impacts that I have just referred to for the
24 young victim, but she also ended up with a
25 sexually transmitted disease as a result of
26 being sexually assaulted.

27 The victim in the Lafferty case was not

1 asleep, but was found to be in a particularly
2 vulnerable state given her state of intoxication.
3 So the element of vulnerability is present in
4 both that case and this one.

5 The one aggravating element that is present
6 in this case that was not present in Lafferty
7 is that in this case Ms. S. was in her own home,
8 and I have taken that into account.

9 But overall, in my view, when I compare
10 the circumstances in Lafferty with the
11 circumstances of this case, the young age of
12 the victim in Lafferty, the use of force which
13 resulted in some physical discomfort, and the
14 transmission to her of a venereal disease, are
15 all matters that put that case higher on the
16 scale of seriousness than this one. Of course,
17 by saying this I do not mean to minimize the
18 seriousness of Mr. Minoza's conduct in any way.

19 All of this being said, I do not think
20 the range of sentence that the Crown is seeking
21 is out of order or unreasonable, but on the
22 whole, and giving full effect to the principle
23 of restraint, I do not think it is necessary to
24 impose a sentence as lengthy as what the Crown
25 seeks to achieve the goals of sentencing.

26 I have also taken into account the fact
27 that Mr. Minoza did spend a few days in custody

1 between the time the warrant was executed and the
2 time he was released on a recognizance back in
3 June of 2012. It was only five days, I recognize
4 that, but especially for someone who has no
5 criminal record and has never been to jail
6 before, it is a factor to consider and not one
7 that I think should be overlooked. Of course,
8 he has been in custody since the jury rendered
9 its verdict yesterday.

10 Stand up, Mr. Minoza.

11 Mr. Minoza, for the crime of sexual assault
12 that you have been convicted for I sentence you
13 to a term of three years and two months in jail.
14 You can sit down.

15 I direct the clerk to endorse the Warrant
16 of Committal with the following recommendations:

17 That you be permitted to serve your sentence
18 in the Northwest Territories; that you receive
19 any counselling and treatment programs available
20 for sexual offenders, counselling and treatment
21 programs for people who have themselves been
22 the victim of sexual abuse, and counselling
23 and treatment for alcohol addiction.

24 I am not going to be as specific as to
25 suggest that you be permitted to serve your
26 sentence in Hay River, not because I disagree
27 with that idea, but because I think the

1 correctional authorities are in the best
2 position to decide where you will have better
3 access to the programs that might help you
4 with your rehabilitation. I am sure if you
5 communicate with them, (and they will know
6 in any event from the record where your
7 connections and ties are) that they will
8 take that into account.

9 But based on everything I have heard this
10 week and what I heard this afternoon from your
11 counsel, I think that you need some help with
12 some of the things that have happened in your
13 life and some of the struggles you have had.
14 You are still very young, you have a long life
15 ahead of you, and it would be in my view best
16 that you have access to the help that you need.

17 The Crown has sought a number of ancillary
18 orders. There will be a DNA order. This is a
19 primary designated offence and such an order is
20 mandatory.

21 There will be an order that Mr. Minoza
22 comply with the requirements of the Sexual
23 Offenders Information Registration Act for
24 a period of 20 years. That is also an order
25 that is mandatory.

26 There will be a firearms prohibition order
27 under Section 109 of the Criminal Code. That

1 will expire 10 years from Mr. Minoza's release
2 from custody. Any firearms that he possesses
3 are to be surrendered forthwith. I heard that
4 he does not have any.

5 I am not going to today make the order
6 granting an exemption from that order because,
7 given the length of the sentence I am imposing,
8 in my view it would be best for that type of
9 application to be examined closer to the date
10 of release, or after Mr. Minoza's release,
11 because I think that there would be a clearer
12 picture at that point of what his situation
13 is and whether an exemption should be granted.

14 There will not be an order for a victim
15 of crime surcharge in this case. I am satisfied
16 that it would result in hardship considering the
17 length of the sentence that I have imposed and
18 Mr. Minoza's other personal circumstances.

19 There will be an order for the destruction
20 of exhibits or their return to their rightful
21 owner, whichever is most appropriate, but
22 of course, that should only be done at the
23 expiration of the appeal period.

24 Is there anything that I have overlooked
25 from the Crown's point of view?

26 MR. LECORRE: No, Your Honour.

27 THE COURT: Is there anything that I have

1 overlooked from defence's point of view?

2 MR. PETITPAS: No, Your Honour.

3 THE COURT: Before we close court I do
4 want to thank the court staff for their work this
5 week, and I want to thank you both, counsel, for
6 your very professional handling of this case and
7 for your work throughout the week. Close court.

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10 Certified to be a true and
11 accurate transcript, pursuant
12 to Rules 723 and 724 of the
13 Supreme Court Rules.

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15 _____
16 Joel Bowker
17 Court Reporter

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