

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- vs. -

JASON FRANK PAULETTE

Transcript of the Reasons for Sentence by The Honourable
Justice S. H. Smallwood, at Fort Smith in the Northwest
Territories, on February 28th A.D., 2014.

APPEARANCES:

Ms. K. Lakusta: Counsel for the Crown
Mr. M. Hansen: Counsel for the Accused

An order has been made banning publication of the
identity of the Complainant/Witness pursuant to Section
486.4 of the Criminal Code of Canada

1 THE COURT: Jason Frank Paulette was
2 found guilty by a jury on January 17th, 2014
3 for committing a sexual assault causing bodily
4 harm which occurred on December 8th, 2011.
5 Sentencing was adjourned and yesterday I heard
6 submissions from the Crown and the defence as
7 to what sentence should be imposed.

8 There is a publication ban prohibiting the
9 publication and broadcast of any information
10 that could identify the complainant in this
11 matter. I don't intend to refer to the
12 complainant by name but if there are portions
13 of my reasons where I do refer to her by name,
14 I am going to direct the court reporter to
15 refer to the complainant by her initials.
16 There can be no publication or broadcast of
17 any information that could disclose the
18 complainant's identity.

19 The Crown is seeking a sentence of six to
20 eight years imprisonment less credit for
21 remand time, and Mr. Paulette's counsel says
22 an appropriate sentence is three and a half to
23 four years less credit for remand time.

24 The evidence heard at trial was that the
25 complainant went to Mr. Paulette's residence
26 the evening of December 7th, 2011.
27 Mr. Paulette is her cousin and she went over

1 because she knew that his common-law spouse
2 was out of town and she thought that she would
3 help him out with his children and have dinner
4 with him. She spent the evening at his
5 residence and they smoked marijuana and drank
6 beer. After dinner, the complainant went to
7 the liquor store and bought some beer and when
8 she returned, they smoked the marijuana and
9 drank the beer. Mr. Paulette also touched up
10 a tattoo on the complainant's ankle with his
11 tattoo gun.

12 While Mr. Paulette was working on the
13 complainant's tattoo, the complainant was
14 texting a friend on her phone. She was
15 texting her friend throughout the evening.
16 Mr. Paulette got mad at the complainant for
17 being constantly on the phone. She thought it
18 was a joke at first but she realized he was
19 serious when he slapped the back of her head.
20 She was scared and put her phone away.

21 The complainant then went upstairs to the
22 bathroom. While she was in the bathroom she
23 blacked out. When she came to again, she was
24 on the bathroom floor and Jason Paulette was
25 choking her. She faked being unconscious so
26 he would get off of her, which he did. He
27 went downstairs and she pulled up her pants

1 and went downstairs. The complainant then
2 began freaking out and asking Mr. Paulette how
3 he could do this to her. Mr. Paulette punched
4 her in the face, which cut her chin. Blood
5 went all over her clothes and on the floor.

6 The complainant continued yelling at
7 Mr. Paulette and he grabbed her by the neck
8 and pushed her to the floor and used her hair
9 to mop up the blood. He told her to "shut the
10 fuck up, you stupid bitch". The complainant
11 blacked out again and the next thing she
12 remembered was putting on her shoes and
13 running out the door into the minus 40 degree
14 weather, leaving behind her jacket, cell
15 phone, iPod, and a bag of clothes. When she
16 left the residence she did not know where
17 Jason Paulette was.

18 The complainant ran over to her friend
19 Ashleigh Stokes' residence which was a short
20 distance away. At Ms. Stokes' residence, she
21 knocked on the door. When there was no
22 immediate answer, she began banging on the
23 door, yelling and crying.

24 Ms. Stokes answered the door. The
25 complainant, in her evidence, testified that
26 Ashleigh Stokes asked her what happened and
27 she tried her best to explain. She was unable

1 to recall the words that she said when talking
2 to Ashleigh Stokes. There were portions of
3 the night that the complainant does not
4 remember as a result of blacking out due to
5 the consumption of alcohol and marijuana. She
6 does not recall any sexual relations with
7 Jason Paulette that night and said that she
8 did not consent to any sexual relations with
9 Jason Paulette.

10 Ashleigh Stokes also testified at the
11 trial and her evidence corroborates the
12 complainant's testimony about when the
13 complainant came to her residence early that
14 morning.

15 Ms. Stokes said that she was asleep at her
16 residence that morning. At around 4:30, she
17 heard knocking on her door. Initially she was
18 not going to answer the door but then she
19 heard yelling and screaming and realized that
20 it was the complainant so she got up and
21 answered the door. When she opened the door,
22 she saw the complainant, who was crying, her
23 hair was messy, there was blood on her face,
24 and she was shivering. She was not wearing a
25 jacket. She was wearing a sweater and jeans
26 which was not appropriate for the cold
27 weather.

1 The complainant said to Ashleigh Stokes
2 "my cousin raped me" over and over again. She
3 asked the complainant "your cousin who?" to
4 which the complainant responded "my cousin
5 Jason raped me".

6 Ashleigh Stokes took the complainant to
7 the hospital. A sexual assault examination
8 was later completed and Jason Paulette's
9 spermatozoa was located in the vaginal swab
10 and vaginal pool sample taken from the
11 complainant.

12 As the jury convicted Mr. Paulette of
13 sexual assault causing bodily harm, they must
14 have accepted the complainant's evidence about
15 the violence inflicted upon her by Mr.
16 Paulette which caused the injuries depicted in
17 the photographs. And they must have also
18 concluded that the assault causing bodily harm
19 occurred in circumstances of a sexual nature.

20 Defence counsel suggests that I cannot
21 conclude that the sexual intercourse between
22 Mr. Paulette and the complainant was
23 nonconsensual. He says there is simply not
24 enough evidence to draw a conclusion and that
25 a sexual assault causing bodily harm can arise
26 in circumstances where there was consensual
27 sexual contact which caused bodily harm.

1 In circumstances where the jury's verdict
2 leaves some ambiguity with respect to the
3 facts on which they have come to their
4 verdict, it is the obligation of the
5 sentencing Judge to come to their own
6 independent determination of the facts
7 consistent with the jury's verdict. I do not
8 have to come to a complete theory of the facts
9 but only to make those factual determinations
10 necessary to decide the appropriate sentence.
11 That is from *The Queen v. Ferguson*, a decision
12 of the Supreme Court of Canada from 2008.

13 In this case, the complainant, despite the
14 problems with her memory, was clear about what
15 she did remember.

16 She testified that in the basement, Jason
17 Paulette slapped the back of her head when she
18 was spending too much time on her phone. She
19 was scared and put the phone away. Prior to
20 this, they had not had sexual intercourse and
21 there had been no discussion of sexual
22 intercourse or any interactions of a sexual
23 nature. Then the complainant went upstairs to
24 the bathroom. While sitting on the toilet,
25 she blacked out. When she came to, she was on
26 the bathroom floor being choked by Jason
27 Paulette. When she feigned unconsciousness,

1 he stopped choking her and left the bathroom.
2 She pulled up her pants and went downstairs to
3 confront him and wanted to know how he could
4 do this to her. His response was to punch her
5 in the face which caused her chin to bleed.
6 She continued to yell at him, and he grabbed
7 her by the neck and pushed her to the floor
8 and used her hair to mop up the blood. She
9 blacked out again and when she came to, she
10 fled the residence.

11 Sometime during this series of events,
12 Jason Paulette would have had sexual
13 intercourse with the complainant. While the
14 complainant has no memory of the sexual
15 intercourse, I conclude that it was
16 nonconsensual. And I come to this conclusion
17 based upon the evidence and the circumstances
18 as related at trial.

19 The complainant blacked out in the
20 bathroom and her memories following that event
21 all involve Jason Paulette choking or
22 assaulting her. When she comes to in the
23 bathroom, she is being choked and her pants
24 are down and Jason Paulette is on top of her.
25 When she goes downstairs, he again assaults
26 her and she blacks out. It seems incredible
27 that consensual sexual intercourse would have

1 occurred in these circumstances.

2 In addition, the complainant, when she
3 fled to Ashleigh Stokes' residence, told
4 Ashleigh Stokes that her cousin Jason had
5 raped her. This was a spontaneous utterance
6 which was subject to a voir dire at the trial.
7 While the complainant's injuries corroborate
8 that she had been assaulted, no one at that
9 point would suspect that there had been a
10 sexual aspect to what had happened to her
11 until she had said that she had been raped.
12 And when I say that, I mean she did not show
13 up at Ashleigh Stokes' residence naked or
14 missing clothing so that it would be clearer
15 to an observer that something sexual might
16 have happened. The complainant had no
17 knowledge of whether there would be any DNA
18 evidence and only she, when speaking with
19 Ashleigh Stokes, would have had knowledge of
20 the sexual contact between her and the
21 accused. At that point she had no reason to
22 lie about being sexually assaulted by the
23 accused. So when she said to Ashleigh Stokes
24 that her cousin Jason raped her, why would she
25 say that unless the intercourse between them
26 was not consensual?

27 The complainant's level of intoxication

1 also raises concerns about her capacity to
2 consent to sexual intercourse. She had drank
3 beer and smoked marijuana to the point that
4 she blacked out several times during the
5 evening. As Jason Paulette was present while
6 the complainant consumed drugs and alcohol, he
7 should have been aware that the complainant
8 had consumed enough drugs and alcohol that her
9 capacity to consent due to intoxication might
10 be compromised.

11 In the circumstances, I find that Jason
12 Paulette had nonconsensual sexual intercourse
13 with the complainant. As stated above, I do
14 not need to come to a complete theory about
15 the facts so, other than saying that the
16 nonconsensual sexual intercourse happened
17 during a period when the complainant was
18 blacked out, I do not think it necessary to
19 come to a conclusion as to exactly when it
20 occurred in the sequence of events that night.

21 The complainant did not provide a victim
22 impact statement. Her father Wilfred Paulette
23 provided a brief one in which he wrote about
24 the impact this offence has had on the
25 complainant. It has been difficult for the
26 complainant to see the accused after the
27 offence, seeing him walking around on the

1 street as he was on release for a period of
2 time. She has had struggles with alcohol and
3 it continues to be tough for her to deal with
4 the offence. She is going to school and has
5 the support of her family.

6 I have no doubt that based on the facts,
7 hearing the complainant testify and seeing the
8 photographs of her injuries, that it has been
9 difficult for her. She suffered physical
10 injuries and emotional trauma. It will take
11 her time to heal and the psychological scars
12 may never heal.

13 Mr. Paulette, you and your lawyer spoke of
14 your problems, the issues that you need to
15 deal with, and the abuse that you suffered
16 while growing up. I hope you realize that
17 what you did to the complainant is similar to
18 what happened to you. You took the trust, the
19 trust of a family member, the relationship
20 that you had with the complainant, and broke
21 it in a violent and degrading way. You hurt
22 her physically and mentally, and I am not sure
23 that you fully appreciate that. But I hope
24 that, as part of a healing process that you do
25 come to that realization.

26 Mr. Paulette has a criminal record which
27 has been filed as an exhibit, and it is a

1 significant one. By my count, there are 33
2 convictions on his criminal record and there
3 are some convictions which raise concerns for
4 the Court.

5 Mr. Paulette's criminal record begins in
6 1993 with property offences and includes
7 numerous offences against the administration
8 of justice over the years. There are also
9 offences of violence. In 1995, he was
10 convicted of assault causing bodily harm and
11 received a fine and probation. In 1999, he
12 was convicted of assault and received a
13 sentence of a suspended sentence and
14 probation. In 2001, he was convicted of
15 assault, spousal assault, and a spousal
16 assault causing bodily harm, along with other
17 offences, and received a global sentence of 12
18 months. In 2010, Mr. Paulette was convicted
19 of a sexual assault and received a sentence of
20 21 months which was essentially a sentence of
21 time served as he had served ten and a half
22 months of remand time which was credited at
23 the rate of two to one. He was at that time
24 placed on a three year probation order which
25 required him to comply with a number of
26 conditions. And following his arrest on this
27 offence, he has three further convictions

1 which have been entered for failing to comply
2 with conditions of his release.

3 Mr. Paulette is an aboriginal person and
4 this requires me to consider Section 718.2(e)
5 of the Criminal Code which states:

6 All available sanctions other than
7 imprisonment that are reasonable
8 in the circumstances should be
9 considered for all offenders, with
10 particular attention to the
11 circumstances of aboriginal
12 offenders.

13 The Supreme Court of Canada has given
14 directions to trial courts in how to interpret
15 this section in Gladue and, more recently, in
16 Ipeelee. I have considered the principles set
17 out in those cases and the requirement to
18 consider the unique systemic or background
19 factors which may have played a part in
20 bringing an aboriginal offender before the
21 Court and the type of sentencing procedures
22 and sanctions which might be appropriate
23 taking into account the circumstances of an
24 aboriginal offender's background.

25 I have heard that Jason Paulette is a
26 child of parents who attended residential
27 school and has suffered as a result of what

1 happened to them. His parents struggled with
2 alcohol, abuse was a part of their lives, and
3 their ability to parent was negatively
4 affected by their residential school
5 experience. This obviously affected
6 Mr. Paulette to be surrounded, to witness this
7 on a daily basis can only have a negative
8 effect on a child.

9 I have also heard that Mr. Paulette was a
10 victim of sexual abuse by a family member and
11 it is apparent this has also had a profound
12 effect upon him and it is one that he is only
13 recently beginning to deal with.

14 Counsel for Mr. Paulette made thorough and
15 thoughtful submissions regarding
16 Mr. Paulette's background, and I won't repeat
17 everything that counsel and Mr. Paulette said
18 yesterday, but it is apparent that he has been
19 negatively affected by many of the factors
20 that are referred to in Gladue and Ipeelee.
21 But within this, I also heard some positive
22 things.

23 Mr. Paulette has a close relationship with
24 his mother and was very fond of his
25 great-great grandmother with whom he lived for
26 a period of time. They were, and in the case
27 of his mother, continue to be loving and

1 supportive parts of his life. He is also in a
2 loving relationship with his common-law spouse
3 who is committed to standing by him and
4 dealing with their problems. He has four
5 children who he loves and wants to be a better
6 father to.

7 Mr. Paulette's situation, while unique to
8 him, is not unusual in this jurisdiction. It
9 is unfortunate, heartbreaking really, but many
10 offenders who come before this Court have
11 lives that have been devastated by abuse and
12 the abuse of alcohol. Offenders have
13 witnessed their parents and family members
14 abuse each other and abuse alcohol. They have
15 begun abusing alcohol often at a relatively
16 young age and continue to do so as they grow
17 up and have children, and their abuse of
18 alcohol begins to affect their children. It
19 is a cycle that I hope you can break, Mr.
20 Paulette; if not for your sake then for your
21 children.

22 I accept there are factors in
23 Mr. Paulette's background which are relevant
24 to his aboriginal heritage and which
25 contribute to him being before this Court
26 today. At the same time the paramount
27 sentencing principles have to be deterrence

1 and denunciation, which I will discuss
2 further. Overall, I do not think that the
3 factors referred to in Gladue and Ipeelee that
4 are applicable here are such that they can
5 involve consideration of anything but a
6 custodial sentence; and indeed, counsel for
7 Mr. Paulette is not suggesting that there is a
8 viable alternative to custody.

9 As acknowledged in Gladue, the more
10 violent and serious the offence the more
11 likely that a sentence of imprisonment for
12 aboriginal and non-aboriginal offenders will
13 be the same or close to the same. I have
14 taken the factors in Section 718.2(e) into
15 account in the overall sentencing.

16 There are a number of sentencing
17 principles that are engaged in this case. The
18 purposes and principles of sentencing are set
19 out in the Criminal Code. I am not going to
20 refer to all of them but I have considered the
21 principles enunciated in Section 718 to
22 Section 718.2.

23 The fundamental principle of sentencing is
24 that a sentence must be proportionate to the
25 gravity of the offence and the degree of
26 responsibility of the offender. The
27 fundamental purpose of sentencing is to

1 contribute to respect for the law and the
2 maintenance of a just, peaceful and safe
3 society by imposing just sanctions that have
4 one or more of the following objectives: to
5 denounce unlawful conduct; to deter the
6 offender and other persons from committing
7 offences; to separate offenders from society,
8 where necessary; and to assist in
9 rehabilitating offenders; to provide
10 reparations for harm done to victims or to the
11 community; to promote a sense of
12 responsibility in offenders, and
13 acknowledgment of the harm done to victims and
14 to the community. All of these factors are
15 applicable to one extent or another in this
16 case.

17 Crown and defence have each filed a book
18 of authorities with several cases and have
19 made very thorough helpful submissions. None
20 of the cases are exactly the same as this case
21 and even if they were, each sentencing has to
22 be approached individually taking into account
23 the facts of the offence and the circumstances
24 of the individual offender. The cases are
25 helpful in determining an appropriate range of
26 sentence and determining what sentencing
27 principles should be considered.

1 Sexual assault is a crime that occurs far
2 too often in the Northwest Territories.

3 As stated in *The Queen v. Lafferty*, 2011
4 NWTSC 60 at paragraph 37:

5 Sexual assault is a crime that is
6 terribly prevalent in the
7 Northwest Territories. This
8 Court, sadly, has cause to comment
9 on this fact very often because
10 this Court very often has the task
11 of sentencing people for the crime
12 of sexual assault. These cases
13 seem to be happening in almost
14 every community in this
15 jurisdiction. They are committed
16 by young people, middle-aged
17 people, sometimes older people.
18 In particular, sexual assaults
19 committed against women or young
20 girls who are passed out or
21 intoxicated to the point of not
22 being able to resist are very
23 frequent.

24 And it goes on later in the paragraph,

25 The fact that it happens so
26 frequently does not make it any
27 more understandable, does not make
28 it any less disturbing, and
29 certainly does not make it any
30 less wrong.

31 I completely agree with the comments
32 expressed in *Lafferty*. It is sometimes hard
33 to believe that this offence occurs so often
34 in this jurisdiction, that a person can
35 demonstrate a complete disregard for the
36 sexual integrity of another person. And when
37 it is combined with the violence that was
38 present in this case, it is disheartening.

1 Because of the prevalence of this type of
2 offence in this jurisdiction, Courts have
3 repeatedly said that the sentencing principles
4 of deterrence and denunciation should be
5 emphasized.

6 Turning to the factors that are applicable
7 in this case, I do not see that there are any
8 mitigating factors. For example, Mr. Paulette
9 has not entered a guilty plea which can be a
10 significant mitigating factor. Mr. Paulette
11 had a trial, which is his right and it is not
12 aggravating that he did so, but what that
13 means is he does not get the mitigating effect
14 on sentencing of a guilty plea.

15 Mr. Paulette has not expressed any remorse
16 for this offence. An expression of remorse,
17 even after a trial, can have some weight. He
18 said that he hoped that the complainant would
19 get the treatment that she needed but I did
20 not hear any expression of remorse for what he
21 did to the complainant.

22 There are a number of aggravating factors
23 in this case.

24 The complainant was Mr. Paulette's first
25 cousin. They had a family relationship and
26 there was an element of trust in that
27 relationship. I agree with defence counsel

1 that this was not a trust relationship per se
2 as exists in a spousal relationship or a
3 student/teacher relationship, but there is an
4 element of trust that arises in a family
5 situation. The complainant felt comfortable
6 enough to go to her cousin Mr. Paulette's
7 residence when his common-law spouse was away
8 and wanted to help him with his children. Mr.
9 Paulette's actions have shattered that trust
10 and this has had a broader impact than just on
11 the relationship between Mr. Paulette and the
12 complainant. It has caused a rift in their
13 family.

14 It is also aggravating that this offence
15 occurred while children were present in the
16 home. One of the more heartbreaking parts of
17 the evidence was hearing the complainant
18 testify that during the events one of the
19 children of Mr. Paulette was present and
20 witnessed part of what her father did to the
21 complainant. The complainant testified that
22 the daughter was crying. Just as Mr. Paulette
23 remembers his father abusing his mother, his
24 daughter will likely remember what she saw and
25 be negatively affected by what she witnessed.

26 The complainant in this case suffered
27 injuries which is obvious because Mr. Paulette

1 was convicted of sexual assault causing bodily
2 harm. But aside from that, there was
3 considerable violence inflicted on the
4 complainant. She was slapped, choked,
5 punched, pushed to the floor and her hair used
6 to mop up her own blood. Any one of these
7 acts of violence are objectionable but the
8 extreme violence inflicted upon the
9 complainant by Mr. Paulette is reprehensible.

10 I have already referred to Mr. Paulette's
11 criminal record but I want to speak more
12 specifically about the prior sexual assault on
13 his criminal record.

14 He was convicted of sexual assault on
15 April 26th, 2010. At that time he received a
16 sentence of time served which, as I mentioned,
17 was equivalent to 21 months in jail and a
18 three year probation order was imposed upon
19 him. He was required to comply with a number
20 of conditions, including not to consume or
21 possess alcohol. So at the time of this
22 offence he was still on his probation order,
23 he was consuming alcohol, and committed the
24 same type of offence for which he was on
25 probation. So I find that it was aggravating
26 that he was on probation at the time of this
27 offence and that he was specifically violating

1 a term of his probation.

2 As I have mentioned, this is an offence
3 which was committed while Mr. Paulette was
4 under the influence of alcohol and drugs. Mr.
5 Paulette's counsel tells me that Mr. Paulette
6 wants to get help for his problems, including
7 his alcohol problem, and I think that
8 acknowledging that you have a problem is a
9 good first step and there are many more steps
10 to go in the healing process but I am hopeful
11 that this is a beginning.

12 The Crown filed a transcript of the
13 reasons for sentence from 2010 in their book
14 of authorities. In that case, Mr. Paulette
15 pled guilty on the day of his jury trial. The
16 facts in that case were that the complainant,
17 who was 16 years old, went to her aunt's house
18 because she was locked out of her residence.
19 Mr. Paulette was there and he was known to
20 her. She went into the house. She went to
21 the bathroom and when she emerged,
22 Mr. Paulette forced her into a bedroom and
23 onto a bed. He held her by the neck and had
24 sexual intercourse with her.

25 There are some similarities to the case
26 before the Court today. I note the comments
27 of Justice Cooper, when he stated at page 9:

1 Let there be no mistake. This was
2 a brutal and egregious act of
3 violence, a predatory offence
4 where the accused displayed total
5 disregard for the personal and
6 bodily integrity of this
7 16-year-old girl.

8 In that case, there was a joint submission
9 of 21 months which, as I have said, was a
10 sentence of time served. The Court, in
11 passing sentence, acknowledged that the
12 sentence may seem inadequate but considered it
13 a unique case given the strong family support
14 and prospects for rehabilitation. I view the
15 sentence that you received, Mr. Paulette, in
16 the circumstances of that case as at the low
17 end of the range. Indeed, acknowledging the
18 principles that bind a Court when a joint
19 sentence is presented, I am of the view that
20 you received a significant break. And I am
21 saying this because I think that you were
22 given an opportunity that many offenders are
23 not. The Court took a chance on your
24 rehabilitation and heard that you were taking
25 programs while in jail and had strong family
26 support and strong prospects for
27 rehabilitation. So it is unfortunate that you
28 are here again today.

29 Now I have heard that your father was not
30 there for you, did not follow up with the

1 commitment that he made, and that too is
2 unfortunate. But ultimately you are here
3 today in the same position because of the
4 choices that you made. And that's where
5 taking responsibility for who you are and what
6 you have done comes into play. Despite your
7 past and the failures of your family, you are
8 still responsible for your actions.

9 So, Mr. Paulette, the sentence that I am
10 about to impose I hope sends several messages.
11 First, it expresses society's condemnation of
12 your conduct. What that means is that the
13 people of the Northwest Territories, the
14 people of Fort Smith, do not think it is okay
15 to violently sexually assault someone. They
16 are disgusted by this type of behaviour.

17 Secondly, it must deter other people from
18 contemplating doing this type of thing. So it
19 has to tell people that this is the type of
20 sentence that you will face if you choose to
21 act the way that Mr. Paulette did, and
22 hopefully this sentence will make them think
23 twice.

24 And lastly, it must specifically deter
25 you, and when I say that I mean you never
26 sexually assault another person again.

27 I also think it is necessary to separate

1 you from society. As it stands, you pose a
2 risk to women, particularly when you are under
3 the influence of alcohol or drugs. And
4 separation from society will also permit you
5 to take programs and attempt to deal with your
6 issues so hopefully you can be rehabilitated
7 and I do think your rehabilitation is
8 important. But in the circumstances, it
9 cannot be the primary sentencing objective but
10 it is still an important factor.

11 Mr. Paulette was originally released on
12 this -- he was in custody on this offence from
13 December 8th, 2011 to April 4th, 2012. He was
14 on consent remand. He was released after a
15 show cause and was on conditions for a period
16 of time but was placed back into custody again
17 on October 17th, 2013. He was sentenced on
18 November 20th, 2013 to a sentence of four
19 months for two breaches. At that time his
20 pre-trial custody to that point, which I take
21 being the custody that he had most recently
22 served, was taken into account, so the 118
23 days which had previously been his remand
24 time, was not taken into account in that
25 sentence. So his sentence on the four months
26 would have expired on January 15th, 2014. On
27 January 23rd, 2014, Mr. Paulette was sentenced

1 to another 30 days consecutive for another
2 breach. And that sentence would have expired
3 on February 18, 2014.

4 So for this offence, today, there are
5 three periods that I understand for which
6 Mr. Paulette has not received credit for his
7 pre-trial custody. So the period from
8 December 8th, 2011 to April 4th, 2012; from
9 January 15th to 23rd; and February 18th to
10 today, of this year, which comes to 126 days
11 of pre-trial custody.

12 Now, pursuant to Section 719(3.1) of the
13 Criminal Code, the maximum credit available
14 for Mr. Paulette's remand time could be up to
15 one and a half days for each day spent in
16 custody, which can be granted if the
17 circumstances justify it.

18 The issue of what circumstances justify an
19 increase up to one and a half days credit for
20 each day in custody has been the subject of
21 some litigation and differences across Canada.
22 However, it has been accepted in this Court
23 that the circumstances that can justify
24 enhanced credit do not have to be exceptional
25 or only occur in rare situations. They do
26 however have to be applicable to the specific
27 accused who is before the Court.

1 As was stated in *The Queen v. Green*, 2013
2 NWTSC 20, at paragraph 78:

3 There is nothing automatic about
4 enhanced credit. The onus is on
5 the person being sentenced to show
6 on a balance of probabilities that
7 the circumstances do justify
8 enhanced credit being granted.

9 This can be done in a variety of ways -
10 through viva voce evidence or, as was done in
11 this way, counsel for Mr. Paulette, who is an
12 Officer of the Court, having spoken with
13 somebody who is familiar and reliable with
14 respect to the circumstances of the offender's
15 pre-trial custody.

16 So in this case, counsel for Mr. Paulette
17 spoke with Richard Keppel who is a sentence
18 administrator with Corrections and familiar
19 with Mr. Paulette's circumstances so counsel
20 for Mr. Paulette is seeking enhanced credit
21 for his remand time. His basis for doing so
22 is that he would have earned remission for
23 most of the period he would have been a
24 serving prisoner, if he had been a serving
25 prisoner, and that he was not able to take
26 programs for a couple of reasons; one, he was
27 the lowest priority as he was a remand
28 prisoner and not a serving prisoner, so he has
29 the lowest priority for programs; and that

1 there were no programs that were offered while
2 he was in remand that were appropriate for his
3 situation, although he did attend AA which I
4 understand is available to all persons who are
5 in custody.

6 With respect to remission, as was noted in
7 The Queen v. Manilaq, 2012 NWTSC 48:

8 Where there is credible
9 information that is presented to
10 the Court that a prisoner on
11 remand would have earned remission
12 if they had been a serving
13 prisoner, that is a relevant
14 consideration in deciding whether
15 credit for remand time should be
16 calculated on an enhanced basis.

17 I imagine there are a variety of other
18 circumstances that could justify enhanced
19 credit being given for remand time. And it
20 could even be that when a person has behaved
21 very well on remand time, the Court may decide
22 not to grant credit on an enhanced basis. In
23 my view, the exercise of discretion in the
24 area has to be based on the specific
25 circumstances of each case and not by applying
26 an automatic approach.

27 In this case, I am told that Mr. Paulette
28 was involved in a couple of minor incidents
29 while in remand such that if he were a serving
30 prisoner, he would have lost approximately
31 five days remission. In the circumstances, I

1 am not satisfied that Mr. Paulette should earn
2 enhanced credit for his remand time. I am
3 going to adjust his pre-sentence credit
4 slightly in order to simplify the calculations
5 of Mr. Paulette's sentence.

6 Please stand, Mr. Paulette.

7 Taking into account the circumstances,
8 your aboriginal background and the applicable
9 sentencing principles, I am satisfied that an
10 appropriate sentence for the sexual assault
11 causing bodily harm is five years
12 incarceration. You will be given credit for
13 the 126 days pre-sentence custody, which I
14 will round up to five months for simplicity,
15 leaving a sentence of four years and seven
16 months to be served.

17 You may sit down.

18 I will recommend that you be given
19 consideration to take any sexual offender
20 treatment and substance abuse treatment
21 programs that are suitable as soon as it is
22 possible.

23 As well, pursuant to Section 743.21,
24 there will be an order prohibiting you from
25 contacting the complainant directly or
26 indirectly while you are in custody.

27 With respect to the ancillary orders,

1 there will be a firearm prohibition order
2 pursuant to Section 109 of the Criminal Code.
3 It will begin today and end ten years after
4 your release from prison.

5 Having heard the submissions of counsel
6 yesterday, and I heard the request today with
7 respect to a Section 113 exemption, I am
8 satisfied in the circumstances that a
9 Section 113 exemption should be granted so
10 that you can apply to the chief firearms
11 officer or the registrar for a license or
12 registration certificate subject to any
13 conditions that they may impose.

14 The sexual assault causing bodily harm is
15 a primary designated offence and there will be
16 a DNA order.

17 There will also be an order pursuant to
18 the Sexual Offender Information Registration
19 Act. And as you have previously been subject
20 to a SOIRA order for the conviction in 2010,
21 the duration of the order will be for life.

22 Mr. Paulette, I hope that you will take
23 the opportunity offered by this sentence to
24 try and address some of your problems. It
25 seems clear to me, and I think that you
26 recognize as well based on what your lawyer
27 said yesterday and what you said, that you

1 need help and so I hope that you will follow
2 up on that because at this point, it is really
3 up to you. The corrections system can offer
4 you all of the programs they want but unless
5 you are willing to commit and take them and
6 really make an effort, then that's when we
7 will know whether there is going to be
8 success.

9 If you want to be there for your children,
10 to be a better father for your children than
11 your father was to you, then I think you need
12 to do something about that and it's not too
13 late to change and become a positive role
14 model for your children.

15 Counsel, neither counsel made any
16 submissions with respect to the victim of
17 crime surcharge.

18 MR. HANSEN: I would ask that it be
19 waived in the circumstances. The offence
20 occurred before the recent amendments and it
21 would be a hardship given that he will be
22 incarcerated for some time. I understand it
23 is a, relatively speaking, small amount of
24 money but for a person of Mr. Paulette's
25 means, it is a larger amount than would occur
26 to any of us who are gainfully employed during
27 that time.

1 THE COURT: Thank you. Ms. Lakusta.

2 MS. LAKUSTA: No opposition to that, Your
3 Honour.

4 THE COURT: I agree that as this offence
5 occurred prior to the changes, which make it
6 mandatory, that it is still open to me to
7 waive the victim of crime surcharge because of
8 hardship and given the sentence that has been
9 imposed and having heard about Mr. Paulette's
10 circumstances, I am satisfied that it should
11 be waived as a result of hardship.

12 All right, counsel, is there anything
13 else?

14 MS. LAKUSTA: Not from the Crown.

15 THE COURT: I want to thank you,
16 counsel, for your work on this trial and your
17 submissions.

18 MR. HANSEN: Thank you.

19 -----
20 Certified to be a true and
21 accurate transcript pursuant
22 to Rules 723 and 724 of the
23 Supreme Court Rules,
24
25
26

27 _____
Lois Hewitt,
Court Reporter