IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

MIKE PATRICK MCLAUGHLIN

Transcript of the Reasons for Sentence delivered by The Honourable Justice L.A. Charbonneau, sitting in Yellowknife, in the Northwest Territories, on the 20th day of November, A.D. 2013.

APPEARANCES:

Ms. W. Miller: Counsel for the Crown

Mr. M. Martin: Counsel for the Accused

(Charge under s. 430 of the Criminal Code of Canada)

THE COURT: Earlier this week, Mr. McLaughlin pleaded guilty to a count of mischief over $5,000 and now it is my responsibility to sentence him for that offence.

Counsel have presented a joint submission in this case. It is well established in law that a sentencing court is required to give a joint submission very serious consideration. Ultimately, the discretion to decide what sentence should be imposed remains with the Court, as I am sure Mr. McLaughlin's counsel told him. But when a joint submission is presented, unless it is clearly unreasonable, it should be followed.

In this case, I have no difficulty at all concluding that the position jointly presented by counsel is reasonable. It is within the range of sentences imposed for this type of offence in this jurisdiction, as was demonstrated by the cases that were filed. The joint position was also well supported by very well articulated and thorough submissions presented by both counsel. So I will follow the joint submission in this case, but I still want to spend a few minutes explaining why I have concluded that the sentence that was proposed - one-year imprisonment followed by one-year probation - is appropriate,

because I think reasons are important to put the sentence imposed in some context.

The first important aspect of this, of course, is the circumstances of what happened, what Mr. McLaughlin has admitted that he did.

He admits that he set fires to two buildings in Inuvik. They were both multi-unit complexes. Each of these buildings was apparently abandoned when this happened. The first fire was set on July 20th, shortly after midnight, and the second one was set two days later, July 22nd, during the evening.

Both fires were brought under control within a reasonably short period of time and the buildings were not completely destroyed. The owner of the building has not provided an estimate of damages, nor has he filed a Victim Impact Statement even though, I am told, he was advised of his right to do so. But even without that type of information and without the specifics, Crown and Defence are in agreement that whatever the exact figure of the damage was, it was in excess of $5,000. I heard, also, that the buildings have been boarded up and remain vacant.

Mr. McLaughlin was arrested near the scene of the second fire. He was highly intoxicated

and he had a lighter and a can of Pam cooking oil in his possession.

He gave two statements to the police where he essentially admitted being responsible for setting the two fires, although he was very intoxicated on both occasions and had limited recall of what happened. He explained, among other things, that he had worked for the owner of these buildings doing general repair work at one of them. He had become concerned about the poor conditions of the building. He considered that they were unsafe for the community. Among other things, he was concerned about sewage leaks from the building. He had spoken to the owner about these concerns, but the owner, he said, had dismissed his concerns.

He has a limited recollection of the events, but he was apparently drinking with another man on the evening of July 20th. They had been talking about how dangerous the buildings were. The other man went in first and tried to start a fire without success, and that is when Mr. McLaughlin went in and lit a bag that was full of rags on fire, and this time, evidently, it worked.

He also admitted being responsible for the second fire.

I also heard that in addition to being intoxicated with alcohol at the time, he was taking medication as a result of an injury that he had sustained some time before; the dosage of his medication was still being adjusted at the time of these events. He was not supposed to take alcohol while taking this medication. The combination of the alcohol and the medication may have caused him to be more impaired than if he had simply been drinking. Of course it is not possible to know this for sure. In any event, he does take responsibility for his actions.

The second important element in any sentencing is the circumstances of the offender. Mr. McLaughlin is 50 years old. He is originally from Ontario but moved to the United States as a young adult. There he ran his own business as a painter and remodeler. Following a divorce in 2001, he moved back to Ontario and found employment there. I heard he relocated to the Yukon in 2006 and worked at camps as a head cook. He was responsible, I heard, for large camps. At the last job he held doing that, he was responsible for the food for a camp of 300 workers. Then he took employment as a head cook on the Alaska highway and moved to Inuvik in 2011.

I also heard that he has done volunteer work in every community where he has lived, including Inuvik. He has volunteered at food banks, homeless shelters, and by all accounts is someone who has always made a positive contribution to the communities that he has lived in.

He does have a criminal record. There are entries from the '80s and then a gap from 1984 to 2001. Of course from what I have heard, this gap corresponds to the time when he was not living in Canada. So I realize the Canadian CPIC system would probably not include information about what may have gone on in other countries. But there is no information before me about that period of time, so I have to operate on the basis that for almost three decades he was not in trouble with the law.

Although the record has a number of entries, it does not disclose crimes that are at the most serious end of the scale. They are property-related crime, a few convictions for drinking and driving and breaches of court orders. Without minimizing the seriousness of those offences, the fact is he has never received a jail term for any of them, except for a term of one day in jail for failure to comply with a recognizance in 2009, and a conditional sentence

that he received in 2010 (a total of 60 days), which is his most recent conviction. He has never been incarcerated, and certainly not for as long as the time he has been on remand since his arrest. This will by far be the most serious conviction on his criminal record, and it marks a rather dramatic increase in the seriousness of his conduct. That difference, unfortunately, will be reflected in the sentence that he receives for that offence.

Mr. McLaughlin has a problem with alcohol. I am not sure he has completely come to terms with it. I understood from this counsel that Mr. McLaughlin recognizes that he is an alcoholic. When he was given an opportunity to address the Court, he said he does not drink all the time but sometimes binges. He said he should probably go to A.A. For what it is worth, I think Mr. McLaughlin definitely should go to A.A. and take whatever other steps are available to him to try to address his relationship with alcohol in a serious way.

I do not think it is in his interest not to address this issue and I say this for a few reasons. First, the record demonstrates that alcohol has been an issue for him in the past. Twice he was convicted for drinking and driving,

including fairly recently in Whitehorse. He must have been told at those sentencings that the difference between a drinking and driving incident that results in simply that charge and a fine, and a drinking and driving incident that results in someone getting killed in an accident is often just a matter of pure luck. I do not know if the other convictions on his record, or some of them, are also related to drinking, but there is a good chance that they might be. In particular, the breaches. So even apart from the events that I must sentence him for today, alcohol has proven to be a problem for him.

Second, what he did in July 2013 was risk his own health by consuming alcohol at a time he was on medication that he was not supposed to be mixing alcohol with. So he put himself at risk in that sense. Third, and most importantly, how he behaved under the influence of alcohol on those occasions is very, very serious. He cannot afford not to address his relationship with alcohol, because, again, the consequences of what happened here could have been far more serious. This takes me to considering the principles of sentencing and why this is such a serious offence.

Proportionality is a fundamental sentencing

principle and it means, in simple terms, that a sentence should be proportionate to the seriousness of the offence and the level of responsibility of the offender.

This is a serious offence. The crime of mischief is punishable by a maximum of ten years in jail and there is no minimum penalty. That is quite the range, and that is quite the range because the offence itself also covers a wide range of possibility about what type of conduct can make out this charge both from the point of view of how much damage can be caused and, more generally, the seriousness of the circumstances.

Committing the crime of mischief by setting a building on fire is, in my estimation, at the more serious end of the spectrum for this offence. Of course, some scenarios could be worse. For example, if it was done with the intention of hurting someone or if someone was actually hurt. But if that happened, the offence charged would probably be a different one.

If a property owner allows their property to become a nuisance to others, to be dangerous, to be bad for the environment or otherwise a community hazard, there are lawful methods to address this. From the facts I have heard, it sounds as though there were real issues with

these buildings. But the course of action chosen by Mr. McLaughlin to deal with the situation was completely inappropriate. It was high risk and it was criminal, and I agree with the Crown that the vigilante aspect of the conduct is of great concern.

Whatever his reasons were, what Mr. McLaughlin did was exceedingly dangerous for his community. He is very lucky that nothing more serious came of this. For example, what if, unbeknownst to him, someone had snuck into another unit in one of these buildings and had been in there when they were set on fire? What if children had gotten in there; or what if teenagers had been having a party; or what if a homeless person looking for shelter had been in there sleeping; or what if people called to respond to these fires had been injured; what if the fire had not been controlled and had spread; what if there had been another fire somewhere else in the community, say, a house fire with people trapped inside, and the response time had been delayed because so many of the firefighters, many of them volunteers, were already busy attending to these other fires?

This type of offence, on its face, cries out for a denunciatory and deterrent sentence. Even

more so here because during submissions I was told, remarkably, about two other recent cases where similar things happened in the community of Inuvik. I heard about an unreported decision from the end of 2012, R. v. Dillon, where a building belonging to the same owner was set on fire. I have been given a copy of the decision in R. v. Bernhardt, 2013 NWTSC 54, where the offender was convicted after trial of setting a vehicle on fire. The sentencing decision says that the motive for the act was unclear but may have been because the offender was angry at someone for rejecting his advances and so he set fire to a vehicle belonging to one of her family members.

If there is any kind of sense in Inuvik or elsewhere in this jurisdiction that under certain circumstances it is an adequate course of action to set things on fire as a means to resolve disputes, exact revenge, or deal with abandoned buildings or other property, that sense has to be dispelled and denounced in no uncertain terms by this Court, because, as I said, setting things on fire is inherently dangerous.

It is aggravating in this case that this was not done just once but twice. The response by the Court has to be stern, and that is why even

for an offender who does not have a significant criminal record, has a good work history, and could be a very productive, valued member of his community, a jail term is still required.

There are also mitigating factors to consider, though. The first is that Mr. McLaughlin has pleaded guilty to this offence. This has saved court time and resources. I heard there would have been several witnesses called at his trial and that there would have been a requirement for a voir dire into the admissibility of his statement. Now that court time can be used to deal with other matters, and there are many other matters that need to be dealt with on the Court's pending list.

In addition to saving resources, and very significantly, the guilty plea signals a willingness to take responsibility and the expression of remorse. In this case the guilty plea is not the only indication of that. I heard that very early on during the court process there were discussions between counsel about resolving this matter without the necessity for a trial. I also heard Mr. McLaughlin waived his preliminary hearing, so no witnesses ever had to testify about this. In addition, from the start, he

cooperated with the police. All of that is consistent with him being remorseful and willing to take responsibility for his actions. So that is mitigating.

Although the plea does come many months after he was charged, given everything else I have heard, given his waiver of the preliminary hearing and how this matter evolved and the direction it took from the start, I do agree that Mr. McLaughlin should receive the maximum credit for his guilty plea.

I must also consider that he has been in custody since his arrest, a period of four months. I heard that one week of that was spent in RCMP cells in Inuvik and the rest was at the North Slave Correctional Centre. I heard that he has put his cooking abilities to good use and has volunteered his work at the kitchen at the correctional centre during his time on remand, and I also heard that his counsel obtained information from his case manager who described Mr. McLaughlin as the "easiest prisoner to deal with". There were no concerns about his behaviour while on remand, and there is little doubt that he would have earned all the remission that he might have been entitled to had he been a serving prisoner. I am satisfied that it is

appropriate to grant him enhanced credit for the time he has spent on remand.

I hope that I have made it very clear, however, that Mr. McLaughlin's motive for doing this is not a mitigating factor. Acting in this way because a person thinks it is for the greater good is not mitigating. The element of vigilante justice that I already referred to underscores the need for a denunciatory and deterrent sentence. It does not assist an offender in justifying a more lenient sentence. It provides an explanation for the conduct but not one that mitigates sentence, and that is because there is a significant risk that others might be inclined to take justice into their own hands if the courts were to signal in any way that having a so-called good reason for doing something will result in lesser punishment, particularly when the action in question is so inherently dangerous.

For all those reasons that I have been talking about, this is a serious offence of mischief and it calls for a term of incarceration.

The sentence that was jointly proposed by counsel is fit in all the circumstances. And in considering, among other things, the Bernhardt

case that was filed that I have already referred to as well as R. v. McNeely, 2007 NWTSC 82, those cases do support the range that is being sought.

There are other orders that have been sought and I will address now those orders and I want to set briefly out some comments with respect to them.

The first is with respect to probation. It is jointly recommended that Mr. McLaughlin be on probation for one year. The Crown asked that there be a number of conditions on this order and defence agrees that those conditions are reasonable.

During the hearing, I raised with counsel the question of the requested complete prohibition from alcohol. I am always concerned about those types of conditions in the event that I am dealing with someone who is not capable of total abstention. At the same time, if this is the kind of conduct that Mr. McLaughlin is capable of when he drinks alcohol, preventing him from doing so may be an important component of protecting the public. And he has said that he is not someone who drinks all the time. He says that stress can sometimes lead him to drink and when he does, he does to excess.

His counsel has explained there are certain

factors in Mr. McLaughlin's life right now, in relation to the health of his father, that may bring some stressors to him in the foreseeable future. More specifically, that his father is ill, that Mr. McLaughlin is the executor of the will, and if something should happen to his father, that would inject some stressful elements in his life. On the other hand, if that were to happen and he had those responsibilities, it really would not be a time where he could afford to go on a binge because then he could not carry out those responsibilities.

So I have decided to include a no alcohol condition in the probation order but not for the full year. It is the Court's hope that Mr. McLaughlin will make the choice to continue to abstain beyond the time where he will be required to abstain by the probation order. But after having spent a long time in custody, I do think it is helpful to mandate him not to drink for a period of time after his release to give him that added incentive to stay dry while he gets himself back into a more normal pace of life, finds work, and hopefully goes on with positive activities he can engage in.

The next issue that was raised was the question of the DNA order. The Crown has sought

one. Mischief is a secondary designated offence for which a DNA order can be made. The Code provides that such an order can be made if the Court is satisfied that it is in the best interests of justice to do so. Paragraph (3) of Section 487.051 says what factors are to be considered and it reads: In deciding whether to make the order, the court shall consider the person's criminal record, whether they were previously found guilty or not criminally responsible for a designated offence, the nature of the offence, the circumstances surrounding its commission and the impact that the order would have on the person's privacy and security of the person and the Court shall give reasons for its decision.

I had to consider this issue in R. v. Gosselin, [2009] N.W.T.J. No. 2, in the context of a narcotics case where the offence was a secondary designated offence. The Crown was seeking the order and the defence was opposing it. At paragraph 60 to 64 of that decision, I referred to the applicable principles. In that case, the Crown was relying primarily on the seriousness of the offence in support for its application, and, in the end, I declined to make a DNA order. The Court also considered this

issue in R. v. Bernhardt, supra, at paragraphs 16 and 17. It seems that in that case the seriousness of the offence, again, was the main reason why the order was being sought and was the main reason that the order was made.

I have considered the factors that are set out in the Code. I do recognize that the offence committed was serious and I have taken into account Mr. McLaughlin's criminal record. There is no indication, however, in that record that he has committed this type of offence or any offence serious enough to warrant his actual incarceration before.

I recognize, as did the Court in Bernhardt, that DNA is a useful investigation tool and that DNA procedures are not particularly intrusive. But the usefulness of the tool and the non-intrusive nature of the proceeding could be invoked in every case. Yet, Parliament has chosen to distinguish between primary and secondary offences and has attached different tests to be met when orders are sought in one situation and in the other. The Court did make the order in Bernhardt in a situation that involved setting something on fire. But in that case, it is important to note that the offender did not oppose the making of the order. On the

whole, I have considered this and I am not satisfied that a DNA order should be made, so I decline to make one.

The next issue is the question of the victim of crime surcharge. The law has now changed and removes the possibility of waiving the surcharge for hardship reason, but that change does not have a retroactive effect. So I do, in this case, have discretion to waive the surcharge. Considering that Mr. McLaughlin has been on remand since last July and that he was unemployed and essentially homeless at the time of his arrest, and considering that he will spend some further time in custody, I am satisfied that imposing a victim of crime surcharge on him would result in hardship, so I decline to do so.

Stand up, please, sir. Sir, for the reasons that I have given, I do agree with the joint submission, so that a sentence of imprisonment of one year is fit. For the four months that you have spent in pre-trial custody, I am going to give you credit for six months. So there will be a further term of imprisonment of six months. You can sit down.

I have given Mr. McLaughlin the maximum credit that I am permitted to give under the law. It is not something I do every time someone has

behaved well in jail and would have earned remission. I have done so here because I am satisfied it is justified given his conduct in the jail, the contribution he made through his work in the kitchen, the fact that he has never been sentenced to incarceration before, the fact some of his remand time was spent in cells in Inuvik, and everything else I have heard about his circumstances.

I think Mr. McLaughlin was quite right when he said earlier this week that being in jail is really a waste of time. I really think you are right, sir. It is a waste of time, it is a waste of your abilities, and I really hope that I will never see you in a courtroom again, and that no other judge will either.

The jail term will be followed by a term of probation for one year. This is to assist you in your integration in the community. You have never spent as much time in custody, as far as I am aware at least, and it will be a transition for you to regain your freedom.

The purpose of the probation is to help you, not to set you up for a breach, as I have said before. It is intended to assist you in getting counselling and help to address whatever issue you have with alcohol and whatever other

underlying issues made you act in this reckless, very dangerous way.

I say again, you are very lucky that there were not more serious consequences to this. I hope that it is a gigantic wake-up call for you about your relationship with alcohol and the need to address it.

From what I have heard, there are a lot of positive things that can be said about you. I hope that when you are released, you will be able to focus on that. Not just because if you commit crimes obviously it would be not good for the community and for whomever you commit these crimes against, but also because it would be very bad for you. Because with this conviction and this sentence on your record, if you are in trouble with the law again, you can expect the sentences will just get longer and longer.

The conditions of your probation are going to be simple. You are to report to a probation officer within 48 hours of release. You are to have no contact directly or indirectly with Talal Khatib for reasons that I think are obvious. You are to take counselling as directed, including alcohol counselling. I am going to direct that you abstain absolutely from the consumption or possession of alcohol for the first four months

of your probation order. As I said, I hope you continue to abstain after that, but I have decided to make the abstention period shorter than the full year of probation. This is to give you an additional incentive to address this issue. I have done so because you have told me that you have gone for long periods of time without drinking.

It is important that you understand that if you reach a point where you think you cannot comply with this condition, you need to contact Mr. Martin. There is a process that can be done to seek an amendment of the condition of probation. But what you cannot do is simply ignore the condition, because that is a separate offence and more trouble. So I hope you will not make this application, but if it becomes impossible to comply with this condition, there is a mechanism, and Mr. Martin can explain that to you, whereby you can ask the Court to change it for whatever reasons might be applicable at that time.

There is A.A. in jail. I know that. I am sure there is A.A. in Inuvik as well. So perhaps a good strategy would be to begin now to try to address this so that you have something to work from when you are actually released.

There is also a condition -- I wanted to ask you, Ms. Miller, you requested a condition that he not attend -- I think you said 7 to 11 Inuit Road. I notice one of the buildings was called 7 and 9 and the other one was called 7 and 11.

MS. MILLER: Yes, Your Honour. I believe -- excuse me. I believe that reflects the various --

THE COURT: Addresses?

MS. MILLER: -- addresses of the multi-unit.

THE COURT: Seven to eleven Inuit Road?

MS. MILLER: Yes, Your Honour. And I believe that is just one building.

THE COURT: Okay. So that is how it should be worded then, Mr. Clerk. And that is the condition that you not attend 7 to 11 Inuit Road.

Is there anything that I have overlooked, Counsel? Mr. Martin?

MR. MARTIN: No, I don't think so, Your Honour.

MS. MILLER: No thank you, Your Honour.

THE COURT: So I reiterate, Counsel, my thanks to both of you for your very helpful submissions and for your work resolving this

matter. Mr. McLaughlin, I hope that things go better for you --

THE ACCUSED: Thanks.

THE COURT: -- from this point.

.....

Certified Pursuant to Rule 723
of the Rules of Court

Jane Romanowich, CSR(A)
Court Reporter