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

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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

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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

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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

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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

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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

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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

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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

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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

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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

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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

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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,

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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

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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.

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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.

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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.

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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

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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

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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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9 Certified to be a true and

accurate transcript pursuant

10 to Rules 723 and 724 of the

Supreme Court Rules,

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16 Lois Hewitt,

Court Reporter

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