

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

DAKOTA JEROME

Transcript of the Reasons for Sentence by The Honourable
Justice K. Shaner, at Yellowknife in the Northwest
Territories, on the 5th day of June, 2013.

APPEARANCES:

Mr. M. Johnson: Counsel for the Crown

Mr. P. Fuglsang: Counsel for the Accused

Charge under s. 344(1)(b) Criminal Code of Canada

1 Proceedings taken in the Supreme Court of
2 Yellowknife, Northwest Territories

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4 THE COURT: Good afternoon.

5 MR. FUGLSANG: Good afternoon, Your Honour.

6 THE COURT: Mr. Fuglsang, do you wish to
7 have Mr. Jerome sit with you?

8 MR. FUGLSANG: I think that would be good,
9 Your Honour.

10 THE COURT: Do you have any concerns,
11 officer?

12 SHERIFF: No, Your Honour.

13 THE COURT: All right.

14 MR. FUGLSANG: Thank you.

15 THE COURT: And I am prepared to give
16 sentence and reasons for sentence. Is there
17 anything before I begin?

18 MR. JOHNSON: Not from the Crown, Your
19 Honour.

20 THE COURT: Okay. Mr. Fuglsang?

21 MR. FUGLSANG: Nothing, Your Honour.

22 THE COURT: And as well, just as a
23 preliminary point, I would like to thank all of
24 you, counsel, and you, Mr. Jerome, and you,
25 officer, for being able to accommodate this
26 change of date from Friday to today. The court
27 appreciates it very much.

1 With that, I will just give you my decision
2 on sentence.

3 On June 3rd, 2013, Monday, Mr. Jerome
4 pleaded guilty to a charge that he stole a bank
5 card, business cards and a jacket from Tony
6 Bernhardt, and at the time, he wounded
7 Mr. Bernhardt contrary to section 344(1)(b) of
8 the Criminal Code.

9 The circumstances of that offence were read
10 into the court record by way of a statement of
11 agreed facts. In summary, however, on the
12 evening of January 24th, 2012, Mr. Bernhardt, who
13 was then 48 years old, went to visit a friend at
14 an apartment. Mr. Jerome and some others were
15 visiting there as well. Mr. Jerome was on
16 probation at the time, and of course, was
17 required to keep the peace and be of good
18 behaviour.

19 Mr. Bernhardt was familiar to Mr. Jerome.
20 Mr. Jerome and another man, Aron Kay, were
21 intoxicated from drinking alcohol. At some
22 point, Mr. Kay told Mr. Bernhardt that the latter
23 owed him money. Mr. Bernhardt, the victim,
24 denied this.

25 Mr. Bernhardt wound up in the washroom with
26 Mr. Kay and Mr. Jerome. It's not clear who
27 exactly got him there. A violent attack on

1 Mr. Bernhardt followed.

2 Mr. Kay grabbed Mr. Bernhardt by the neck
3 and threatened him unless Mr. Bernhardt gave him
4 money. Mr. Jerome punched Mr. Bernhardt in the
5 chest and face.

6 Mr. Bernhardt was forced backwards into the
7 tub, he thinks by Mr. Jerome. He ended up
8 lengthwise with his head at the end of the tub by
9 the faucet.

10 Mr. Kay and Mr. Jerome kicked and stomped on
11 Mr. Bernhardt in the face, head, chest and neck.
12 When Mr. Bernhardt rolled onto his stomach to
13 protect himself, they stomped on his back.

14 Then Mr. Kay or Mr. Jerome took
15 Mr. Bernhardt's wallet out of his back pocket.
16 Mr. Kay threatened Mr. Bernhardt in order to
17 obtain his personal identification number.
18 Mr. Kay and Mr. Jerome then left the apartment.

19 Mr. Bernhardt suffered significant injuries.
20 He had two black eyes, a broken rib, bruising on
21 various parts of his body, and not surprisingly,
22 he was sore for weeks after the attack.

23 Mr. Jerome was arrested on January 25th,
24 2012, and has remained detained in custody since
25 that time, being a period of one year, four
26 months and 11 days as of today.

27 Mr. Fuglsang provided information to the

1 court about Mr. Jerome's background and
2 circumstances, and I also had the benefit of
3 several letters of support, one from a longtime
4 friend and one from Mr. Jerome's girlfriend and
5 one from his adoptive mother. The latter was
6 particularly helpful in providing background on
7 Mr. Jerome's childhood and allowing the court to
8 have some insight into the person he is.

9 Mr. Jerome is 23 years old and has a
10 Grade 10 education. He is aboriginal. He was
11 raised both in Inuvik and in Yellowknife,
12 spending 13 years in the latter.

13 It's probably an understatement to say that
14 Mr. Jerome had a rocky start in life. His
15 biological parents were both in gaol when he was
16 born, and I have no doubt that things would have
17 been much worse but for Brenda Jerome and her
18 husband, who took care of him as much as they
19 could, as his biological parents struggled.
20 These people, who I will refer to later as his
21 mother and father, were finally able to adopt
22 Mr. Jerome six years later.

23 In a letter that Mr. Jerome's lawyer
24 provided to the court, his mother, Brenda,
25 describes Mr. Jerome as a helpful son who has
26 never been abusive to either her or his father.
27 They both have health problems and he offers

1 assistance to them.

2 She also stated in the letter that
3 Mr. Jerome was diagnosed with fetal alcohol
4 syndrome when he was around four years old. Now,
5 I pause to point out that the court cannot accept
6 this as a proven medical diagnosis based on the
7 letter, for a variety of reasons. However, I
8 will come back to that point later.

9 The two other letters that were tendered
10 were helpful as well. Both of them described
11 Mr. Jerome as a person who truly wants to change.
12 His girlfriend, Colleen Hawkins, seems to be
13 prepared to offer Mr. Jerome a great deal of
14 support in changing for the better.

15 Sadly, Mr. Jerome has an uninterrupted
16 criminal record that dates back to 2002, when he
17 would have been 13 years old. There are 41
18 convictions; about half of them are property
19 related. There are four convictions for crimes
20 of violence and there are two convictions for
21 robberies. There are several convictions for
22 crimes against the administration of justice. I
23 will return to the matter of his criminal record
24 and how it factors in to my decision later.

25 I always find it useful to return to the
26 basic principles of sentencing that are set out
27 in the Criminal Code. The objectives are as

1 follows: Denunciation of unlawful conduct, which
2 is an expression of society's abhorrence of a
3 particular type of conduct; deterrence, both
4 aimed specifically at the offender and at the
5 public; separating the offender from society if
6 necessary; rehabilitation; reparation and
7 promoting a sense of responsibility in offenders;
8 an acknowledgment for the harm done to victims
9 and to the community.

10 The Criminal Code also sets out a number of
11 principles that guide judges in how they apply
12 these objectives. Judges have to consider
13 aggravating and mitigating factors and increase
14 or decrease a sentence accordingly.

15 Judges must also consider restraint and
16 similarity of sentence. Similarity of sentence
17 means simply that there should be similar
18 treatment for offences and offenders in like
19 circumstances.

20 The principle of restraint means that
21 imprisonment should be a measure of last resort,
22 and this requires consideration of all available
23 sanctions other than imprisonment that are
24 reasonable in the circumstances, with particular
25 attention to the circumstances of aboriginal
26 offenders.

27 The most important principle, the overriding

1 one, is proportionality, and it is articulated as
2 follows in the Criminal Code:

3 A sentence must be proportionate to
4 the gravity of the offence and the
5 degree of responsibility of the
6 offender.

7 There are a number of
8 aggravating factors that arise out of the
9 circumstances of this particular offence. The
10 victim was in a very vulnerable position. He was
11 essentially trapped in a bathtub and could not
12 escape from a sustained beating of blows and
13 kicks visited upon him by Mr. Jerome and Mr. Kay.
14 He was threatened. His injuries caused him pain
15 for weeks following the attack.

16 Mr. Jerome's criminal record is aggravating
17 as well. This is especially so in light of
18 previous convictions for crimes of violence. But
19 despite the aggravating factors, there are some
20 mitigating ones as well.

21 Mr. Jerome's guilty plea is highly
22 mitigating. It saves the court the time of going
23 through a trial and it saves the witnesses from
24 having to testify and relive the events.

25 In addition, Mr. Jerome's lawyer tendered a
26 letter that Mr. Jerome wrote to the court in
27 which you, Mr. Jerome, expressed remorse as well

1 as a recognition that you were responsible for
2 what happened and for changing your life. You
3 reiterated much of what was in that letter in
4 your personal oral submissions to the court, and
5 I find this very mitigating and very encouraging.

6 The Crown seeks a conditional sentence of
7 two and a half years or 30 months. Defence
8 submits that the sentence should be in the range
9 of 18 to 24 months. Considering all of the
10 circumstances, including Mr. Jerome's own
11 personal circumstances, I have concluded that a
12 custodial sentence of 30 months is necessary to
13 achieve the goals and objectives of sentencing.

14 Mr. Jerome bears a high degree of moral
15 blameworthiness in this case. From the agreed
16 facts, it appears that Mr. Bernhardt went to his
17 neighbour's apartment to socialize, and I think
18 it's fair to say he was expecting to have a few
19 drinks and go home. He probably was not
20 expecting to get into an argument about a debt,
21 and certainly he was not expecting to become the
22 victim of a violent crime.

23 What was carried out was an act of
24 unprovoked violence in a calculated and
25 deliberate manner. This is not a situation of
26 someone who flew off the handle, so to speak, and
27 lashed out.

1 Mr. Bernhardt was lured into the bathroom
2 where Mr. Jerome and Mr. Kay proceeded to punch,
3 kick, stomp and rob him. Frankly, I am
4 surprised, although very relieved, that the
5 outcome was not more tragic than it was.

6 The Crown submitted a number of cases from
7 various jurisdictions in support of its position
8 on the appropriate length of sentence. Despite
9 the fact that none of these cases has the same
10 fact situation as I have before me, something
11 which would indeed be highly unusual, there are
12 sufficient similarities in all of them, both as
13 to the offences and the circumstances of the
14 offenders, to suggest that what the Crown seeks
15 is within the acceptable range, thus satisfying
16 the principle of similarity.

17 The sentence I impose has to send a message,
18 both to the public and to Mr. Jerome, that
19 conduct that causes injury to others is
20 unacceptable.

21 Assaults in circumstances like this, where
22 there is excessive drinking, followed by
23 arguments and altercations, followed by violence,
24 followed by harm, are way too common in the
25 Northwest Territories. It just keeps happening.

26 Mr. Jerome is only 22 years old and already
27 has four convictions for violence against others

1 on his record. Short periods of incarceration
2 and community-based sentences have failed
3 completely to deter him.

4 My point is this: People need to know that
5 the law holds them responsible for their actions,
6 and if they act irresponsibly and if they break
7 the law and hurt others, there are real
8 consequences. In the circumstances, the sentence
9 that the Crown seeks, a 30-month custodial
10 sentence, will send that message. I'm not
11 confident that a lesser sentence would do the
12 same thing.

13 I have given a great deal of consideration
14 to Mr. Jerome's aboriginal status and his history
15 despite the severity of the offence and the
16 aggravating factors, and I have asked myself if a
17 non-custodial sentence or a period of less
18 incarceration and a community-based sentence
19 could be imposed that would achieve the ultimate
20 goal of rehabilitation.

21 As I indicated earlier, I think it's fair to
22 say, and actually perhaps an understatement, that
23 Mr. Jerome began life at a disadvantage, and as I
24 indicated, I am very encouraged by the fact that
25 he took responsibility for this crime and he
26 expressed remorse. But unfortunately, a
27 non-custodial sentence is just not realistic.

1 It's not just because of the severity of the
2 crime, but also because of Mr. Jerome's
3 significant criminal record for non-compliance
4 with court orders and directions. That makes it
5 abundantly clear that a community-based sentence
6 would not serve any rehabilitative purpose.

7 He has been almost entirely unsuccessful in
8 meeting obligations that have been imposed, and
9 in my view, to impose a sentence would just be
10 setting him up for failure. He will find himself
11 back in court, back in the correctional system,
12 no further ahead than he is now.

13 It may be tempting to think that a custodial
14 sentence serves less of a rehabilitative and more
15 of a punitive purpose than a community-based
16 sentence, and there may well have been a time
17 when that was true. But in this day and age, our
18 correctional facilities offer programs that can
19 and do allow offenders to rehabilitate themselves
20 and become productive, law-abiding citizens.
21 Rehabilitation can and does occur all the time in
22 correctional facilities.

23 Where the best place for rehabilitation is
24 will very much depend on the offender and the
25 circumstances of the offence, and in Mr. Jerome's
26 case, it's my view that rehabilitation has the
27 best chance of occurring inside of a correctional

1 facility.

2 Mr. Jerome was detained on the basis of his
3 criminal record prior to sentencing, and so he is
4 not eligible for enhanced credit for presentence
5 custody because of the provisions in the Criminal
6 Code. The custodial portion of the sentence
7 would, however, be reduced by the time that you
8 have spent awaiting disposition, Mr. Jerome.

9 Can you please stand up, Mr. Jerome?

10 Mr. Jerome, upon being convicted of stealing
11 a bank card, business cards and a jacket from
12 Tony Bernhardt, and wounding him at the same
13 time, and upon consideration of the
14 circumstances, the nature of the offence, as well
15 as your own personal circumstances, I sentence
16 you to a term of 30 months in prison. This will
17 be reduced by the amount of time you spent in
18 custody awaiting the disposition of your case on
19 a one-to-one basis, which is as of today one
20 year, four months and 11 days.

21 Do you understand?

22 THE ACCUSED: Yes.

23 THE COURT: You can sit down, Mr. Jerome.

24 There will also be an order for bodily
25 fluids to be taken from you for DNA analysis and
26 an order prohibiting you from possessing a
27 firearm or other weapons listed in section 109 of

1 the Criminal Code, and that will be in effect for
2 10 years from the date of your release.

3 Mr. Jerome, you have expressed what I
4 consider to be a sincere desire and a willingness
5 to change, and you need to change. You need to
6 change, because if you don't, you are going to
7 wind up in this position or perhaps an even worse
8 one again.

9 You are a young man, you have many years
10 ahead of you, and you have great insight into
11 yourself. Your mother, in her letter to the
12 court, indicated that you were diagnosed with
13 FASD when you were very young, and as I said, for
14 a number of reasons, it's not possible for me to
15 accept this evidence in court as proof that that
16 is in fact the case. But that's not to say that
17 you cannot follow up and explore that possibility
18 or the possibility of any other underlying
19 cognitive disability that you might have, and
20 explore the possibility of treatment for that, if
21 in fact that's the case.

22 So please use your time wisely when you are
23 in the correctional facility. Take advantage of
24 the programs that they offer, because that will
25 be a very good start on the path to changing your
26 life. You are a young man. You have many years
27 ahead of you, and you can change.

1 Counsel, is there anything else?

2 MR. JOHNSON: Not from the Crown, Your
3 Honour.

4 THE COURT: Mr. Fuglsang?

5 MR. FUGLSANG: No, Your Honour.

6 THE COURT: Very well. Mr. Fuglsang, can
7 I adjourn court or is there something else that
8 you require?

9 MR. FUGLSANG: No, ma'am, I'm sorry, that's
10 fine.

11 THE COURT: All right. The court is
12 adjourned.

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14 PROCEEDINGS CONCLUDED

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