

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES
IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

CLINTON McLEOD

Transcript of the Reasons for Sentence delivered by The Honourable Justice V. A. Schuler, in Yellowknife, in the Northwest Territories, on the 29th day of August, 2013.

APPEARANCES:

Mr. D. Praught: Counsel on behalf of the Crown
Mr. J. Bran: Counsel on behalf of the Accused

Charges under s. 266 C.C. x 2

1 THE COURT: Clinton McLeod entered pleas
2 of guilty to two counts in an Indictment, each
3 being a charge of assaulting his common-law wife
4 contrary to section 266 of the Criminal Code.

5 The Crown proceeded by indictment in this
6 case.

7 The facts are set out in the Agreed
8 Statement of Facts, so I will summarize them
9 briefly.

10 Mr. McLeod and the victim have been in a
11 common-law relationship for approximately 13
12 years and have three daughters, the eldest is 12
13 and there are nine-year-old twins.

14 On May 4, 2013, in the early morning hours,
15 both Mr. McLeod and the victim were intoxicated
16 and were standing at the top of the outside
17 stairs to their residence, which is about seven
18 steps up from the ground. They argued about
19 whether they would continue drinking. Mr. McLeod
20 pushed the victim, causing her to fall on the
21 stairs, hitting her face on the railing of the
22 stairs on the way down. As a result, she
23 suffered a scrape on her face below her right
24 eye. After pushing her, Mr. McLeod told her that
25 she had fallen. While he went inside, the victim
26 remained on the steps crying for about 30
27 minutes. She then went inside and found Mr.

1 McLeod to be asleep.

2 The victim did not report this incident to
3 the police at that time.

4 On May 8, 2013, Mr. McLeod became angry
5 because he could not find his cell phone in the
6 family home. He accused the victim and two of
7 his daughters of hiding the phone and he was
8 yelling at them. The victim became scared and
9 went upstairs. He followed her. She asked him
10 to leave the residence and he refused. He shoved
11 the victim backwards and despite the children
12 telling him to stop, he then grabbed her and
13 pushed her down the stairs leading to the
14 basement. She fell backwards down the stairs, of
15 which there were seven, to the landing. As a
16 result, she suffered bruising on her left shin
17 and right foot, as well as a sore and stiff neck.

18 The children who were there began to cry and
19 scream at Mr. McLeod. He told them that the
20 victim fell down the stairs.

21 He left the residence.

22 The victim got the children into her van to
23 take them to her mother's house. As they were
24 about to leave, Mr. McLeod came up and tried to
25 get into the vehicle but could not as the doors
26 were locked.

27 There is no evidence in the Agreed Statement

1 of Facts that Mr. McLeod was under the influence
2 of alcohol at the time of this second offence.

3 The victim's mother reported the matter to
4 the police, and the May 4th incident was also
5 reported to them by the victim on that day.

6 Mr. McLeod was arrested on May 8 and has
7 been in custody since then on consent.

8 The Court has the benefit of a very thorough
9 presentence report for which the author should be
10 thanked.

11 Mr. McLeod is a 30 year old aboriginal man.
12 He described his upbringing to the author of the
13 report as positive, although he and his family
14 went through a difficult time when his sister
15 passed away in an accident when he was 12 years
16 old. A letter from his parents does, however,
17 indicate that there was family violence in the
18 home when Mr. McLeod was growing up.

19 Mr. McLeod pursues traditional skills -
20 hunting, trapping, and fishing. He has a grade
21 10 education and has worked as a labourer and
22 most recently in road and gravel construction and
23 maintenance. He is reported by his family to be
24 a good worker and a good father to his children
25 when he is not under the influence of alcohol.

26 He reports that he has been drinking since
27 the age of 18. It appears from the presentence

1 report that Mr. McLeod's parents have spoken to
2 him about how alcohol is destroying him and his
3 children. The information from his family is
4 that both Mr. McLeod and the victim drink
5 excessively and need treatment. His parents
6 express concern about the effect of the drinking
7 and violence on the children, and the presentence
8 report states that they report that they are
9 tired of talking to him about his drinking and it
10 seems he does not understand the negative impact
11 alcohol and violence has on his children. His
12 parents also say that Mr. McLeod uses marihuana
13 regularly although he denied that to the
14 probation officer so I do not take that into
15 account.

16 One of the significant features of this
17 case, perhaps the most significant, is Mr.
18 McLeod's criminal record, in particular his
19 record for assaulting the same victim. He was
20 convicted of assaulting her in 2005, he was
21 convicted twice in 2007, he was convicted again
22 in 2009, and in 2010 he was convicted of two
23 charges of assaulting her, making six prior
24 assaults on her. For the 2010 assaults he was
25 given six months on each charge consecutive, for
26 a total of one year. He also has four
27 convictions for failing to comply with probation

1 orders and recognizances, two of which are for
2 breaching conditions that he not contact the
3 victim.

4 It is clear, therefore, that the
5 relationship between Mr. McLeod and the victim is
6 a lengthy one and that she has suffered
7 considerable violence at his hands, continuing
8 violence over a period of 12 years, almost the
9 entire relationship. It is also clear that again
10 and again she has forgiven him and tried to
11 continue on. I refer to one of the paragraphs in
12 her victim impact statement that has already been
13 read out in court where she says that after the
14 latest assaults,

15
16 With sadness, I felt let down,
17 betrayed and hated. My perception
18 of my life changed. I wanted both
19 our families to believe that we'll
20 make it as a happy family this time.
21 I wanted them to believe he loved me
22 so much that he would never hurt me
23 again, but he did again. This time
24 with more violence and without
25 remorse.

26 She also says in the victim impact statement
27 that she is concerned for the children and how
28 they will remember their childhood with all the
29 violence, and she feels sorry for Mr. McLeod
30 because of what he is doing to his own life by
31 his actions.

1 When interviewed by the probation officer,
2 the victim advised that she has decided that she
3 is not going back to the relationship with Mr.
4 McLeod, so reconciliation is not a consideration
5 here as it is in some cases.

6 The impact of Mr. McLeod's actions on the
7 children is clearly a concern. Seeing violence
8 perpetrated by their father on their mother may
9 lead them to accept that that is a normal spousal
10 relationship and may lead them to accept that if
11 their boyfriend or their husband abuses and
12 batters them, that is just the way life is no
13 matter how many times they may be told by others
14 that it is not normal and that it is not the way
15 life is for everyone.

16 In my view, the possibility and perhaps,
17 sadly, the likelihood that the eldest daughter
18 may fall into this cycle is illustrated by the
19 facts of this case. The eldest daughter and her
20 sister were crying and screaming at the accused
21 when he pushed their mother down the stairs on
22 May 8. It must have been a very upsetting and
23 frightening experience for them. Yet, the
24 presentence report also talks about Mr. McLeod's
25 eldest daughter "crying for days" when she found
26 out that her father was in jail and being "lost
27 without him". It is hard to imagine how his

1 daughter will reconcile such conflicting views of
2 her father, in other words, obviously loving him
3 but also fearing him and being horrified by his
4 behaviour, how she will reconcile those views
5 without being negatively affected herself.

6 The only mitigating factor in my view is the
7 fact that Mr. McLeod pleaded guilty and the
8 victim has not had to testify at a trial or a
9 preliminary inquiry. The guilty pleas are early,
10 although there is no indication that they came at
11 the earliest possible opportunity which would
12 have been in Territorial Court, but still the
13 guilty pleas are a significant mitigating factor.

14 There are also many aggravating factors. I
15 have already described with respect to the facts
16 that on May 4, Mr. McLeod pushed the victim on
17 the stairs. At that time they were both
18 intoxicated. Then four days later after the
19 first assault and despite knowing what he had
20 done when he was intoxicated and now in a
21 situation where he was not intoxicated, he did it
22 again, he pushed her down the inside stairs. So
23 that repetition of behaviour is aggravating.

24 The fact that two of the children were
25 present during the second assault and were
26 screaming at him to stop, yet he did not, is a
27 highly aggravating factor.

1 On both occasions Mr. McLeod initially
2 denied responsibility, told the victim that she
3 fell. On the second occasion he told the
4 children who were there that she fell. In other
5 words, he put the blame on her. He did nothing
6 to help her. In my view, that is an aggravating
7 factor.

8 The fact that he has repeatedly assaulted
9 the victim over 12 long years is also a highly
10 aggravating factor. I am not sentencing Mr.
11 McLeod today for the assaults he has already been
12 sentenced for, but his record of assaults on the
13 victim, the fact that he has been before the
14 court many times over the past 12 years for the
15 same type of behaviour and no doubt has
16 repeatedly been told why it is wrong and that it
17 will damage his children yet he continues in this
18 behaviour when drinking and when sober, that
19 indicates to me that Mr. McLeod, for all of the
20 things he has said to the Court and to the
21 probation officer, just does not get it or is not
22 willing to get it.

23 The Criminal Code says that when an offender
24 abuses his spouse or common-law partner that is
25 an aggravating factor. The reason is simple -
26 the basis of that relationship is trust between
27 the parties and abusing/assaulting one's spouse

1 is a breach of that trust. Mr. McLeod is
2 supposed to help and support his family, and that
3 includes the victim. His actions over the past
4 12 years and his actions on May 4 and 8 violated
5 the trust between them and it also has the effect
6 of violating the trust of his children.

7 Although he apologized to the Court and his
8 family when he spoke here on Monday, and although
9 he has pleaded guilty, Mr. McLeod does seem to
10 lack any insight into what he is doing. He seems
11 to lack any insight into the effect his actions
12 are having. His parents say they have spoken to
13 him repeatedly about what his drinking is doing
14 to his children. The presentence report says
15 that they talked of it "destroying" his children.
16 The probation officer says that although Mr.
17 McLeod reports that he is ready and willing to
18 make changes in his life by attending a
19 residential treatment program, he does not appear
20 to understand the impact alcohol abuse has on his
21 family life and views it as somewhat normal.

22 For someone who has repeatedly been in court
23 on domestic violence charges, someone whose
24 family has repeatedly talked to him about this
25 issue, the lack of understanding and the lack of
26 dedication to change has to be of great concern
27 to the Court. I also note that the letter that

1 Mr. McLeod prepared and that was marked as
2 Exhibit 6 on the sentencing, expresses more
3 concern for himself and what he has suffered and
4 what he has lost than it does for anyone else.
5 He says in the letter that he is very sorry to
6 have committed a crime and to have offended the
7 court. He also says that he is sorry if he has
8 inadvertently and unwillingly hurt and
9 disappointed anyone in the process. In light of
10 the facts of the case that is before me and in
11 light of his record, his conduct cannot possibly
12 be described as "inadvertent" or "unwilling", so
13 this to me simply highlights Mr. McLeod's
14 inability or perhaps unwillingness to understand
15 that he is the one who committed the crimes. He
16 is the one who has to stop himself from
17 committing further crimes. No one else is to
18 blame. No one else made him push the victim down
19 the stairs. He seems to blame the police for not
20 having been given the chance to take treatment
21 during a past incarceration. Whether the police
22 played a role or not, he has had 11 years since
23 the first assault in which to take treatment.
24 His family has tried to get him to take
25 treatment. I have to say that I find Mr.
26 McLeod's attitude very troubling.

27 I do not accept the submission that the

1 offences before me are minor. True, they did not
2 result in significant physical injury to the
3 victim, however pushing someone at the top of a
4 flight of stairs in my view is an objectively
5 dangerous act no matter whether the victim is the
6 offender's spouse or a stranger. Just as hitting
7 someone in the head may result in severe injury
8 even if that injury was not specifically
9 intended, pushing someone in circumstances where
10 they may fall down a flight of stairs may result
11 in severe injury; for example, a head injury
12 resulting in death, broken bones. It is only
13 luck that the victim was not severely injured or
14 died and that Mr. McLeod is not here facing a
15 much more serious charge. In any event, in this
16 case because of the history between the parties,
17 the psychological impact on the victim is
18 serious.

19 I take into account, as I must, that Mr.
20 McLeod is an aboriginal person. He has not, it
21 appears, suffered some of the negative effects
22 that many other aboriginal people who come before
23 the court have suffered. In his case although
24 his parents went to residential school, they
25 report in the presentence report that they found
26 it to be a positive experience. On the other
27 hand, Mr. McLeod has clearly abused alcohol,

1 which is a factor for many aboriginal people.
2 But there is no submission before me that because
3 of his aboriginal status Mr. McLeod should not be
4 sentenced to jail, nor indeed would such a
5 submission be reasonable in the circumstances of
6 this case. Although I do not ignore Mr. McLeod's
7 aboriginal status, the courts have made it clear
8 that deterrence of others who assault their
9 spouses and denunciation signifying society's
10 rejection of spousal violence are the paramount
11 sentencing considerations along with specific
12 deterrence, which is in itself a weighty
13 consideration; in other words, past sentences
14 imposed for this type of behaviour have not
15 persuaded Mr. McLeod to change his ways so this
16 sentence has to try to accomplish that.

17 I am not under any illusion that courts or
18 sentences alone can make people change their
19 ways. There has to be a willingness to change
20 and an understanding of the problem.

21 I also keep in mind that the victim is
22 entitled to be protected from Mr. McLeod's
23 violence and his daughters are entitled to be
24 protected from the effects of his violence.

25 One of the main principles of sentencing is
26 that a sentencing must be proportionate to the
27 gravity of the offence and the moral

1 blameworthiness of the offender. Here, the
2 offences are serious even though they did not
3 result in serious physical injury.

4 The moral blameworthiness is also high. I
5 agree with the observations of Justice Vertes in
6 the McKay case, 2003 NWTSC 63, that where, as
7 here, an offender has been previously convicted
8 of the same type of offence, has been punished
9 for it and continues to repeat that same offence
10 notwithstanding the previous punishments, then
11 the moral blameworthiness is quite high. Mr.
12 McLeod has now accumulated eight convictions for
13 assaulting the victim so the moral
14 blameworthiness is significant.

15 As to the remand time, counsel agree that it
16 is 111 days. Defence counsel asks that it be
17 credited at 1.5 rather than on a one-to-one
18 basis. Under sections 719(3) and (3.1) of the
19 Criminal Code, I can only give more than
20 one-to-one credit and up to 1.5 credit if the
21 circumstances justify it and so long as Mr.
22 McLeod was not detained because of his record.
23 The latter was not the case since he was in
24 custody by consent. So the question is do the
25 circumstances justify the enhanced credit. The
26 reasons put forward are, first, that Mr. McLeod
27 has been a well-behaved prisoner and so would

1 have earned remission had he been a serving
2 prisoner according to the information from his
3 case manager at the jail; second, that he asked
4 for but was not able to take core programming for
5 alcohol abuse and anger and the reason he was not
6 able to is his remand status. I note that he
7 was, however, able to attend AA meetings
8 approximately weekly in June, July and August.

9 Crown counsel takes no position on the 1.5
10 credit sought. Since 1.5 is the maximum, I think
11 it is reasonable that it be reserved for cases
12 where the remand time has been spent in
13 conditions of hardship or where there are other
14 factors that justify it, which I do not find to
15 be the case here. I will, however, credit the
16 remand at 1.3, for a total credit of 144 days.

17 Crown counsel seeks a sentence on each count
18 of nine to twelve months to be served
19 consecutively, in other words a global sentence
20 of 18 to 24 months along with probation for two
21 years. Defence seeks a global sentence of six to
22 eight months with not more than one year
23 probation.

24 I have reviewed all of the cases submitted
25 by both counsel and, as usual, no one case is
26 exactly the same as this case. The main
27 distinguishing factor, in my view, in this case

1 is the number of assaults over such a lengthy
2 period of time.

3 The Crown requests a DNA order which defence
4 opposes because it is not mandatory. There is no
5 question, however, that DNA is a very useful
6 investigative tool for the police. In light of
7 Mr. McLeod's history, it is quite possible, at
8 the very least, that some day he will commit more
9 assaults, perhaps even more serious ones, if not
10 on the victim in this case then on some other
11 woman with whom he forms an intimate
12 relationship. The taking of DNA is minimally
13 intrusive. In my view, a DNA order is in the
14 best interests of the administration of justice
15 and I make that order.

16 As to the Crown's request for a firearms
17 prohibition order, which is not mandatory in this
18 case since hunting and trapping are a significant
19 aspect of Mr. McLeod's life and since there is no
20 indication that he has used a firearm or any
21 other weapon in any of the assaults on the
22 victim, I am not going to make the order under
23 section 109 but I will instead impose some
24 conditions on his possession of firearms under
25 the probation order that I will make and I will
26 impose those conditions for the safety of the
27 victim.

1 Stand up please, Mr. McLeod.

2 Mr. McLeod, you are only 30 years old and
3 already you have a terrible record for spousal
4 assault. You had better do something about your
5 drinking and your understanding of your problems
6 because otherwise I have no doubt that you will
7 be spending a large part of your middle age in
8 jail and maybe even in the penitentiary.

9 You are said to be a good father, but a good
10 father does not assault his wife and he does not
11 do things that he knows are going to damage his
12 children. If you continue to act that way, you
13 have already heard - you have heard me say, I am
14 sure you have heard many people say - you will be
15 damaging your children and maybe that will result
16 in damage to your grand-children, and on and on
17 it will go. I do not want to be sitting here one
18 day sentencing someone who happens to be the
19 husband or the boyfriend of one of your daughters
20 and be thinking to myself "she probably cannot
21 get out of the situation because that is what she
22 saw at home and she thinks it is normal." I am
23 sure that you do not want that to happen either,
24 but you have to decide what you are going to do
25 about it.

26 Taking everything into account including the
27 guilty pleas, on Count 1, which is the assault on

1 May the 4th, I am sentencing you to eight months
2 in jail. On Count 2, the assault on May 8th, I
3 sentence you to ten months in jail consecutive.
4 That is a total of 18 months.

5 The remand time of 144 days will be credited
6 against the total sentence.

7 On both counts there will be a probation
8 order for a period of 18 months. The statutory
9 conditions will be included, and you will also
10 have to obey the following conditions: You will
11 report to a probation officer within two days of
12 release from jail and thereafter as required by
13 the probation officer.

14 Your lawyer indicated that you would be
15 willing to take alcohol abuse counselling. I am
16 asking you to confirm that you are willing to
17 take treatment and counselling for alcohol abuse.

18 THE ACCUSED: Yeah.

19 THE COURT: I also intend to impose a
20 condition that you take counselling and treatment
21 for violence issues. Do you agree with that?

22 THE ACCUSED: Yeah.

23 THE COURT: All right. So there will also
24 be a condition that you are to take such
25 counselling and treatment to address your
26 violence issues and alcohol abuse as recommended
27 by your probation officer.

1 During the period of probation you will not
2 have in your possession any firearms while in the
3 Hamlet of Fort Liard. When you are outside the
4 Hamlet of Fort Liard, you will not have in your
5 possession any firearms except when you are out
6 on the land. So if you go to Fort Simpson, you
7 do not have any firearms in your possession.

8 THE ACCUSED: Okay.

9 THE COURT: Do you understand?

10 THE ACCUSED: Yeah.

11 THE COURT: In light of the length of the
12 jail sentence and because I understand that the
13 new legislation that will in fact prevent courts
14 from waiving the victim surcharge is not yet in
15 force, I will in this case waive the victim
16 surcharge.

17 Have a seat, Mr. McLeod.

18 Is there anything else, counsel, that I have
19 overlooked?

20 MR. PRAUGHT: Just to clarify the firearms
21 prohibition condition, Your Honour. I believe
22 right at the end you said, just to clarify, is it
23 no possession while in Fort Liard? While outside
24 of Fort Liard, while only on the land?

25 THE COURT: That's right, no possession in
26 Fort Liard; and when he's outside of Fort Liard
27 he can only have the firearms if he's out on the

1 land. I suppose that perhaps it would be less
2 complicated to simply say: Not be in possession
3 of any firearms except when you are out on the
4 land, and that would encapsulate the whole thing.

5 MR. PRAUGHT: I think that the prohibition
6 specifically addressing the community of Fort
7 Liard is helpful, so I think it's okay. I think
8 Your Honour said "Fort Simpson" instead of "Fort
9 Liard" at the end there.

10 THE COURT: Oh, I'm sorry. I was just
11 trying to illustrate my intention being that if
12 he were to go to Fort Simpson or if he were to go
13 to Hay River, he is not to have any firearms in
14 those communities because he would not be out on
15 the land.

16 MR. PRAUGHT: So "the land" would be outside
17 of the community.

18 THE COURT: Yes. And when I say the
19 "Hamlet of Fort Liard", I mean whatever the
20 municipal boundaries are of the Hamlet of Fort
21 Liard.

22 MR. PRAUGHT: Thank you.

23 THE COURT: Is that clear?

24 MR. BRAN: Your Honour, I spoke very
25 briefly here with Mr. McLeod about that issue.
26 It sounds like whenever his family does go
27 outside of Fort Liard they are usually in a camp.

1 I asked him if there were times that he would
2 perhaps at times travel along the river and maybe
3 make his way through places such as Fort Simpson
4 or Wrigley, and he's explained that no, it's
5 usually just at camp and they're not going to
6 other communities or travelling through any other
7 communities, for instance Nahanni Butte or
8 anything. So I think that condition is clear and
9 he understands that condition.

10 THE COURT: All right.

11 If there is not anything else, we will close
12 court.

13

14
15 Certified to be a true and
16 accurate transcript pursuant
17 to Rule 723 and 724 of the
18 Supreme Court Rules of Court.

19 _____
20 Annette Wright, RPR, CSR(A)
21 Court Reporter