

R. v. Beyonnie, 2015 NWTSC 68

S-1-CR2013000101

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- vs. -

GARY BEYONNIE

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Transcript of the Reasons for Sentence by The Honourable  
Justice S. H. Smallwood, at Déline in the Northwest  
Territories, on November 26th A.D., 2015.

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APPEARANCES:

Ms. J. Scott: Counsel for the Crown

Mr. P. Fuglsang: Counsel for the Accused

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Charge under s. 239(1)b) Criminal Code of Canada

Official Court Reporters

1 THE COURT: Gary Beyonnie has entered a  
2 guilty plea to a charge that on February 1st,  
3 2013, in Déline, did attempt to murder Douglas  
4 Baton by striking him in the head with a  
5 hammer, contrary to section 239(1)(b) of the  
6 Criminal Code.

7 Mr. Beyonnie entered his guilty plea on  
8 October 5th, 2015, and the matter was  
9 adjourned to today, here in Déline, for  
10 sentencing.

11 The facts are revealed in an Agreed  
12 Statement of Facts which were agreed upon by  
13 the Crown and the defence. They indicate that  
14 sometime between midnight and 1 a.m. on  
15 February 1st, 2013, Mr. Baton went to Mr.  
16 Beyonnie's residence here in Déline to ask for  
17 cigarettes. Mr. Beyonnie became frustrated  
18 and wanted Mr. Baton to stop bothering him and  
19 hit him in the face and kicked him. Mr.  
20 Beyonnie then went and got a hammer from his  
21 residence and hit Mr. Baton two or three times  
22 on the head. He left Mr. Baton on the steps  
23 and returned to his residence.

24 Sometime after this Mr. Baton was found in  
25 the snow at the bottom of Mr. Beyonnie's  
26 stairs, and he was moved into a neighboring  
27 residence where the people who found him made



1           some efforts to obtain assistance and tried to  
2           get ahold of the authorities.

3           After the assault, Mr. Beyonnie went  
4           outside to check Mr. Baton's pockets for  
5           cigarettes and discovered that Mr. Baton was  
6           no longer there.

7           Subsequently, Mr. Baton was taken to the  
8           health centre and later medevaced to  
9           Yellowknife and then to Edmonton for treatment  
10          for his injuries.

11          I will speak later about the injuries that  
12          Mr. Baton suffered but he did suffer extensive  
13          skull fractures with brain protrusions and  
14          required surgery in order to save his life.  
15          He was subsequently in the hospital for a  
16          period of time and has been undergoing  
17          rehabilitation as well since the incident. He  
18          was ultimately discharged from the Glenrose  
19          Rehabilitation Hospital on May 16th, 2013 and  
20          had made a number of gains but still suffers  
21          the effects of his injuries.

22          Mr. Beyonnie was arrested by the police on  
23          February 1st, 2013 when they attended to his  
24          residence on an unrelated matter. When they  
25          arrived, he told them that he had killed "that  
26          guy" and was going to remand. He was arrested  
27          and later provided a statement where he



1 admitted that he had killed Douglas Baton by  
2 hitting him with a hammer and that the hammer  
3 was located in his house. He indicated that  
4 he intended to hit Mr. Baton in the head with  
5 the hammer and that he was trying to kill him.

6 The hammer was subsequently seized by the  
7 police and located in Mr. Beyonnie's  
8 residence. When they analyzed the hammer, it  
9 revealed that there was blood, hair, and  
10 biological matter of Mr. Baton on the hammer,  
11 and Mr. Beyonnie's DNA was also on the hammer.

12 So those are the facts underpinning the  
13 offence that is before the Court today.

14 As I indicated, the victim suffered  
15 extensive injuries. He was medevaced to  
16 Yellowknife and then to Edmonton. He had  
17 three skull fractures and was diagnosed with a  
18 depressed skull fracture. He also had  
19 bruising and swelling of his brain. The  
20 neurosurgeon who operated on him noted that  
21 there were pieces of bone driven into his  
22 brain, there was hair and debris within his  
23 skull, and there were pieces of brain in the  
24 hair, all of which had to be treated when he  
25 was operated on.

26 As well, the neurosurgeon was of the view  
27 that this type of injury would not have been





1 consistent with a fall, as was originally  
2 reported by Mr. Baton to the police when they  
3 located him, but that it was likely from  
4 multiple blows to the head.

5 The discharge summary from the Glenrose  
6 Rehabilitation Centre indicates that it is  
7 clear that Mr. Baton suffered a severe  
8 traumatic brain injury. It has had lasting  
9 effects, which are detailed in the report,  
10 both physically and cognitively on Mr. Baton.

11 The Victim Impact Statements that have  
12 been provided to the Court, both by Mr. Baton  
13 and his sisters (as well we heard from his  
14 sister Ms. Baton today) speak to the  
15 long-lasting effects that this incident has  
16 had on Mr. Baton and his family. It has been  
17 described as a life changing event. Mr.  
18 Baton and his family have had to deal with  
19 this over the last couple of years, and it is  
20 clear that they will have to continue to deal  
21 with this. Mr. Baton's life has changed. He  
22 is no longer able to work. There are things  
23 that he cannot do, and there are things that  
24 he will not be able to do that he did before  
25 this event.

26 Ms. Baton today described his life as  
27 sometimes being unhappy and with lots of



1 anger.

2 She has indicated that some of the  
3 individuals in her family have been able to  
4 forgive Mr. Beyonnie but others are still  
5 undergoing that process.

6 It has been a struggle for Mr. Baton to  
7 recover physically and mentally and to deal  
8 with those long-lasting effects of the trauma  
9 on him, and that is something that he will  
10 have to deal with for the rest of his life.

11 The background of Mr. Beyonnie is  
12 addressed in the materials that the Crown has  
13 provided on sentence, as well as I have heard  
14 from counsel for Mr. Beyonnie about his  
15 background. A pre-sentence report was  
16 completed for another offence in 2009 which  
17 describes Mr. Beyonnie's background and I am  
18 advised that despite the report being  
19 completed in 2009, that it is still relevant  
20 to his background and the circumstances facing  
21 Mr. Beyonnie.

22 As well, there is the psychiatric report  
23 that was completed in August of 2014 where Dr.  
24 Singh at the Alberta Hospital examined Mr.  
25 Beyonnie over a period of time.

26 The pre-sentence report speaks to the  
27 background of Mr. Beyonnie and to some of the



1           mental health issues that he has faced.

2           Mr. Beyonnie also is an aboriginal person  
3           so I am required, pursuant to section 718.2(e)  
4           of the Criminal Code, to consider any factors  
5           that may have arisen because of his aboriginal  
6           background and which may bring him before the  
7           Court. Those background factors are referred  
8           to somewhat in the pre-sentence report as well  
9           as in the submissions by his counsel this  
10          morning.

11          It appears from the pre-sentence report  
12          that Mr. Beyonnie was raised by his  
13          grandparents who are both since deceased. He  
14          has had traumatic events occur in his life.  
15          His brother drowned when he was six years old  
16          (Mr. Beyonnie was 11 years old at the time).  
17          He has lived in Déline his whole life except  
18          when he attended residential school at  
19          Akaitcho Hall in Yellowknife for a couple of  
20          years.

21          It appears that his family environment was  
22          a healthy environment, one of sobriety, and he  
23          was exposed to a traditional lifestyle by his  
24          grandparents but himself does not actively  
25          participate in that lifestyle.

26          Since his grandparents have passed away,  
27          he is alone. It is unfortunate that he has



1           now limited support in the community. Because  
2           of the issues that are facing him, it makes it  
3           a difficult and lonely existence for Mr.  
4           Beyonnie. He has limited work experience.  
5           And significantly, throughout the pre-sentence  
6           report and the psychiatric report prepared by  
7           Dr. Singh, is the history of Mr. Beyonnie's  
8           abuse of substances, most significantly  
9           marijuana and solvents. He has a long  
10          history, as detailed in the report, starting  
11          at seven years old with the abuse of solvents.  
12          He started using marijuana and alcohol when he  
13          was 15. And today, as an adult, the  
14          substances that he abuses are solvents and  
15          marijuana.

16                 It appears that he has not participated in  
17          counselling despite opportunities to do so.  
18          It is unclear why that is the case but it  
19          appears that Mr. Beyonnie has little interest  
20          in addressing some of these issues.

21                 The report of Dr. Singh indicates that Mr.  
22          Beyonnie has a history of medication  
23          noncompliance (that he does not always take  
24          his medication). He has a history of  
25          polysubstance abuse, so he has abused multiple  
26          substances over the years, and essentially has  
27          a chronic and intractable addiction to





1 solvents and cannabis which makes dealing with  
2 him, in terms of dealing with his mental  
3 health issues and his substance abuse issues,  
4 difficult.

5 Mr. Beyonnie does have a criminal record.  
6 His criminal record starts in 1989, in Youth  
7 Court, and continues to 2013. He has  
8 approximately 20 convictions on his criminal  
9 record. There are nine offences of violence  
10 and one offence which could be considered  
11 violent, that of forcible entry. He also has  
12 four property convictions and six offences  
13 against the administration of justice.

14 The nine assaults that are on his record  
15 start in 1989 when he was a youth when he was  
16 convicted of assault causing bodily harm and  
17 received a fine.

18 His next conviction is for assaulting a  
19 peace officer in 1997 when he received a  
20 sentence of four months incarceration and a  
21 year of probation.

22 He has a conviction for forcible entry in  
23 1998 for which received 30 days incarceration.  
24 And in 1998, he was convicted of break and  
25 enter and commit assault, two counts of that,  
26 and received six months on each consecutive.

27 He also has assaults in 2007, 2009, and



1           2011 for which he received various sentences  
2           of either a fine or jail.

3           His last conviction of assault is from  
4           2013 and post-dates this offence. It occurred  
5           while he was on remand for this offence that  
6           he is being sentenced for today.

7           I have been advised of some of the  
8           circumstances of a few of the assaults, and  
9           they bear some similarity to this case in that  
10          the ones that were described to me describe  
11          unprovoked assaults, obviously not of the same  
12          severity, but the concern that it raises is  
13          the escalation of violence and that public  
14          safety has to be given consideration taking  
15          into account Mr. Beyonnie's history and issues  
16          and his failure to address his addictions  
17          issues.

18          There are a number of sentencing  
19          principles that the Court has to consider.  
20          Those are set out in the Criminal Code.

21          First of all, a sentence has to be  
22          proportionate to the gravity of the offence  
23          and the degree of responsibility of the  
24          offender.

25          In this case the offence, when you look at  
26          the gravity of the offence, it is a serious  
27          offence, it is one of attempted murder. Under



1 the Criminal Code, the maximum penalty is life  
2 imprisonment so that tells courts and  
3 individuals in society that it is one of the  
4 most serious offences under Canadian law.

5 In terms of the responsibility of the  
6 offender, looking at Mr. Beyonnie's  
7 circumstances it is obvious that he does have  
8 mental health issues. His abuse of solvents  
9 is described as chronic and the offence itself  
10 is a senseless brutal attack on the victim  
11 where he assaulted the victim and went to get  
12 a hammer and continued to assault him even  
13 though it appears that the victim was  
14 unconscious after the first initial assault.  
15 So in my view he bears a high degree of  
16 responsibility, but that also has to be  
17 considered in light of the mental health  
18 issues.

19 Other sentencing principles that the Court  
20 has to consider are specific and general  
21 deterrence. What that means is that Mr.  
22 Beyonnie and other individuals will be  
23 deterred by the sentence that the Court is  
24 about to impose from committing this type of  
25 offence.

26 And also denunciation, and that means that  
27 the sentence expresses society's - the



1 community, the people of Déline - condemnation  
2 for this type of offence.

3 The Court can also not lose sight of  
4 rehabilitation. That is something that has to  
5 be considered in every offence and for every  
6 offender, that the prospects of rehabilitation  
7 do exist for Mr. Beyonnie and that is  
8 something to be taken into account.

9 As well, and I have already referred to  
10 this, the safety of the public is also  
11 something that has to be considered.

12 The Crown has provided a number of cases,  
13 and authorities, 13 cases, which I have  
14 reviewed, I won't go through them but I do  
15 note, as Justice Vertes did, in R. v.  
16 Fantasque, 2007 NWTSC 32, which is the only  
17 case from the Northwest Territories that was  
18 provided, that sentencing in these types of  
19 situations and for this offence are very fact  
20 specific and the sentences that are imposed  
21 can be very wide ranging. That is  
22 demonstrated by the cases that the Crown has  
23 provided where the sentences range from five  
24 years to life imprisonment.

25 In this case as well, there is also the  
26 pre-trial custody that needs to be considered.

27 Mr. Beyonnie was arrested on February 1st,





1           2013, and has been in custody on this offence  
2           ever since. The only other incident that  
3           affects that is his conviction in 2013 for an  
4           assault for which he received 60 days, and  
5           that will be deducted from his pre-trial  
6           custody. So taking that into account, from  
7           February 1st, 2013, it is almost two years and  
8           ten months that Mr. Beyonnie has been in  
9           custody on this offence.

10           The Criminal Code allows me to grant  
11           credit of up to one and a half times credit  
12           for each day in custody, for each day that is  
13           spent in custody prior to sentence. I have  
14           not heard anything from counsel with respect  
15           to why that should not occur other than the  
16           assault on the inmate for which Mr. Beyonnie  
17           did receive a jail sentence, so he was  
18           convicted, and he also received a period in  
19           isolation by the correctional authorities.  
20           There are no other incidents that have been  
21           brought to my attention and I am advised that  
22           he would have received early remission had he  
23           been a serving prisoner. He also would have  
24           been exposed to programs which are not  
25           otherwise available to remand prisoners.

26           So in the circumstances, I am prepared to  
27           grant credit for one and a half days for each



1 day in custody. So at two years and 10  
2 months, deducting 60 days it would be two  
3 years eight months at one and a half times  
4 credit, and Mr. Beyonnie will receive credit  
5 for four years of pre-trial custody.

6 There are as well mitigating and  
7 aggravating factors.

8 In mitigation, Mr. Beyonnie has entered a  
9 guilty plea. Guilty pleas are entitled to  
10 weight for several reasons. They save trial  
11 expenses. They save the victim from having to  
12 testify. They provide certainty to the  
13 proceedings. So they are entitled to some  
14 weight. In this case, the guilty plea was not  
15 entered at the earliest opportunity. There  
16 was a preliminary inquiry and a voir dire that  
17 did occur, which is Mr. Beyonnie's right to go  
18 through those processes. They just simply  
19 mean that it is not something that Mr.  
20 Beyonnie is penalized for but it means that  
21 the mitigating effect of the guilty plea is  
22 less than it would have been otherwise if he  
23 had entered it earlier.

24 As well, I am advised through his counsel  
25 that he is remorseful for what has occurred,  
26 and I accept that that is the case.

27 There are aggravating factors as well.



1 This was a senseless brutal attack. It was an  
2 unprovoked attack. Mr. Beyonnie hit the  
3 victim, apparently knocked him out, went into  
4 his residence to get a hammer, and then  
5 returned and then hit the victim multiple  
6 times after that. As indicated in his  
7 statement, he said that he did have the intent  
8 to kill Mr. Baton, he wanted to "finish him  
9 off", and all because Mr. Baton was bothering  
10 him.

11 As I have indicated, the injuries that Mr.  
12 Baton suffered, they were life threatening and  
13 if not for medical intervention, he would have  
14 died and they have had a lasting impact on  
15 him, both cognitively and physically.

16 Mr. Beyonnie also faces severe addiction  
17 issues which have resulted in mental health  
18 issues, and I have discussed that already with  
19 respect to the effect that they have had on  
20 him and his inability to deal with those  
21 issues.

22 Dealing first with the ancillary orders  
23 that the Crown has sought, there will be a DNA  
24 order. As well, there will be a firearms  
25 order pursuant to section 109 of the Criminal  
26 Code.

27 Mr. Beyonnie, please stand up.



1           Mr. Beyonnie, taking into account the  
2           circumstances that I have referred to, the  
3           circumstances of the offence and your personal  
4           circumstances, I am satisfied that an  
5           appropriate sentence for you is one of eight  
6           years imprisonment. You will receive credit  
7           of four years imprisonment for the pre-trial  
8           custody received, leaving a sentence of four  
9           years to be served.

10           You may sit down.

11           All right, counsel, no one addressed the  
12           victim of crime surcharge. So, Ms. Scott?

13       MS. SCOTT:           Your Honour, I hadn't turned  
14           my mind to it. This offence would have  
15           predated the amendments that would have made  
16           it mandatory, my understanding. If I am not  
17           mistaken they came into effect in October of  
18           2014 -- or '13 in any event. The Crown's  
19           position would be that they should be applied  
20           in this instance, unless my friend has  
21           submissions contrary.

22       THE COURT:           Mr. Fuglsang, any  
23           submissions on the victim of crime surcharge?

24       MR. FUGLSANG:           I'm not sure -- it can't be  
25           waived anymore, so.

26       THE COURT:           It does predate the  
27           amendments from what I understand.





1 MR. FUGLSANG: I would just suggest that it  
2 apply once he's released, a certain amount of  
3 money be payable.

4 THE COURT: I think it is \$200 for the  
5 offence.

6 MR. FUGLSANG: I believe so.

7 THE COURT: So, Ms. Scott, what is your  
8 position on the applicability of the  
9 amendments?

10 MS. SCOTT: Your Honour, the Crown would  
11 submit that it should apply in this instance  
12 with respect to the applicability of the  
13 amendments. I believe that the amendments  
14 actually deal with the conviction date rather  
15 than the offence date if I have researched  
16 that correctly. In any event I believe they  
17 are mandatory and if they are not mandatory,  
18 the Crown would nonetheless seek that they be  
19 applied in this instance.

20 THE COURT: Okay. So there will be the  
21 victim of crime surcharge that is imposed and  
22 it will be payable pursuant to the  
23 regulations.

24 Is there anything else on this matter,  
25 counsel?

26 MS. SCOTT: No, Your Honour.

27 THE CLERK: Your Honour, how long is the



1 firearms prohibition for?

2 THE COURT: It should be ten years  
3 following the date of release.

4 THE CLERK: Thank you.

5 MR. FUGLSANG: Yes, Your Honour, there is  
6 always the issue of where to serve and I would  
7 ask that his warrant be endorsed to be served  
8 in the north.

9 THE COURT: Ms. Scott, do you have any  
10 submissions on that?

11 MS. SCOTT: None, Your Honour. I leave  
12 it in your hands and the correctional  
13 facility's.

14 THE COURT: The issue of where an inmate  
15 serves their sentence when they are sentenced  
16 to a federal term of imprisonment is  
17 ultimately up to the correctional authority so  
18 I cannot tell them where Mr. Beyonnie should  
19 serve his sentence but I can make an  
20 endorsement on the warrant of committal that  
21 they give consideration to having him serve  
22 his sentence in the north, and I will do so.  
23 I will make that endorsement but ultimately it  
24 will be up to the correctional authorities to  
25 make that decision based on their assessments  
26 of Mr. Beyonnie and his needs.

27 All right, counsel, if there is nothing



1           else, I want to thank you for your submissions  
2           and for your work on this case in resolving  
3           this case and resolving this case over the  
4           time that it has taken to get here. So we  
5           will adjourn court.

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Certified to be a true and  
accurate transcript pursuant  
to Rules 723 and 724 of the  
Supreme Court Rules,

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Lois Hewitt,  
Court Reporter

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