

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

DAVID RICHARD HARRISON

Transcript of Reasons for Sentence delivered by the
Honourable Madam Justice S.H. Smallwood, sitting in
Yellowknife, in the Northwest Territories, on the 27th day
of October, 2015.

APPEARANCES:

Mr. B. MacPherson	Counsel for the Crown
Mr. M. Lecorre	
Ms. C. Wawzonek	Counsel for the accused

(Charge under s. 235(1) of the *Criminal Code of Canada*)

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1 TUESDAY, OCTOBER 27TH, 2015

2
3 REASONS FOR SENTENCE

4 SMALLWOOD J. (Orally):

5
6 [1] The offender David Harrison was convicted of
7 second-degree murder in the death of Yvonne
8 Desjarlais. On December 29th, 2012, David Harrison
9 murdered Yvonne Desjarlais when he strangled her
10 before leaving her body in an alley in Yellowknife.
11

12 [2] The act of taking Ms. Desjarlais' life has had
13 a significant impact on those who loved
14 Ms. Desjarlais. Her family and friends are left to
15 wonder why this senseless tragedy occurred and have
16 to go on knowing that their wife, sister, aunt,
17 mother, grandmother and friend is no longer with us,
18 and knowing that she died violently and alone.
19

20 [3] The circumstances of this offence are set out
21 in the Agreed Statement of Facts. On the night of
22 December 29th, 2012, Ms. Desjarlais was at a party
23 at the Northern Lites Motel in Yellowknife. She was
24 drinking and was intoxicated. She left the party
25 and began walking towards the Women's Shelter.
26

27 [4] While walking, she came across the offender

1 David Harrison. They were acquaintances who knew
2 each other from the Day Shelter. David Harrison had
3 been drinking and was also intoxicated. He invited
4 her into a building where he had been working on
5 renovations for a local businessman. Mr. Harrison
6 invited Yvonne Desjarlais into the building to drink
7 beer. She accepted and they entered Le Stock Pot.
8 They were the only two people present in the
9 building.

10
11 [5] At some point, Ms. Desjarlais wanted to leave
12 and David Harrison became upset and physically
13 restrained her. There was a brief struggle where
14 David Harrison placed his arms around
15 Ms. Desjarlais' neck and strangled her.
16 Ms. Desjarlais died of strangulation. David
17 Harrison then dragged her body outside and left
18 Yvonne Desjarlais' body in the alley behind the
19 building where it was discovered the next morning.

20
21 [6] Mr. Harrison was arrested in July 2013, after
22 DNA evidence linked him to the murder. The nature
23 of the DNA evidence and where it was located has not
24 been specified.

25
26 [7] Following his arrest, David Harrison confessed
27 to murdering Yvonne Desjarlais.

1 [8] Both counsel referred to this yesterday, but no
2 sentence imposed today, no words expressed can make
3 up for the loss that this crime has caused for the
4 people that loved Ms. Desjarlais, and I do not
5 expect that the sentence that I impose will do that.
6 A sentence of imprisonment cannot make up for the
7 loss of a loved one, and the Court cannot undo the
8 harm that was done.

9
10 [9] The Victim Impact Statements that were filed,
11 many of which were read out loud in court yesterday,
12 demonstrate the loss that Yvonne Desjarlais' family
13 feels because of Mr. Harrison's actions. For Yvonne
14 Desjarlais' family and friends, the people affected
15 by this tragic event, I hope that the criminal
16 proceedings and the end of them will be a step along
17 the way in the journey of healing.

18
19 [10] The Victim Impact Statements that were filed
20 express the incredible loss suffered and the effect
21 Ms. Desjarlais' death has had on her family. Their
22 lives have been forever changed.

23
24 [11] There are many emotions expressed in the Victim
25 Impact Statements. Primarily, love for Yvonne
26 Desjarlais, also grief, anger, guilt. It is clear
27 that Mr. Harrison's actions have greatly affected

1 Ms. Desjarlais' family. They have struggled to deal
2 with her tragic death and to understand why and what
3 happened. Many speak of struggling to cope with
4 daily life since her death. Some have turned to
5 alcohol to cope. Her family has had problems and
6 is, to quote one person, "falling apart."
7

8 [12] Some of the Victim Impact Statements refer to
9 wanting to see justice to be served. Seeing justice
10 to be served will mean different things to each
11 person. Mr. Harrison will be sentenced to a life
12 sentence of imprisonment today. For some, that will
13 serve justice; for some, it will not.
14

15 [13] As I said, no sentence of imprisonment can make
16 up for the loss of a loved one, but I have taken
17 into account what was said in the Victim Impact
18 Statements and what was said by counsel and the
19 cases submitted and tried to craft a fit sentence
20 for this offence.
21

22 [14] The sentence mandated by the *Criminal Code* for
23 second-degree murder is one of life imprisonment.
24 That is the sentence that will be imposed upon
25 Mr. Harrison today.
26

27 [15] The issue to be decided today is the period of

1 time that Mr. Harrison will be required to serve
2 before being eligible for parole. My decision is
3 not when Mr. Harrison will be paroled because that
4 is up to the National Parole Board, but my decision
5 is instead when he can apply for parole.

6
7 [16] Section 745(c) of the *Criminal Code* provides
8 that a person convicted of murder be sentenced to a
9 period of parole ineligibility for at least 10 years
10 and not more than 25 years.

11
12 [17] Section 745.4 of the *Criminal Code* provides
13 that the judge sentence the offender having regard
14 to the character of the offender, the nature of the
15 offence and the circumstances surrounding the
16 commission of the offence.

17
18 [18] In sentencing an offender, a fundamental
19 principle of sentencing is that the sentence must be
20 proportionate to the gravity of the offence and the
21 degree of responsibility of the offender. This
22 requires taking into account the circumstances of
23 the offender and the circumstances of the offence as
24 well as the applicable sentencing principles.

25
26 [19] As stated by Justice Vertes in the case of
27 *Delorme*, 2005 NWTSC 79, at paras. 4 and 5:

1 Implicit in these factors are
2 considerations of specific and general
3 deterrence, denunciation, and the
4 reformation and rehabilitation of the
5 offender. And, as noted by the Supreme
6 Court of Canada in *R. v. Shropshire*
7 (1995), 1995 CanLII 47 (SCC), 102
8 C.C.C. (3d) 193, the determination of
9 the period of parole ineligibility is a
10 very fact-sensitive process. The Court
11 also noted that the discretion to
12 impose a period greater than ten years
13 reflects the fact that within the
14 category of second degree murder there
15 is both a range of seriousness and
16 varying degrees of moral culpability.

17 The Supreme Court also held that it is
18 incorrect to start from the proposition
19 that the period of parole ineligibility
20 must be the statutory minimum unless
21 there are unusual circumstances. It
22 is a question of what is the
23 appropriate sentence in the
24 circumstances. The emphasis is on the
25 protection of society through the
26 Court's expression of repudiation for
27 the particular crime by the particular
 offender.

17 [20] In this case, the Crown is seeking a period of
18 parole ineligibility of 15 years. The defence is
19 seeking a period of parole ineligibility of 10
20 years, saying that the circumstances do not warrant
21 an increase beyond the minimum period of parole
22 ineligibility.

24 [21] Turning to the factors I must consider under
25 s. 745.4, first the character of the offender. I
26 have had the benefit of thorough submissions from
27 defence counsel regarding David Harrison's

1 background as well as two letters filed, one from
2 his mother and another from his father, which speak
3 to his background history and some of the problems
4 he has faced.

5
6 [22] David Harrison is 30 years old and of Inuit
7 descent. He was adopted at birth by Nancy and Brian
8 Harrison into a non-Aboriginal family with seven
9 other children. Since his childhood, David Harrison
10 has had issues and challenges. He has had health
11 challenges, struggled in school, had episodes of
12 aggression that his family has struggled to get him
13 help for. He has been considered learning disabled
14 and has been evaluated since he was young by various
15 health professionals. The diagnoses have varied and
16 a definitive diagnosis has been hard to establish.

17
18 [23] Reportedly, his mother did not consume alcohol
19 during her pregnancy, so that does not appear to be
20 an issue. His paternal biological family may have
21 had a history of mental illness.

22
23 [24] His parents have made an effort to have him
24 assessed and diagnosed over the years. The most
25 recent assessment was in 2000, which agreed with a
26 1998 assessment which concluded David Harrison had
27 attention deficit disorder with hyperactivity, was

1 borderline mentally retarded and suffered from
2 intermittent explosive disorder not otherwise
3 specified.
4

5 [25] So Mr. Harrison has been on medication and
6 hospitalized over the years. As a youth, episodes
7 of aggression were noted by his parents, which has
8 continued into adulthood. His mother describes
9 Mr. Harrison's life as a cycle of work, success,
10 depression, drinking and drugs and violent
11 outbursts. In recent years, in jail, the structure
12 and routine of an institutional environment has
13 leveled his behaviour, but he still experienced
14 bouts of depression.
15

16 [26] Despite his problems, his parents describe him
17 as thoughtful and caring and a valued member in a
18 loving family and someone whose humour is
19 appreciated in the family.
20

21 [27] Mr. Harrison has been in custody since his
22 arrest in July 2013, and there have been no
23 incidents while in custody. As a remand prisoner,
24 there was limited programming available to him,
25 although he did see the psychiatric counsellor and
26 an Aboriginal counsellor on occasion. He also
27 worked while on remand in the kitchen up until

1 recently.

2

3 [28] Mr. Harrison has a criminal record dating back
4 to 1998 when he was a youth. There are 32
5 convictions on his criminal record. There are eight
6 offences of violence on the record, three of which
7 occurred as a youth.

8

9 [29] Mr. Harrison was convicted in 2005 of an
10 assault and received a suspended sentence and
11 probation. In 2007, he was convicted of assault
12 causing bodily harm and received a sentence of six
13 months imprisonment. In 2009, he was convicted of
14 an assault and received a sentence of 10 months
15 imprisonment. In 2010, he was convicted of assault
16 causing bodily harm and received a sentence of 600
17 days which equates to approximately 20 months. In
18 2012, he was convicted of assault and received an
19 eight-month conditional sentence. Many of his other
20 convictions are offences against the administration
21 of justice. Since 2005, Mr. Harrison has had an
22 entry on his criminal record every year with the
23 exception of 2011, and it appears that he was in
24 custody for much if not all of 2011.

25

26 [30] Since 2007, there have been significant
27 assaults on Mr. Harrison's record, an assault

1 causing bodily harm conviction in 2007, then in 2009
2 a conviction for a simple assault, and by that I
3 mean assault pursuant to s. 266 of the *Criminal*
4 *Code*, but a sentence was imposed of 10 months
5 imprisonment, which means that the Crown went by
6 indictment. So for a simple assault, I must
7 conclude that it was at the more serious end of the
8 spectrum of simple assaults. In 2010, he was
9 convicted of assault causing bodily harm, and in
10 2012 again a conviction for assault with an
11 eight-month conditional sentence, again meaning that
12 the Crown went by indictment and that it was a more
13 serious assault.

14
15 [31] Based on his criminal record and his most
16 recent convictions, it appears that Mr. Harrison has
17 been in trouble with the law steadily since 2004,
18 and his recent convictions for violence lead me to
19 conclude that he is a violent person and
20 consideration of the security of the public must be
21 a factor in sentencing.

22
23 [32] Considering now the nature of the offence.
24 Mr. Harrison has pled guilty to murder. Murder is
25 one of the most serious offences in the *Criminal*
26 *Code*. Mr. Harrison's level of moral culpability is
27 high.

1 [33] The moral culpability required for murder and
2 the gravity of the offence, the seriousness of the
3 offence are reflected in the automatic sentence of
4 life imprisonment with a minimum 10 years of parole
5 ineligibility.

6
7 [34] Considering the circumstances surrounding the
8 commission of the offence. The Agreed Statement of
9 Facts, as I mentioned, sets out what occurred when
10 Mr. Harrison murdered Yvonne Desjarlais.
11 Ms. Desjarlais was a 63-year-old woman and
12 Mr. Harrison was in his 20's at the time.
13 Ms. Desjarlais had some problems with alcohol and
14 was in a vulnerable social group. She frequented
15 the Day Shelter and the Women's Shelter in
16 Yellowknife.

17
18 [35] Mr. Harrison was an acquaintance that she knew
19 from the Day Shelter and he was part of the same
20 broad social group. He invited her to have beer in
21 a vacant building that he had access to and
22 Ms. Desjarlais agreed. When she wanted to leave,
23 Mr. Harrison became upset and physically restrained
24 her, strangling her in the process, before leaving
25 her body in the alley behind the building.

26
27 [36] There is no explanation for what occurred, no

1 motivation, no provocation. It is a random
2 senseless tragedy. Mr. Harrison, a young man,
3 strangled Ms. Desjarlais, an elderly woman, and I
4 accept that Ms. Desjarlais was vulnerable because of
5 her age and the situation that she was in, in an
6 empty building alone with David Harrison and unable
7 to seek help or flee.

8
9 [37] Alcohol was also a factor. It was a problem
10 for Ms. Desjarlais and was involved in the offence.
11 It made her vulnerable in several ways.
12 Ms. Desjarlais was intoxicated when she came across
13 David Harrison and because of her alcohol problem
14 was, I expect, more likely to accept Mr. Harrison's
15 offer of beer rather than continuing on to the
16 Women's Shelter.

17
18 [38] The consumption of alcohol is something that is
19 prevalent in the cases that come before this court,
20 in the courts in the Northwest Territories. Daily
21 there are cases involving the consumption or the
22 abuse of alcohol, from bootlegging to property
23 offences, to sexual abuse, to violence, assaults up
24 the spectrum of violence to murder.

25
26 [39] It is unfortunate that in our society we cannot
27 do more to help those who suffer from mental

1 illness, who suffer from drug and alcohol
2 addictions. That is something for the leaders of
3 this Territory and country to address. The courts
4 can only deal with the aftermath, sentencing
5 individuals for crimes committed while dealing with
6 these addictions and issues and hope that the
7 sentences imposed achieve the sentencing principles
8 of specific and general deterrence, denunciation and
9 rehabilitation.

10
11 [40] Following the murder of Ms. Desjarlais, David
12 Harrison left her body in an alley to be discovered
13 the next morning. The discovery of Ms. Desjarlais'
14 body led to an investigation and Mr. Harrison's
15 eventual arrest in July 2013.

16
17 [41] Following the court process, he is now being
18 sentenced after pleading guilty to second-degree
19 murder.

20
21 [42] I have had the benefit of reviewing the cases
22 provided by Crown and defence, and I will not review
23 them in detail as counsel went over them yesterday
24 and I have read them all.

25
26 [43] As has been noted, sentencing for second-degree
27 murder is very fact-specific. No two cases are

1 alike. The cases provide a framework for
2 determining what is an appropriate sentence in a
3 case like this.

4
5 [44] The two cases that have been provided from the
6 Northwest Territories are not factually similar but
7 provide an example of the sentences that have been
8 imposed for second-degree murder in this
9 jurisdiction.

10
11 [45] The case of *Sayers*, 2003 NWTSC 69, from 2003 is
12 an example. That case involved the beating of a
13 night clerk at a hotel in the course of a robbery.
14 The accused in that case was convicted after trial
15 of second-degree murder and a sentence of 14 years
16 of parole ineligibility was imposed.

17
18 [46] The other case that was provided from the
19 Northwest Territories is that of *Delorme, supra*,
20 from 2005, and that case involved the beating and
21 strangulation of the victim in a crack house by
22 several people involved in the drug world. They
23 killed the victim because they thought he was
24 bringing the police to their door, and there was an
25 attempt to conceal the body following the murder by
26 burning it and leaving it outside of town. In that
27 case, again, there was a guilty verdict after trial

1 and the period of parole ineligibility was set at
2 14 years.

3
4 [47] Counsel provided other cases from across
5 Canada. The case of *Roberts*, 2001 ABQB 520, from
6 2001 in Alberta, which involved a shooting death.
7 The accused was found guilty after trial and a
8 sentence of 15 years parole ineligibility was
9 imposed.

10
11 [48] The case of *White*, 2010 NBQB 203, in 2010 from
12 New Brunswick, a case involving an elderly victim.
13 In that case, there was a guilty plea and a joint
14 submission of 20 years of parole ineligibility.

15
16 [49] The case of *Scott*, 2014 NBQB 146, 2014 from New
17 Brunswick, was also provided. Again, that was a
18 case where there was a vulnerable victim, a guilty
19 plea to second-degree murder and a sentence of
20 15 years parole ineligibility was imposed.

21
22 [50] The case of *Barry*, 2013 BCSC 937, from 2013 in
23 British Columbia, was a case where there was a
24 verdict after a trial, but a trial on a specific
25 issue, whether the accused was not criminally
26 responsible, and that was an unprovoked stabbing on
27 a 15-year-old and in that case the Court imposed a

1 10-year period of parole ineligibility.

2
3 [51] The case of *Bitternose*, 2006 S.J. No. 496, a
4 2006 decision from Saskatchewan, was also a guilty
5 plea. In that case it was a shooting death by a
6 group of individuals. The accused in that case was
7 not the leader of the individuals but had fired a
8 weapon, and the period of parole ineligibility in
9 that case was 10 years.

10
11 [52] And the last case that was provided was that of
12 *Dennis*, 2014 YKSC 14, a Yukon case from 2014.
13 Again, in that case there was a guilty plea, there
14 was a joint submission that the Court went along
15 with of 12 years of parole ineligibility.

16
17 [53] So those cases, as I said, provide a framework
18 for determining what is an appropriate sentence in a
19 case like this.

20
21 [54] Mr. Harrison is also of Inuit descent and this
22 requires me to consider s. 718.2(e) of the *Criminal*
23 *Code* where a sentencing court is required to give
24 particular attention to the circumstances of
25 Aboriginal offenders in coming up with a sentence.
26 These circumstances of Aboriginal offenders are
27 often referred to as the *Gladue* factors following

1 the decision of the Supreme Court of Canada, and
2 what the Supreme Court of Canada has said is that a
3 sentencing court must consider the unique systemic
4 or background factors which may have played a part
5 in bringing an Aboriginal offender before the courts
6 and the types of sentencing procedures and sanctions
7 which may be appropriate in the circumstances
8 because of the offender's Aboriginal background.

9
10 [55] As acknowledged in *Gladue*, the more violent and
11 serious the offence, the more likely that a sentence
12 of imprisonment for Aboriginal and non-Aboriginal
13 offenders will be the same or close to the same.

14
15 [56] In this case, I have not heard about many of
16 the factors that we commonly hear about when dealing
17 with Aboriginal offenders. Mr. Harrison did not
18 attend residential school; his contact with his
19 Aboriginal family appears to be limited. However, I
20 have heard that he has participated in Aboriginal
21 events, particularly a group in Red Deer that
22 danced. So I have considered the information that
23 has been provided to me about Mr. Harrison's
24 Aboriginal background.

25
26 [57] Overall, I do not think that the factors
27 referred to in the cases of *Gladue* and *Ipeelee* are

1 applicable here such that they can significantly
2 reduce Mr. Harrison's sentence for murder.

3
4 [58] Murder by definition is a very serious offence
5 and there are factors which can make a murder more
6 serious. In this case, the victim Ms. Desjarlais
7 was 63 years old, elderly, significantly older than
8 Mr. Harrison. She was intoxicated by alcohol and
9 she was vulnerable.

10
11 [59] There is also significant credit to be given to
12 Mr. Harrison for pleading guilty. He was originally
13 charged with first-degree murder and has pled to
14 second-degree murder. This removed the need for a
15 *voir dire* and a trial, it saves the court time, it
16 saves witnesses from having to testify and, most
17 importantly, it saves Ms. Desjarlais' family and
18 friends from having to go through a trial with the
19 uncertainty of what the outcome might be.

20
21 [60] While this matter has taken some time to go
22 through the court system, a just outcome has
23 occurred. Mr. Harrison's plea shows that he takes
24 responsibility for his actions.

25
26 [61] The letter that was filed in court from his
27 mother indicates that he does also experience

1 remorse to the point of contemplating suicide, as
2 she indicated.

3

4 [62] I accept that Mr. Harrison, through his plea
5 and through what has been related to me, is sorry
6 for what he has done.

7

8 [63] The guilty plea does have a mitigating effect.
9 In my view, it does not reduce the need for a period
10 of parole ineligibility to the minimum of 10 years.
11 Given the circumstances of the offence, the
12 circumstances of Mr. Harrison and the aggravating
13 factors, I am of the view that a sentence in excess
14 of the minimum 10 years parole ineligibility is
15 required.

16

17 [64] First, I will deal with the ancillary orders
18 that the Crown has referred to, and defence has not
19 opposed any of the orders sought. So there will be
20 a DNA order, and there will also be a firearms order
21 pursuant to s. 109 of the *Criminal Code*.

22

23 [65] With respect to the victims of crime surcharge,
24 both counsel have suggested that it should be
25 waived, and in the circumstances, given the offence
26 and the sentence that will be imposed, I agree. So
27 the victims of crime surcharge will be waived.

1 [66] Mr. Harrison, please stand up.

2

3 [67] David Harrison, for the murder of Yvonne
4 Desjarlais, I sentence you to a term of imprisonment
5 for life and I set your parole ineligibility date at
6 13 years. You may sit down.

7

8 [68] I want to conclude by saying that, after
9 reviewing the Victim Impact Statements filed
10 yesterday, that no sentence can ever compensate
11 Yvonne Desjarlais' family and friends for the loss
12 of their loved one. I realize that, but I also hope
13 that by Mr. Harrison taking responsibility for
14 murdering Ms. Desjarlais and by the sentence that I
15 have imposed, that you can take a measure of comfort
16 and that will help you come to terms with your loss
17 and help you to heal.

18

19 [69] I want to thank counsel for your work in
20 resolving this case and for the helpful submissions
21 and the cases and materials that you filed.

22

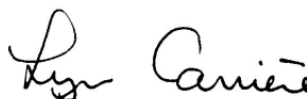
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of the Rules of Court

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Lynn Carrière
Court Reporter