

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

THOMAS KENT APSIMIK

Transcript of the Reasons for Sentence delivered by The Honourable Justice K. Shaner, sitting in Yellowknife, in the Northwest Territories, on the 20th day of April, 2015.

APPEARANCES:

Mr. B. MacPherson and

Mr. M. Fane:

Counsel for the Crown

Mr. T. Apsimik:

For himself

(Charge under s. 268 of the Criminal Code of Canada)

1 THE COURT: Good afternoon, counsel. Good
2 afternoon, Thomas.

3 Following the submissions that I heard this
4 morning, I am now in a position to deliver a
5 sentence and my reasons for sentence with respect
6 to Mr. Thomas Apsimik, and I just thought I would
7 mention that Thomas prefers to be called "Thomas"
8 and so I will refer to him by his first name in
9 these reasons.

10 On March 16th, 2015, Mr. Apsimik pled guilty
11 to aggravated assault. A conviction was entered
12 and sentencing was adjourned to today to allow
13 for the preparation and distribution of a
14 pre-sentence report.

15 Aggravated assault is a very serious offence
16 and, as Crown counsel mentioned this morning, it
17 carries with it a maximum sentence of 14 years,
18 and what that means is that Parliament and the
19 government treats it as something very serious.

20 The Crown is seeking a sentence of 30
21 months, less time spent in remand at a rate of
22 1.5 days 'credit for each day served, which would
23 amount to just over 17 months' of incarceration,
24 and this would be followed by two to three years
25 of probation, the terms of which would include
26 close monitoring of Thomas's compliance with
27 medical treatment.

1 Thomas earlier today said that he should
2 serve a total of eight months. He agrees that
3 there should be a period of probation, however,
4 and he did indicate that he would benefit from
5 monitoring.

6 The circumstances of this offence were set
7 out in a Statement of Agreed Facts which was
8 marked earlier in these proceedings as P1. I
9 pause to note that Thomas did not actually sign
10 this document; however, he did agree to its
11 contents orally in court and March 9th, 2015.

12 Briefly, those circumstances are that on
13 April 30th, 2014, Thomas and the victim were at
14 Thomas's apartment. They had a disagreement and
15 there was an physical altercation. Thomas
16 indicated today and at earlier times before me
17 that the victim had threatened him and that was
18 at the root of the altercation, and, accordingly,
19 he views this as having commenced as a matter of
20 self-defence. The Crown does not appear to take
21 exception to the suggestion that there was a
22 threat emanating from the victim to Thomas before
23 the altercation occurred.

24 At one point, the victim was on the floor
25 and Thomas kicked him repeatedly in the upper
26 body area and the head. The victim suffered very
27 extensive injuries. He suffered various facial

1 fractures and to this day continues to suffer
2 from those injuries. He has missed several
3 months of work, he has a loss of energy, and his
4 ability to taste food is diminished. He
5 experiences numbness in his face, throat, nose,
6 lips, and teeth, and he has had to seek medical
7 attention with respect to his ability to swallow.

8 I had the benefit of reading the
9 pre-sentence report which describes Thomas's
10 background and circumstance. Thomas is 32 years
11 old. He was raised by his grandparents who
12 provided him with a nurturing home environment.
13 He was well-adjusted and he did extremely well in
14 school. Although Thomas asked that I consider
15 Gladue in determining the appropriate sentence, I
16 must say at this point, Thomas, that none of the
17 typical Gladue factors are at play here. Rather,
18 it appears that Thomas had a healthy upbringing
19 free from many of the systemic factors, including
20 addiction, abuse, and residential schools which
21 form the background of many of the offenders that
22 appear before this court. Now, that is not to
23 say that Thomas has not had his share of
24 significant challenges. He became involved in
25 the justice system when he was approximately 16
26 and he was eventually expelled from school.

27 THE ACCUSED: Twelve.

1 THE COURT: Given his history, I expect
2 that these two things were the first
3 manifestations of well-documented mental illness.

4 In 2002 when he was 19, Thomas was sent for
5 psychiatric assessment in Alberta and he was
6 diagnosed with bipolar disorder. In 2007 he was
7 again referred for assessment at which time he
8 was diagnosed with paranoid schizophrenia.
9 Thomas has been admitted to hospital for
10 psychiatric issues at least 23 times.

11 Thomas also has an extensive criminal record
12 which includes convictions for crimes of
13 violence. As noted, it begins in 1999. He was
14 convicted of breaking and entering with intent
15 and two counts of breaking and entering and
16 theft. He was also convicted of failure to
17 comply with an undertaking. In 2001 he was
18 convicted of uttering threats, and the following
19 year, he was convicted of robbery, possession of
20 a weapon, as well as failure to comply. In 2003
21 he sustained convictions for assault, assault
22 with intent to resist arrest, and mischief. In
23 2005 he was convicted of assault causing bodily
24 harm and failing to comply, for which he received
25 a sentence of seven months and two months
26 consecutive. He was subsequently convicted of
27 assault with a weapon in 2007 for which he

1 received a sentence of nine months. In 2008 he
2 was convicted of uttering threats, and in 2009 he
3 was convicted of theft under \$5,000.

4 It was noted by the author of the
5 pre-sentence report that Thomas's criminal
6 activities do not appear to be motivated by either
7 his bipolar disorder or his schizophrenia.
8 Rather, she indicated that they are linked to
9 other antisocial personality traits.

10 To his credit, Thomas managed to stay out of
11 the justice system between 2009 and April 30th,
12 2014, when the events that bring us here today
13 occurred. Subsequent to his arrest for this
14 matter, however, he was convicted of assaulting a
15 peace officer and he was sentenced to four
16 months' incarceration, less two months as credit
17 for time served.

18 There are a number of objectives for
19 sentencing that are set out in the Criminal Code
20 and which apply in varying degrees of importance
21 depending on the nature of the offence and the
22 circumstances of the offender. These include
23 denunciation, deterrence, both specific and
24 general, and, where necessary, the separation of
25 offenders from society. Rehabilitation,
26 reparation, and the promotion of a sense of
27 responsibility in offenders are objectives as

1 well.

2 The fundamental principle of sentencing in
3 Canada is proportionality, and that is that the
4 sentence must reflect the seriousness of the
5 offence and the degree of responsibility of the
6 offender, and this must be borne in mind in
7 considering how to achieve best the objectives of
8 sentencing.

9 The Crown submitted that primary
10 consideration must be given to the need for
11 denunciation and deterrence, and it takes the
12 position that separating Thomas from society is
13 important given his lengthy and related criminal
14 record. Accordingly, it asks for a sentence of
15 30 months, less credit for time served on remand.

16 The principles of restraint and parity in
17 sentencing are also at play in this case. The
18 principle of restraint is codified in Section
19 718.2(e) of the Criminal Code and it provides
20 that the Court must consider all available
21 sanctions other than imprisonment that are
22 reasonable in the circumstances, with particular
23 attention to the circumstances of aboriginal
24 offenders. In many cases, this is part of the
25 Gladue analysis. As I stated earlier, however, I
26 have no evidence of systemic factors which may
27 have left Thomas predisposed with heavy

1 involvement with the justice system because of
2 his aboriginal background. Nevertheless,
3 restraint applies to all accused persons and thus
4 it is incumbent upon me to bear this principle in
5 mind when determining the appropriate sentence
6 for Thomas. This must of course be balanced
7 against the circumstances of the offence and the
8 need to satisfy the relevant objectives of
9 sentencing.

10 The Crown spoke of parity this morning, and
11 parity means that sentences should be similar for
12 like offences and circumstances. That does not
13 call for sentences to be exactly the same;
14 however, it does mean that there should not,
15 without good reason, be a marked departure from
16 the normal range of sentencing in any given case.

17 In support of its position that 30 months is
18 an appropriate time for incarceration, the Crown
19 relies on the case of R. v. Sarasin, which is
20 reported on CanLII at 2013 NWTSC 46. In that
21 case, the victim was stabbed with a box cutter
22 and the wound was so serious that the victim's
23 intestines had begun to exit through the wound.
24 The accused was on probation at the time and he
25 had a significant criminal record with over 30
26 convictions, mostly for property-related
27 offences.

1 You will have to wait Mr. -- you will have
2 to wait, Thomas, until I am finished.

3 As counsel pointed out, Justice Vertes noted
4 that jurisprudence from the NWT indicates the
5 range of potential sentences for stabbing where
6 someone is wounded is from 30 months to 5 years.

7 Now, while the circumstances in the case
8 before me today are very serious, including the
9 extent of injuries, I find the Sarasin case of
10 limited value because it involved a stabbing.
11 The introduction of a weapon, as in Sarasin,
12 takes an aggravated assault to a much higher
13 level of seriousness, such that the Court must
14 look at longer periods of incarceration to effect
15 the objectives of sentencing, particularly
16 deterrence and denunciation. No two cases are
17 alike of course, but there are cases more similar
18 factually to Thomas's case than the facts in
19 Sarasin, and one such case is R. v. Camsell,
20 which is reported at 2012 NWTSC 55, and, again,
21 it is available on CanLII. In that case there
22 was a physical altercation with no weapon
23 involved. The victim wound up with a broken jaw
24 and required extensive treatment. Aggravating
25 factors included the victim being attacked in his
26 own home and being restrained physically by one
27 assailant while the other beat him. The accused

1 entered a guilty plea which was considered, among
2 other factors, as mitigating. The sentencing
3 judge imposed 18 months in jail, less time spent
4 on remand as well as a year's probation.

5 Cited in the Camsell case are two other
6 cases, namely R. v. Catholique, 2010 NWTSC 37
7 (CanLII), and R. v. Mitchell, 2009 NWTSC 52
8 (CanLII).

9 In Mitchell, the accused knocked the victim
10 to the ground and then proceeded to kick him in
11 the chin area, causing extensive injuries.
12 Justice Schuler found that there were no
13 mitigating circumstances. She noted the offender
14 was aboriginal, and it was noted that he did not
15 enter a guilty plea. Nevertheless, he was
16 sentenced to a period of 12 months followed by a
17 period of probation.

18 The Catholique case involved an aggravated
19 assault where the accused threw the victim down
20 some stairs, breaking his jaw. The accused then
21 continued to kick the victim, who sustained
22 serious injuries. Mr. Catholique was an
23 aboriginal offender and, like here, there were no
24 indications of systemic factors related to his
25 ethnicity. Nevertheless, the sentencing judge
26 considered rehabilitation to be an important
27 consideration such that a lengthy jail term was

1 unwarranted. He accepted a joint submission for
2 a period of incarceration of 15 months followed
3 by 18 months' probation.

4 Turning to the aggravating and mitigating
5 circumstances in this case, I note there are a
6 number of aggravating factors, including the fact
7 that Thomas continued to kick the victim after he
8 was unconscious and laying on the ground, causing
9 serious and long-lasting injuries. Thomas's
10 criminal record, which I described earlier, is
11 also aggravating. From 1999 until 2009, it is
12 continuous, starting when he was 16, and relative
13 to his age now, it is extensive. It contains a
14 very high number of convictions for violent
15 offences.

16 There are, however, some mitigating factors.
17 It is mitigating that Thomas entered a guilty
18 plea. Entering the guilty plea saved the victim
19 from having to come and testify and it saved the
20 Court time and expense. Giving up his right to a
21 trial and accepting responsibility is worthy of
22 significant weight.

23 Earlier in these proceedings, Thomas
24 indicated in court that he recognized he had gone
25 too far in his response to the threat the victim
26 made. This signals to me that he accepts, in
27 part, responsibility for his actions and he

1 recognizes that he went too far and that what he
2 did was wrong.

3 Thomas is by no means blameless in this
4 case. The victim was seriously injured and the
5 goals of denunciation and deterrence are
6 important. Whatever sentence is imposed must be
7 significant enough to make Thomas realize that he
8 cannot solve his problems through violence.
9 Nevertheless, this must be balanced against the
10 need to ensure Thomas is ultimately able to
11 function in society and live peacefully among
12 others. That is why I see a need to impose a
13 jail sentence to drive home the point that this
14 type of behaviour is unacceptable. The goal of
15 rehabilitation, in my view, would best be
16 achieved through a shorter period of
17 incarceration followed by a longer period of
18 probation.

19 Thomas, please stand up. Thomas Apsimik,
20 upon being convicted of aggravated assault and
21 upon consideration of the circumstances and the
22 nature of the offence as well as your personal
23 circumstances, I sentence you to the following:
24 You are sentenced to a period of incarceration of
25 22 months. You will be credited with a period of
26 12 months and 19 days, which represents the time
27 you spent on remand calculated on the basis of

1 1.5 days' credit for each day serve.
2 Accordingly, you will have 10 months and 11 days
3 left to serve. This will be followed by a period
4 of probation of three years, and I am going to
5 discuss the terms of that probation in just a
6 moment. Do you understand?

7 THE ACCUSED: (Affirmative, non-verbal
8 response).

9 THE COURT: You're nodding yes? Okay, you
10 can sit down, please, Thomas.

11 THE ACCUSED: I, I have no water. I can't
12 talk. I take too much medication. It dries my
13 throat.

14 THE COURT: I will ask the clerk to give
15 you some water. Okay? I am sorry, Thomas.

16 THE ACCUSED: I can't drink from the
17 fountain down there. It's too gross. It's
18 disgusting down there. You should go take a
19 look.

20 THE COURT: Thomas, just wait, please.
21 The clerk is going to give you some water.

22 THE ACCUSED: Shame on you guys.

23 THE COURT: So the terms of the probation
24 order, which will run for three years upon your
25 release from jail, are those which the Crown
26 proposed and which were marked in Exhibit P6, and
27 I am going to just recite those so everyone hears

1 them and we are all on the same page in terms of
2 what they say.

3 The terms of your probation will be as
4 follows: You will keep the peace and be of good
5 behaviour. You will appear in court when you are
6 required to do so by the Court. You will notify
7 the Court or your probation officer in advance of
8 any change of name or address and promptly notify
9 the Court or your probation officer of any change
10 of employment or occupation. You will report to
11 a probation officer within two business days from
12 release from custody and thereafter, as and when
13 directed by your probation officer. You will
14 reside where directed by your probation officer
15 and obey all the rules of that residence. You
16 are to have no contact directly or indirectly
17 with Duane McKenzie. You are to abstain
18 absolutely from the possession and consumption of
19 controlled substances as defined in the
20 Controlled Drugs and Substances Act, except in
21 accordance with a medical prescription. And,
22 Thomas, if you need more information on that,
23 your probation officer will be able to explain
24 that to you. You are to attend as directed by
25 your probation officer from time to time at such
26 medical facilities or medical practitioner as
27 directed by the probation officer for the purpose

1 of receiving such medical counselling and
2 treatment as may be recommended. If you do not
3 consent to the form of medical treatment or
4 medication which is prescribed or recommended,
5 you will forthwith report to your probation
6 officer and thereafter report daily to the
7 probation officer. You are to provide your
8 treating physician, your doctor, with a copy of
9 this order and the name and address and telephone
10 number of your probation officer. You are to
11 instruct your treating physician that if you fail
12 to take medication as prescribed by him or her,
13 or fail to keep any appointment made with him or
14 her, he or she is to advise your probation
15 officer immediately of any failure. You are to
16 inform your probation officer of all medications
17 which are prescribed to you and any changes to
18 those prescriptions or cancellation of
19 prescriptions within 24 hours of that occurring,
20 and, finally, you will carry a copy of the
21 probation order on your person and present it on
22 request to a peace officer or probation officer.

23 If you have any questions about the terms of
24 this probation order, Thomas, then ask your
25 probation officer to explain them.

26 THE ACCUSED: My legal guardian wants me to
27 move to Edmonton to get away from this whole

1 Yellowknife scene because I know so much about
2 this city and --

3 THE COURT: Well, if that happens,
4 Thomas --

5 THE ACCUSED: -- it's a bad influence on me.
6 Just to walk down the street, I know what's going
7 on, I know where to go for what I want.

8 THE COURT: Well, just a moment, Thomas.
9 I understand that, and if and when that happens,
10 then amendments can be made to the probation
11 order, okay, to allow for you to move to
12 Edmonton.

13 THE ACCUSED: Under psychiatric care.

14 THE COURT: Yes.

15 THE ACCUSED: Yeah.

16 THE COURT: If that happens, then this
17 will come back to court and the terms of the
18 probation can be varied. Okay?

19 Now, the Crown asked for ancillary orders.

20 I did have a question, Mr. MacPherson, with
21 respect to the firearms prohibition. I am
22 assuming that you are asking for a firearms ban
23 of ten years? Or longer?

24 MR. MACPHERSON: Yes, Your Honour.

25 THE COURT: Okay. So I will impose a
26 firearms prohibition under Section 109 for ten
27 years, which will run from the time your sentence

1 is finished.

2 In addition, you were asking for a DNA
3 order. So I am going to make an order that you
4 will submit to the taking and collection of
5 bodily fluids for DNA analysis. Okay, Thomas?

6 THE ACCUSED: Yes.

7 THE COURT: All right. Is there anything
8 else, counsel?

9 MR. MACPHERSON: Victims of crime surcharge.

10 THE COURT: Well, I can't waive the
11 victims of crime surcharge. So there will be --
12 That's automatic now. Do you have any
13 submissions on time to pay?

14 MR. MACPHERSON: No, Your Honour.

15 THE COURT: All right. There is one count
16 on the Indictment and that --

17 MR. APSIMIK: I'm not Justin Bieber. I
18 don't have \$200,000,000 and I'm not 20 years old.

19 THE COURT: I'm not going to ask you --

20 THE ACCUSED: I'm past my prime.

21 THE COURT: I'm not going to ask you to
22 pay \$200,000,000, but, unfortunately, I have no
23 choice but to impose a victims of crime surcharge
24 and it is in the amount of \$200. I have no
25 discretion to waive that, Thomas.

26 THE ACCUSED: Is he going to go out and buy
27 two grams of crack and smoke it until he dies?

1 THE COURT: Thomas, you will have a year
2 to pay.

3 THE ACCUSED: I don't get no money. I can't
4 get hired. I'm a criminal. Who hires criminals?

5 THE COURT: Well, Thomas, I am sorry, I
6 can't do anything about it. That is part of the
7 sentence and I no longer have any discretion to
8 waive it.

9 Counsel, is there anything else?

10 MR. MACPHERSON: Nothing further. Thank you.

11 THE COURT: All right. Thomas, I just
12 wanted to say that from your criminal record, it
13 appears that you have had success in the past in
14 controlling your behaviour and staying out of
15 trouble. You have had a serious bump here, but
16 you do appear to be willing to take
17 responsibility for what happened and you also
18 appear to be willing to be supervised. So I hope
19 that you will follow the advice of your probation
20 officer, and I hope that if you find yourself in
21 need of support, that you will reach out to the
22 supports that are in place for you, including
23 your guardian, any medical personnel who are in
24 charge of helping you, or even your probation
25 officer, because you are still a very young
26 person and --

27 THE ACCUSED: I'm not very young. I'm 32.

1 THE COURT: Well, you are only 32.
2 THE ACCUSED: (Indiscernible).
3 THE COURT: Okay. So I just want you --
4 THE ACCUSED: (Indiscernible) 40-year old
5 player in the MBA.
6 THE COURT: I just want you to try hard,
7 okay, because I am confident you can change.
8 Everyone can change.
9 Is there anything else?
10 MR. MACPHERSON: No thank you.
11 THE COURT: All right. Then we will
12 adjourn. Thank you.

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15

16 Certified Pursuant to Rule 723
17 of the Rules of Court
18

19 Jane Romanowich, CSR(A)
20 Court Reporter
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