

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

NANCY BERTHA RUBEN

Transcript of Reasons for Sentence delivered by the Honourable Justice K. Shaner, sitting in Yellowknife, in the Northwest Territories, on the 23rd day of September, 2015.

APPEARANCES:

Mr. D. Praught

Counsel for the Crown

Mr. T. Bock

Counsel for the accused

(Charge under s. 268(2) of the *Criminal Code*)

1 WEDNESDAY, SEPTEMBER 23RD, 2015

2
3 REASONS FOR SENTENCE

4 SHANER J. (Orally):

5 On July 30th of this year, Nancy Bertha Ruben
6 was convicted of aggravated assault against Nora
7 Martin following a judge alone trial. Sentencing
8 was adjourned so that a pre-sentence report could be
9 prepared and provided to the Court, and to the Crown
10 and defence.

11 I heard submissions from each of the counsel on
12 Monday as well as a letter from Ms. Ruben, which was
13 read out by her counsel, and the proceedings were
14 adjourned to today for reasons and decision on
15 sentencing.

16 Aggravated assault is a very serious offence
17 which has a maximum penalty of 14 years. The Crown
18 in this case is seeking a sentence of 20 months to
19 two years, less time spent waiting for sentencing at
20 a rate of one and a half days' credit for each day
21 served which would amount to 88 days. This would be
22 followed by a period of two years of probation, the
23 terms of which would include a requirement to attend
24 counselling as directed.

25 Defence counsel submits that a custodial
26 sentence in the range of 15 to 20 months less credit
27 for pre-trial and pre-sentence custody is

1 appropriate. From submissions, I understood that
2 defence counsel was in agreement with what the Crown
3 proposed with respect to the length of the
4 probationary period.

5 The salient aspects of the circumstances of the
6 offence are as follows:

7 On the evening of October 15th, 2013, the
8 victim, Nora Martin, was standing at the corner of
9 50th Avenue in Yellowknife, by the Canadian Imperial
10 Bank of Commerce. She was with a friend. She had a
11 re-usable shopping bag over her shoulder which
12 contained, among other things, her wallet. She was
13 about to cross the street to go to the bus stop.
14 Ms. Ruben and her husband, Jason Balsillie,
15 approached them from the other side of the street.

16 The victim and Ms. Ruben were known to each
17 other, but they were not close and they had not been
18 interacting that day. Ms. Ruben initiated contact
19 with Ms. Martin, asking her if she had money or
20 liquor. Ms. Martin replied that she had neither.
21 Ms. Ruben then became angry and accused Ms. Martin
22 of lying. She grabbed the shopping bag on
23 Ms. Martin's shoulder. In doing so, she pulled
24 Ms. Martin down with enough force for Ms. Martin to
25 fall to her knees. Ms. Ruben then attempted to kick
26 Ms. Martin in the head. Ms. Martin put her left
27 hand up to protect her head and Ms. Ruben wound up

1 kicking her in her left arm, breaking it. The
2 attack was unexpected and unprovoked.

3 The crime has had a significant psychological
4 and physical effect on Ms. Martin, which persists to
5 this day. Ms. Martin prepared a Victim Impact
6 Statement a few months after the events in which she
7 indicated that, as a result of this injury, she was
8 having difficulty with everyday tasks like
9 showering, dressing herself and cooking. She has
10 been unable to work and she has had to seek income
11 assistance. She became fearful of walking around at
12 night. She experienced what she described as an
13 emotional roller coaster with feelings of
14 helplessness, fear and sadness. At the trial she
15 indicated that she was still unable to work and that
16 she continued to suffer from having a limited range
17 of motion in the arm which was injured.

18 The offender, Ms. Ruben, is homeless and she is
19 poor. She has had and she continues to have a life
20 characterized by many significant challenges.
21 Ms. Ruben is an Inuvialuit woman who was raised in
22 Paulatuk, a small community in the Arctic. She is
23 41 years old. Her family was very large; her
24 parents had 22 children. They lived a traditional
25 lifestyle and, as a result, Nancy Ruben learned many
26 traditional skills. Her mother was employed as a
27 teacher.

1 Family life was very rough however. Her father
2 and brothers abused alcohol and fought in the home.
3 Her lawyer relayed to me on Monday that Ms. Ruben's
4 mother would get scared and run away, leaving the
5 children to fend for themselves. Ms. Ruben was
6 picked on and bullied by other family members.

7 When she was eight, Ms. Ruben was abused by a
8 babysitter, and this abuse lasted for about a year.
9 At 15, she was the victim of a sexual assault and
10 she became pregnant with her first son as a result
11 of that. When she told her parents what happened
12 and that she was pregnant, they beat her.

13 She started to abuse alcohol at that time and
14 she quit school, thus attaining only a grade 8 level
15 of education. She began to look after other family
16 members' children. She eventually left Paulatuk
17 when she was 17 or 18 years old.

18 At 20, Ms. Ruben had another son. Both
19 children were eventually placed in foster care,
20 something which has affected her deeply and
21 following which she increased her use of alcohol.
22 She has attended treatment programs and counselling
23 at various times in the past, however she continues
24 to drink.

25 Ms. Ruben has worked as a cleaner and as a camp
26 cook, although she has not been employed steadily
27 for a number of years. Given her lack of housing,

1 lack of education and her alcohol addiction issues,
2 this is not in the least surprising. Further, she
3 has physical injuries which impede her ability to
4 work at the kinds of physically demanding jobs that
5 she once did.

6 Ms. Ruben has been married to Jason Balsillie
7 for six years. They are both homeless and so they
8 do not live together, however they spend their days
9 together. There has been quite a bit of violence in
10 their relationship and each has been convicted of
11 assault upon the other. That said, Ms. Ruben cares
12 very deeply for her husband and she worries about
13 him.

14 Ms. Ruben herself has a criminal record. There
15 are 23 convictions which go back to 1995. Most of
16 these are for failing to comply with various court
17 orders. There are seven convictions for crimes of
18 violence. The most recent ones are a 2007
19 conviction for assault with a weapon for which she
20 received 18 months in prison, and a 2013 conviction
21 for simple assault for which she received three
22 months in jail plus a year of probation.

23 With respect to the last conviction, her
24 defence counsel submitted a document entitled
25 "Report Back to Court" prepared by Ms. Ruben's
26 probation officer and filed with the Territorial
27 Court in December of 2013, and in it her probation

1 officer reported that Ms. Ruben was actively
2 participating in community-based programming and
3 showing an eagerness to address issues such as
4 alcoholism, anger and unhealthy relationships.
5 Unfortunately, it seems that she has not been
6 entirely successful in this.

7 There are a number of objectives in sentencing
8 that are set out in the *Criminal Code* and the case
9 law which apply in varying degrees of importance
10 depending on the nature of the offence and the
11 circumstances of the offender. These include
12 denunciation, specific and general deterrence, where
13 necessary the separation of offenders from society,
14 rehabilitation, reparation and the promotion of a
15 sense of responsibility in offenders.

16 In this case, primary consideration must be
17 given to the objectives of denunciation, deterrence
18 and protection of the public. Restraint and parity
19 of sentencing are also important here, as they are
20 in all sentencing matters.

21 Overall, the sentence must reflect the
22 seriousness of the offence and the degree of
23 responsibility or moral blameworthiness of the
24 offender. This in particular must be borne in mind
25 in considering how to achieve the objectives of
26 sentencing.

27 In determining moral blameworthiness and in

1 determining what sentence will achieve the relevant
2 objectives, it is incumbent on me, as the sentencing
3 judge, to consider Ms. Ruben's Aboriginal background
4 and the systemic factors in her background, which
5 may have led her to her involvement with the justice
6 system today. It is very clear that there is a
7 whole host of systemic factors which have left
8 Ms. Ruben predisposed to heavy involvement with the
9 justice system. The odds were and continue to be
10 stacked against her.

11 She was a victim of a very serious crime at a
12 young and formative age, which resulted in a
13 pregnancy. Her parents victimized her further by
14 beating her up when she told them what happened.
15 She dealt with this by abusing alcohol, and it is
16 not clear what, if any, medical or psychological
17 support would have been available to her at the
18 time. I cannot imagine that there was much in
19 Paulatuk at the time at her disposal, and this no
20 doubt led her to deal with her problems through
21 alcohol.

22 This seems to have sent her on a very tragic
23 path. She lost her children, and while she has had
24 periods of stability, she has spent more time
25 homeless and transient and it seems she has never
26 gained enough traction to get ahead of the curve in
27 any meaningful way.

1 Parity means that sentences for like offences
2 should be similar. That does not call for sentences
3 to be exactly the same. However, it does mean that
4 sentences should not, unless there is a very good
5 reason, represent a marked departure from the normal
6 range in sentencing.

7 In support of its position on the appropriate
8 length of incarceration and the objectives that are
9 engaged in this case, the Crown referred to and
10 submitted a number of cases, namely, *R. v. Mitchell*,
11 2009 NWTSC 52, *R. v. Catholique*, 2010 NWTSC 37,
12 *R. v. Camsell*, 2012 NWTSC 55, *R. v. Wanderingspirit*,
13 2013 NWTSC 44, and *R. v. Apsimik*, 2015 NWTSC 21.

14 All of these were cases of aggravated assaults.
15 In all but the *Apsimik* case, where the custodial
16 portion of the sentence was 22 months, the sentences
17 imposed were lower than what is proposed by the
18 Crown in this case. Crown counsel pointed out,
19 however, that there are a number of distinguishing
20 factors in this case which, it says, would justify a
21 sentence in the higher range than it proposes here.

22 As well, in all of the cases cited earlier,
23 except the *Mitchell* case, the offender pled guilty.

24 In the *Mitchell* case, the offender was
25 initially trying to stop a fight. He went further,
26 however, and he knocked the victim to the ground and
27 then proceeded to kick him in the face, breaking his

1 jaw. That resulted in a serious disabling injury.
2 Mr. Mitchell was sentenced to 12 months
3 incarceration followed by a period of probation.
4 The offender, Mr. Mitchell, who was Aboriginal, was
5 nearly 20 years younger than Ms. Ruben, and although
6 he had a criminal record, it was not as extensive as
7 Ms. Ruben's. The attack, though unjustified,
8 occurred in the context of a fight, unlike the case
9 here where the attack was entirely unprovoked.

10 *Catholique* was an aggravated assault where the
11 accused, also in the midst of a fight, threw the
12 victim down some stairs, breaking his jaw and
13 causing facial injuries. The accused then continued
14 to kick the victim, who sustained serious injuries.
15 Mr. Catholique was an 18-year-old Aboriginal
16 offender. Although the Court found no indication of
17 systemic factors related to his ethnicity or
18 background which would affect sentencing, his youth
19 and his limited criminal record elevated
20 rehabilitation as an important consideration and, as
21 such, the sentencing judge found that a lengthy jail
22 term would be unjustified. The offender was thus
23 sentenced to a period of incarceration of 15 months
24 followed by 18 months probation, and this was based
25 on a joint submission from counsel.

26 In the *Camsell* case, the 26-year-old accused
27 received a sentence of 18 months incarceration and

1 one year probation. The victim was attacked in his
2 own home after asking his assailants to leave. He
3 suffered a broken jaw and he required extensive
4 treatment. The sentencing judge cited as
5 aggravating factors that the victim was attacked at
6 home and restrained physically by one assailant
7 while the other beat him. His guilty plea and
8 expression of remorse were considered highly
9 mitigating.

10 *Wanderingspirit* involved Mr. Camsell's
11 co-accused. There the 36-year-old offender received
12 a sentence of 19 months incarceration followed by
13 probation. He had a significant criminal record
14 which included two counts of assault with a weapon.

15 In the *Apsimik* case, the offender, as I noted,
16 received a custodial sentence of 22 months which was
17 followed by three years of probation. The attack
18 there was sustained, with the victim being kicked
19 repeatedly in the head and upper body while he was
20 on the floor. The offender had an extensive
21 criminal record. His guilty plea was a mitigating
22 factor.

23 In my view, the cases suggest that a period of
24 incarceration ranging from 18 to 24 months should be
25 considered in this case. There are both aggravating
26 and mitigating circumstances here. It is highly
27 aggravating that the attack was unprovoked and

1 initiated entirely at the instance of Ms. Ruben.
2 The victim was completely unprepared for it and it
3 is hard to imagine the shock and horror of being
4 physically attacked and seriously injured in the
5 middle of the street in the early evening in
6 Yellowknife.

7 Ms. Ruben's criminal record is also aggravating
8 insofar as the convictions for crimes of violence
9 are concerned. She knows this is wrong. She has
10 been convicted of and received punishment for
11 similar crimes in the past, including one sentence
12 of 18 months.

13 Although Ms. Ruben does not have the benefit of
14 a guilty plea as a mitigating factor - and I will
15 emphasize that the absence of a guilty plea is not
16 an aggravating factor - she did have her lawyer, as
17 I mentioned, read into court a letter during
18 submissions on sentencing in which she acknowledged
19 that her actions were wrong and that they caused
20 harm to the victim. I took this as a sincere
21 expression of remorse and acceptance of
22 responsibility for what happened by Ms. Ruben, and
23 I do give it weight.

24 Ms. Ruben's life, as I have said, has been very
25 difficult and it continues to be so. Given her
26 background, it is no surprise whatsoever that she
27 has had such frequent contact with the criminal

1 justice system. This is particularly so insofar as
2 the convictions for failing to comply with court
3 orders are concerned. Being homeless and poor
4 creates instability which may make it difficult to
5 comply with court-imposed conditions; addiction only
6 adds to this. Further, her addiction, which she has
7 not effectively addressed, appears to add to her
8 propensity for violence.

9 All of this supports the conclusion that
10 Ms. Ruben's moral blameworthiness must be treated as
11 somewhat diminished. That does not mean, of course,
12 that she is blameless. Ms. Ruben is here because
13 she committed a random act of violence and she hurt
14 someone very, very seriously. She must shoulder the
15 responsibility.

16 Denunciation and deterrence are very important
17 and so is public safety. The victim Nora Martin and
18 anyone else like her has the right to walk on our
19 streets without fear of random attack. The sentence
20 must thus strike a balance between recognizing
21 Ms. Ruben has had significant challenges in her life
22 which contribute disproportionately to her
23 involvement with the justice system, while also
24 being meaningful enough to motivate her to deal with
25 her addictions and anger and to deter her from
26 committing further violent acts. It must also
27 strike a balance between the need for public safety

1 in the short term, which can be achieved through
2 incarceration, and public safety in the long term
3 which, in these circumstances, cannot be achieved
4 through incarceration alone. A combination of
5 incarceration with, hopefully, effective programming
6 and close community supervision following prison is
7 required.

8 For these reasons, I concluded that a period of
9 incarceration of 20 months followed by a period of
10 probation of two years is appropriate.

11 Ms. Ruben, can you please stand up.

12 Ms. Ruben, it is really difficult for me to say
13 this, but I have to impose this sentence. Upon
14 being convicted of aggravated assault and upon
15 consideration of the circumstances and the nature of
16 the offence as well as your personal circumstances,
17 I sentence you as follows. You are sentenced to a
18 period of incarceration of 20 months. You will be
19 credited with a period of 88 days, which is
20 approximately three months, which represent the time
21 that you spent on remand, calculated on a basis of
22 1.5 days for each day served, and so you will have
23 approximately 17 months left to serve.

24 That will be followed by a period of two years
25 of probation, and I will tell you the terms of that
26 probation order in a moment. Do you understand?

27 THE ACCUSED: (Indicates in the affirmative)

1 THE COURT: You can sit down, Ms. Ruben.

2 The terms of the probation order are going to be as
3 follows:

4

5 • You will have to report to Probation Services
6 within two business days of your release and
7 after that as you are directed by your
8 probation officer.

9 • You will keep the peace and be of good
10 behaviour.

11 • You will appear in court as required.

12 • You will notify Probation Services or the court
13 of any change in your address, employment, name
14 or occupation.

15 • You will abstain from consuming alcohol or
16 other intoxicating substances.

17 • You will abstain from consuming drugs except
18 those that have been medically prescribed for
19 you.

20 • And, finally, I note that your counsel stated
21 on your behalf in submissions that you are
22 prepared to attend treatment, possibly
23 residential treatment. So it will be a term of
24 your probation that you attend treatment
25 programs as directed by your probation officer
26 and, of course, subject to being accepted into
27 those treatment programs.

1 I would only add to that that I do hope that
2 Probation Services is able to access the kinds of
3 treatment programs for Ms. Ruben that she is in need
4 of.

5 I am now going to turn to the ancillary orders.
6 The Crown has asked that I impose a firearms
7 prohibition order under s. 109, and I will do so.
8 Crown, you are seeking just a 10-year firearms
9 prohibition?

10 MR. PRAUGHT: Yes, Your Honour.

11 THE COURT: You will also be required to
12 submit to the collection of bodily fluids for DNA
13 analysis.

14 Finally, I am unable to waive the victims of
15 crime surcharge because of recent amendments to the
16 *Criminal Code*, and so you will be required to pay
17 \$200.00 as a victim of crime surcharge. Mr. Bock,
18 do you have any submissions on time to pay?

19 MR. BOCK: Due to her circumstances,
20 \$200.00 is obviously a lot of money. However, I
21 would submit that -- eight months, Your Honour.

22 THE COURT: All right. I will direct that
23 the Order provide that Ms. Ruben has eight months to
24 pay the victim of crime surcharge following her
25 release from prison.

26 Counsel, is there anything else?

27 MR. PRAUGHT: Your Honour, the specific

1 request of Ms. Martin, the Crown did request a no
2 contact condition on....

3 THE COURT: I'm sorry, yes. The probation
4 order should include a provision that Ms. Ruben have
5 no contact with Ms. Nora Martin, the victim. And is
6 there anything else?

7 MR. PRAUGHT: No, Your Honour.

8 THE COURT: Mr. Bock?

9 MR. BOCK: No, thank you, Your Honour.

10 THE COURT: Ms. Ruben, when you go to
11 prison, you are going to have access to a number of
12 treatment programs. Please, please take advantage
13 of them and use this as an opportunity for
14 rehabilitation and an opportunity to kickstart your
15 work on beating your addictions because you are
16 still a young woman, you are only 41 years old, you
17 have got a lot of years ahead of you, and I know
18 that you can change.

19 *****

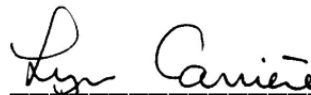
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22 Certified Pursuant to Rule 723
23 of the Rules of Court

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Lynn Carrière
Court Reporter

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