

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

EAGLE QUILL HUNTER

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Transcript of the Reasons for Sentence delivered by The Honourable Justice K. Shaner, sitting in Yellowknife, in the Northwest Territories, on the 28th day of October, A.D. 2013.

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APPEARANCES:

Mr. B. MacPherson: Counsel for the Crown

Mr. P. Falvo: Counsel for the Accused

(Charges under s. 268 of the Criminal Code of Canada)

1 THE COURT: Counsel, I did have an  
2 opportunity to review your submissions and  
3 consider them. So I am in a position to give my  
4 reasons for sentence and to impose sentence on  
5 Mr. Hunter.

6 As we know, on October 11th, 2013, Mr.  
7 Hunter was found guilty on one charge of  
8 aggravated assault by a jury here in Yellowknife.  
9 The victim is Harry Joe Sabourin, and Mr.  
10 Sabourin testified at the trial and gave an  
11 account of the assault. Mr. Hunter testified as  
12 well and he gave a different version of what  
13 happened. He claimed that he was defending  
14 himself. Given that the jury returned a verdict  
15 of guilt on this count on the Indictment, it is  
16 clear that they did not accept Mr. Hunter's claim  
17 of self-defence. However, as the Crown pointed  
18 out, it is impossible to tell on what basis that  
19 was rejected.

20 There were several versions through the  
21 witnesses of what happened. In other words,  
22 there were a lot of unknowns, and, in large part,  
23 I think this is due to the fact that there was a  
24 great deal of alcohol consumed at the party,  
25 which no doubt interfered with the memories of  
26 many witnesses and their ability to recall the  
27 details of the events. The events were also

1 viewed from different vantage points by different  
2 witnesses in the room where the incident took  
3 place and that might account for many of the  
4 differences as well.

5 What is clear, however, is that during the  
6 afternoon and the evening of June 25th, 2011,  
7 there was a party at an apartment in Yellowknife  
8 and Mr. Sabourin and Mr. Hunter, previously  
9 unknown to each other, were both there.

10 Subsequently, Mr. Hunter and Mr. Sabourin were  
11 involved in a fight that started in the living  
12 room of the apartment and Mr. Hunter introduced a  
13 weapon into that fight, in particular a broken  
14 liquor bottle. Mr. Sabourin suffered significant  
15 injury. He had cuts to his head and his arms and  
16 he required surgery to fix a lacerated artery.  
17 Someone called an ambulance for him and the  
18 police also attended at the scene.

19 Mr. Falvo, as defence counsel, provided  
20 information to the Court about Mr. Hunter's  
21 background and circumstances. Mr. Hunter is a  
22 29-year-old man. He is aboriginal. He was born  
23 in Hay River, but he was adopted by his  
24 biological uncle as an infant and he grew up in  
25 Alberta. He graduated from high school in  
26 Edmonton in 2004. He has worked consistently  
27 since he finished high school at various jobs,

1 mostly in the food service industry. He  
2 volunteered his time to charity. He was employed  
3 for two years with Aurora Village as evidenced by  
4 the letter provided by Mr. Morin and marked as  
5 Exhibit S2. He is also the father of three  
6 children, a ten-year old and six-year-old twins,  
7 and the mother of his twins also provided a  
8 letter of support in which she described  
9 Mr. Hunter as a caring and supportive father.

10 Mr. Hunter has a lengthy criminal record and  
11 it dates back to 2000 when he was a youth. It  
12 includes convictions from both Alberta and the  
13 Northwest Territories. There are four  
14 convictions for crimes against the person, and he  
15 is currently in custody for three convictions for  
16 arson. His lawyer advises that those convictions  
17 arose because he set fire to vehicles. He has  
18 several convictions stemming from non-compliance  
19 with court orders and failure to attend court.

20 The principles and objectives of sentencing  
21 are set out in the Criminal Code and they are  
22 briefly: Denunciation; (specific and general)  
23 deterrence; separating offenders from society  
24 where that is necessary; rehabilitation;  
25 reparation; and promoting a sense of  
26 responsibility in offenders and an acknowledgment  
27 of the harm done to victims and to the community.

1           There are certain principles that were  
2           described by the Crown that guide the Court in  
3           applying those objectives and the Criminal Code  
4           sets out those principles. The most important  
5           one is that a sentence must reflect moral  
6           blameworthiness of the offender in relation to  
7           the gravity of the criminal act.

8           Judges also have to consider aggravating and  
9           mitigating circumstances, and they have to  
10          increase or reduce sentences accordingly.

11          Restraint is another very important  
12          principle. It means that judges have to consider  
13          all of the sentencing options available that are  
14          reasonable besides incarceration, and this is a  
15          specific requirement in considering sentences for  
16          aboriginal offenders.

17          Finally, there is the principle of parity  
18          and, basically, that means that there should be  
19          similar treatment for similar offenders in like  
20          offences.

21          The most aggravating factor in this case, in  
22          my view, is the introduction of the weapon, in  
23          the form of a broken bottle, into a fistfight,  
24          and I do not agree with defence counsel that it  
25          is less aggravating than if Mr. Hunter had come  
26          with a knife. This was a weapon that he created,  
27          and it is just as dangerous as a knife and it did

1 as much or perhaps more damage than one might  
2 sustain from a knife.

3 Mr. Hunter's criminal record is another  
4 aggravating factor. He has had the benefit of  
5 sentencing designed for rehabilitation more than  
6 punishment, but the message is not getting  
7 through. The longest he has gone between  
8 convictions has been three years. That is a  
9 terrible track record.

10 I do not find the fact that the accused  
11 started the fight with or invited Mr. Grandjambe  
12 to fight to be aggravating. As Mr. Falvo pointed  
13 out, Mr. Grandjambe was a willing participant  
14 once Mr. Hunter asked him to fight, and  
15 Mr. Hunter was not charged in relation to that  
16 fight.

17 There are some mitigating factors.  
18 Mr. Hunter did not enter a guilty plea, nor was  
19 he expected to do so. All that means is that  
20 there is one less mitigating factor that I can  
21 consider, but it is certainly not aggravating.  
22 Mr. Hunter apologized today and he acknowledged  
23 that he is to blame for this. It comes very late  
24 but, nevertheless, I find it mitigating. I also  
25 find it mitigating that he has some recognition  
26 of the fact that he gets into trouble when he  
27 drinks and that he needs to do something about

1           that.

2           The Crown is seeking a custodial sentence of  
3           three to four years, and the defence submits that  
4           the sentence should be in the range of twenty-two  
5           months. The range of sentence for an aggravated  
6           assault in similar circumstances in this  
7           jurisdiction is, as put by Justice Charbonneau in  
8           the Morgan case, about thirty months to five  
9           years.

10          In my view, Mr. Hunter bares a high degree  
11          of moral blameworthiness in that case. He is the  
12          one who introduced the weapon and he is the one  
13          who caused the injury. He needed to walk away  
14          and he did not. As the Crown pointed out, the  
15          law treats aggravated assault very seriously.  
16          The maximum punishment is 14 years and that is a  
17          very long time. It has to be that way, however.  
18          The potential for serious, life-long harm to come  
19          from acts of violence cannot be underestimated.

20          There were three cases from the Northwest  
21          Territories that were submitted by the Crown,  
22          namely R. v. Morgan, R. v. Pascal, and R. v.  
23          Sarasin. These are all decisions of the Supreme  
24          Court. There are some similarities between this  
25          case and the three cases submitted by the Crown.  
26          There are also a number of differences, which is  
27          not surprising given that no two cases are ever

1           alike.

2           There are a number of similarities between  
3           this case and Pascal in particular. In that  
4           case, as here, the parties were drinking in a  
5           party situation. The party was happening in a  
6           shed and the accused, who was heavily  
7           intoxicated, became angry with the victim.  
8           Moments later he swung a knife at the victim and  
9           stabbed him once in the chest. The victim tried  
10          to evade Mr. Pascal and escape the shed, but it  
11          was locked and it was only through the assistance  
12          of a third party that the victim in that case was  
13          able to escape and seek help for his injuries.  
14          Mr. Pascal was sentenced to 20 months in prison,  
15          which was net of time spent in remand, and, in  
16          addition, that was followed by two years of  
17          probation. Unlike this case, however, Mr. Pascal  
18          had the benefit of the mitigating effect of the  
19          guilty plea and he had a very dated criminal  
20          record.

21          Sarasin also involved a guilty plea. This  
22          was a case where the victim and accused had a  
23          chance encounter. They got into a fight and  
24          Mr. Sarasin stabbed the victim in the abdomen  
25          with a box cutter. There was only one stab wound  
26          but it was very, very serious. The accused was  
27          on probation when the altercation occurred and he



1 received a sentence of 30 months' incarceration.

2 In Morgan the accused was convicted of  
3 aggravated assault following a trial. There was  
4 no guilty plea. He and the victim engaged in a  
5 fight. The victim was stabbed. He was sentenced  
6 to three-and-a-half years' incarceration. That  
7 case involved some serious wounds, particularly  
8 to the head, and the accused was on a  
9 recognizance at the time of the incident.

10 Defence counsel submitted R. v. Theriault,  
11 which I also considered. In that case, the  
12 accused entered a guilty plea to a charge of  
13 aggravated assault. Again, it was wounding with  
14 a knife. He was sentenced to 22 months'  
15 incarceration and a year of probation. Justice  
16 Vertes noted that the accused had a very dated  
17 criminal record and that he had in the past  
18 appeared to have benefitted from the probation in  
19 staying out of trouble for a long period of time.

20 I accept that what the Crown is seeking in  
21 terms of sentence is well within the range of  
22 sentences imposed in similar cases of aggravated  
23 assault in the Northwest Territories, thus  
24 satisfying the principle of similarity.

25 Crimes like this one and in these kinds of  
26 circumstances are all too common in the Northwest  
27 Territories. There is a party, people are

1 drinking (and usually the sole purpose of  
2 drinking is to get really drunk), inhibitions and  
3 judgment are parked at the door, and suddenly  
4 there is an altercation and someone suffers a  
5 traumatic injury. It happens in a moment and the  
6 impact can last a lifetime.

7 Like the circumstances in Pascal, Sarasin,  
8 and Morgan, the wounds in this case could have  
9 resulted in something far worse. You are not on  
10 trial for what could have happened, Mr. Hunter,  
11 but it is important that you know what could have  
12 happened could have been much worse. For that  
13 reason, the seriousness of aggravated assault,  
14 the sentence has to send a clear message of  
15 denunciation and deterrence. It has to be clear  
16 that conduct that harms others is never  
17 acceptable.

18 I have considered very carefully whether a  
19 shorter period of incarceration than is in the  
20 range proposed by the Crown, followed by a period  
21 of probation, would be appropriate, and combined  
22 with this, I considered Mr. Hunter's aboriginal  
23 status. For a number of reasons, I do not think  
24 it would be appropriate. First, it would not  
25 recognize the seriousness of the offence and the  
26 injuries sustained by Mr. Sabourin. Second, it  
27 would not send an appropriately strong message of

1 denunciation. Third, as the Crown pointed out,  
2 probationary sentences in the past have  
3 apparently failed to have a rehabilitative effect  
4 on Mr. Hunter, which suggests it is not the best  
5 sentencing tool in these circumstances; and,  
6 fourth, its value might be lost, in any event,  
7 given that Mr. Hunter faces a probationary period  
8 of a sentence that he is already serving upon his  
9 release.

10 I pause to note that prisons, while  
11 punitive, also offer many opportunities for  
12 rehabilitation, and if Mr. Hunter is serious  
13 about changing his life, as he indicated through  
14 his counsel that he is, including getting  
15 treatment for alcohol addiction, there is no  
16 reason that he could not start working towards  
17 that in prison.

18 With respect to Mr. Hunter's aboriginal  
19 status, that is all I have. There is no evidence  
20 of a difficult childhood or one riddled with  
21 abuse and neglect of the kind we see so often in  
22 our courts. On the contrary, it appears that  
23 Mr. Hunter was adopted and raised by a loving  
24 uncle and had the support and care of a loving  
25 home.

26 Mr. Hunter, can you please stand up.

27 Mr. Hunter, upon being convicted of aggravated

1 assault by wounding and upon consideration of the  
2 circumstances and the nature of the offence as  
3 well as your personal circumstances, I sentence  
4 you to a term of three years in prison. You can  
5 sit down.

6 There will also be an order for bodily fluid  
7 to be taken from you for DNA analysis, and an  
8 order prohibiting you from possessing a firearm  
9 or other weapons listed in Section 109 of the  
10 Criminal Code which will be in effect for ten  
11 years from the date of your release. Do you  
12 understand? Can you answer, please.

13 THE ACCUSED: Yes.

14 THE COURT: Thank you. Mr. Hunter let me  
15 say that through your counsel, you have expressed  
16 a willingness to change your life, and you really  
17 need to do that. If you do not, you are going to  
18 wind up in this position or even a worse one  
19 again. You are a young man and you have three  
20 children who depend on you and who need you to be  
21 there for them. So please take advantage of the  
22 programming that is going to be available to you  
23 when you go to prison to assist you in  
24 identifying what leads you to make such poor  
25 choices that lead you consequently to be in  
26 conflict with the law. Work to develop skills  
27 that you can use so that you make the right

1 choices in the future. And when you get out, and  
2 even before you are released, advocate for  
3 yourself so that there is some kind of plan in  
4 place to help you, seriously help you,  
5 reintegrate you into society and keep you making  
6 the right choices so that you are not in this  
7 court or another court again. I do wish you the  
8 best.

9 Is there anything else, Counsel?

10 MR. MACPHERSON: No thank you, Your Honour.

11 THE COURT: Mr. Falvo?

12 MR. FALVO: No, Your Honour.

13 THE COURT: All right. There is one other  
14 thing I will state. Given Mr. Hunter's current  
15 incarceration and proposed incarceration that I  
16 have just imposed, I do not foresee that he will  
17 have the means to pay a victims of crime  
18 surcharge. I am cognizant of the recent  
19 amendments to the Criminal Code; however, this  
20 charge arose prior to those amendments. So in  
21 the circumstances, the victims of crime surcharge  
22 is waived.

23 MR. FALVO: Your Honour, I'm sorry, there  
24 was one thing I should have mentioned a moment  
25 ago and that is Mr. Hunter would like to stay in  
26 the Northwest Territories. I'm aware that that  
27 is not a decision made by the courts, although

1 the Court could consider a recommendation or an  
2 endorsement on that because of his family and  
3 because of the programming available here.

4 THE COURT: Well, I am -- other than --  
5 He has got relatives in Hay River? Is that where  
6 you say he has got relatives?

7 MR. FALVO: Yes, Your Honour.

8 THE COURT: Well, in that case, I will  
9 make that recommendation that he be permitted to  
10 serve his sentence in the Northwest Territories.  
11 But as you have indicated, that is not binding on  
12 the Director of Corrections. So that will  
13 ultimately be a decision for Correction Services.

14 MR. FALVO: Thank you, Your Honour.

15 THE COURT: Is there anything else?

16 MR. MACPHERSON: No, Your Honour.

17 THE COURT: Mr. Falvo?

18 MR. FALVO: No, Your Honour.

19 THE COURT: Thank you. Good luck to you,  
20 Mr. Hunter. Work hard.

21 .....

22 Certified Pursuant to Rule 723  
23 of the Rules of Court

24

25 Jane Romanowich, CSR(A)  
26 Court Reporter

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