

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

GILBERT WILSON JACOBSON

Transcript of the Reasons for Sentence delivered by the Honourable Justice L. A. Charbonneau, in Tuktoyaktuk, in the Northwest Territories, on the 14th day of March, 2014

APPEARANCES:

Ms. A. Piche: Counsel on behalf of the Crown

Mr. T. Boyd: Counsel on behalf of the Accused

Charge under s. 271 Criminal Code of Canada

1 THE COURT: I am ready to give my decision
2 on this case. I thank counsel for their
3 submissions this morning. Obviously, at the
4 conclusion of the proceedings yesterday and last
5 night, I did spend some time thinking about this
6 case as I was aware of at least the evidence, and
7 I am also aware of the principles of law that
8 apply in a case like this. So I had some time to
9 think about this matter since we received the
10 verdict yesterday, and this morning I have had
11 additional time to consider the submissions that
12 were presented by counsel.

13 Before I give my reasons for my decision
14 this morning, I just want to remind everyone that
15 there is a publication ban in place which
16 prohibits the publication of any information that
17 could identify the victim in this matter. I am
18 going to be referring to her by name in my
19 decision, but I want the court reporter to use
20 initials only in the transcript. If I refer to
21 either of the young girls who were involved in
22 this matter by name in my reasons, I also want
23 initials used in the transcript.

24 Yesterday a jury from this community found
25 Mr. Jacobson guilty of sexual assault for an
26 incident that happened back in December of 2009,
27 and today it is my responsibility to decide what

1 his sentence should be for this crime. Both
2 lawyers have talked about the evidence and the
3 factual basis for the sentencing this morning,
4 and I think it is important to be clear as to
5 what that is.

6 The jury's verdict does not leave any
7 ambiguity as to the findings they made. To find
8 Mr. Jacobson guilty, they had to have rejected
9 his version of events, that the sexual activity
10 that occurred that night was at D.L.P.'s
11 suggestion and with her consent in exchange for
12 alcohol and drugs. The jury had to have
13 concluded instead that Mr. Jacobson had sexual
14 intercourse with her either when she was
15 unconscious or when she was so highly intoxicated
16 that she could not consent validly to the
17 activity; in other words, that she was either
18 passed out or completely incapacitated by
19 alcohol, although she may not have been actually
20 passed out.

21 We know from the two other young women who
22 testified at his trial that they were at the
23 house drinking with D.L.P. and Mr. Jacobson. We
24 know that a lot of alcohol was consumed that
25 night, and we know that at one point the police
26 showed up at the door and were banging on the
27 door. How and why the police came to be at

1 Mr. Jacobson's house, why these two other young
2 girls were so concerned about being found by the
3 police is not something that is explained in the
4 evidence, but what they were both clear about was
5 that they ran out the back door to evade the
6 police and that when they left, Ms. P. was still
7 at the house and so was Mr. Jacobson.

8 We also know that at 7:00 in the morning
9 D.L.P. walked into her brother's house half
10 naked, very cold, and extremely intoxicated to
11 the point that she fell down as she was getting
12 in the door. Based on this, the only conclusion
13 is that at some point between the time the two
14 friends left and the time that D.L. arrived at
15 her brother's house, Mr. Jacobson took advantage
16 of the fact that she was in a highly intoxicated
17 state and had sexual intercourse with her.

18 D.L.P. talked about an incident that she
19 says happened several months later last spring.
20 She alleged that she and Mr. Jacobson came upon
21 one another on the street and that he threatened
22 her. The threat was not an element of the
23 offence of sexual assault, so the conviction does
24 not mean that the jury accepted her evidence on
25 that point, and it does not that mean that they
26 were convinced beyond a reasonable doubt that
27 that threat was made. It is not something that

1 flows inevitably from the verdict or necessarily
2 from the verdict. It is I, as the trial judge,
3 who has to decide whether that fact has been
4 proven beyond a reasonable doubt. If so, it
5 would be a significantly aggravating factor. I
6 am unable to attach any weight to Mr. Jacobson's
7 denial of that threat because the jury concluded
8 that he was not truthful about the sexual
9 activity, which taints his entire evidence. That
10 leaves Ms. P.'s evidence on the point, and I have
11 considered it carefully. On the whole, I cannot
12 say that I am sure that this threat was made.
13 Maybe it was; maybe it was not. But I have to
14 give the benefit of that doubt to Mr. Jacobson,
15 so I am not taking it into account in my decision
16 today.

17 In a sentencing, one of the things I have to
18 consider are the circumstances of Mr. Jacobson.
19 His counsel, this morning, outlined those
20 circumstances in a lot of detail. I will not
21 repeat now everything that has been said except
22 to say that Mr. Jacobson is an aboriginal man and
23 he grew up in this region. He did show, in his
24 life, initiative, and an ability to get training
25 and get an education, something that not everyone
26 in this jurisdiction is able or willing to do. I
27 heard he has training and has worked as a heavy

1 equipment operator. He has also travelled out of
2 the jurisdiction to acquire a certificate in
3 environmental science. He has been employed and
4 he has a good work record. It is also to his
5 credit that he has raised three of his children
6 as a single parent with the assistance of his own
7 mother from the point in time when he separated
8 from his spouse in 1997. I have taken what I
9 have heard about him and in particular the
10 positive aspects of his background into
11 consideration.

12 I have taken into account that he is an
13 aboriginal offender, and I have kept in mind the
14 principles that the Supreme Court of Canada has
15 outlined with respect to the approach that courts
16 must take when sentencing aboriginal offenders.

17 In any sentencing, in addition to
18 considering the facts of the offence and
19 circumstances of the offender, the Court has to
20 apply the sentencing principles that are set out
21 in the Criminal Code, and the fundamental
22 sentencing principle is proportionality. That
23 means a sentence has to be proportionate to the
24 seriousness of the offence and to the degree of
25 blameworthiness of the offender. Every other
26 sentencing principle flows from that fundamental
27 one.

1 Sadly, very sadly, this scenario, a man
2 sexually assaulting a woman who is passed out or
3 very intoxicated, is very common in the Northwest
4 Territories. It is a crime that seems to happen
5 to women of all ages. It is a crime that seems
6 to be committed by men of all ages. There are so
7 many cases that involve this type of sexual
8 assault that this Court has gone as far as to
9 call it an epidemic. There is a long list of
10 victims just like D.L.P. who have to spend the
11 rest of their lives living with the consequence
12 of having been violated in this way, and there is
13 a long list of offenders like Mr. Jacobson who
14 have been sent to jail for a long time for
15 committing this type of crime. There are many
16 families of victims and many families of
17 offenders who have suffered greatly as a result
18 of this type of crime, and unfortunately this
19 case now adds itself to that list.

20 The Court does not know what it will take to
21 stop these types of crimes from being committed
22 in our communities. The Court does not have
23 those answers. If anyone can change things, it
24 is the people who live in the communities, and
25 there is very little the Court can do except
26 repeat the same message that this is wrong, that
27 it causes harm. The harm that it causes is

1 obvious from the victim impact statements that
2 were filed in this case.

3 Because of the seriousness of this type of
4 crime, which is a serious violation of the
5 victim's personal and sexual integrity, the
6 Courts in this jurisdiction have long held that
7 the most important sentencing principles when
8 sentencing someone for committing this crime are
9 denunciation and deterrence. Sentences imposed
10 need to show clearly that this conduct is
11 completely unacceptable. That is what
12 denunciation is. They also need, to the extent
13 possible, to discourage other people from
14 committing similar offences.

15 I realize that a person who is highly
16 intoxicated and about to sexually assault someone
17 else is not going to be thinking about the
18 sentences that are imposed by this Court for
19 these types of crimes. But hopefully, maybe
20 deterrence can operate before the drinking
21 starts. Hopefully it can operate to the people
22 who have unhealthy relationships with alcohol and
23 other issues to do something about it so they do
24 not end up drunk with no self-control, committing
25 these serious offences, hurting their fellow
26 community members.

27 All this to say deterrence and denunciation

1 are the dominant sentencing principles in a case
2 like this one. Other principles such as
3 rehabilitation must be kept in mind, but they do
4 take second place.

5 Restraint is always an important sentencing
6 principle, one that applies even more so when
7 sentencing aboriginal offenders. As I have said,
8 I have taken into account that aspect of
9 Mr. Jacobson's circumstances, including the fact
10 that he attended residential school and including
11 the fact that his generation is one that saw a
12 great change happening in this region. I think
13 the fact that his parents were fluent in
14 Inuvialuktun and that Mr. Jacobson does not speak
15 that language is a very good illustration of some
16 of the changes that occurred within the span of
17 that generation.

18 The starting point on sentencing for
19 offences of this kind is three years'
20 imprisonment, as was noted by the Court of Appeal
21 in *R. v. A.J.P.J.* and a host of other decisions
22 of this Court as well as other appellate
23 decisions. That is not a minimum sentence, and
24 it is not a mandatory sentence. It is simply a
25 starting point that reflects the seriousness of
26 this type of conduct and the devastating impact
27 it has on its victims.

1 On this specific offence, I have to say I
2 find Mr. Jacobson's blameworthiness is quite
3 high. The circumstances revealed by the evidence
4 are deeply disturbing.

5 There are aggravating and mitigating factors
6 that must be considered in the time the Court
7 imposes sentences. Here, there are aggravating
8 factors, significant ones. The first is the age
9 of the victim. She was only 17 at the time.
10 This is now an aggravating factor specifically
11 set out in the Criminal Code, but this Court has
12 always treated that factor as an aggravating
13 factor.

14 The second aggravating factor is that she
15 was sexually assaulted when she was in a
16 particularly vulnerable position by virtue of her
17 high state of intoxication. The fact that D.L.P.
18 should not have been drinking underage, the fact
19 that she was not behaving in a particularly good
20 way that evening is one thing, and it is part of
21 these circumstances. She and her friends were,
22 one could say, out of control with their partying
23 that evening considering what I heard about how
24 much they had to drink. But that changes nothing
25 to the fact that ultimately she was in a very
26 vulnerable position when Mr. Jacobson assaulted her.

27 I also find it aggravating that Mr. Jacobson

1 supplied some of the liquor that was consumed.
2 In itself, supplying liquor to a minor is a
3 crime, but to do so in these types of
4 circumstances is particularly blameworthy.

5 I have also taken into account
6 Mr. Jacobson's criminal record. It does not
7 include offences of a sexual nature, but it does
8 include crimes against people. By this, I mean
9 assault; there is a break and enter and assault
10 for which he received a not insignificant jail
11 term, although it was in the territorial range.
12 I agree with the Crown that the criminal record
13 is not particularly significant, but it is a
14 factor. I am also mindful that a person should
15 not be punished over and over again for the
16 convictions that appear on their criminal record.

17 I have considered whether there are
18 mitigating factors here, and I find it difficult
19 to find any. There certainly is no evidence of
20 any kind of remorse here. Mr. Jacobson's version
21 of events, which the jury must have concluded was
22 fabricated, was highly contemptuous to D.L.P. He
23 claimed that she prostituted herself for alcohol
24 and drugs, that she fabricated this allegation to
25 get herself out of a difficult situation after
26 she arrived in the state she did at her brother's
27 house. He claimed that she extorted more alcohol

1 from him by telling him she would not charge him
2 if he gave her more alcohol. And during his
3 evidence he volunteered information about her
4 sexual activity with another person when it was
5 certainly not in response to a question that
6 related to that topic.

7 He cannot be treated more severely for
8 having exercised his right to have a trial, of
9 course. I am simply noting that his evidence was
10 contemptuous and demeaning to the complainant and
11 confirms his absolute lack of remorse or any
12 insight into his behaviour. The Court hopes that
13 someday he will come to be in a different place.

14 As I have said, there are aspects of the
15 evidence we have heard in this trial that are
16 very, very disturbing and that I think the
17 community should be concerned about.

18 It was clear on the evidence that these
19 girls had been at Mr. Jacobson's house many times
20 before. It is clear that they saw his house as a
21 place they could go sit around and drink alcohol.
22 I find it disturbing that a man of Mr. Jacobson's
23 age, who has children himself, would welcome
24 teenagers in his house for drinking parties,
25 sharing and doing drugs with them, be prepared to
26 supply more liquor to them.

27 As I said, these particular teenagers were

1 not behaving in an ideal way that night, far from
2 it. But sometimes that is how teenagers act.
3 Sometimes that is how adults act. But certainly
4 when young people act in this way, one would
5 expect that adults would try to stop them. If
6 they were not able to stop them, one would hope
7 that at least they would not enable them, that
8 they would not help them continue drinking more
9 and smoking more drugs. You would expect that
10 adults would try to protect and guide younger
11 people, not contribute to getting them completely
12 intoxicated and then take advantage of them.

13 The harm that this type of offence causes,
14 as I have said, is very real, and it is
15 eloquently shown in the three victim impact
16 statements that were filed in this case.

17 In addition, I found D.L.P.'s hurt very
18 obvious during her testimony. At times she came
19 across as somewhat hostile, but she did break
20 down when she started talking about her blackout.
21 Her hurt was obvious to me. Her brother
22 testified as well. He talked about being in
23 shock that morning when he saw her walk in. He
24 repeats that in his victim impact statement. His
25 hurt showed very differently from hers, but he
26 too was evidently, to me at least, very upset
27 during his evidence. As for D.L.'s father, he

1 was, as he was required to be, very stoic when he
2 sat with her during her evidence as a support
3 person. He also was when he read out his victim
4 impact statement in court this morning. But
5 still, it is obvious to me that he is very hurt
6 and upset and has suffered harm as a result of this.

7 I also had occasion during the week to see
8 some of the people who were here to support
9 Mr. Jacobson, which I assume are members of his
10 family or are friends. I am sure they are
11 devastated about what has happened here, and I am
12 sure they are hurt and devastated about the fact
13 that he will be taken away from this community
14 for some time. That is what is so sad about
15 these types of cases. They cause harm to a great
16 number of people.

17 The Crown's position is that the term of
18 imprisonment I should impose in this case is four
19 years, which is the same sentence that was
20 imposed in the case of *R. v. A.J.P.J.* in the
21 Court of Appeal for facts that are not dissimilar
22 to the facts here.

23 The defence acknowledges that a jail term
24 has to be imposed but asks me to limit it to
25 two-and-a-half years. Defence argues that this
26 would be sufficient to achieve the goals of
27 sentencing. I am unable to agree that there is

1 any basis here for imposing a sentence in that
2 range. To do so would not reflect the
3 significant aggravating factors that I have
4 talked about, and it would not reflect the
5 blameworthiness of this offender for committing
6 this particular crime.

7 There is nothing joyful about sentencing
8 someone to a long jail term. There is really
9 nothing that feels pleasant about it. The Court
10 has compassion for the consequences that this
11 decision will have on Mr. Jacobson and on his
12 family, but those are the consequences of his own
13 actions. The Court's response to this type of
14 crime has to be proportionate to its seriousness,
15 and it has to take into account the aggravating
16 factors.

17 The Crown has asked for a number of
18 ancillary orders, and I will make those orders.
19 There will be a DNA order because this is a
20 primary designated offence. There will be an
21 order that Mr. Jacobson comply with the *Sex*
22 *Offender Information Registry Act* for a period of
23 20 years. There will be a firearms prohibition
24 order that will commence today and expire
25 10 years after his release from imprisonment.
26 The law now forces the Court to impose a victim
27 of crime surcharge, but these incidents arose

1 before that amendment. So I have discretion to
2 waive it, and I will for obvious reasons. I am
3 also going to make an order that any exhibits
4 seized in this matter be returned to their
5 rightful owners if that is appropriate;
6 otherwise, they are to be destroyed at the
7 expiration of the appeal period.

8 Mr. Jacobson, stand up, please. For the
9 sexual assault that you committed against D.L.P.,
10 I sentence you to a term of imprisonment of
11 four years. You can sit down.

12 THE ACCUSED: How long?

13 THE COURT: You can sit down. Four years.

14 Now, I will, Madam Clerk, ask you to endorse
15 on the warrant of committal the Court's strong
16 recommendation that Mr. Jacobson be permitted to
17 serve his term of imprisonment in the North to
18 facilitate his family's ability to have access to
19 him so that he can continue to benefit from their
20 support, which he obviously has.

21 Before we close court, I want to thank both
22 counsel for their work on this case and the court
23 staff for their hard work as well.

24 We will now close court.

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26 PROCEEDINGS ADJOURNED ACCORDINGLY

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1 CERTIFICATE OF TRANSCRIPT

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I, the undersigned, hereby certify that the foregoing pages are a complete and accurate transcript of the proceedings taken down by me in shorthand and transcribed from my shorthand notes to the best of my skill and ability.

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Tiffany Low

Court Reporter