

R. v. Buggins, 2014 NWTSC 24

S-1-CR2011000143

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- vs. -

WILFRED LAWRENCE BUGGINS

Transcript of the Reasons for Sentence by The Honourable
Justice V.A. Schuler, at Hay River in the Northwest
Territories, on March 4th A.D., 2014.

APPEARANCES:

Mr. M. Lecorre:	Counsel for the Crown
Ms. C. Wawzonek:	Counsel for the Accused

1 THE COURT: Wilfred Lawrence Buggins has
2 pleaded guilty to, and now stands convicted
3 of, manslaughter. He has admitted that on
4 February 5th, 2011, near Enterprise here in
5 the Northwest Territories, he shot and killed
6 his younger brother Roy. The facts admitted
7 by Mr. Buggins are that he, his brother, and
8 others were drinking for some hours on
9 February 4, 2011. Eventually Mr. Buggins, his
10 brother Roy, and a friend Mr. Hudson ended up
11 at Mr. Buggins' cabin near Enterprise.

12 Mr. Hudson observed Mr. Buggins and his
13 brother arguing throughout the evening.
14 During an argument about money, Mr. Buggins
15 was heard to tell his brother "I should just
16 shoot you, my brother" and the brother Roy
17 replied "well I dare you". After Mr. Hudson
18 helped Mr. Buggins to his bed, Mr. Hudson
19 could hear Mr. Buggins' brother trying to get
20 Mr. Buggins to continue drinking with him.

21 At some point in the early morning hours
22 of February 5th, Mr. Buggins shot his brother
23 Roy twice in the abdomen area with a rifle
24 that belonged to Mr. Buggins. Roy was sitting
25 in a chair in the livingroom at the time.
26 Mr. Buggins says, and it is an agreed fact,
27 that he had blacked out from alcohol

1 consumption and does not remember what
2 occurred. He was noted to be staggering and
3 slurring his words and not making sense even
4 before they got to the cabin, and he was seen
5 by Mr. Hudson to fall down on his way to the
6 washroom when they were at the cabin.

7 When Mr. Buggins woke up early on the
8 morning of February 5th, he saw that his
9 brother was dead and he told Mr. Hudson that
10 he had shot and killed him. He was noted to
11 still be intoxicated at that time.

12 They went to Hay River where Mr. Buggins
13 went to the RCMP detachment but no officers
14 were there. He was arrested about an hour
15 later at a friend's house. All of these
16 facts, and some others, are set out in the
17 Agreed Statement of Facts filed as Exhibit S-1
18 on this sentencing.

19 Mr. Buggins is now 69 years old. He will
20 turn 70 this year. He is the fourth eldest of
21 12 children in a close family brought up in a
22 traditional lifestyle.

23 At the age of four or five, Mr. Buggins
24 and some of his siblings were taken to
25 residential school in Fort Resolution. He
26 spent six years there and his lawyer, Ms.
27 Wawzonek, has related to the Court that he was

1 abused there. His sisters, to whom Ms.
2 Wawzonek has spoken, believe that he has been
3 left scarred by his residential school
4 experience and that it led him to live an
5 isolated and solitary life. It was after his
6 residential school experience that Mr. Buggins
7 began to abuse alcohol by binge drinking.

8 Mr. Buggins has worked on oil rigs and in
9 mining camps but he has always had a trapline
10 to provide food and fur. He is described as
11 illiterate but intelligent. His family
12 describes him as a skilled and successful
13 hunter, as well as kind, generous, and gentle.
14 He provides meat and wood for family members
15 and helps them and others with various
16 repairs.

17 Ms. Wawzonek also reports that family
18 members say that Mr. Buggins and his brother
19 would squabble and argue while drinking
20 together. It is said that the brother Roy
21 would bully Wilfred Buggins and they would
22 have arguments about who had better trapping
23 skills.

24 Mr. Buggins has a somewhat dated criminal
25 record. He had a couple of convictions for
26 theft in the 1970s, which I consider to be
27 irrelevant to the current offence. In 1987,

1 he was convicted of assault, mischief and
2 careless use of a firearm, and received fines
3 and a period of probation. That was over 20
4 years ago. In 2006, he was convicted of
5 assaulting a peace officer and was sentenced
6 to time served of one day, from which I infer
7 that it was not a very serious example of that
8 offence. The record therefore carries little
9 weight, however, the past convictions for
10 assault are relevant because they also involve
11 violence or the threat of violence against
12 another person. The conviction for careless
13 use of a firearm is also relevant although it
14 is from so long ago that, as I said, it is of
15 little weight.

16 Although no victim impact statements were
17 provided to the Court, Ms. Wawzonek has
18 related to the Court things that Mr. Buggins'
19 sisters have told her. They are supportive of
20 Mr. Buggins and expressed disbelief that he
21 could have shot his and their brother. They
22 used the words "grief", "heartache", "pain"
23 and "confusion" to describe their reaction to
24 this tragedy and they express relief that
25 their mother is not still alive to know that
26 it happened. And it truly is a tragedy, one
27 that any family would have difficulty

1 understanding and coping with. Still,
2 Mr. Buggins' sisters hope that he will
3 eventually rejoin his family.

4 The fact that there really is no
5 explanation as to why Mr. Buggins shot his
6 brother also makes this case tragic. Ms.
7 Wawzonek indicated that the brothers were
8 accustomed to drinking together. It appears
9 that they would drink together and nothing
10 more serious than arguments would happen.
11 According to the facts that have been agreed
12 upon, when Roy Buggins dared Wilfred to shoot
13 him it was in the context of an argument over
14 money. There is no indication that it was
15 anything very serious. Unfortunately, there
16 simply is no explanation as to why this
17 happened and that must make it even more
18 difficult for the family because it makes what
19 happened so senseless.

20 As in any case, the Court has to consider
21 the mitigating and aggravating factors.

22 A guilty plea is virtually always
23 considered to have a mitigating effect on
24 sentence. In this case, the plea came in time
25 enough that the Court was able to cancel the
26 jury trial that had been scheduled on the
27 charge that Mr. Buggins was originally facing,

1 which was second-degree murder. So the guilty
2 plea has saved the time and resources that
3 would have gone into that trial. Crown
4 counsel concedes that the guilty plea was
5 brought forward in a timely manner and should
6 be given full credit. The guilty plea also
7 indicates that Mr. Buggins is taking
8 responsibility for the terrible thing that he
9 did, so it is a significant mitigating factor
10 in this case.

11 It is also a mitigating factor that
12 Mr. Buggins tried to turn himself into the
13 police very shortly after the shooting.

14 Although his criminal record means that
15 Mr. Buggins cannot claim to be a first
16 offender, I do take into account that at the
17 age of almost 70, he has a minimal record.

18 In my view, the fact that Mr. Buggins, who
19 is an experienced hunter and trapper, picked
20 up a gun and used it while intoxicated is an
21 aggravating factor. He well knew the dangers
22 of guns, I am sure, and I have no doubt that
23 he also knew that alcohol and guns are a very
24 dangerous and often deadly combination. And
25 although this is not a breach of trust
26 situation where the victim is dependent in
27 some way on the offender, there is an element

1 of breach of trust here because family members
2 are supposed to support and help each other;
3 they expect that from each other. There is a
4 form of trust between them, and Mr. Buggins
5 broke that trust when he shot his brother.

6 The maximum punishment that can be imposed
7 on a conviction for manslaughter is life
8 imprisonment. Taking the life of another
9 person is generally considered the most
10 serious offence that an individual can commit.
11 In this case, because a firearm was used in
12 the killing, Section 236(a) of the Criminal
13 Code provides that a minimum jail sentence of
14 four years must be imposed.

15 Counsel have reviewed cases from the
16 Northwest Territories that involve
17 circumstances similar to this case, and they
18 have jointly submitted four such cases.
19 Although each case and each offender are
20 different, other cases are important because
21 one of the principles of sentencing is that a
22 sentence should be similar to sentences
23 imposed on similar offenders for similar
24 offences committed in similar circumstances.
25 Based on the cases submitted, Crown counsel
26 says that a sentence of six years in jail less
27 credit for the remand time is appropriate.

1 Defence counsel says that a sentence of four
2 years, or close to that, less the remand time
3 is appropriate.

4 Two of the cases cited, Andre-Blake and
5 Emile, did not involve firearms and therefore
6 the four year minimum was not applicable. In
7 Andre-Blake, the offender had a lengthy
8 related record and started the drunken fight
9 which he ended by stabbing his cousin who
10 died. In Emile, the accused, who was a very
11 young man with a minor record, fought with his
12 brother, assaulted his sister, and then chased
13 after the brother with a knife and stabbed him
14 to death. In each of those cases, six years
15 was considered an appropriate sentence and was
16 imposed less credit for remand time.

17 In the Caisse case, a five year sentence
18 was imposed where the offender shot and killed
19 someone who had assaulted him in his own home.
20 There were some aggravating factors in that
21 case, including the fact that the offender had
22 a related firearms record and was prohibited
23 from possessing a firearm at the time of the
24 offence.

25 In Elias, the offender shot and killed his
26 brother and also a second person who did not
27 die. The shootings happened in the context of

1 an argument about the offender's son's
2 suicide, which one would infer would be a very
3 emotional subject matter for the offender.
4 Upon a joint submission for a sentence of six
5 to eight years, six years less credit for
6 remand time was imposed.

7 The offenders in Andre-Blake, Elias, and
8 Emile all entered guilty pleas as has
9 Mr. Buggins. As always, none of the cases
10 submitted are exactly the same as Mr. Buggins'
11 case and the Court has to ensure that the
12 sentence in this case takes into account the
13 specific circumstances of this case and of
14 Mr. Buggins.

15 In cases of manslaughter, the principles
16 of sentencing that are of most importance are
17 denunciation, in other words, showing how
18 society condemns and rejects the behaviour of
19 the offender; and general deterrence, meaning
20 that the sentence should serve to deter or
21 stop others from behaving this way. And
22 perhaps I should use the term discouraging
23 rather than stop because it is more realistic.
24 I do note that usually it is a younger man
25 that comes before the Court for an offence
26 like this. Rarely do we see an individual of
27 Mr. Buggins' years before the Court for

1 killing another person.

2 The sentence must also be proportionate,
3 which means that it should reflect the
4 seriousness of the offence and the degree of
5 responsibility of the offender.

6 I have already spoken about the
7 seriousness of this offence.

8 The degree of responsibility of the
9 offender or what is sometimes called the moral
10 blameworthiness, in this case, in my view, is
11 significant. Mr. Buggins, as I have said, is
12 used to handling guns, he has been drinking
13 for a long time, so there can be no question
14 that he was aware of the dangers of mixing the
15 two.

16 I accept that Mr. Buggins has been
17 scarred, that likely he has been traumatized
18 by his residential school experience, but it
19 would be speculation to say that that is what
20 actually led to the shooting. As terrible as
21 his time at residential school was for
22 Mr. Buggins, he has been able to live, for the
23 most part, a law-abiding life despite that
24 experience.

25 We know from the agreed statement of facts
26 that has been filed, and the facts that are
27 admitted, that Mr. Buggins shot his brother

1 not once but twice while Roy was sitting in a
2 chair. The only logical conclusion, in my
3 view, is that Wilfred Buggins was angry at
4 Roy. Maybe he also harbors anger for what
5 happened to him at residential school. But in
6 any event, fuelled by alcohol on this
7 particular occasion, he did not control that
8 anger and he shot his brother. The exact
9 cause of his anger, I suppose, will never be
10 known. It may have been the argument over
11 money, it may have been the dare, it may have
12 been because he wanted to sleep and Roy
13 Buggins wanted him to drink. Whatever it was,
14 sadly there is not anything very unusual or
15 unique in those circumstances. And because of
16 them, any sentence that I impose must also act
17 as a deterrent to Wilfred Buggins, to deter
18 him from drinking and using a firearm or even
19 being around firearms when he has been
20 drinking.

21 Since Mr. Buggins is aboriginal,
22 Section 718.2(e) of the Criminal Code requires
23 that I consider that aspect of his background.
24 This is usually referred to as the Gladue
25 principle, which requires that a Court
26 consider the unique systemic or background
27 factors which may have played a part in

1 bringing Mr. Buggins before the Court for this
2 offence and the types of sentencing that may
3 therefore be appropriate.

4 Unlike some cases, where aboriginal
5 offenders grew up in families or households
6 where alcohol and violence are prevalent, here
7 it appears that Mr. Buggins' family is close
8 and supportive and was observant of a
9 traditional lifestyle. There is no indication
10 that alcohol or violence were issues in the
11 family as Mr. Buggins was growing up.
12 However, the residential school experience is
13 one that affects many aboriginal families and
14 individuals, and the information before the
15 Court is that it did affect Mr. Buggins in a
16 very negative way. So that, as described by
17 his sisters, appears to have scarred him. I
18 accept that it has likely played a role in his
19 being before the Court for this offence,
20 certainly in part by contributing to his abuse
21 of alcohol. However, the principles of
22 denunciation and deterrence, to which I have
23 already referred, have to be taken into
24 account notwithstanding Mr. Buggins' difficult
25 history. Both the Gladue and Ipeelee
26 decisions of the Supreme Court of Canada tell
27 courts that aboriginal heritage must be

1 considered in determining the appropriate
2 sentence however both decisions also indicate
3 that in cases of serious and violent offences,
4 sentences for aboriginal offenders are not
5 likely to be very different from those imposed
6 on non-aboriginal offenders and that is
7 because principles such as denunciation and
8 deterrence are considered to be paramount in
9 such cases.

10 Another factor that must be considered is
11 the time that Mr. Buggins has spent in remand,
12 which both counsel agree amounts to three
13 years and one month.

14 Section 719 of the Criminal Code says that
15 credit for remand time is one day for each day
16 in custody. Notwithstanding that,
17 Section 719(3.1) provides that up to one and a
18 half days for each day in custody may be
19 granted if the circumstances justify it. And
20 there is case law, including the case of Green
21 2013 NWTSC 20 from this Court, that says that
22 the circumstances need not be exceptional to
23 justify more than one for one credit. The
24 fact that a prisoner while on remand has
25 behaved in such a way that he would have
26 earned remission had he been a serving
27 prisoner is something that the Court can take

1 into account as was done, for example, in the
2 case of Inuktalik 2013 NWTSC 75.

3 Crown counsel has quite fairly left it to
4 Ms. Wawzonek to attempt to persuade the Court
5 that Mr. Buggins should receive enhanced
6 credit. Crown counsel takes no position on
7 whether the credit should be more than one to
8 one.

9 Ms. Wawzonek has relayed information
10 obtained from Mr. Buggins' caseworker at North
11 Slave Correctional Centre. That information
12 is that there have been no incidents which
13 would affect Mr. Buggins' eligibility for
14 remission had he been a serving prisoner.

15 Also, he has not been eligible for any of
16 the core programming that would be considered
17 relevant to remission.

18 A further circumstance of Mr. Buggins'
19 remand time is because of his age, he has been
20 kept in a small unit housing, as I understand
21 it, those with medical or mental health
22 issues. He has therefore been relatively
23 isolated and without much opportunity to move
24 around.

25 I do accept that Mr. Buggins' outdoor
26 traditional lifestyle would make it difficult
27 for him to adjust to being confined.

1 Three years is a very long time to be on
2 remand no matter what the circumstances, and I
3 think it is fair to say that it is unusually
4 long in this jurisdiction. In all the
5 circumstances, I find that a credit of one and
6 half is justified and therefore Mr. Buggins
7 will be credited with four and a half years on
8 his sentence.

9 I will deal now with the DNA and firearms
10 orders that were sought by the Crown.

11 Manslaughter is a primary designated
12 offence so a DNA order is mandatory, and I
13 make that order for the taking of Mr. Buggins'
14 DNA in the usual terms.

15 A firearm prohibition order is also
16 mandatory pursuant to Section 109 of the
17 Criminal Code. Now, Crown counsel seeks a
18 lifetime prohibition however there is no
19 information before me indicating that notice
20 was given about that in this case and as I
21 read the section, it is either a ten year
22 prohibition or if certain circumstances
23 prevail, none of which appear to be relevant
24 in this case, then it can be a lifetime
25 prohibition. In light of Mr. Buggins' age, I
26 have decided that I will grant the ten year
27 prohibition.

1 The next question is whether I should
2 grant an exemption pursuant to Section 113 of
3 the Criminal Code. Crown counsel opposes an
4 exemption, defence counsel asks for it so that
5 Mr. Buggins can at least hunt ducks and small
6 game.

7 I have read the cases submitted by Ms.
8 Wawzonek. I note that none of them involved
9 killing another person with a gun. I
10 recognize that being banned from possessing
11 any firearms will have a detrimental effect on
12 Mr. Buggins' ability to provide food for
13 himself and his family, but I have decided
14 that he will have to cope with that as best he
15 can. The consequences of his having a gun
16 were obviously deadly in this case and the
17 reason that this happened is really, as I have
18 already indicated, inexplicable so I do not
19 believe that in this case granting an
20 exemption is justified or advisable.

21 The victim surcharge will be waived due to
22 hardship since Mr. Buggins has no income and
23 considering that at the date of the offence,
24 the Court had discretion to waive it.

25 As to the sentence to be imposed, I have
26 considered carefully everything that has been
27 said, as well as the principles that govern

1 sentencing. I do take into account
2 Mr. Buggins' age. His age also means that he
3 had the life experience and the knowledge to
4 know that guns and alcohol do not mix and to
5 control his behaviour in a way that a younger
6 man or a young man might not yet have learned.
7 I do not see any basis upon which I can
8 logically distinguish this case to any degree
9 from the Andre-Blake, Elias, and Emile cases
10 that have been cited by counsel. In my view,
11 this case is just as serious as those cases.

12 Stand please, Mr. Buggins.

13 Mr. Buggins, you now have to live with
14 what you did and at your stage of life, which
15 is a time when many people tend to look back
16 on their lives and look at what they have done
17 in their lives, I am sure it will weigh very
18 heavily on you that you killed your brother
19 and caused such pain to your family members.
20 And I don't have any doubt that that in itself
21 is a form of punishment for you. Nothing the
22 Court does can obviously bring back your
23 brother or make his death any less tragic for
24 your family, and the Court can only offer
25 condolences to the family for this terrible
26 thing that has happened. It may be that you
27 can make some amends to your family - whether

1 it is by giving up alcohol, whether it is by
2 helping them out or whether it is simply by
3 acknowledging to them the support that they
4 have given you throughout this matter.

5 The sentence that I am imposing in this
6 case is six years in jail. With a credit of
7 four and a half years, that means that you
8 have one and a half years left to serve.

9 You may sit down, Mr. Buggins.

10 The firearm prohibition order therefore
11 will begin today and expire on a date that is
12 ten years after Mr. Buggins' release from
13 imprisonment.

14 I will direct that the warrant be endorsed
15 with the recommendation that Mr. Buggins be
16 given access to alcohol and anger management
17 counselling.

18 There will also be a recommendation that
19 he serve his sentence in the Northwest
20 Territories so that he can continue to benefit
21 from the support of his family. As to where
22 in the Northwest Territories he serves his
23 sentence, in my view that is up to the
24 correctional authorities. I am not going to
25 make a direction or a recommendation about a
26 particular location but I will direct that the
27 warrant be endorsed with the Court's

1 recommendation that he should be permitted to
2 serve the sentence at a facility that provides
3 him with the maximum opportunity for in-person
4 contact with family members. And I point out
5 that that is just a recommendation. It is up
6 to the correctional authorities to make that
7 decision.

8 I didn't recall, Ms. Wawzonek, any
9 comments from you on the forfeiture order that
10 was submitted so can I assume that that is
11 consented to?

12 MS. WAWZONEK: Yes, Your Honour.

13 THE COURT: That's fine, so that order
14 will issue as well.

15 Is there anything that I have overlooked,
16 counsel?

17 MR. LECORRE: Not from the Crown's
18 perspective.

19 MS. WAWZONEK: No, Your Honour, thank you.

20 THE COURT: Thank you very much for your
21 resolution of this difficult case. I hope,
22 Mr. Buggins, that you will reconcile with your
23 family and that you will finish serving your
24 time and get back to being a productive
25 person. We will close court.

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