

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- vs. -

BENJAMIN WILLIAM VANELTSI

Transcript of the Sentencing by The Honourable
Madam Justice S. Smallwood, at Inuvik in the Northwest
Territories, on 5th June A.D., 2013.

APPEARANCES:

Ms. W. Miller: Counsel for the Crown
S. Petitpas, Esq.: Counsel for the Accused

Charge under s. 348(1)(B) Criminal Code of Canada

1 Proceedings taken at Sentencing, in the Supreme Court
2 of the Northwest Territories, at Inuvik, Northwest
3 Territories.

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5 5th June, 2013

6 The Honourable Madam of the Supreme Court of
7 Justice S. Smallwood the Northwest Territories

8 Ms. W. Miller For the Crown

9 S. Petitpas, Esq. For the Accused

10 D. Sirman, CSR(A) A.C.E. Reporting Services Inc.

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12 MS. MILLER: Good morning, Your Honour.

13 THE COURT: Good morning, Ms. Miller.

14 MS. MILLER: We have Mr. Vaneltsi here.

15 I'm not sure if Your Honour is prepared to begin
16 with the decision. We're in the Court's hands.

17 THE COURT: Yes. Yes. We can begin
18 with Mr. Vaneltsi's decision and I think we will
19 take a brief adjournment and then continue with
20 the trial of Mr. Neyando.

21 Yesterday Benjamin William Vaneltsi pleaded
22 guilty to one count of breaking and entering and
23 committing the indictable offence of mischief
24 over \$5000 contrary to section 348(1)(b) of the
25 Criminal Code. This morning it is my task to
26 sentence him for this offence. The facts of the
27 offence are as detailed in the Agreed Statement

1 of Facts filed yesterday which I will briefly
2 summarize.

3 On two occasions the Accused broke into the
4 John Tetlichich Building in Fort MacPherson and
5 caused significant damage to the offices of Mary
6 Ruth Wilson and Hazel Nerysoo. On April 29, 2012
7 the R.C.M.P. in Fort MacPherson received a report
8 of a break-in at the John Tetlichich Building, a
9 building which houses offices of the Government
10 of the Northwest Territories. There was
11 extensive damage as depicted in the photographs
12 Exhibit S-3. The office of Mary Ruth Wilson was
13 damaged and the total cost of the damage was
14 \$4,320. The office of Hazel Nerysoo was also
15 damaged and the cost of damage for her office was
16 \$1575. Blood was located at the scene and sent
17 away for analysis. No one was arrested at that
18 time.

19 On August 8, 2012 another break-in was
20 reported at the John Tetlichich Building. Two
21 offices were broken into, and again they were
22 those of Mary Ruth Wilson and Hazel Nerysoo. The
23 photographs again depict the damage which was
24 extensive. The total cost of the damages to both
25 offices was \$12,262.69.

26 Muddy footprints were observed at the scene.
27 The offender had been arrested and lodged in

1 R.C.M.P. cells because of another incident, and
2 at that time it was observed that the tread
3 pattern on his shoes appeared to match that of
4 the footprints that were in the building.

5 Later the blood submitted from the first
6 incident was determined to match the offender's
7 DNA profile which had been placed on the DNA data
8 bank. He subsequently gave a warned statement
9 admitting to both break-ins and saying that he
10 had done so because Hazel Nerysoo and Mary Ruth
11 Wilson made fun of him and he heard that they did
12 not like him. He had had no way of getting at
13 them so he broke into their office and smashed
14 things.

15 On sentence the Crown is seeking a sentence
16 of 12 months imprisonment to be followed by
17 12 months of probation. The Defence is however
18 suggesting that a conditional sentence of
19 imprisonment would be appropriate in the
20 circumstances and is requesting that a 15- to
21 18-month conditional sentence be imposed followed
22 by 12 months of probation.

23 There are a number of factors to consider in
24 crafting an appropriate sentence in this case.
25 In mitigation the offender has entered a guilty
26 plea and has done so at an early opportunity.
27 Notwithstanding that the offence occurred

1 starting in April of 2012, Mr. Vaneltsi at his
2 first appearance in November 2012 elected Supreme
3 Court Judge alone and did not request a
4 Preliminary Inquiry. Shortly after this the
5 following week counsel for Mr. Vaneltsi advised
6 the court that he wished to set this matter down
7 for disposition. So no witnesses have been
8 required to testify at any stage in this
9 proceeding. So the offender is entitled to the
10 full credit for an early guilty plea.

11 There are aggravating factors as well. The
12 amount of damage caused by the offender was
13 significant. Over \$18,000 in damages over both
14 incidents. This offence involved two incidents
15 separated by several months so this was not just
16 a one-time thing. The Accused Mr. Vaneltsi has
17 readily admitted his motive. His counsel
18 characterized the offender's actions as being in
19 response to the bullying of Ms. Wilson and
20 Ms. Nerysoo. The offender in providing a
21 statement to the police and in addressing the
22 court yesterday admitted that he damaged the
23 offices on two occasions for how the two ladies
24 had treated him. In his statement to the police
25 he stated that they did not like him and they
26 made fun of him. It's not clear to what extent
27 this occurred, but if it did then I sympathize

1 with the offender, but his response, his actions,
2 were wrong. This is not how you respond to
3 people who you believe are mistreating you. The
4 offender's actions affected not just Ms. Wilson
5 and Ms. Nerysoo but must have gone farther and
6 had an impact on other people who work in the
7 building, and I say that because of the
8 photographs which show the damage which was
9 extensive, and also because this is a building
10 with government offices and it likely would have
11 had an impact on members of the community who had
12 to access those offices.

13 The offender also has a criminal record
14 which is a fairly significant one. He has 37
15 convictions starting in 1993 and continuing up to
16 2009. There are a variety of offences on his
17 criminal record including offences against the
18 administration of justice, property offences,
19 driving offences and offences of violence.

20 In considering whether a conditional
21 sentence should be imposed the court is required
22 to consider four factors pursuant to
23 section 742.1 of the Criminal Code. Counsel
24 agree that the amendments which came into force
25 in November 2012 were not retroactive in their
26 effect and I agree. So the factors are that
27 Mr. Vaneltsi must be convicted of an offence

1 which is not punishable by a minimum term of
2 imprisonment and otherwise complies with
3 section 742.1; the court must be considering a
4 sentence of less than two years imprisonment;
5 service of a sentence in the community would not
6 endanger the community and also would be
7 consistent with the fundamental purpose and
8 principles of sentencing as detailed in sections
9 718 to 718.2 of the Criminal Code.

10 The first two factors are met in this case.
11 This is an offence which qualifies and for which
12 there is no minimum term of imprisonment, and the
13 Crown is not seeking and the court is not
14 considering a sentence of more than two years.
15 In considering whether serving a sentence in the
16 community would endanger the community the court
17 must consider the threat posed by the specific
18 offender and not the broader risk of undermining
19 respect for the law. It includes a consideration
20 of the risk of any criminal activity including
21 property offences and whether there is a risk
22 that the offender will re-offend and the gravity
23 of the damage that could ensue.

24 The offender in this case is 41 years old.
25 He is single, born in Inuvik, and resides in
26 Fort MacPherson with his sister. He is the
27 youngest of seven siblings. His sister who is

1 the oldest is willing to have Mr. Vaneltsi
2 continue to reside with her while serving a
3 conditional sentence.

4 The offender's criminal history which I have
5 briefly referred to above must be considered in
6 determining whether a conditional sentence would
7 endanger the community. Mr. Vaneltsi's criminal
8 history goes back 20 years. He has five
9 convictions for property offences on his criminal
10 record. In 1999 a conviction for attempt to
11 break and enter with intent for which he received
12 a sentence of 30 days. A mischief conviction in
13 1999 as well for which he received 15 days
14 consecutive to other sentences he was serving.
15 A break and enter with intent and an unlawfully
16 in a dwelling house in 2004 for which he received
17 eight months and two months respectively. A take
18 motor vehicle without consent in 2008 for which
19 he received a suspended sentence and probation
20 for 12 months. He has 17 convictions for
21 offences against the administration of justice
22 going back to 1993 and continuing up to 2009.
23 The offences include failing to comply with a
24 recognizance, driving while disqualified, failing
25 to appear and multiple convictions for failing to
26 comply with an undertaking and failing to comply
27 with a probation order.

1 The accused's history of complying with
2 court orders is also a concern. On November 24,
3 1994 Mr. Vaneltsi was sentenced for careless
4 storage and an assault and received a suspended
5 sentence and one year probation. On May 11, 1995
6 he was sentenced for an assault causing bodily
7 harm and failing to comply with a recognizance.
8 At that time he would have been on that probation
9 order although there has been no conviction for
10 failing to comply with probation. While the date
11 of the assault and failing to comply with the
12 recognizance are unknown there is a possibility
13 that he committed those offences while on
14 release.

15 Giving Mr. Vaneltsi the benefit of the doubt
16 I cannot conclude that he failed to comply with
17 that first probation order. However, the next
18 order that he was on, which was imposed by the
19 court, he was placed on a driving prohibition on
20 November 20, 1996 for three months. On April 10,
21 1997 he was convicted of driving while
22 disqualified. Mr. Vaneltsi was subsequently
23 placed on two further driving prohibitions which
24 he apparently complied with. The next order that
25 he was placed on pursuant to a sentencing was a
26 probation order on August 8, 2008 when he
27 received a 12-month probation order. On May 13,

1 2009 he was convicted of five failing to comply
2 with probation order offences for breaches which
3 occurred on March 17, 2009, March 21, 2009 and
4 April 29, 2009.

5 Interspersed on his criminal record are also
6 a number of convictions for failing to comply
7 with conditions of release in 1995, 1999, 2000,
8 2004 and 2008. Based on his history of
9 compliance and committing substantive offences I
10 have some concerns about Mr. Vaneltsi's ability
11 to comply with conditions that might be imposed
12 on a conditional sentence.

13 I must also consider whether a conditional
14 sentence would be consistent with the fundamental
15 purpose and principles of sentencing. In the
16 case of Nitsiza, which was provided by the Crown
17 yesterday, that case has some similarities and
18 some differences with the case before me today.
19 Each case and each offender must be considered on
20 their own individual circumstances, but that case
21 is useful in that it demonstrates that the
22 sentencing principles that the court can consider
23 as important are deterrence as well as
24 rehabilitation.

25 Considering the circumstances of the offence
26 and the offender's personal circumstances I
27 believe that deterrence is important in this

1 case, both specific and general. Specific
2 deterrence is required to send a message to
3 Mr. Vaneltsi that he cannot deal with his
4 problems with people in this manner. While he
5 did not deal with his problems with these two
6 women in a physical manner his actions are still
7 serious. He caused significant damage to their
8 offices on two occasions.

9 General deterrence is also required to send
10 a message to the community and members of the
11 public that this type of behaviour, the flagrant
12 destruction of offices on two occasions, will not
13 be tolerated by the courts.

14 Rehabilitation is another principle that I
15 must consider. While I have not heard much about
16 the offender's prospects for rehabilitation I
17 cannot conclude that his prospects are small or
18 that there is no point in considering
19 rehabilitation. The gaps in his record over the
20 past few years demonstrate that the offender has
21 the ability to refrain from committing offences.
22 So he has the ability to manage the issues
23 whether it's alcohol or anger management to an
24 extent; but obviously given the last conviction
25 that I am dealing with today that is still an
26 issue, and there is still a concern with his
27 ability to do so over the long term.

1 Reparations for harm done to victims and the
2 community is another sentencing principle in the
3 Criminal Code. The amount of damage done in this
4 case was significant and the impact upon the
5 victims and the community is something that I
6 cannot ignore. I have addressed it earlier so I
7 will simply say having looked at the photographs
8 of the damage I can easily see how \$18,000 in
9 damage was done, and that it must have had an
10 impact on the victims as well as members of the
11 public who frequent the building.

12 A sentence must also be proportionate to the
13 gravity of the offence and the degree of
14 responsibility of the offender. As I mentioned
15 while I suppose we can be thankful that
16 Mr. Vaneltsi chose not to physically assault
17 these two women that he had the issues with the
18 damage caused was intentional, significant and
19 occurred on two occasions with several months
20 in-between. So there is a high degree of
21 responsibility with respect to Mr. Vaneltsi's
22 actions.

23 I must also pursuant to the Gladue and
24 Ipeelee decisions of the Supreme Court of Canada
25 consider the aboriginal background of the
26 offender and whether sanctions other than
27 imprisonment should be considered. In addition

1 to what I have already referred to I have heard
2 that the offender is unemployed and has a Grade 7
3 education. He is of Gwitch'in descent and
4 participates in traditional activities like
5 trapping. His father attended residential school
6 and his parents struggled with alcohol while he
7 was growing up. The offender himself started
8 drinking at a young age and struggles with
9 alcohol. According to his counsel most of the
10 offences on his criminal record have involved
11 alcohol, and what I have heard about Mr. Vaneltsi
12 sadly is not unusual. The courts in the
13 Northwest Territories are burdened with offenders
14 of aboriginal descent who have either attended
15 residential school or have had a parent who
16 attended residential school. The abuse of
17 alcohol frequently predominates their background
18 either through abuse by their parents of alcohol
19 or the offender's ongoing struggles with it or
20 both; and I do not know that I have the answer or
21 that we can solve these problems, but courts
22 struggle to craft appropriate sentences for
23 aboriginal offenders while attempting to respect
24 the other sentencing principles.

25 Considering all of these circumstances I am
26 not satisfied that the offender serving a
27 sentence in the community meets the last two

1 principles required under section 742.1, that of
2 endangering the community and meeting the
3 fundamental purpose and principles of sentencing.
4 Based on the circumstances of the offence and of
5 the offender I believe that a sentence of
6 incarceration is appropriate.

7 Stand up, Mr. Vaneltsi. For the offence of
8 breaking and entering and committing the offence
9 of mischief over \$5000 I sentence you to
10 ten months of imprisonment. It will be followed
11 by a probation order of nine months which will
12 have the following conditions: It will have the
13 statutory conditions which are that you are to
14 keep the peace and be of good behaviour; appear
15 before the court when required to do so by the
16 court; and to notify the court or the probation
17 officer in advance of any change of name or
18 address and promptly notify the court or the
19 probation officer of any change of employment or
20 occupation.

21 In addition, there will be optional
22 conditions that you report to your probation
23 officer within three working days of your release
24 from custody and thereafter as directed. You are
25 to take counselling as directed by your probation
26 officer. You are to have no contact with Hazel
27 Nerysoo or Mary Ruth Wilson and you are not to go

1 to their residence or place of work wherever that
2 may be. You are not to attend the John Tetlich
3 Building in Fort MacPherson without the written
4 permission of your probation officer. You are
5 not to consume or possess alcohol or
6 nonprescription drugs.

7 Do you understand these conditions?

8 THE ACCUSED: Yeah.

9 THE COURT: There will also be a stand
10 alone Restitution Order for \$18,157.69 payable to
11 the Government of the Northwest Territories. The
12 victim of crime surcharge will be waived given
13 the hardship that it would impose on
14 Mr. Vaneltsi. You can sit down now,
15 Mr. Vaneltsi.

16 Is there anything else, Counsel, that we
17 need to deal with?

18 MS. MILLER: No. Thank you, Your
19 Honour.

20 MR. PETITPAS: Nothing further. Thank
21 you.

22 THE COURT: Thank you. All right. So
23 that is Mr. Vaneltsi's matter.

24

25 **PROCEEDINGS CONCLUDED**

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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.

Dated at the City of Edmonton,
Province of Alberta, this 28th day of January, 2014.

D. Sirman, CSR(A)
A.C.E. Reporting Services Inc.