

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

AARON KENNETH MORAN

Transcript of the Reasons for Sentence delivered by the Honourable Justice K. Shaner, sitting in Yellowknife, in the Northwest Territories, on the 14th day of September, 2015.

APPEARANCES:

Ms. J. Scott

Counsel for the Crown

Mr. M. Michael

Counsel for the accused

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

1 MONDAY, SEPTEMBER 14TH, 2015

2
3 REASONS FOR SENTENCE

4 SHANER J. (Orally):

5 We are here for purpose of me delivering my
6 Reasons for Sentence and the sentence with respect
7 to the matter of *The Queen and Aaron Moran*.

8 By way of history, on June 1st, 2015, Mr. Moran
9 pled guilty to robbery, during which violence was
10 used, contrary to s. 344(1)(b) of the *Criminal Code*.
11 Sentencing was adjourned to allow for the
12 preparation and distribution of a pre-sentence
13 report, and this morning a Statement of Agreed Facts
14 was read into the record and a conviction was
15 entered.

16 Robbery is considered a very serious offence,
17 which is reflected in the fact that it carries with
18 it a maximum penalty of life imprisonment. The
19 Crown and the defence have agreed the circumstances
20 of this case call for a period of incarceration of
21 18 months to two years less a day followed by
22 probation for a period of two years. Defence
23 suggests that the lower end of that suggested range
24 of incarceration, that is 18 months, is what is
25 appropriate.

26 The case law that was provided by the Crown and
27 referred to and relied upon by both of the parties

1 supports the conclusion, in my view, that the range
2 that is suggested along with the period of probation
3 proposed is appropriate in these circumstances.

4 As I said, the circumstances of the offence
5 were set out in the Agreed Statement of Facts which
6 was marked as Exhibit 1, and I am just going to
7 summarize those facts here so that there is some
8 context to these reasons.

9 On July 1st, 2014, Mr. Moran was at the
10 victim's apartment which the victim shared with a
11 roommate, Ms. Klengenberg. Mr. Moran asked the
12 victim for a sip of alcohol but the victim said no.
13 He then asked the victim for cigarettes. The victim
14 had none, but then Ms. Klengenberg told the victim
15 to get cigarettes from her bedroom. He complied
16 with her request and he went to the bedroom to look
17 for cigarettes.

18 Mr. Moran followed him into the bedroom and he
19 pushed the victim down to the bed from behind. He
20 tried to take the victim's wallet and there was a
21 struggle which ensued, as a result of which the
22 victim sustained a number of injuries, most of which
23 were depicted in the photographs comprising Exhibit
24 S-2. These were a scrape to his forehead, bruising
25 on his hands and cuts to his toes. He also suffered
26 a sore right shoulder and bicep, and the shoulder
27 pain took some months to resolve, according to the

1 Victim Impact Statement and the Agreed Statement of
2 Facts.

3 Ultimately, Mr. Moran reached into the victim's
4 pockets and took his wallet. The wallet contained
5 at the time approximately \$900.00 in cash.
6 Mr. Moran took the cash and left the apartment. The
7 victim called the police, who subsequently arrested
8 Mr. Moran. Upon arrest, he had on his person
9 \$350.00 in cash. At the time of the offence,
10 Mr. Moran was on probation for a theft conviction
11 entered in September of 2013.

12 In his Victim Impact Statement, which was
13 marked as Exhibit S-3, the victim makes reference to
14 the shoulder pain. He also indicates that he has
15 difficulty sleeping and has to investigate every
16 noise to reassure himself that there is not someone
17 coming. He sleeps with a dresser blocking his
18 bedroom door. Clearly, the impact of this has been
19 significant for him.

20 As noted, there was a pre-sentence report that
21 was prepared to assist in this sentencing process,
22 and it contains a great deal of information about
23 Mr. Moran's background and his circumstances.

24 Defence counsel indicated that Mr. Moran does
25 not maintain the opinion he expressed to the author
26 of the report, which is contained on the first page,
27 that is, that the offence was not as serious as the

1 police information suggests. His counsel stressed
2 this morning that Mr. Moran understands and
3 appreciates that this is a serious matter.

4 He also asked to clarify what I presume is a
5 typographical error indicating, at page 5 of the
6 report, that Mr. Moran's mother's home community is
7 Fort Simpson, when in fact it is Fort Smith.

8 From the report and counsel's submissions, I
9 have learned that Mr. Moran is a 33-year-old
10 Aboriginal male. He was raised by his mother, and
11 during his upbringing, he was exposed to a great
12 deal of substance abuse and violence in his home.
13 He has a long history of substance abuse, including
14 addiction to crack cocaine starting at age 17. He
15 reported to the author of the pre-sentence report,
16 however, that he had been clean and sober for a
17 month by that time, largely at the insistence of his
18 spouse, with whom he has a young child.

19 Mr. Moran has been with his current spouse for
20 a number of years, and as I just noted, they have
21 one child together. He enjoys being a father.
22 Mr. Moran has another child, who is in his teens,
23 from an earlier marriage. He does not have a close
24 relationship with that child.

25 The author of the report described Mr. Moran as
26 being resistant to the idea of community-based
27 programming for addictions. That said, he did

1 express a willingness to participate in programming
2 during any period of incarceration.

3 Mr. Moran has a grade 10 education and a very
4 limited employment history. This is no doubt due to
5 a very lengthy criminal record which goes back 12
6 years to 2003. There are groups of convictions
7 approximately every two years. There are five
8 convictions for property offences, ten offences
9 against the administration of justice, one
10 conviction for impaired driving, two convictions for
11 drug possession, and one conviction for obstructing
12 a peace officer. Mr. Moran cites his addiction as
13 the underlying cause of his criminal conduct.

14 The sentencing objectives set out in the
15 *Criminal Code* apply in varying degrees of importance
16 depending on the nature of the offence and the
17 circumstances of the offender. They include
18 denunciation, deterrence, both specific and general,
19 where necessary, the separation of offenders from
20 society, rehabilitation, reparation and the
21 promotion of a sense of responsibility in offenders.

22 The key principle of sentencing is that the
23 sentence must reflect the seriousness of the offence
24 and the degree of responsibility, or moral
25 blameworthiness, of the offender.

26 In robbery, it is appropriate that great
27 emphasis is placed on specific and general

1 deterrence as well as emphasis on public safety.
2 This is reflected in comments made by Justice
3 Richard in *R. v. Brownlee*, 2002 NWTSC 78, at
4 para. 18, and in *R. v. B.(E.)*, 2001 NWTSC 18, at
5 para. 31, as well as those of Justice Vertes in
6 *R. v. Tsetta*, 2002 NWTSC 80, at paras. 15 and 16.

7 The principle of restraint is also important
8 here. The principle of restraint is codified in
9 s. 718.2(e) of the *Criminal Code* and it provides
10 that a court must consider all available sanctions
11 other than imprisonment that are reasonable in the
12 circumstances, with particular attention to the
13 circumstances of Aboriginal offenders.

14 Mr. Moran is, as I noted, Aboriginal, and from
15 the pre-sentence report it is clear that many of the
16 systemic, or so-called *Gladue* factors, which are
17 acknowledged as contributing to the
18 overrepresentation of Aboriginal offenders in our
19 correctional system, are present here. These
20 include disconnection from an Aboriginal community
21 and culture, poverty, substance abuse and family
22 violence, all of which were present in Mr. Moran's
23 upbringing.

24 While *Gladue* factors may lead the sentencing
25 judge to determine that the degree of moral
26 blameworthiness of a particular offender is
27 diminished, thus perhaps justifying a sentence that

1 is less harsh, they must be balanced against the
2 circumstances of the offence and the need to satisfy
3 the relevant objectives of sentencing. Indeed, as
4 Justice Vertes pointed out in at para. 14 of the
5 *Tsetta* case, the Supreme Court of Canada in the
6 *Gladue* decision itself recognized the reality that
7 distinction in sentence based on those systemic
8 factors is likely to disappear when dealing with
9 serious crimes and serious offenders. The reality
10 is that some crimes call out for a significant
11 period of incarceration.

12 Finally, Mr. Moran is a relatively young man
13 who has expressed a desire to turn his life around.
14 Rehabilitation is therefore still an important
15 consideration in this analysis.

16 There are, as pointed out by counsel, a number
17 of aggravating factors in this case. The victim was
18 elderly, he was attacked in his own home from
19 behind, and the attack was unprovoked, deliberate
20 and predatory.

21 The accused has a lengthy and sustained
22 criminal record with numerous convictions for
23 property crimes and he was on probation for theft
24 when this offence occurred. This reflects a
25 significant lack of respect for the rights of other
26 citizens and the law and it is aggravating.

27 There are, however, a number of mitigating

1 circumstances. The most mitigating is that
2 Mr. Moran entered a guilty plea and he did so at a
3 relatively early stage in these proceedings. Doing
4 so saved the victim, who it appears has been
5 traumatized by this event, from having to testify,
6 and it saved the Court obvious time and expense.
7 Mr. Moran's decision to accept responsibility and
8 plead guilty is therefore worthy of significant
9 weight.

10 He also indicated this morning that he is sorry
11 for what he did.

12 Although he blames his addiction for this and
13 other criminal conduct, it is Mr. Moran who
14 ultimately is to blame for what happened here and he
15 needs to deal with his addictions. This is a
16 serious crime and it calls out for a sentence that
17 achieves the goals of deterrence and public safety.
18 The victim was injured physically and he remains
19 traumatized.

20 Whatever sentence is imposed must be
21 significant enough to drive home to Mr. Moran that
22 he cannot hurt and take from others to feed his own
23 habits. At the same time, a sentence must also
24 promote rehabilitation so that Mr. Moran can
25 ultimately function in and be a productive member of
26 our society.

27 In my view, this will be achieved by imposing a

1 period of incarceration of 18 months followed by two
2 years of probation.

3 Mr. Moran, can you please stand up.

4 Upon being convicted of robbery and upon
5 consideration of the circumstances and the nature of
6 the offence as well as your own personal
7 circumstances, I sentence you as follows. You are
8 sentenced to a period of incarceration of 18 months.
9 This will be followed by a period of two years of
10 probation and I am going to tell you what the terms
11 of that probation are in a moment. Do you
12 understand?

13 THE ACCUSED: Yes, I do.

14 THE COURT: Okay, you can have a seat,
15 Mr. Moran. The terms of your probation are going to
16 be as follows:

17

18 • You are to report to Probation Services within
19 two working days of your release and thereafter
20 as directed by your probation officer.

21 • You are to keep the peace and be of good
22 behaviour.

23 • You are to abstain from communicating, directly
24 or indirectly, with the victim, Donald
25 Hjelmeland.

26 • You are to appear in court as required.

27 • You are to notify the court or your probation

1 officer in advance of any change of your name
2 or address, change in your employment or your
3 occupation; and

4 • You are to abstain from the consumption of
5 alcohol, drugs or other intoxicating substances
6 except with respect to medication that is
7 prescribed by a licensed medical practitioner.

8
9 Do you understand those terms?

10 THE ACCUSED: Yes, I do.

11 THE COURT: All right. Mr. Moran, I did
12 notice that there are many many convictions on your
13 record for breaching...

14 THE ACCUSED: Yeah.

15 THE COURT: ...Court Orders, and it is
16 really important that you comply. So if at any
17 point you do not understand the terms of a Court
18 Order or you are unsure, please, please check with
19 your probation officer.

20 THE ACCUSED: I will.

21 THE COURT: There are also some ancillary
22 Orders that were requested by the Crown. The Crown
23 asked that I impose a firearms prohibition under
24 s. 109, which I will do, and that will be in effect
25 for 10 years.

26 You will also be required to submit to the
27 collection of bodily fluids for DNA analysis,

1 Mr. Moran.

2 Crown and defence, was there anything else?

3 MS. SCOTT: I believe you already made the
4 Order with respect to forfeiture.

5 THE COURT: Yes, I did sign the Order.

6 MS. SCOTT: No, there's nothing further,
7 thank you.

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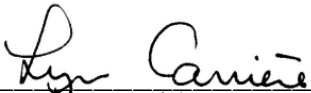
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14 Certified Pursuant to Rule 723
15 of the Rules of Court

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Lynn Carrière
18 Court Reporter

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