

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

LAWRENCE LLOYD BLACKDUCK

Transcript of the Reasons for Sentence delivered by The Honourable Justice S. H. Smallwood, sitting in Yellowknife, in the Northwest Territories, on the 17th day of November, 2014.

APPEARANCES:

Ms. J. Scott: Counsel for the Crown

Mr. J. Bran: Counsel for the Accused

(Charges under s. 267 and 264.1(1)(a) of
the Criminal Code of Canada)

1 THE COURT: Good morning.

2 MR. BRAN: Good morning, Your Honour. If
3 there's no concerns or objections, I'd ask that
4 Mr. Blackduck be able to sit with me for today's
5 appearance.

6 THE COURT OFFICER: No concerns, Your Honour.

7 THE COURT: All right. You can go ahead.

8 Lawrence Blackduck has entered a guilty plea
9 to assault causing bodily harm and uttering
10 threats committed on March 28, 2013. It is now
11 my task to sentence him for these offences.
12 Mr. Blackduck has been -- or assault with a
13 weapon, I should say.

14 Mr. Blackduck has been in custody since the
15 date of the offences and both counsel for the
16 Crown and the accused are suggesting a sentence
17 that is, in effect, time served for the offences.
18 They differ in what the actual sentence imposed
19 should be. The Crown is suggesting a sentence of
20 two to three years' imprisonment less credit for
21 Mr. Blackduck's guilty plea and granting him one
22 and a half days' credit for every one day in
23 custody for his pre-trial custody. Defence
24 counsel is suggesting that an appropriate
25 sentence is one of 18 months' imprisonment less
26 credit for his pre-trial custody.

27 The facts of the offence are as detailed in

1 an Agreed Statement of Facts which was filed on
2 Monday. Briefly, at approximately 8 a.m. on
3 March 28, 2013, the accused; the victim Joseph
4 Nedlin, who was 69 years old; Ernie Wedzin; and
5 Joseph Mantla, were drinking at the victim's
6 residence in Behchoko, Northwest Territories.
7 Mr. Blackduck and the victim argued over a bottle
8 of vodka and \$40. Mr. Blackduck became angry and
9 grabbed two knives from a drawer in the kitchen.
10 He stabbed the victim one time in the arm and
11 then tried to stab the victim again a few more
12 times before knocking him to the ground and
13 kicking him in the shoulder and chest area.
14 Another person, Mr. Mantla, intervened to assist
15 the victim and then a fight ensued between
16 Mr. Blackduck and Mr. Mantla. Afterwards, the
17 accused hid the knives in the kitchen. They were
18 later seized and photographed by the police, and
19 the photos depict two kitchen knives.

20 The victim went to the health centre at
21 9 o'clock that morning for treatment of his
22 injuries. He suffered a 1.75 centimetre cut to
23 his left earlobe which required three stitches, a
24 1.5 centimetre cut to his upper lip which
25 required two stitches, and a 1.5 centimetre cut
26 to his left arm which required two stitches.
27 Those were all depicted in the photographs which

1 were filed as part of the Agreed Statement of
2 Facts. He also suffered bruising on the right
3 side of this chest.

4 The accused was arrested that day at 9:08
5 a.m. and was transported to the RCMP detachment.
6 He was lodged in cells, and once in cells, yelled
7 to Corporal Landry, "I am going to kill you
8 guys."

9 So those form the facts for both offences,
10 the assault using a weapon on Joseph Nedlin and
11 the uttering threats to Corporal Landry to cause
12 death.

13 A Victim Impact Statement was filed by the
14 victim, Mr. Nedlin, and was read out in court.
15 The statement makes it clear that in addition to
16 his physical injuries, that this offence has had
17 an emotional impact on the victim as well. He
18 speaks of feeling unsafe in his home and feeling
19 more secure when out in public with others around
20 him. As well, he is scared when someone knocks
21 on his door until he determines who it is. He
22 stated that he wished to have no contact with the
23 accused.

24 The sentencing principles that are
25 applicable in an assault with a weapon are
26 deterrence, both specific and general, and
27 denunciation. That means that the sentence must

1 deter Mr. Blackduck from committing this type of
2 offence again and it must deter other individuals
3 in the community from considering committing an
4 offence of violence. And denunciation means
5 sending the message that society, the people of
6 the Northwest Territories, and the people of
7 Behchoko, do not accept this type of conduct;
8 they denounce it.

9 The separation of offenders from society and
10 the protection of the public are also
11 considerations as is the rehabilitation of the
12 offender which always has to be kept in mind.

13 There are a number of sentencing factors,
14 both aggravating and mitigating, to consider in
15 determining what an appropriate sentence is.

16 Mr. Blackduck has entered a guilty plea. He
17 had a preliminary inquiry and this matter was set
18 for trial scheduled to begin next week, on
19 November 24th. In October the Crown made an
20 offer to resolve the matters and, on November 3rd
21 this year, counsel for Mr. Blackduck indicated at
22 the bail review that Mr. Blackduck wanted to
23 resolve the matters. So he has entered a guilty
24 plea to the assault with a weapon and utter
25 threats charges and the more serious aggravated
26 assault charge has been stayed.

27 Mr. Blackduck deserves some credit for his

1 guilty plea because it removed the necessity of
2 holding a jury trial and saved the victim from
3 having to testify about the assault. However, it
4 cannot be considered an early guilty plea and
5 should not receive the full credit reserved for
6 early guilty pleas.

7 Mr. Blackduck is 46 years old and has an
8 extensive criminal record. He has approximately
9 104 convictions starting in 1989 and continuing
10 through to 2013. He has amassed convictions in
11 every year in between those two dates with the
12 exception of 1991 and 1998. He has frequently
13 received sentences of imprisonment. He has
14 convictions for offences of violence,
15 approximately 15 of them. He has eight
16 convictions for assault, two convictions for
17 assaulting a peace officer, a conviction for
18 sexual assault, and four convictions for uttering
19 threats. Based on your criminal record

20 Mr. Blackduck, I am not sure that there is
21 anything that I can say to you that has not
22 already been said by another judge probably on
23 more than one occasion.

24 Looking at the circumstances of the offence,
25 an assault with a weapon, particularly a knife,
26 where someone is stabbed is a serious offence,
27 one punishable by up to ten years' imprisonment.

1 When it comes to stabbings, the difference
2 between a minor injury and a more serious injury,
3 and that includes stabbings that have resulted in
4 death, is often a matter of centimetres and
5 frequently is a matter of luck. So Mr. Blackduck
6 is lucky that there were not more serious
7 injuries suffered by the victim. This easily
8 could have turned out much worse.

9 The assault itself occurred after an
10 argument with the victim, after arguing over
11 vodka and money. Mr. Blackduck introduced a
12 knife into the situation and attacked the victim
13 and stabbed him.

14 The introduction of a knife into the
15 argument is an aggravating factor and increases
16 the level of moral blameworthiness of the
17 offender. The victim suffered three wounds, each
18 of which required stitches. He also suffered
19 emotional injuries as related in the Victim
20 Impact Statement.

21 The assault on the elderly victim occurred
22 after drinking with the victim and others prior
23 to the offence. So like many offenders who come
24 before the courts in this jurisdiction, the
25 consumption -- the abuse of alcohol is part of
26 the offence and part of the offender's
27 background. Indeed, his abuse of alcohol, I am

1 advised, is a factor in many of the convictions
2 on Mr. Blackduck's criminal record.

3 Mr. Blackduck is an aboriginal person and
4 Section 718.2(e) of the Criminal Code must be
5 considered where "all available sanctions other
6 than imprisonment that are reasonable in the
7 circumstances should be considered for all
8 offenders, with particular attention paid to the
9 circumstances of aboriginal offenders." These
10 are often referred to the Gladue or Ipeelee
11 factors based on the Supreme Court of Canada
12 decisions. I have considered the principles set
13 out in those cases. They require me to consider
14 the unique systemic or background factors which
15 might have played a part in bringing Mr.
16 Blackduck before the courts and the types of
17 sentencing procedures and sanctions which might
18 be appropriate considering his aboriginal
19 background.

20 In this case, I have heard that
21 Mr. Blackduck, who is a member of the Tlicho, was
22 born in Yellowknife and has lived in Yellowknife
23 or Behchoko for all of his life. His education
24 was limited and he only attended school for a
25 couple of years. His first language is Tlicho
26 and he has been making efforts to learn and
27 improve his English.

1 His family was apparently not impacted by
2 attendance at residential schools, but that is
3 not clear as the topic is one that was not
4 discussed in his family.

5 His family lived a traditional lifestyle and
6 lived off the land. He has participated in
7 traditional activities such as harvesting and
8 hunting and, also, including hand games and drum
9 dances.

10 His family history with alcohol appears to
11 be limited. He recalls his father consuming
12 alcohol from time to time and does not recall any
13 violence within his family. Mr. Blackduck does
14 recall witnessing violence within the community
15 of Behchoko as he was growing up.

16 Mr. Blackduck began consuming alcohol as a
17 teenager and alcohol has played a significant
18 part of his life. It has resulted in many
19 convictions and he has spent a significant amount
20 of time in jail, albeit in relatively short but
21 frequent jail sentences. This has had other
22 effects. While serving one sentence in jail, his
23 sister committed suicide, and during another, his
24 mother passed away.

25 With respect to pre-trial custody, the
26 standard is credit is imposed on a one-to-one
27 basis. Section 719(3.1) of the Criminal Code

1 states that if the circumstances justify it, I
2 can grant up to one and a half days for every one
3 day in pre-trial custody unless the accused has
4 been detained primarily because of convictions on
5 his record. Mr. Blackduck was detained primarily
6 because of his record.

7 In R. v. Nadli, a decision of this court
8 from earlier this year, that portion of Section
9 719(3.1) that relates to the detention on the
10 basis of prior criminal convictions was declared
11 unconstitutional and of no force and effect. I
12 adopt the reasoning in Nadli and, in sentencing
13 Mr. Blackduck, I am of the view that if the
14 circumstances justify it, I can grant up to one
15 and a half days' credit for every day in remand
16 time.

17 Mr. Blackduck has been in custody since his
18 arrest on March 28th, 2013. While in custody, in
19 terms of programming, counsel advises that
20 Mr. Blackduck has taken the programs that were
21 available to him on remand and that there were
22 other programs that he was interested in taking
23 that he was not eligible to take. Mr. Blackduck
24 has taken resumé writing and an anger management
25 program called Creating New Choices while he has
26 been in custody. He has also attended Alcoholics
27 Anonymous meetings on several occasions between

1 April and August of 2014. Mr. Blackduck also
2 says that he has been working on his education,
3 on improving his English and learning to read and
4 write, and he is planning on continuing his
5 education when he gets out.

6 Mr. Blackduck, I hope that you follow
7 through with what you have started, because if
8 you are going to stay out of trouble, then you
9 will have to manage your drinking and continue to
10 work on yourself by taking programs and
11 continuing your education.

12 Mr. Blackduck has spent about 601 days in
13 custody as of today, which is about 20 months.
14 If Mr. Blackduck were to receive
15 one-and-a-half-to-one credit, that would amount
16 to 30 months' credit for pre-trial custody.
17 Taking into account Mr. Blackduck's
18 circumstances, including the loss of early
19 release, I am satisfied that Mr. Blackduck should
20 receive one-and-a-half-to-one credit and so I
21 have credited him with 30 months of pre-trial
22 custody.

23 Dealing first with the ancillary orders
24 requested by the Crown, there will be a firearms
25 prohibition order pursuant to Section 109 of the
26 Criminal Code. It will begin today and end ten
27 years after your release from prison. The

1 assault with a weapon is a primary designated
2 offence and there will be a DNA order.

3 Stand up please, Mr. Blackduck. In
4 considering the principles and objectives of
5 sentencing, the personal circumstances of
6 Mr. Blackduck as an aboriginal offender,
7 Mr. Blackduck's previous criminal record,
8 including his prior offences of violence, the
9 seriousness of these offences and Mr. Blackduck's
10 guilty plea, I am satisfied that an appropriate
11 sentence for the offence of assault with a weapon
12 is one of 24 months. For the offence of uttering
13 threats, I sentence you to a period of
14 imprisonment of six months to be served
15 consecutively. Therefore, your sentence is one
16 of 30 months' imprisonment, and I am giving you
17 credit of 30 months for your pre-trial custody of
18 20 months, which means that your sentence will be
19 one of time served. You can sit down.

20 THE ACCUSED: Thank you.

21 THE COURT: You will be subject to a
22 probation order for a period of 12 months. It
23 will have the following conditions, which are the
24 statutory conditions. So you are required by the
25 Criminal Code to keep the peace and be of good
26 behaviour, to appear before the Court when
27 required to do so by the Court, and to notify the

1 Court or the probation officer in advance of any
2 change of name or address and promptly notify the
3 court or the probation officer of any change of
4 employment or occupation. In addition to those
5 conditions which are required by the Criminal
6 Code, there will be some additional conditions,
7 and so you are to report to your probation
8 officer within five days of your release and
9 thereafter as directed, you are to have no
10 contact with Joseph Nedlin, and you are not to go
11 within 50 metres of Joseph Nedlin's residence.

12 The amendments to Section 737 dealing with
13 the victim of crime surcharge and which make it
14 mandatory to impose the surcharge came into
15 effect on October 24th, 2013, so after
16 Mr. Blackduck committed these offences, and I am
17 of the view that they are prospective only, so
18 given Mr. Blackduck's limited employment history
19 and his limited financial resources, I am going
20 to waive the imposition of the victim of crime
21 surcharge.

22 Counsel, is there anything that I have
23 missed?

24 MS. SCOTT: No.

25 THE COURT: Anything else that needs to be
26 dealt with?

27 MR. BRAN: No. Thank you.

1 THE COURT: Thank you, counsel, for your
2 submissions, and good luck, Mr. Blackduck.

3 THE ACCUSED: Thank you.

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7 Certified Pursuant to Rule 723
8 of the Rules of Court

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11 Jane Romanowich, CSR(A)
12 Court Reporter

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