

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

WINSTON BATON

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Transcript of the Reasons for Sentence delivered by The Honourable Justice S.H. Smallwood, sitting in Yellowknife, in the Northwest Territories, on the 3rd day of September, 2014.

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APPEARANCES:

Ms. W. Miller: Counsel for the Crown

Mr. T. Bock: Counsel for the Accused

(Charges under s. 271 and 151 Criminal Code of Canada)

BAN ON PUBLICATION OF THE COMPLAINANT/WITNESS  
PURSUANT TO SECTION 486.4 OF THE CRIMINAL CODE

1 THE COURT: Winston Baton was convicted of  
2 one count of sexual assault and one count of  
3 touching a person under the age of 16 years for a  
4 sexual purpose. The two charges arise from the  
5 same incident which occurred on September 21st,  
6 2012, in Wrigley.

7 The Crown is seeking a sentence of three and  
8 a half to four years' incarceration as well as a  
9 number of ancillary orders. Counsel for  
10 Mr. Baton suggested that an appropriate sentence  
11 is one of two to three years' incarceration.

12 The facts were read into the record by Crown  
13 counsel yesterday and, briefly, they are:  
14 On September 21st, 2012, Mr. Baton, along with  
15 the victim (who was 15 years old at the time) and  
16 two others, were drinking at a residence in  
17 Wrigley.

18 The victim became extremely intoxicated and  
19 had to be helped upstairs, where she passed out.

20 In the middle of the night, the victim awoke  
21 briefly and discovered Mr. Baton on top of her  
22 having sexual intercourse while she was sleeping.  
23 She passed out again, and when she came to later,  
24 she was on the stairs holding Mr. Baton's hand.  
25 She felt uncomfortable and ran to the bedroom.  
26 There, she noticed there was blood on the sheets.

27 Mr. Baton's criminal record has been filed

1 as an exhibit. His criminal record is limited  
2 but significant. He has a conviction in 2009 as  
3 a youth for break and enter and commit, and then  
4 in 2012, he has three entries for sexual  
5 offences.

6 The record is significant because on October  
7 12th, 2012, Mr. Baton was sentenced to four years  
8 for a sexual assault, sexual interference and  
9 anal intercourse. According to the pre-sentence  
10 report and update that were filed, those offences  
11 occurred in October 2011, and Mr. Baton was  
12 convicted after trial in September 2012.  
13 Mr. Baton remained on release pending his  
14 sentencing in October 2012. So these offences  
15 occurred while Mr. Baton was on release and after  
16 he had been convicted, but not sentenced, for the  
17 prior sexual offences.

18 It does not appear that Mr. Baton has any  
19 pre-trial custody that is applicable to these  
20 offences. He was sentenced to a penitentiary  
21 term in October 2012 and has been a serving  
22 prisoner since that date.

23 Mr. Baton is of aboriginal descent and this  
24 requires me to consider Section 718.2(e) of the  
25 Criminal Code where "all available sanctions  
26 other than imprisonment that are reasonable in  
27 the circumstances should be considered for all

1 offenders, with particular attention to the  
2 circumstances of aboriginal offenders."

3 I have considered, as I am required to do by  
4 the Supreme Court of Canada decisions in Gladue  
5 and Ipeelee, the principles set out in those  
6 cases and the requirement to consider the unique,  
7 systemic, or background factors which may have  
8 played a part in bringing this aboriginal  
9 offender before the courts and the types of  
10 sentencing procedures and sanctions which might  
11 be appropriate in the circumstances because of  
12 his aboriginal background.

13 Exhibit S2 consists of a pre-sentence report  
14 and an update that were completed in October 2012  
15 and on August 15th, 2014. They provide  
16 background into Mr. Baton's personal  
17 circumstances. I also have the Reasons for  
18 Sentence from October 12th, 2012, and I have  
19 heard from counsel for Mr. Baton about  
20 Mr. Baton's background and the Gladue factors.

21 Some of what I have heard is that Mr. Baton  
22 is 21 years old. He is originally from Deline  
23 but moved to Wrigley with his family when he was  
24 a youth. He is of Dene descent. He is single,  
25 has not had any significant employment, and is  
26 working on upgrading his education and hopes one  
27 day to become an electrician.

1           Mr. Baton's background is, like so many  
2           people who come before the courts in this  
3           jurisdiction, one that has been affected by  
4           dysfunction and abuse. Mr. Baton's mother left  
5           his father because of abuse when he was very  
6           young. When in Wrigley, his mother began a  
7           relationship with Mr. Tale, who has been  
8           Mr. Baton's stepfather and has been the only  
9           father figure he has had as he has had limited  
10          contact with his father.

11           While growing up, Mr. Baton lived in a  
12          residence where alcohol abuse occurred. His  
13          mother had a gambling problem and spent many  
14          evenings out gambling. There was occasional  
15          violence in the home and Mr. Baton remembers  
16          arguments and physical violence consisting of  
17          pushing and hair pulling.

18           Mr. Baton himself endured sexual abuse at  
19          the hands of an elder and later by baby-sitters.  
20          He was also bullied and beaten up in Wrigley and  
21          felt like an outsider. His stepbrothers, while  
22          they lived in the same residence as Mr. Baton,  
23          bullied him and bossed him around. All of this  
24          has negatively impacted Mr. Baton. He became a  
25          follower to stop the bullying and followed his  
26          peers into using alcohol and marijuana.

27           He does have a connection to the land, which

1 occurred primarily through his grandfather, whom  
2 he was close to, who lived in Deline. His  
3 grandfather taught him about traditional  
4 activities and living on the land, going to the bush.

5 His grandfather was a significant influence  
6 in his life, but unfortunately passed away when  
7 Mr. Baton was 12. He has also lost other family  
8 members while growing up - his stepsister and  
9 half-brother.

10 Mr. Baton himself has a five-year-old child  
11 whom he has had limited contact with. The child  
12 was custom-adopted to a relative of his  
13 ex-girlfriend and he has been incarcerated since  
14 2012, so has had limited opportunities to have  
15 contact with the child. He hopes when he is  
16 released to have a relationship with his child  
17 and to become more of a parent to the child.

18 A fundamental principle of sentencing is  
19 that the sentence must be proportionate to the  
20 gravity of the offence and the degree of  
21 responsibility of the offender.

22 The Crown has filed the case of R. v.  
23 Kodzin, a 2011 decision of this court, and also  
24 the previous sentencing decision for Mr. Baton.  
25 What Kodzin says is that the principles of  
26 deterrence, denunciation, and promotion of a  
27 sense of responsibility in the offender are the

1 primary sentencing principles in cases of this  
2 type.

3 The principle of denunciation involves  
4 denouncing unlawful conduct. Deterrence involves  
5 deterring the offender -- deterring the specific  
6 offender (so Mr. Baton) and other persons in the  
7 community from committing these types of  
8 offences.

9 The offence of sexual assault committed  
10 against females while they are asleep or  
11 unconscious occurs far too often in the Northwest  
12 Territories, something, again, which Kodzin  
13 notes. It happens frequently in virtually every  
14 community in this territory, and what the Court  
15 says when we see this offence on a weekly basis  
16 is that the principles of deterrence and  
17 denunciation must be emphasized. The women of  
18 this jurisdiction deserve no less than the  
19 Court's continual condemnation of this type of  
20 activity. And when the victim is a child,  
21 someone who is under the age of 18 years old,  
22 that is significant as well. Pursuant to Section  
23 718.01, when sentencing an offender for an  
24 offence that involves the abuse of a person under  
25 the age of 18 years old, a court is required to  
26 give primary consideration to the objectives of  
27 denunciation and deterrence. In this case, the

1 victim was 15 years old, so deterrence and  
2 denunciation are the primary considerations,  
3 followed by the other applicable sentencing  
4 principles.

5 Turning to the factors that are applicable  
6 in this case. Mr. Baton has entered a guilty  
7 plea. He waived the preliminary inquiry in this  
8 matter. The matter was later set for trial and  
9 Mr. Baton re-elected to trial by judge alone and  
10 entered a guilty plea the week before the trial.

11 Counsel for Mr. Baton advises that the  
12 timing of the guilty plea was more a factor of  
13 circumstance than a last-minute change of heart.  
14 Mr. Baton was serving his sentence in Alberta and  
15 he and counsel were communicating by telephone,  
16 but Mr. Bock wanted to speak to Mr. Baton in  
17 person given the significance of the decision  
18 that Mr. Baton had to make. While the timing was  
19 late for a guilty plea, the circumstances under  
20 which the guilty plea occurred are  
21 understandable. Significantly, the victim has  
22 not ever had to testify in this matter. So I am  
23 prepared to give Mr. Baton full credit for his  
24 guilty plea.

25 Mr. Baton, through his counsel and in  
26 speaking to the Court yesterday, has expressed  
27 his remorse for this offence. This is evident by



1 his willingness to plead guilty and also in the  
2 submissions of his counsel and his own words  
3 yesterday.

4 There are also aggravating factors in this  
5 case. It is statutorily aggravating, pursuant to  
6 Section 718.2(a)(ii.1), that the offender abused  
7 a person under the age of 18 years. The victim,  
8 as I said, was 15 years old. The offender  
9 himself was 20 years old at the time of the  
10 offence. The victim also was in a vulnerable  
11 position. She was asleep or unconscious after  
12 having consumed alcohol with the accused that  
13 evening. She was in a position where she was not  
14 able to defend herself or say no. Mr. Baton,  
15 having spent the night drinking, would have known  
16 how intoxicated the victim was. He himself was  
17 intoxicated as well, but that is not a mitigating  
18 factor. More often it shows that the accused  
19 made a bad decision while his judgment was  
20 impaired rather than committing an offence after  
21 carefully and deliberating planning it.

22 Mr. Baton was also on release at the time of  
23 this offence, having just days before been  
24 convicted of a similar offence. If there ever  
25 was a time to be concerned about the risk of  
26 consuming alcohol and what bad decisions he might  
27 make while under the influence, I would think it

1 would have been in the days following his  
2 conviction for an offence which occurred in  
3 similar circumstances. And the similarity  
4 between this offence and the previous offence on  
5 Mr. Baton's criminal record is significant. In  
6 both cases the victims were under 18, were  
7 sleeping or unconscious after consuming alcohol,  
8 and were sexually assaulted by Mr. Baton.

9 I am mindful that Mr. Baton is young and is  
10 serving another sentence. He has been in custody  
11 serving his sentence since October 2012. I am  
12 told he is doing well in custody, but, because of  
13 the outstanding charges, was not able to take any  
14 offence-specific programming. He has taken  
15 upgrading, participated in spiritual and healing  
16 programs, attended Alcoholic Anonymous and  
17 Narcotics Anonymous meetings regularly, and taken  
18 advantage of other opportunities in the  
19 institution. He is doing well, reportedly. He  
20 is motivated to better himself and to fill his  
21 time, to stay focused, and I hope that drive and  
22 motivation continues because Mr. Baton is still  
23 young, he has potential, and he has made a good  
24 decision to take advantage of what is offered in  
25 the correctional facility, and I hope, Mr. Baton,  
26 that you can take what you have learned and apply  
27 it once you are released from jail.

1           Please stand, Mr. Baton. Taking into  
2 account the circumstances and the applicable  
3 sentencing principles, I am satisfied that an  
4 appropriate sentence is three and a half years'  
5 imprisonment. The sentence imposed will be three  
6 and a half years on each count, concurrent. You  
7 may sit down. Thank you.

8           There are also a number of ancillary orders  
9 that the Crown has requested. So there will be a  
10 SOIRA order for life as this is his second  
11 conviction for sexual assault, and I understand  
12 that there was previously a SOIRA order made. As  
13 well, this offence is a primary designated  
14 offence, so there will be a DNA order. There  
15 will also be a firearms prohibition, pursuant to  
16 Section 109 of the Criminal Code, which will be  
17 for ten years. As well, considering the  
18 offender's lack of previous employment and the  
19 sentence he will be serving, it would cause undue  
20 hardship to impose the victim of crime surcharge,  
21 and since this predates the amendments to the  
22 Criminal Code, I am of the view I still have the  
23 authority to waive that, so I will be waiving the  
24 victim of crime surcharge.

25           Is there anything else, counsel?

26 MS. MILLER:                   Nothing from the Crown, Your  
27 Honour. Thank you, Your Honour.

1 THE COURT: Mr. Bock?  
2 MR. BOCK: No. Thank you very much, Your  
3 Honour.  
4 THE COURT: Counsel, thank you for your  
5 submissions and we will adjourn court.  
6 THE COURT CLERK: Thank you, Your Honour.

7 .....  
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10 Certified Pursuant to Rule 723  
11 of the Rules of Court  
12

13 Jane Romanowich, CSR(A)  
14 Court Reporter  
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