

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

MOLSON MITCHELL ROMIE

Transcript of the Reasons for Sentence delivered by The Honourable Justice L. A. Charbonneau, sitting in Yellowknife, in the Northwest Territories, on the 27th day of February, 2015.

APPEARANCES:

Mr. A. Godfrey: Counsel for the Crown

Mr. M. Martin: Counsel for the Accused

(Charge under s. 271 Criminal Code of Canada)

BAN ON PUBLICATION OF THE COMPLAINANT/WITNESS
PURSUANT TO SECTION 486.4 OF THE CRIMINAL CODE

1 THE COURT: Earlier this week, Mr. Romie
2 pleaded guilty to a charge of having sexually
3 assaulted L.F., and I must now sentence him for
4 that serious offence.

5 The Crown and defence have jointly submitted
6 that an appropriate range of sentence for this
7 offence would be between two years less a day and
8 two and a half years' imprisonment in addition to
9 the time that Mr. Romie has already spent in
10 custody. Within that range, the Crown is asking
11 that I impose a sentence at the higher end of the
12 range and the defence is asking that I impose a
13 sentence at the lower end of the range. I will
14 say at the outset that I agree that it is an
15 appropriate range. The only question that I must
16 decide today is where in that range the sentence
17 should be.

18 The Agreed Statement of Facts that was filed
19 by the Crown does not include a lot of details
20 about the sexual assault that was committed on
21 Ms. F beyond the fact that it involved an act of
22 full intercourse without her consent. Counsel
23 also clarified, in answer to a question I asked
24 during the sentencing hearing, that she was awake
25 when the sexual assault took place.

26 Mr. Romie and Ms. F are both residents of
27 Whati, but this offence happened in Yellowknife.

1 Mr. Romie was in Yellowknife with his sister and
2 Ms. F was here with her father. On the evening
3 of this incident, they ended up getting together
4 with some other people and consumed alcohol.
5 Ms. F was 17 at the time and Mr. Romie was 24.

6 Paragraphs 3 to 6 of the Agreed Statement of
7 Facts describe the assault committed on Ms. F by
8 Mr. Romie and those paragraphs read as follows:

9 That evening, L.F. went to sleep
10 in her sister, L's room. Her
11 sister L went to sleep in the
12 living room.

13 L.F. was in the room laying on the
14 bed and Molson Romie was in the
15 room standing having a cigarette.

16 Molson Romie had non-consensual
17 sex with L.F. It lasted less than
18 two minutes.

19 After he finished he told her not
20 to say anything about the sex and
21 he left the apartment.

22 Molson Romie felt bad after it
23 happened.

24 Ms. F disclosed these events about a week
25 later during an interview with a counsellor in
26 Whati. As a result of this disclosure, the
27 police were called and she was interviewed by
28 them. Mr. Romie was charged and arrested on June
29 3rd and was released on process at that time.

30 He elected to have his trial before a court
31 composed of a judge and a jury and sought to have
32 a preliminary hearing. Having reviewed the

1 endorsements from the Territorial Court file, it
2 appears that the matter was adjourned a number of
3 times. There were a few occasions where
4 Mr. Romie did not appear in court and the matter
5 had to be spoken to at a later date, including
6 one of the dates that had been set for the
7 preliminary hearing. Ultimately, Mr. Romie
8 consented to his committal. This was in February
9 2014. So the complainant did not have to
10 testify.

11 Mr. Romie's trial had been scheduled to
12 proceed this week. I heard that at some point
13 last week the Crown made his counsel a proposal
14 for resolution of this matter. From what defence
15 counsel said, I understand this resolution offer
16 was more favourable to Mr. Romie than earlier
17 resolution offers that had been made. Presented
18 with this new offer, Mr. Romie decided to plead
19 guilty and the jury trial was cancelled. The
20 witnesses were advised before the end of last
21 week that they would not have to testify.

22 Crown counsel has said that Ms. F was very
23 relieved about not having to testify on this
24 matter. I have no doubt that this is true and
25 that she must have been very relieved. In
26 addition to sparing her from having to testify, I
27 am told the guilty plea avoided the cost of her

1 having to travel from Whati to Yellowknife and,
2 also, the cost of the police officer having to
3 travel to Yellowknife from Inuvik to testify.

4 Mr. Romie, as I said already, had been
5 released on process when he was first charged. I
6 am told that he was taken into custody on
7 March 4, 2014, and released again on March 7. I
8 was not provided any further details as to why
9 this was, but I take it, it may have been as a
10 result of not appearing in court as required.

11 I was advised that he was taken into custody
12 again on January 28th, 2015, as a result of being
13 charged with other matters which are currently
14 still pending in the Territorial Court. As I
15 heard this morning, there was no show cause
16 hearing on those new charges, which means that I
17 have discretion as to how much credit I will give
18 Mr. Romie for this period of time he has spent in
19 custody.

20 Ms. F has written a Victim Impact Statement
21 which was filed as an exhibit at the sentencing.
22 It was not read into the record earlier this
23 week, but I will read it now because I think it
24 is important for everyone, including Mr. Romie,
25 to keep in mind the impact that this crime had on
26 her. The Victim Impact Statement statement is
27 dated February 20th, 2015, and it reads as

1 follows:

2 Didn't sleep good. Made me feel
3 depressed. Made me see a
4 counsellor. Made me feel
5 sensitive. Made me feel
6 uncomfortable around males. Me
7 and my sister's relation, I didn't
8 get along cause [sic] of this
9 pain. It affected me and my
10 former relationship. Scared to
11 [be] alone after this incident
12 happened. I felt blamed from side
13 of the family. People thinks rude
14 comments about me / talking about
15 me. Affected my senior year. Mom
16 was being over protective cause of
17 my safety. That I almost took my
18 life away because of what
19 happened. I was being put down
20 alot [sic] that I didn't deserve.
21 I was hiding under a rock. I cut
22 some friends and family off cause
23 I was afraid. Emotionally wreck
24 of myself. I was always crying
25 that "Why me? Why is it my
26 fault?" I was in college, then I
27 drank alot to ignore the pain.

16 And she has signed the document.

17 Sadly, this Victim Impact Statement is very
18 representative of what we know about the impact
19 that sexual assaults have on victims. Just about
20 everything enumerated by Ms. F mirrors the things
21 we often hear sexual assault victims experience:
22 feelings of isolation; self-blame and depression;
23 difficulty sleeping; problems in other
24 relationships; unhealthy and self-destructive
25 conduct; substance abuse to numb the emotional
26 pain; difficulties in trusting others and, in
27 particular, men, if the abuser was a man; and

1 suicidal tendencies. These are the very real and
2 very sad consequences that Ms. F experienced as a
3 result of this very intrusive and contemptuous
4 act Mr. Romie committed against her.

5 I turn to the circumstances of Mr. Romie
6 himself. He is now 26. He has a criminal
7 record, but that record does not include
8 convictions for crimes anywhere nearly as serious
9 as this one. He did receive a jail term in 2010.
10 In 2012 for a series of property offences, he
11 received a jail term as well, but that jail term
12 was served as a conditional sentence, so he was
13 able to serve it in the community. The offence I
14 have to sentence him for today is in another
15 category altogether. It is far more serious than
16 any other offence that appears on his record.

17 I heard that Mr. Romie grew up in difficult
18 circumstances. Both his parents are residential
19 school survivors. In particular, his father was
20 taken from his family to be sent to residential
21 school and spent a number of years there.

22 Defence counsel advised that bad things happened
23 to him when he was in residential school. These
24 are things he apparently has not discussed with
25 his son.

26 I heard that when Mr. Romie was young, there
27 was alcohol abuse and violence in the family

1 home. There were enough problems that Mr. Romie
2 was cared for by different people at different
3 times. As an infant, he was cared for by an
4 uncle, but that uncle committed suicide when
5 Mr. Romie was still very young. Mr. Romie was
6 cared for by several of his aunts, at times by
7 his grandmother, and at times by his parents.
8 When he was staying with his parents, I am told
9 he was exposed to the dysfunction in the home. I
10 have no doubt that this contributed to Mr. Romie
11 coming into contact with the criminal justice
12 system, and I have taken that into account as I
13 am required to by law given the provisions of the
14 Criminal Code and the binding cases about how
15 sentencing of aboriginal offenders must be
16 approached.

17 I have, as I am required to, taken judicial
18 notice of systemic and background factors that
19 have impacted Mr. Romie as well as his specific
20 circumstances as they were outlined by his
21 counsel. In reaching my decision on this matter,
22 I have taken those circumstances into account and
23 I will exercise as much restraint as possible in
24 the sentence I impose. I want to add, though,
25 that in ensuring that the sentence takes into
26 account Mr. Romie's circumstances and the
27 challenges he faced as an aboriginal person, the

1 Court must also ensure that the sentence also
2 does justice to his victim.

3 Ms. F is an aboriginal person too. I have
4 very limited information about her and her
5 background, but the systemic and background
6 factors which are taken into account in
7 sentencing Mr. Romie are things that would have
8 impacted her life as well. Aboriginal people who
9 are victimized are entitled to the Court's
10 protection to the same degree as non-aboriginal
11 victims, obviously, and the harm that is caused
12 to them must be acknowledged and reflected in the
13 sentences imposed by the Court in the same way as
14 harm caused to non-aboriginal victims has to be
15 reflected. So in applying the principles set out
16 in the Criminal Code and interpreted by the
17 Supreme Court of Canada cases, it is important
18 that the harm caused to aboriginal victims of
19 crimes not be overlooked.

20 But going back to Mr. Romie's personal
21 circumstances, I also want to note that there are
22 very positive things that were said about him at
23 the sentencing hearing. I heard that he has led
24 a largely traditional lifestyle, that he hunts
25 and fishes and gathers wood, and gathers snow for
26 the preparation of traditional tea. He engages
27 in those activities for the benefit of himself,

1 his family, and other community members,
2 including elders. This was confirmed by his
3 grandmother who spoke to the Court with the
4 assistance of an interpreter on Monday. She said
5 that he visits her regularly when he is in the
6 community, he makes sure that she eats, and that,
7 generally speaking, he has been a hard-working,
8 supportive, and caring grandson to her.

9 I heard as well that Mr. Romie has worked as
10 a labourer for various employers to the extent
11 that work is available to him in Whati. He has
12 also worked seasonally as a brush cutter. Based
13 on what I heard, it is very clear that Mr. Romie
14 is not someone who sits around and does nothing.
15 He is very capable of contributing to his
16 community and to his family and appears to have
17 done so fairly consistently over the years.
18 Unfortunately, this case shows that as is the
19 case for so many other people, when Mr. Romie
20 consumes alcohol, he is capable of behaving in a
21 way that is not the behaviour of a caring
22 grandson or of a hard-working young father.

23 Mr. Romie is the only one who has any
24 control over what he will do for the rest of his
25 life. His counsel has said Mr. Romie does not
26 want to drink, he does not want to become like
27 his parents were, and he does not want to expose

1 his child to what he was exposed to. The
2 decision to stay away from alcohol may be
3 difficult at times, the Court knows that, but
4 hopefully Mr. Romie will be able to maintain a
5 commitment to lead a sober lifestyle. That way
6 he cannot only be a good spouse and a good father
7 and a productive community member, but he can
8 also become a role model for other young persons
9 in his community. He can behave in a way that
10 makes other people look up to him and want to
11 lead healthy lifestyles too.

12 Counsel have correctly identified the
13 guiding sentencing principles and the basic range
14 that applies here. The maximum sentence for the
15 crime of sexual assault is ten years'
16 imprisonment. There is no minimum sentence. The
17 range of sentences available for this offence is
18 very broad, but sentencing courts are guided by
19 appellate case law in assessing where in that
20 broad range a particular case fits.

21 The sexual assault committed by Mr. Romie
22 was a major sexual assault as that concept has
23 been defined by appellate decisions that are
24 routinely applied by the trial courts in this
25 jurisdiction. That means the starting point on
26 sentencing is three years' imprisonment. This
27 starting point reflects the seriousness of this

1 type of crime, the harm it causes, and an
2 offender's blameworthiness for it. From this
3 starting point, the sentence must be adjusted to
4 reflect any mitigating or aggravating factors
5 that are present. Here, the main aggravating
6 factor is the victim's age. She was under 18 at
7 the time this happened, and the Criminal Code
8 specifically says that this is an aggravating
9 factor. In fact, even before the Criminal Code
10 said that, it was for many years treated as an
11 aggravating factor when the victim of a crime was
12 a young person. Here, the person was not a young
13 child, but she was a young person nonetheless and
14 that is aggravating.

15 I think it is also somewhat aggravating that
16 Mr. Romie told her not to tell anyone about what
17 happened. It is not alleged that he threatened
18 her in any way, but, under the circumstances, the
19 mere fact of telling her not to tell anyone could
20 well have intimidated her enough to not disclose
21 what happened to her, especially given her age,
22 and if she had not disclosed this, not only would
23 Mr. Romie not have ever been held accountable for
24 what he did, but she would have had to cope with
25 these events without receiving any help and
26 without being told, as I hope she was, by the
27 counsellor she spoke to, and hopefully by others,

1 that this was not her fault. Let there be no
2 doubt: This was not her fault. It takes courage
3 and strength to report something like this,
4 especially in the context of a small, close-knit
5 community. Ms. F did a brave thing in reporting
6 this and she is not to blame for what happened,
7 she is not to blame for the consequences of it
8 being reported or for Mr. Romie facing a jail
9 term today. The person responsible for that is
10 Mr. Romie himself, and I hope that everyone in
11 Whati knows this and understands this.

12 I make those comments because I know that
13 often victims are blamed for what happened to
14 them. Ms. F's Victim Impact Statement makes some
15 reference to that, actually. It may be easier
16 sometimes to blame the victim rather than to
17 accept that a loved one behaved in the way
18 Mr. Romie did. But victim-blaming is unfair and
19 is very, very wrong. Communities and families
20 must support those who are abused, not blame them
21 and not ostracize them.

22 A third aggravating factor is Mr. Romie's
23 criminal record, although I do not consider it to
24 be a significant factor because the record is
25 unrelated. He does not come before the Court as
26 a first offender. He has been before the courts
27 before and has been sentenced to jail terms

1 before. But beyond that, I do not find the
2 record is of particular significance in my
3 decision today.

4 There are mitigating factors to consider as
5 well and the most significant one is the guilty
6 plea. Although the term "early guilty plea" was
7 used in submissions, I do not think this can be
8 characterized as an early guilty plea. This
9 charge has been pending for quite a while and the
10 decision to change the plea came a few days
11 before the trial was scheduled to commence. But
12 that being said, the timing of the guilty plea
13 has to be considered in context. It came, in
14 this case, after a resolution offer that was made
15 just last week. Where an accused person changes
16 his or her position on a case at the eleventh
17 hour because a resolution offer is made at the
18 eleventh hour, it is difficult to hold the
19 lateness of the plea against that accused. And
20 quite apart from timing issues, a guilty plea in
21 a sexual assault case is always significant
22 because it spares the victim from having to come
23 to court to talk about very traumatic events and
24 very intimate, personal things. Having seen
25 many, many victims testify in these types of
26 trials and having observed firsthand the effect
27 that having to recount events and withstand

1 cross-examination has on those people, I know
2 that sparing someone from that is sparing them a
3 lot.

4 In addition, a guilty plea provides
5 certainty of outcome. It also removes all doubt
6 for fellow community members and family members
7 that the events did occur as reported. There can
8 be no lingering suspicion that somehow the
9 accusation was a false one.

10 By pleading guilty earlier this week,
11 Mr. Romie has admitted to Ms. F, to her family,
12 to his family, and to the community of Whati as a
13 whole that he did do this to her, that she was
14 telling the truth when she reported it. This is
15 meaningful and important, especially in our
16 small, close-knitted communities in this
17 jurisdiction.

18 Last but not least, a guilty plea
19 demonstrates Mr. Romie's remorse and willingness
20 to accept responsibility. He has apologized in
21 open court to Ms. F and to his family and to her
22 family and I accept this apology is a sincere
23 one. I observed Mr. Romie when his grandmother
24 was speaking to the court on Monday. It is clear
25 he knows that he has caused her hurt and he has
26 hurt others as well as Ms. F. I hope that he
27 never forgets how he felt on Monday and how he

1 feels today and that this will give him the
2 strength and the motivation that he needs to stay
3 away from alcohol and not risk hurting another
4 person again. For all of those reasons I have
5 been talking about, I attach significant weight
6 to Mr. Romie's guilty plea.

7 Counsel have made reference to a few cases
8 from this jurisdiction. These cases are
9 illustrations of well-established principles and
10 considerations that govern sentencing courts when
11 sentencing people for sexual assault as of the
12 same level of seriousness as this one.

13 The prevalence of sexual assaults in this
14 jurisdiction was something that was commented on
15 in *R. v. Minoza*, 2013 NWTSC 78 at paragraphs 27
16 to 29. I will not read those paragraphs out loud
17 now, but they comment on the prevalence of this
18 type of crime and the importance that this
19 prevalence not lead to a desensitization of the
20 courts or of the communities about how serious
21 these offences are. The prevalence of these
22 crimes is one of the reasons why it continues to
23 be important for the courts to impose sentences
24 that denounce this conduct.

25 Those comments were made in the context of
26 sexual assaults of sleeping or passed out
27 victims; but they are also applicable to sexual

1 assaults of victims who are not passed out or
2 sleeping, because those types of sexual assaults
3 are also very prevalent in this jurisdiction.

4 In Minoza, a sentence of three years and two
5 months of jail was imposed. The accused had no
6 record and the victim was an adult, but the
7 accused was convicted after trial and the victim
8 had been assaulted in her own home, in her own
9 bed, and she was sleeping. Therefore,
10 particularly vulnerable. There were no
11 mitigating factors in the Minoza case and there
12 were important aggravating factors.

13 The second case that was referred to was R.
14 v. Cli, 2014 NWTSC 69. In that case, the victim
15 was also an adult. She was sleeping in a tent
16 when she was sexually assaulted. Mr. Cli was her
17 friend. He had waived his preliminary hearing
18 and had pleaded guilty. He had a record with a
19 few convictions for crimes against people but no
20 convictions for crimes of a sexual nature. In
21 that case, a joint submission was presented that
22 a sentence of two years less a day would be a fit
23 sentence, and this joint submission was accepted
24 by the Court.

25 Another case referred to was R. v.
26 Laliberte, 2013 NWTSC 70. In that case, a
27 sentence of two and a half years' imprisonment

1 was imposed after the accused pleaded guilty to
2 having touched a person under 16 years of age for
3 a sexual purpose. The offence involved an act of
4 full intercourse with a teenager who was sleeping
5 in her home at the time. In that case, counsel
6 had also presented a joint submission that was
7 accepted by the Court. The guilty plea in that
8 case was treated as a significant mitigating
9 factor.

10 Ultimately, each case must be decided on its
11 own circumstances, weighing and balancing the
12 applicable factors. Mr. Romie is still very
13 young and there are a lot of positive things that
14 can be said about him. Under the circumstances,
15 I would see little point in imposing a sentence
16 that would result in him being sent to a
17 penitentiary in southern Canada to serve his
18 sentence. I think making sure that he can serve
19 his sentence in the Northwest Territories is
20 something that will ensure that the need for
21 deterrence and denunciation is addressed while
22 also supporting his rehabilitation, because if he
23 remains in the North, he will have easier access
24 to his support network, his family, and, in
25 particular, his grandmother for whom it would be
26 far more difficult to travel to visit him if
27 Mr. Romie was sent to southern Canada.

1 Based on what I was told during the
2 sentencing hearing, Mr. Romie has spent a total
3 of 35 days in custody. But he had been released
4 on process on this matter. He found himself in
5 custody and released a number of times according
6 to the endorsements on the Territorial Court
7 file, or I should say there were warrants issued
8 for his arrest on a few occasions because he was
9 not in court.

10 The provision of the Criminal Code that was
11 referred to this morning by Crown counsel,
12 Section 719(3.1), takes away the Court's
13 discretion to give enhanced credit for remand
14 time in certain circumstances. But even when
15 that provision is not specifically engaged, the
16 Court is not forced to give enhanced credit for
17 time spent in pre-trial custody. It depends on
18 the circumstances of each case. Here,
19 considering the overall circumstances and the
20 fact that Mr. Romie was released on process
21 originally and now finds himself in custody as a
22 result of being charged with other offences, I am
23 not inclined to grant him enhanced credit for the
24 time he has spent in custody to date.

25 The Crown has asked for a number of
26 ancillary orders and I will deal with those
27 first.

1 There will be a DNA order as this is a
2 primary designated offence. There will be an
3 order pursuant to the Sexual Offender Information
4 Registry Act for a period of 20 years, again
5 because this is an offence for which such an
6 order must be made. There will be a firearms
7 prohibition order pursuant to Section 109 of the
8 Criminal Code. But given what I have heard about
9 Mr. Romie's traditional activities on the land,
10 the fact that no weapon was used in the
11 commission of this offence, and the fact that
12 there was no violence other than the force
13 inherent in the act itself, my order will include
14 the endorsement pursuant to Section 113 that will
15 give the Registrar of Firearms permission to
16 allow Mr. Romie to be in the possession of
17 firearms under specific conditions to be decided
18 by that officer, the main intention here being to
19 ensure that when he is released, he can continue
20 with his traditional activities on the land,
21 which, in this jurisdiction, often require having
22 a firearm for hunting, obviously, but also for a
23 person's own protection given where we live.

24 Because of the date of this offence, I have
25 the discretion not to impose a victim of crime
26 surcharge and I am going to exercise that
27 discretion given that I am imposing a significant

1 jail term today. I am satisfied that imposing a
2 surcharge would result in hardship.

3 I will also order that any exhibits seized
4 as part of this investigation be returned to
5 their rightful owner, if that is appropriate;
6 otherwise, they can be destroyed; but of course
7 only once the appeal period has expired.

8 Stand up, please, Mr. Romie. Mr. Romie, I
9 am going to impose a sentence at the very low end
10 of the range that counsel have suggested. I
11 agree with your lawyer that I should keep you in
12 the Territories to serve your sentence. If you
13 had not had any time in custody, I would have
14 imposed a sentence of two years and 35 days. For
15 the 35 days that you have spent in custody, I am
16 going to give you credit for 36 days, which means
17 the jail term I am imposing today is two years
18 less one day, and that means the sentence will be
19 served here in the Northwest Territories and not
20 in southern Canada. Your family will be able to
21 come visit you and you will have better access to
22 the people who can support you. You can sit
23 down.

24 Madam Clerk, please ensure that the Warrant
25 of Committal reflects the amount of remand time,
26 the credit given, the sentence that would have
27 been imposed but for the remand time, and the

1 sentence that I am imposing because that is
2 required under the Criminal Code.

3 Is there anything I have overlooked from the
4 Crown's perspective?

5 MR. GODFREY: Just one thing, Your Honour.

6 With respect to the firearms order, I didn't hear
7 a duration.

8 THE COURT: It will commence today and
9 expire ten years after his release.

10 MR. GODFREY: Thank you.

11 THE COURT: Because Mr. Romie is in
12 custody, I assume he is not in possession of any
13 firearms, but the order will say that they are to
14 be surrendered forthwith just to complete that
15 part. Anything else, Mr. Godfrey?

16 MR. GODFREY: No. Thank you.

17 THE COURT: Anything from your
18 perspective, Mr. Martin?

19 MR. MARTIN: No thank you.

20 THE COURT: All right. Thank you,
21 counsel, for your work in resolving this case.
22 Close court.

23

24 Certified Pursuant to Rule 723
25 of the Rules of Court

26 Jane Romanowich, CSR(A)
27 Court Reporter