

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- and -

PATRICK NADLI

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Transcript of Reasons For Sentence of The Honourable  
Justice L.A. Charbonneau, delivered orally in Yellowknife,  
in the Northwest Territories, on the 11th day of July, 2014.

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APPEARANCES:

Ms. S. Boucher:	Counsel for the Crown
Ms. J. Bond:	Counsel for the Crown
Mr. P. Harte:	Counsel for the Accused

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Charge under s. 272(1)(C), s. 267(B)  
Criminal Code of Canada

Ban on Publication of Complainant/Witness  
pursuant to Section 486.4 of the Criminal Code

1 THE COURT: I have had the opportunity to  
2 consider the submissions that were made on this  
3 matter, of course the first part of those  
4 submissions, and the part I will talk about  
5 today, has to do with what sentence should be  
6 imposed on Mr. Nadli for this offence.

7 As part of my decision, I will be indicating  
8 my conclusions on the issues that were raised  
9 with respect to the remand time and how it should  
10 be treated, but I will be filing a written  
11 decision on that aspect of the case.

12 Before I begin, I just want to reiterate  
13 that there is a publication ban in effect in this  
14 case that protects the identity of the  
15 complainant and prevents the publication or  
16 broadcast of any information that could identify  
17 her. If at any point in my decision I refer to  
18 her by name, only initials will appear in the  
19 transcript.

20 On May 27th, 2014, Patrick Nadli pleaded  
21 guilty to a charge of sexual assault causing  
22 bodily harm, and today it is my responsibility to  
23 decide what his sentence should be for that very  
24 serious offence.

25 The legal framework that governs sentencing  
26 is set out in the Criminal Code. I am not going  
27 to refer to or quote all of those sections in

1           this decision, but I have reviewed them and I  
2           have considered them.

3           I had the benefit of thorough submissions  
4           from counsel at this sentencing hearing, both on  
5           what I will call the first part of the sentencing  
6           hearing which dealt with the circumstances of the  
7           offence and the circumstances of Mr. Nadli, and  
8           for the second part which related to the legal  
9           issues about the remand time. I am grateful for  
10          those thorough submissions.

11          The fundamental principle of sentencing is  
12          proportionality. That means that a sentence must  
13          be proportionate to the seriousness of the  
14          offence and to the degree of responsibility of  
15          the offender. The Criminal Code sets out more  
16          specific sentencing principles, but in the end  
17          they are all directed at ensuring that the  
18          sentence imposed meets the fundamental  
19          requirement of proportionality.

20          To do this and to arrive at a proportional  
21          sentence, the Court has to take into account the  
22          circumstances of the offence, how serious it was,  
23          what consequences it had for the victim, but the  
24          Court must also take into account the  
25          circumstances of the person who committed that  
26          offence. There are a whole host of factors that  
27          have a bearing on sentencing. No two cases are

1           ever alike, and that is why sentencing is a  
2           highly individualized process.

3           The facts that Mr. Nadli admitted to were  
4           recorded in an Agreed Statement of Facts which  
5           was filed as an exhibit at the sentencing  
6           hearing. It was read into the record then, and I  
7           will not read it again in it's entirety, but I  
8           have to refer again to what Mr. Nadli is being  
9           sentenced for because that is necessary to put  
10          this sentencing decision in context.

11          The victim of this offence met Mr. Nadli  
12          during the day on June 27th, 2012, in the town of  
13          Hay River. Together they returned to the  
14          Hay River reserve where the victim lived. They  
15          were together for a period of time with one of  
16          the victim's female friends. At one point  
17          Mr. Nadli and the victim's friends left the  
18          victim's house and went to a neighbour's house to  
19          continue drinking.

20          Mr. Nadli later returned to the victim's  
21          house. By then she had gone to bed. She awoke  
22          to him being in her room. He then sexually  
23          assaulted her, trying to put his penis in her  
24          anus. He also struck her on the back with a  
25          closed fist.

26          She tried to get away, but she was held down  
27          by Mr. Nadli. She tried to calm him down by

1 calling him names such as "love," "sweetheart,"  
2 and "honey." She also asked him to put a condom  
3 on. Eventually he had vaginal intercourse with  
4 her. While he was doing this, he struck her with  
5 his fists on her face, her chest, and her upper  
6 body.

7 The victim told Mr. Nadli she needed to go  
8 and care for her dog. She was then able to leave  
9 the bedroom. Then she escaped from her house and  
10 went to her neighbour's house to call the police.

11 The police received that call at 4 a.m. in  
12 the morning on June 28th. They went to the house  
13 from which she had called. They saw her there  
14 and they made observations of her. In addition  
15 to the fact that she was upset, they noted that  
16 the left side of her face was starting to swell.  
17 Based on what she told them, they went to her  
18 house and there they found Mr. Nadli; he was  
19 still inside the residence. He was placed under  
20 arrest without incident.

21 Photographs of the victim's injuries were  
22 filed at the sentencing hearing. They show  
23 significant bruising and swelling to the left  
24 side of her face. They show bruising on her arm  
25 and on one of her breasts as well as on the side  
26 of her lower abdomen near her rib cage.

27 The victim prepared a victim impact

1 statement which was filed as an exhibit and was  
2 also read into the record at the sentencing  
3 hearing. It describes in simple but compelling  
4 terms the effect that this crime was having on  
5 her at the time it was written, which was in July  
6 2012, about two weeks after the events.

7 She refers to physical effects including  
8 bruising, swelling, soreness, headaches. She  
9 also describes significant psychological effects.  
10 She says since the sexual assault happened she  
11 has had nightmares; that friend and family  
12 members do not like to sleep at her house because  
13 she wakes up screaming; that she feels suicidal;  
14 that she feels dirty and is compulsive about  
15 taking showers and cleaning her home; that she  
16 feels scared and unsafe all the time; that she  
17 feels that she will never be able to trust  
18 anybody again.

19 I was able to observe the victim of this  
20 offence when she testified at the trial that was  
21 held in November 2013, almost a year and a half  
22 after she wrote that victim impact statement. It  
23 was apparent then that she was still very much  
24 affected emotionally by these events. This is  
25 not surprising as this was a brutal, prolonged  
26 assault that occurred while she was in her home.  
27 It was a serious, callous, and contemptuous

1 violation by Mr. Nadli of her personal and sexual  
2 integrity.

3 Mr. Nadli's counsel provided the Court with  
4 a lot of information about Mr. Nadli's personal  
5 circumstances and background. It is a background  
6 that speaks of considerable challenges that  
7 Mr. Nadli has had to face.

8 Mr. Nadli was born in Fort Providence. His  
9 parents abused alcohol. As a young child he was  
10 at times afraid to stay at home because of the  
11 drinking that went on there. He ran away from  
12 home. Eventually social services became involved  
13 and he was apprehended because he was found in  
14 need of protection.

15 As a child, and this I find quite sad, he  
16 felt responsible for having been apprehended, as  
17 though it was his fault. Obviously it was not  
18 his fault. It was the responsibility of adults  
19 who did not provide an environment where he could  
20 be safe. It is very sad that so early on in his  
21 life Mr. Nadli had to feel the weight of  
22 responsibility for something that was not his  
23 fault.

24 Feeling responsible for this was not the  
25 only consequence for him, unfortunately. He was  
26 moved to live in a group home in Fort Simpson and  
27 later to a hostel that was attached to the school

1           there. While he was living there, he was  
2           sexually assaulted by a night watch supervisor.

3           Through processes that have been set up and  
4           going on for a number of years now whereby  
5           persons who were abused at these schools can  
6           obtain some financial compensation for the harm  
7           done to them, Mr. Nadli received compensation, I  
8           am told, in the amount of \$100,000. Money cannot  
9           repair the emotional and psychological harm that  
10          resulted from suffering this kind of abuse of  
11          course, but the fact that he received a sizable  
12          amount of financial compensation demonstrates the  
13          recognition that he did suffer abuse and that  
14          this abuse was serious.

15          Not surprisingly, after he was abused,  
16          Mr. Nadli began acting out. He spent a few years  
17          in Yellowknife, and during that time he had some  
18          contact with his family, but it was quite  
19          limited. Then he was sent to Bosco Homes in  
20          Alberta. He struggled in school because he was  
21          placed in grade levels that did not correspond to  
22          the level he was actually at.

23          He returned to Fort Providence when he  
24          was 14. It is not clear what led him to be sent  
25          back to live with his family, but after that  
26          point he never returned to school, and at that  
27          point, still quite young, he started getting into



1 trouble with the law.

2 His criminal record which was filed as an  
3 exhibit shows a fairly steady pattern of  
4 convictions starting at that point, 1990, and  
5 continuing over the two following decades. The  
6 last entry on his record is from September 2011,  
7 less than a year before this offence was  
8 committed.

9 Mr. Nadli has worked at various jobs. He  
10 has worked in the fishing industry, he has worked  
11 as a rock crusher, and as a carpenter's helper.  
12 At one point he was employed as a janitor at one  
13 of the mines but lost that job when the employer  
14 found out about his criminal record.

15 Despite his fairly lengthy criminal record,  
16 Mr. Nadli had never in the past spent as much  
17 time in custody as he has since his arrest on  
18 this matter.

19 I heard that while on remand he has taken  
20 advantage of some of the resources that were  
21 available to him. He has attended AA meetings  
22 regularly since he was taken into custody and now  
23 recognizes the negative impact that alcohol abuse  
24 has had on his life. He has attended and  
25 participated several times in talking circles  
26 that take place regularly at the jail. Through  
27 this he has been able to start talking about his

1 own abuse and has been able to begin getting some  
2 insights into his behaviour.

3 I heard about these things through  
4 Mr. Nadli's counsel, and I also heard about them  
5 through Mr. Nadli himself when he had an  
6 opportunity to speak to the Court at the  
7 conclusion of his sentencing hearing.

8 Documents were filed confirming his  
9 attendance at AA and his participation in the  
10 talking circles. One of the counsellors at the  
11 North Slave Correctional Centre has written a  
12 letter which was also filed as an exhibit where  
13 he explains what the talking circles are about.  
14 In that letter he expresses the view that  
15 Mr. Nadli is taking responsibility for his own  
16 healing, and he commends him for it.

17 It is very clear from what I have heard that  
18 Mr. Nadli has had a very difficult childhood.  
19 The struggles that he faced growing up, the abuse  
20 that he suffered, and some of the resulting  
21 consequences, sadly, are things that many  
22 aboriginal offenders who are dealt with by the  
23 Courts in this jurisdiction have also faced as  
24 children. There is little doubt that they are  
25 things that have contributed to Mr. Nadli acting  
26 out, developing an unhealthy relationship with  
27 alcohol, and feeling a lot of anger and pain that

1 he has never been able to address in a meaningful  
2 way until now.

3 His criminal record, which I have already  
4 referred to, includes convictions for a variety  
5 of offences: Property offences, crimes of  
6 violence, and breaches of various court orders.  
7 He has received non-custodial sentences such as  
8 terms of probation and fines as well as several  
9 jail terms, most of which amounted to a few  
10 months. The longest individual sentence he has  
11 ever received was 15 months imprisonment for  
12 assault causing bodily harm in 2006. He has  
13 never been convicted for anything as serious as  
14 what he faces sentence for today, and he has  
15 never received a sentence anywhere near the range  
16 of the sentence he is facing today.

17 The Crown argues that a fit sentence under  
18 the circumstances is a sentence in the range of  
19 4 to 5 years imprisonment. Defence does not take  
20 issue with that range. That is a reasonable  
21 concession for the defence to make under the  
22 circumstances.

23 Defence asks that the sentence be at the  
24 lower end of that range, taking into account the  
25 principle of restraint and its particular  
26 importance when dealing with aboriginal  
27 offenders, and considering Mr. Nadli's specific

1 circumstances.

2 The law is well established in this  
3 jurisdiction that in dealing with serious sexual  
4 assaults, and this is certainly such an offence,  
5 the paramount sentencing principles are  
6 deterrence and denunciation. There are many  
7 reasons why this is so, including the prevalence  
8 of sexual assaults in this jurisdiction,  
9 particularly sexual assaults on women who are  
10 assaulted while they are sleeping.

11 Because there are so many of these cases,  
12 quite unfortunately this Court has commented  
13 numerous times on this issue of prevalence of  
14 this type of crime. For the record and because  
15 it is a consideration on this matter as it is in  
16 so many others, I will repeat here when I said in  
17 R v. Lafferty 2011 NWTSC 60, at paragraph 37.

18 "Sexual assault is a crime  
19 that is terribly prevalent in  
20 the Northwest Territories.  
21 This Court sadly has cause to  
22 comment on this fact very  
23 often because this Court very  
24 often has the task of  
25 sentencing people for the  
26 crime of sexual assault.

27 These cases seem to be  
happening in almost every  
community in this  
jurisdiction. They are  
committed by young people,  
middle-aged people, and  
sometimes older people. In  
particular, sexual assaults  
committed against women or  
young girls who are passed out

1 or intoxicated to the point of  
2 not being able to resist and  
3 also sometimes on women or  
4 young girls who are quite  
5 simply asleep in their own bed  
6 are very frequent.

7 I have said in other cases  
8 that it boggles the mind how  
9 often it happens and why it  
10 happens. What makes a person  
11 decide to treat another person  
12 with such disregard and  
13 contempt for their personal  
14 integrity? The fact that it  
15 happens so frequently does not  
16 make it any more  
17 understandable, does not make  
18 it any less disturbing, and  
19 certainly does not make it any  
20 less wrong."

21 In the paragraph that follows the one I have  
22 just quoted in Lafferty, I refer to a series of  
23 cases from this jurisdiction where similar  
24 comments were made about the prevalence of this  
25 type of crime in the Northwest Territories. I am  
26 not going to repeat those references here. They  
27 are but a small sample of a very long list of  
28 sentencing decisions in this jurisdiction dealing  
29 with this type of assault.

30 It is a type of offence that comes so  
31 frequently before the Court that it has been  
32 described as an epidemic. There continues to be  
33 a real need for the Court to send a clear message  
34 that this conduct is intolerable. The message  
35 also has to be sent that in those cases where the

1 victim is sleeping or intoxicated or highly  
2 intoxicated, that fact does not in any way lessen  
3 the seriousness of the act. On the contrary; it  
4 makes it all the more serious because people in  
5 that condition are more vulnerable. This is true  
6 whether the victim is actually passed out from  
7 drinking or simply intoxicated and therefore not  
8 in the best position to defend herself.

9 The starting point for offences of this type  
10 is three years imprisonment. From this starting  
11 point, the sentence must be adjusted to reflect  
12 any aggravating or mitigating factors that might  
13 exist. Here there are several aggravating  
14 factors.

15 First, the victim was in her own home, the  
16 place where she should be able to feel the  
17 safest. In fact, she was in her own bed. That  
18 sense of safety was taken away from her. That is  
19 abundantly clear from her victim impact  
20 statement, and it is also consistent with what we  
21 hear regularly in cases of this kind. The fact  
22 that this happened in her home is an aggravating  
23 factor.

24 Second, the violence used against her while  
25 she was being sexually assaulted is also a  
26 significant aggravating factor. This was  
27 ongoing, gratuitous violence. It left her

1 bruised on several parts of her body. The  
2 bruising and swelling to her face is significant.  
3 The fact that she had all those bruises elsewhere  
4 on her body speaks to the fact that the force  
5 used against her was significant. Of course the  
6 fact that she was injured is reflected in the  
7 fact that Mr. Nadli pleaded guilty to the charge  
8 of sexual assault causing bodily harm, not merely  
9 a charge of sexual assault.

10 The fact remains that severe bruising or  
11 bodily harm could be caused by one single blow.  
12 Here Mr. Nadli struck the victim repeatedly  
13 despite her attempts to calm him down. I  
14 consider it aggravating that this continued for  
15 some time, despite her attempts to get him to  
16 stop. The fact that she was desperate enough and  
17 scared enough to call the very person who was  
18 violating her and brutalizing her things like  
19 "love" and "sweetheart" speaks volumes. It is  
20 also particularly disturbing to imagine how that  
21 must have felt for her, and again I was able to  
22 observe, when she testified at the November 2013  
23 trial, the emotional state that she was in while  
24 she was speaking specifically about those facts.

25 Mr. Nadli was on probation at the time this  
26 happened. That is somewhat aggravating, although  
27 it is not a significant factor in this case.

1 Mr. Nadli's record is also a factor because it  
2 does include convictions for crimes of violence.  
3 He has received jail terms for some of them,  
4 although as I mentioned most of these jail terms  
5 were not very long ones, the longest being a 15  
6 month sentence for assault causing bodily harm  
7 that I have already referred to.

8 A person should not be sentenced a second  
9 time for the convictions that appear on their  
10 criminal record because they have already been  
11 sentenced for those convictions. It is very  
12 important not to overemphasize the existence of a  
13 criminal record on sentencing, but it can be a  
14 relevant factor. Here it is relevant because it  
15 shows a steady pattern of antisocial conduct,  
16 including conduct that involves physically  
17 harming others, as he did in this case. It is  
18 relevant because it speaks to the danger he can  
19 present to his fellow community members.

20 I expect most of the convictions are related  
21 to offences that occurred when Mr. Nadli was  
22 drinking, but he has for over 20 years now known  
23 that drinking leads him to act badly. Although I  
24 recognize that now that he has started dealing  
25 with the issue of alcohol consumption and  
26 addiction, and that is an important step for him,  
27 the underlying anger and whatever other issues



1 lead him to harm others when he drinks also need  
2 to be dealt with. Because a lot of people drink  
3 and get drunk but they do not harm others when  
4 they are under the influence of alcohol.

5 There are also mitigating factors to  
6 consider, and I need to spend some time on those.

7 The guilty plea must be considered. It is  
8 far from a guilty plea entered at an early  
9 opportunity. It is not a plea that put a quick  
10 end to proceedings, showed unequivocal remorse,  
11 and spared the victim from having to testify at  
12 all about the event. This matter went through  
13 the full process of a criminal proceeding. There  
14 was a preliminary hearing, there was a jury  
15 trial, and there were verdicts rendered on two of  
16 the three counts that Mr. Nadli faced in November  
17 of 2013. After the mistrial was declared on the  
18 third count, the Crown had to speak to the victim  
19 about going through a second trial, and a date  
20 was set for that retrial. It is after all of  
21 that that Mr. Nadli entered his guilty plea.

22 This is something that I cannot ignore,  
23 particularly in light of the submission that I  
24 heard on behalf of Mr. Nadli, and things that he  
25 said himself, about the fact that the time he has  
26 spent in custody has given him access to certain  
27 resources and has lead him to gain insight into

1 his behaviour.

2 The AA attendance sheets, for example, begin  
3 with entries in July of 2013, but I have heard  
4 from counsel and accept that Mr. Nadli starting  
5 attended AA a long time before that but just did  
6 not get attendance sheets filled in. As for the  
7 talking circle, Mr. Lockhart's letter lists all  
8 the dates on which Mr. Nadli participated. He  
9 started in May 2012 and he attended as well in  
10 August, September, October, November, and  
11 December of that year. He also attended numerous  
12 times in 2013, a total of 24 times before his  
13 jury trial took place in November 2013.

14 The only reason I mention this is because at  
15 the jury trial, Mr. Nadli testified and provided  
16 an account of events that is completely at odds  
17 with what he now admits happened. His account of  
18 events at trial was one where, to put it simply,  
19 he had done absolutely nothing wrong. So at that  
20 point, despite sobriety and despite extensive  
21 participation in the talking circle, he had not  
22 yet gained enough insight into his conduct to be  
23 prepared to take responsibility for it. At that  
24 point he was still deflecting all the blame onto  
25 the victim. He accused her of having attacked  
26 him and said that her injuries were caused when  
27 he was defending himself.

1           Of course he had the right to have a trial  
2           and he had a right to testify in his own defence,  
3           and I am certainly not going to punish him for  
4           that. This is only relevant to the extent that  
5           as recently as November 2013, Mr. Nadli was not  
6           prepared to take responsibility for his actions  
7           and was quite prepared to put the blame on the  
8           victim.

9           From what he said at the sentencing hearing  
10          and from what his counsel has said, it appears  
11          that since that date something has clicked for  
12          him and he has had a huge shift happen in terms  
13          of taking responsibility for this matter, a shift  
14          that is evidenced by his guilty plea. It is very  
15          much to his credit that this shift has happened,  
16          but I expect for him these are the first steps of  
17          what will be a long journey.

18          He has taken responsibility. He has  
19          publicly apologized to the victim when he  
20          addressed the Court, and I hope that the Crown's  
21          office, if that has not already happened, will  
22          ensure that she is aware not just that he has  
23          pleaded guilty but also he has publically  
24          apologized to her in the courtroom at the  
25          sentencing hearing.

26          Mr. Nadli's guilty plea is a mitigating  
27          factor and it is an indication that he now

1 accepts responsibility for his actions, but quite  
2 apart from what it says about his state of mind  
3 and his level of insight, the guilty plea  
4 provided this victim with certainty of outcome  
5 and has avoided the need for her to testify  
6 again. That is very meaningful. Certainty of  
7 outcome considering the high standard of proof  
8 that applies in criminal cases is very valuable  
9 to victims. Sparing this victim from having to  
10 testify again is also significant because I say  
11 again, I know, for having seen it, how difficult  
12 testifying at the November trial was for her.

13 The guilty plea is significantly mitigating,  
14 and to me it is clear that had Mr. Nadli been  
15 convicted of this offence after trial, he would  
16 be facing a much longer jail term than the range  
17 that is being suggested here.

18 Another important factor that has a bearing  
19 on the sentence to be imposed is that I am  
20 required by law to take into account that  
21 Mr. Nadli is an aboriginal offender, and I have  
22 already referred to the struggles that he has  
23 faced and how those facts played a part into his  
24 coming in conflict with the law. It is not an  
25 excuse for him to commit crimes, but as the  
26 Supreme Court of Canada has said, it is something  
27 that may reduce his level of blameworthiness,

1           which in turn is a component that is relevant to  
2           proportionality.

3           I have taken the mitigating factors into  
4           account, and I have considered carefully the  
5           requirement that I exercise restraint. Even  
6           making due allowance for those factors though,  
7           making allowance for the very sad circumstances  
8           that Mr. Nadli faced as he was growing up, the  
9           fact still is that the offence that he committed  
10          in June 2012 was extremely serious. He was out  
11          of control and caused great harm to his victim,  
12          and while his level of blameworthiness is reduced  
13          to some extent having regard to his own  
14          circumstances, it is only so up to a point.

15          His victim is an aboriginal woman with  
16          struggles of her own. This offence took place on  
17          the Hay River reserve, an aboriginal community.  
18          Mr. Nadli's community is an aboriginal community.  
19          The principle of restraint is important and it is  
20          particularly important when dealing with  
21          aboriginal offenders, but Courts must be cautious  
22          not to apply that principle in a way that results  
23          in the people who live in those aboriginal  
24          communities not being adequately protected, or in  
25          a way that fails to reflect the seriousness of  
26          the harm that is done to them when crimes are  
27          committed in their communities.

1 I have carefully considered the submissions  
2 that were presented to me on behalf of Mr. Nadli,  
3 but I conclude that a sentence at the higher end  
4 of the range proposed by the Crown is what is  
5 required here, even giving due effect to the  
6 guilty plea and the requirement for restraint.

7 The last factor that must be taken into  
8 account here today is the time that Mr. Nadli has  
9 spent on remand, and this was the subject of  
10 extensive submissions at the sentencing hearing.  
11 As I said at the outset, I will soon be filing  
12 written reasons which set out in detail my  
13 conclusions on the various legal issues that  
14 counsel addressed in their submissions. For the  
15 purposes of the reasons I am delivering now, I  
16 will simply indicate what my bottom-line  
17 conclusions are on those issues.

18 First of all, I have concluded that it is  
19 not open to me at this sentencing hearing to set  
20 aside or disregard the written entry made into  
21 the record at the time of Mr. Nadli's bail review  
22 in November 2012, to the effect that his  
23 detention is being ordered primarily because of  
24 his criminal record. I have concluded that I  
25 must treat that entry into the record as having  
26 been made pursuant to paragraph 515(9.1) of the  
27 Criminal Code. By operation of paragraph

1 719(3.1) of the Criminal Code, therefore, the  
2 remand time that accumulated after that bail  
3 review date can only be credited on a ratio of  
4 1 for 1 unless the relevant provisions are found  
5 to infringe the Charter.

6 Having concluded that, I have considered  
7 Mr. Nadli's Charter challenge to a portion of  
8 paragraph 719(3.1). I have concluded that the  
9 provision does infringe the Charter and that it  
10 is not saved by section 1. For the purposes of  
11 this sentencing I will give that provision no  
12 force or effect. I conclude that I do have  
13 discretion to grant Mr. Nadli credit on enhanced  
14 a ratio to a maximum of 1.5 to 1 for the totality  
15 of the time that he has spent on remand.

16 As of today's date, Mr. Nadli has spent 744  
17 days on remand. At the maximum credit rate at  
18 1.5 for 1, that translates into 1,116 days, which  
19 represents 3 years and 21 days.

20 There is no suggestion that there was  
21 anything particularly harsh about Mr. Nadli's  
22 detention conditions. In fact as I have already  
23 referred to, he has had access to some programs  
24 while he was on remand, and he has benefited from  
25 that.

26 In the case of *R v. Summers*, 2014 SCC 26,  
27 the Supreme Court of Canada provided guidance as

1 to what circumstances can give rise to enhanced  
2 credit for remand time under paragraph 719(3.1).  
3 At paragraph 71 of the decision, the Court said:

4 "The loss of early release taken  
5 alone will generally be a sufficient  
6 basis to award credit at a rate of  
7 1.5 to 1, even if the conditions of  
8 detention are not particularly  
9 harsh, and parole is unlikely. Of  
10 course a lower rate may be  
11 appropriate when detention was a  
12 result of the offender's bad  
13 conduct, or the offender is likely  
14 to obtain neither early release or  
15 parol."

16 Then the Court talked about where enhanced  
17 credit is not available, but in Summers the  
18 constitutional validity of that portion of the  
19 provision was not in issue.

20 I understand the Summers decision to mean  
21 that the inability to earn remission while on  
22 remand is a sufficient basis to grant enhanced  
23 credit to the maximum ratio provided by the  
24 Criminal Code. But it is always the case that  
25 within the parameters set out in the Code, the  
26 credit to be given for remand time remains a  
27 matter for the sentencing judge's discretion.

28 Having considered all of that, having  
29 considered what the maximum credit would be and  
30 having considered the submissions I heard that  
31 some of Mr. Nadli's conduct or aspects of his



1           conduct would have disentitled him to the  
2           equivalent of 14 days in remission, as his  
3           counsel put it, I have decided that for the  
4           amount of time he has spent on remand, I will  
5           give him credit for a total of 3 years.

6           Stand up, please, Mr. Nadli.

7           Mr. Nadli, for the sexual assault causing  
8           bodily harm of Ms. B, I have concluded that a fit  
9           sentence is 5 years imprisonment. I am giving  
10          you credit for the time that you have spend on  
11          remand as close to the maximum as I can. I am  
12          giving you credit for three years. The further  
13          jail term will be two years imprisonment. You  
14          can sit down.

15          I am going to direct that the warrant of  
16          committal be endorsed with a recommendation that  
17          Mr. Nadli be permitted to serve his sentence in a  
18          Northern institution so that he can continue some  
19          of the things that he has started doing while at  
20          the North Slave Correctional Centre.

21          It is not something I can order and it is  
22          not something that I would order because it is  
23          possible that there are things that Mr. Nadli  
24          could benefit from that are not available in the  
25          North, but I am sure the authorities will  
26          recognize that he has already spent a long time  
27          at the North Slave Correctional Centre. He has

1 started building the foundation, hopefully, for  
2 change and healing, and I trust that those  
3 responsible for deciding where he will serve his  
4 sentence will take into account the importance of  
5 not doing anything that would be  
6 counterproductive and do harm to the progress he  
7 has already made.

8 The Crown has sought other orders, and they  
9 will issue. There will be a DNA order because  
10 this is a primary designated offence. There will  
11 be an order that Mr. Nadli comply with the Sexual  
12 Offender Information Registry Act for a period of  
13 20 years. There will be a firearms prohibition  
14 order commencing today, expiring 10 years after  
15 Mr. Nadli's release. There will be no order for  
16 a victim of crime surcharge. The date of this  
17 offence is such that I do have discretion to  
18 waive the surcharge, and I do so because of the  
19 length of time Mr. Nadli has already spent in  
20 custody and the sentence that I am imposing  
21 today.

22 There will be an order for the return of  
23 exhibits seized to their rightful owner, if that  
24 is appropriate. Otherwise they are to be  
25 destroyed, but only at the expiration of the  
26 appeal period.

27 Is there anything I have overlooked from the

1 Crown's perspective?

2 MS. BOUCHER: I don't think so, Your Honour.

3 THE COURT: Anything from the defence  
4 perspective?

5 MR. HARTE: No. Thank you, Your Honour.

6 THE COURT: Before we close Court, I thank  
7 counsel again for their submissions on this  
8 matter.

9 Mr. Nadli, I know this is a further jail  
10 term that is lengthy, but I also heard what you  
11 said about what you are trying to do and where  
12 you want to go, and I sincerely wish you luck  
13 with that, and I hope that you will continue with  
14 all your efforts so that you can turn the page  
15 and use your many skills to contribute to your  
16 community and not ever be in a courtroom again.

17 We will close Court.

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CERTIFICATE OF TRANSCRIPT

Certified to be a true and accurate  
transcript pursuant to Rule 723 and  
724 of the Supreme Court Rules of Court.

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Karissa Irvine  
Court Reporter