R v N.A., 2015 NWTSC 2 S-1-CR-2013-000019

AMENDED ORIGINAL

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

N.A.

Transcript of the Reasons for Sentence delivered by The Honourable Justice M. T. Moreau, in Inuvik, in the Northwest Territories, on September 18, 2014.

APPEARANCES:

Ms. W. Miller: Counsel on behalf of the Crown

Mr. T. Boyd:
Ms. A. Vogt: Counsel on behalf of the Accused

Charges under ss. 156 C.C. and 246.1 C.C.

Ban on Publication of Complainant/Witness
pursuant to Section 486.4 of the Criminal Code

Names of the accused and family members have been initialized in observance of the Publication Ban.

1 R. v. N.A.
2 September 18, 2014 - Inuvik
3 Reasons for Sentence by Justice M. T. Moreau
4
5
6 THE COURT: N.A. was convicted by
7 a jury of his peers of indecent assault and
8 sexual assault in relation to sexual acts
9 perpetrated by him on his biological son between
10 September 1980 and December 1985, at or near
11 Ulukhaktok. I make the following findings of
12 fact in relation to the sentencing of Mr.
13 A:
14 Based on the jury's guilty verdicts in
15 relation to Counts 1 and 2 on the Indictment, I
16 find that the sexual activity started when the
17 complainant was a preschooler, he having
18 testified that the sexual acts started about age
19 three or four, or somewhere around there, and
20 that the first couple of acts of anal intercourse
21 occurred before he was in school. The
22 complainant was living in what he described as
23 the "matchbox house" in Ulukhaktok with his five
24 siblings, the accused, who was his biological
25 parent, and his mother.
26 The accused would force the complainant to
27 drink a bad tasting sour fruit brew that I find

1 was an alcohol home-brew that caused him to fall
2 asleep. When he woke up he would be in his
3 parents' bedroom, lying on his back, with his
4 clothes off, the accused on top of him holding
5 his knees to his shoulders and performing anal
6 intercourse upon him. The acts of anal
7 intercourse occurred on several occasions while
8 the family resided in the matchbox house.
9 On the complainant's 5th birthday he again
10 was given the sour fruit brew and awoke in the
11 middle of the night with the accused performing
12 anal intercourse on him, while his mother was
13 sleeping on the floor of the bedroom, which he
14 stated was where she preferred to sleep. The
15 accused gave him a $50 bill and told him not to
16 tell anyone after that incident.
17 The assaults caused him considerable pain
18 and he would attempt to ease the pain by sitting
19 on his bare bum in the snow gathered on the
20 porch, or in a basin of water when the anal
21 intercourse occurred in the summer. He stated
22 that he bled from his rear end onto the snow.
23 I find that the acts of anal intercourse
24 continued when the family moved to what he
25 described as the "new red house" in the same
26 community. On one occasion, he recalled the
27 accused telling him to pull his penis to make it

1 hard when he was about six years of age and had
2 started kindergarten, and threatened him with his
3 fist in the air. I also find that the anal
4 intercourse occurred on two occasions when the
5 accused and the complainant were out hunting
6 alone.
7 An issue arose as to how long the acts
8 lasted, the complainant stating that he recalled
9 they continued for several years and until he was
10 eight or nine. However, as defence counsel
11 pointed out and was very evident from the
12 testimony of the complainant, his recollection of
13 details in his testimony was not precise. He
14 believed there were three bedrooms in the
15 matchbox house but said he was not too sure. He
16 could not remember if his sister had her own
17 room. He couldn't recall whether his mother used
18 a wringer washer in the matchbox house. He could
19 not remember how many times the sexual acts
20 occurred, simply stating they occurred "a lot".
21 He was only able to describe the circumstances
22 surrounding less than a handful of specific
23 occasions and commented in reply to several
24 questions posed in cross-examination about
25 details of his life that he could not remember.
26 Those parts of his life were "turned off like a
27 light switch". When he was asked how long the

1 assaults went on for, he said "maybe seven
2 years". He could not recall why or when or how
3 the assaults stopped.
4 Some weaknesses in his recollection of
5 details were illustrated when his statement to
6 Constable Webb of July 2010, about four years
7 ago, was put to him in cross-examination at trial
8 indicating a different recollection than at trial
9 of a detail relating to his 5th birthday party.
10 The assaults ended abruptly during the
11 period of time the family was living in the new
12 red house.
13 When asked if he went caribou hunting at
14 about age ten, he stated he did not remember that
15 part of his life.
16 He could not recall where he was living when
17 he went to police in September of 2010.
18 As the Crown has sought to adduce a
19 conviction for sexual assault in December 1985 in
20 relation to an offence date of January 1985, when
21 the complainant in this case would have been
22 seven years and about three months old, as an
23 aggravating factor, that aggravating factor must
24 be proved under the Gardiner principle beyond a
25 reasonable doubt. While I find that the offences
26 carried on for several years, I am not able to
27 find, based on the memory issues, evidence in the

1 complainant's testimony that this aggravating
2 feature has been proved beyond a reasonable
3 doubt. As I reminded the jury in my final
4 instructions, it is not expected that adults
5 remembering childhood events would remember them
6 as an adult remembering adult events. Bearing
7 this principle in mind, and having regard to the
8 memory difficulties of the complainant as I have
9 illustrated, I will treat the accused as a first
10 offender in dealing with the offences in relation
11 to which the jury found him guilty.
12 The complainant is now 37 years of age. He
13 first went to police in July 2010, approximately
14 24, 25 years after, or perhaps more, after the
15 last act of intercourse. After the accused was
16 charged with these offences, the complainant went
17 to live with him for a period of several months
18 and was living with him as recently as last
19 spring.
20 I do not find that the aggravating feature
21 that the accused pulled the complainant's arm
22 bone out of its socket during the period of the
23 indecent or sexual assaults to have been proved
24 beyond a reasonable doubt, nor was proof of this
25 further offence necessary to the jury's verdicts
26 or intertwined in the actual acts of anal
27 intercourse.

1 I have some concerns about the manner in
2 which this particular recollection was first
3 raised, namely in cross-examination, prompted by
4 a direct defence question as to the incident,
5 after the complainant was asked about injuries
6 and did not refer to that incident. Secondly, I
7 also have a reasonable doubt as to whether the
8 injuries it caused may not have been intended.
9 The acts of anal intercourse here constitute
10 a major sexual assault as defined in R. v.
11 Arcand, 2010 ABCA 363, at paragraph 171.
12 Justice Charbonneau in R. v. Holman, 2014
13 NWTJ 5, noted at paragraph 33 that courts in the
14 Northwest Territories have for many years
15 followed the principle outlined in the Alberta
16 Court of Appeal decision in R. v. S.(W.B.),
17 [1992] A.J. No. 601, which sets the starting
18 point for a single act of a major sexual assault
19 on a child by a person in a position of trust at
20 four years' imprisonment. As noted in S.(W.B.),
21 at paragraph 33, the paramount considerations in
22 sentencing for child sexual assault are
23 denunciation and deterrence. The Court noted
24 that when a person assaults a child for sexual
25 gratification, "...it is reasonable to assume
26 that the child may have suffered emotional
27 trauma, the effects of which may survive longer

1 than bruises or broken bones and may even be
2 permanent."
3 One consequence of sexual abuse noted by the
4 Court is that the child may never to able as an
5 adult to form a loving relationship with another
6 adult, always fearful that such a partner will
7 use sexual acts to hurt him or her rather than as
8 an intimate expression of caring and affection.
9 Another consequence noted by the Court is
10 that the child, on becoming an adult, may treat a
11 child or children as he or she has been treated
12 as a child.
13 In summary, the Court observed, after
14 reviewing materials providing empirical
15 information on the consequences of child sexual
16 abuse, that in every case of sexual abuse of a
17 child there is a very real risk of very real harm
18 to the child.
19 As to the situation where the family is to
20 be restored, the Court cited the comments of
21 Kerans, J.A. in R.P.T., [1983] 7 C.C.C. (3d) 109,
22 at page 114, that denunciatory sentences cannot
23 be saved only for where families are not to be
24 restored. In this case there is evidence that
25 although the complainant and the accused are able
26 to salute each other in public, that is to greet
27 each other, there does not appear to be in this

1 case a situation of restoration of a family
2 relationship between the accused and the
3 complainant at this particular point in time. I
4 do note that the accused has maintained a
5 relationship of some kind with his son J. and
6 has a warm relationship with the grandchildren
7 and great-grandchildren that he referred to in
8 his closing remarks to me.
9 Justice Vertes in R. v. R.K., 2001 NWTSC 31
10 described the particular seriousness of sexual
11 crimes against children:
12 The safekeeping of children is the responsibility of every adult in the
13 community. When that responsibility is broken, especially by someone
14 standing in the position of a parent, then the entire community
15 suffers. This is why in cases such as this, general deterrence and
16 denunciation are the primary considerations and other principles
17 are generally not as significant. This type of case normally demands a
18 significant period of incarceration.
19 Cases involving sexual predators bring out
20 "visceral reactions of revulsion" towards the
21 offender and care must be taken to temper these
22 reactions and ensure that the sentence is not
23 vengeful, as noted by Brown, P.C.J. in R. v.
24 R.B.L., 2005 ABPC 63, at paragraph 42, a case
25 involving incest and parental sexual abuse. She
26 went on, however, to observe at paragraphs 43 and
27 44:

1 Parental sexual abuse of children is an especially heinous betrayal of
2 trust. A family ought to be a loving, nurturing environment that
3 fosters the growth of happy, healthy, productive members of
4 tomorrow's world. As with all criminal offences, parental sexual
5 abuse not only damages individuals but also profoundly damages society.
6
The extent of the damage to society
7 is measured, in part, by looking at the harm inflicted on individual
8 victims. Both Victim Impact Statements and victim statements in
9 support of an offender give great assistance in assessing the damage
10 to society but, at the end of the day, a criminal sentence addresses
11 the harm to society and leaves the question of personal remedies to the
12 civil system.

13

14 Turning to the aggravating factors in this
15 case. Section 718.2(a)(ii.1) and (ii.2) of the
16 Criminal Code expressly provide that abuse of
17 children under 18 by a person who stands in a
18 position of trust is an aggravating factor. In
19 addition, section 718.01 requires that sentences
20 imposed for crimes against persons under 18 give
21 primary consideration to denunciation and
22 deterrence. This same principle, that primary
23 consideration be given to denunciation and
24 deterrence, is repeated in section 718.02 in
25 cases of sexual assault. Section 718.2(a)(iii.1)
26 states that the court shall also consider
27 "...evidence that the offence had a significant

1 impact on the victim, considering their age and
2 other personal circumstances, including their
3 health and financial situation." We have only a
4 limited amount of information in that regard
5 arising from the complainant's testimony at trial
6 as he chose not to complete a victim impact
7 statement, nor were any others presented to me by
8 family members.
9 In addition, I find there to be the
10 following particular aggravating factors in this
11 case:
12 The sexual assault started when the
13 complainant was at a very tender and vulnerable
14 age.
15 The assaults were numerous and were
16 committed over a period of several years.
17 The nature of the sexual assaults were of
18 the most serious and also involved at least one
19 incident of the complainant being told to pull
20 the accused's penis. As noted in R. v. F.N.T.,
21 2001 ABPC 121, at paragraph 25, anal sex on a
22 young child is "inherently violent and forceful".
23 The accused, a parent, abused his own child
24 for his carnal pleasure, which could be described
25 as the ultimate act of parental betrayal.
26 The fact that pain and suffering were
27 associated, and I mean physical pain and

1 suffering were associated with the repeated
2 sexual acts and on one occasion the complainant
3 was threatened is also aggravating.
4 A form of intoxicant was repeatedly used to
5 subdue and gain control of the complainant, and
6 in administering the intoxicant I am satisfied
7 that there was planning and deliberation
8 associated with the offences.
9 The crimes were opportunistic when, at least
10 at the initial stages and when the two were
11 hunting together, the accused was entrusted with
12 the care of the child, and on one occasion money
13 was used to persuade the complainant not to tell
14 anyone.
15 The psychological impact of a serious nature
16 can be inferred. There is evidence here of
17 physical injury in the form of bleeding from the
18 anal area associated with the offences.
19 While the complainant declined to complete a
20 victim impact statement, he indicated in his
21 testimony that he battled with suicidal thoughts
22 arising from these events. He has a criminal
23 history that speaks to an unbalanced life
24 following the destabilizing impact the Court can
25 infer these events had upon him. The complainant
26 was emotional in describing events occurring over
27 25 years ago in his account to the jury.

1 In summary, Mr. A seriously violated
2 the sexual integrity of his own child, choosing
3 his youngest and most vulnerable child as a
4 target of his assaults, who was entitled to rely
5 upon his father for his protection, safety,
6 security and nurturing and instead whose
7 vulnerabilities as a young child were seriously
8 and repeatedly exploited.
9 I find there to be no mitigating factors in
10 relation to the circumstances of the offences.
11 In relation to the circumstances of the
12 accused, section 718.2(e) of the Criminal Code
13 directs that "all available sanctions other than
14 imprisonment that are reasonable in the
15 circumstances should be considered for all
16 offenders, with particular attention to the
17 circumstances of aboriginal offenders." While
18 not mitigating, I am of the view that the
19 circumstances of this particular aboriginal
20 offender, which I will describe in a few moments,
21 must be considered in assessing an appropriate
22 sentence in this case.
23 Crown counsel seeks a global period of
24 incarceration of seven years. Referring to the
25 statutory aggravating and other aggravating
26 features of this case, she submits that even if
27 the Court considered this to be a first set of

1 offences the sentence should remain within the
2 range of seven years, that is one of seven years,
3 as the offences are so serious and perpetrated on
4 such a young child that deterrence and
5 denunciation must be reinforced.
6 She also noted that the accused has not led
7 an exemplary life since the offences, given his
8 criminal record, that would create any
9 exceptional circumstances here that existed in a
10 decision that was handed to me by defence
11 counsel, R. v. Tedjuk for example.
12 Defence counsel seeks a global period of
13 incarceration of three to four years. He submits
14 that the Gladue factors are such as to reduce the
15 sentence from his acknowledged four year starting
16 point, and considering the personal circumstances
17 and age of the accused and the fact that there
18 have been no instances of any breach of the peace
19 since the record ended in 2001 and there were no
20 instances of any breaches of the peace since he
21 received his summons in 2012 in relation to these
22 charges.
23 Turning to the principles and purposes of
24 sentencing. Section 718 states:
25 The fundamental purpose of
sentencing is to contribute, along
26 with crime prevention initiatives,
to respect for the law and the
27 maintenance of a just, peaceful and
safe society by imposing just

1 sanctions that have one or more of
the following objectives:
2 (a) to denunciate unlawful conduct;
(b) to deter the offender and other
3 persons from committing offences;
(c) to separate offenders from
4 society, where necessary;
(d) to assist in rehabilitating
5 offenders;
(e) to provide reparations for harm
6 done to victims or to the community;
and
7 (f) to promote a sense of
responsibility in offenders, and
8 acknowledgement of the harm done to
victims and to the community.

9

10 Section 718.1 requires that "a sentence must

11 be proportionate to the gravity of the offence

12 and the degree of responsibility of the

13 offender."

14 I have also considered the provisions of

15 718.01, .02, and 718.2(a)(ii.1), (ii.2), and

16 (iii.1) to the limited extend it might apply,

17 that is in respect of (iii.1).

18 I have also considered the provisions of

19 section 718.2(b), (c), and (d).

20 I have also considered pursuant to section

21 718.2(e) the Gladue factors referred to by

22 defence counsel. He explained that as the

23 accused's early years were spent at Read Island,

24 there is nothing by way of written record to

25 assist the Court in assessing the systemic and

26 individual factors in his aboriginal background

27 and raising with the exception of a 1985

presentence report. I accept defence counsel's request to present himself, and with the assistance of the 1985 PSR, the Gladue features in this case bearing in mind that in R. v. Wells, 2000 S.C.C. 10, the Supreme Court clarified the scope of the sentencing judge's duty following Gladue, at paragraph 55.

> ...it was never the Court's intention, in setting out the appropriate methodology for this assessment, to transform the role of the sentencing judge into that of a board of inquiry. It must be remembered that in the reasons in Gladue, this affirmative obligation to make inquiries beyond the information contained in the pre-sentence report was limited to "appropriate circumstances", and where such inquiries were "practicable" (para. 84). The application of section 718.2(e) requires a practical inquiry, not an impractical one. As with any other factual finding made by a court of first instance, the sentencing judge's assessment of whether further inquiries are either appropriate or practicable is accorded deference at the appellate level.

Accordingly, while I find that the Court must find a form of Gladue report before it to fulfil its obligations under 718.2(e), that report can take a number of forms, as dictated by the circumstances.

Defence counsel was able to advise the

1 Court, assisted by the 1985 presentence report
2 that shed light on the accused's earlier years,
3 that the accused's earliest memories were of his
4 birthplace on March 28, 1947, at Read Lake, on
5 the south coast of Victoria Island, an isolated
6 outpost camp of some eight families. Inuinnaqtun
7 was his first language. His parents essentially
8 abandoned him when they left for Cambridge Bay
9 early in his life. He was adopted by an elderly
10 couple who did not bring affection into his
11 upbringing, the 1985 PSR noting that there was a
12 long period of time when he felt deserted, with
13 no one to turn to for immediate guidance when he
14 was growing up, and that this may have been a
15 causal factor in his drinking and later familial
16 issues. His adoptive father died at Read Island.
17 When he was 13, his mother and sibling moved
18 in to Ulukhaktok, and at age 16 he started
19 working at Hudson's Bay. At age 17 he married, a
20 very early age, prompted by a need for affection
21 and stability, and his former wife confirmed that
22 he started abusing alcohol at that time. He was
23 able to make positive contributions sustaining
24 his family with income from the Hudson's Bay, and
25 assisting himself and the community, spending 30
26 years in the Canadian Rangers. However, his
27 alcoholism impacted on his family, and his wife

1 advises she had to bear the brunt alone of
2 raising the children. The children, she advised
3 counsel, seemed to respect their mother and built
4 self-esteem on her example. The accused was able
5 to maintain employment, taking training as a
6 heavy equipment operator and airport maintainer
7 and worked in those fields in his home community.
8 While able to continue to support his family, his
9 income provided access to a ready supply of
10 alcohol.
11 He is proficient in living off the land and
12 he had his own dog team on Read Island. He is a
13 very proficient hunter and continued to hunt when
14 he moved to Holman.
15 When a local clergyman had to travel to
16 Sachs Harbour, on Banks Island, he took him by
17 dog team, which counsel noted was a several day
18 trip. He is functionally able to live off the
19 land alone, preserving the traditions of his
20 culture. He was high functioning in traditional
21 and, as noted by the types of employment he
22 engaged in, also functioning in a contemporary
23 culture.
24 Largely because of his alcohol abuse
25 however, he and his wife W. were divorced.
26 Counsel noted that he had contributed to his
27 community, working in organizing a scout troop

1 which kept going for about five years, until the
2 person he organized it with moved out of the
3 community.
4 He served on a housing board and is an
5 accomplished fiddler and continues to perform for
6 community events.
7 He took treatment at Poundmaker's Lodge for
8 alcoholism and on his own initiative took some
9 treatment in a Yellowknife facility. He was dry,
10 his counsel reported, for 16 years and has had,
11 however, some use of alcohol in recent days
12 coming in from Holman for trial but his counsel
13 advises not to an abusive level, and I record the
14 fact that he was in court on time for each and
15 every day of the sitting.
16 In terms of his current state of health, he
17 had heart surgery a number of years ago, has a
18 pacemaker, receives a pension, enjoys time with
19 his grandchildren, and his counsel attest to the
20 fact that he has a positive relationship with his
21 family members — there are two generations after
22 him — as witnessed by their visits to his hotel
23 room whilst in Inuvik for the trial.
24 His counsel also reported that he has a
25 vertigo disorder.
26 In Gladue, at paragraph 55, the Supreme
27 Court instructed:

> Generally, the more violent and serious the offence the more likely as a practical reality the term of imprisonment for aboriginals and non-aboriginals will be close to each other or the same, even taking into account their different concepts of sentencing.
>
> As with all sentencing decisions, the sentencing of aboriginal offenders must proceed on an individual (or a case-by-case) basis. For this offence, committed by this offender, harming this victim, in this community, what is the appropriate sanction under the Criminal Code?

In addressing the passage of time since the offences were committed, reference was made in R. v. McGee, 2006 NWTJ 87, to the decision of the Alberta Court of Appeal in R. v. Spence (1992), 78 C.C.C. (3d) 451, where the court stated:

> The lapse of time does not in any way render inapplicable the principles of general deterrence and denunciation.

The court reasoned as follows at paragraphs 54 and 55:

> The passage of time, even a long time, between the offences and the sentencing is not mitigating. We know that many child victims, and sometimes even adult victims, are unable to disclose these types of things until much time has passed. Giving any kind of credit or mitigating effect to the passage of

1 time would give an offender credit for delays in reporting that
2 happened for very understandable reasons and are the consequence of
3 the trauma caused by the actions of the offender. That would not be
4 fair.

5 It could also have a more sinister and perverse effect of inciting
6 those who commit these types of crimes to be more tempted to
7 threaten their victims or otherwise make sure that they are dissuaded
8 from talking about what happened to them.

9

10 While the Court cannot consider the criminal
11 record postdating the offence as an aggravating
12 feature in this case, the accused cannot have the
13 benefit of some lenience related to leading an
14 exemplary life post offence.
15 Having considered the statutory and other
16 aggravating factors I have identified, the lack
17 of mitigating factors, the principles and purpose
18 of sentencing as set out in the Criminal Code
19 sections I have referred to, the personal
20 circumstances of Mr. A, the historical
21 nature of the assaults, and the case authorities
22 provided by counsel, including W.B.S. and the
23 sentencing decisions referred to within that
24 decision, I conclude that the range of sentence
25 in this case does not include a term of
26 incarceration of less than two years. The
27 starting point for offences of the kind committed

1 by Mr. A is four years for a single act,
2 and there are no mitigating factors that would
3 reduce the appropriate sentence to something in
4 the range of what is permitted for instance for a
5 conditional sentence.
6 In W.B.S., the respondent was convicted
7 after trial of repeated acts of anal intercourse
8 on his young stepson and stepdaughter.
9 Aggravating was the fact that the acts were
10 committed while both victims were in the same
11 room. The respondent had no record. And of
12 course a further aggravating factor was that
13 there were multiple victims. A global sentence
14 of seven years was imposed on appeal.
15 I have also reviewed the sentences imposed
16 in the great number of cases reviewed in the
17 W.B.S. decision.
18 In F.N.T. which involved guilty pleas in
19 relation to acts of anal intercourse and other
20 sexual acts on two young sons of the accused, one
21 from his first family and one from his second
22 family, when the acts did not stop until the
23 accused was confronted by the child's mother, a
24 global sentence of seven years was imposed.
25 Defence counsel referred to Holman, the
26 offences there dating back 40 years. The victim
27 was 11. Sexual intercourse was involved. Ten

1 years later, the accused attempted to have sexual
2 intercourse with another girl. He was sentenced
3 to four and a half years' imprisonment, however,
4 as noted by Crown counsel in her submissions, he
5 came forward and confessed, pled guilty,
6 confessed to two other sexual assaults and had
7 since the assaults led an exemplary life.
8 Here there was no mitigating guilty plea.
9 In Minoza, submitted by the defence,
10 children were not involved.
11 Tedjuk, submitted by the defence, was based
12 on a joint submission involving only one incident
13 of sexual assault in which two years less a day
14 was the sentence.
15 I agree with Crown counsel's submission that
16 Minoza and Tedjuk are distinguishable on their
17 facts.
18 Having regard to the principles of
19 sentencing and the primacy of deterrence, both
20 personal and general, and denunciation in serious
21 crimes of this nature that prey on the most
22 vulnerable members of our community; the
23 aggravating factors in this case; the lack of
24 mitigating factors in relation to the offences
25 before me; the accused's aboriginal heritage and
26 the systemic challenges he faced in childhood
27 without the guidance and love of his parents; an

1 early marriage; and alcoholism, which I am
2 satisfied, as supported by the 1995 PSR, was
3 prompted at least in part by an unstable
4 childhood; and having regard to the totality
5 principle of sentencing in this case for what is
6 essentially the same offence that continued
7 through a period of time when the Criminal Code
8 was amended to provide for the offence of sexual
9 assault and abolish indecent assault.
10 I would ask that you stand, please, Mr.
11 A.
12 Mr. A, I find that a fit and proper
13 global sentence for you and for these offences is
14 one of five and a half years' imprisonment.
15 As to Count 1 then, the sentence is five and
16 a half years' imprisonment. And as to Count 2,
17 the sentence is five and a half years'
18 imprisonment, both to be served concurrently.
19 You may be seated, sir.
20 I direct that the warrant of committal be
21 endorsed with my strong recommendation that the
22 accused be permitted to serve his sentence in a
23 northern correctional facility.
24 In addition, I impose the following
25 ancillary orders:
26 Mr. A is required to forthwith, as
27 soon as the required tools can be made available,

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1 provide a sample of bodily fluids for DNA
2 analysis, pursuant to section 487.051 of the
3 Criminal Code.
4 He shall register and maintain compliance
5 with the Sex Offender Information Registration
6 Act.
7 I am going to check the period. Is it for
8 life?
9 MS. MILLER: Your Honour, Crown requested
10 for life as there was multiple offences. If I
11 could just have a moment, I have the section
12 marked here.
13 THE COURT: While you check that.
14 Pursuant to section 109(1) of the Criminal
15 Code, Mr. A is prohibited from possessing
16 any weapon as described in section 109(1) for a
17 period of ten years following his release from
18 imprisonment and from possessing a prohibited
19 weapon and prohibited ammunition for life.
20 MS. MILLER: Your Honour, it's section
21 490.013. In the Crown's view, (2.1) applies as
22 it's for more than one offence referred to in
23 paragraph (a), (c), (c.1), (d), or (e). So this
24 is technically he's being sentenced for two
25 offences, so in the Crown's view (2.1) applies
26 and the order should be made for life.
27 THE COURT: Any submissions, Mr. Boyd? Do

1 you want to have a chance to look at that?
2 MR. BOYD: No submissions, Your Honour.
3 I'm also keeping the offender's age, now 67, in
4 mind, so whether it's 20 years or life I'm not
5 sure it's a significant difference.
6 THE COURT: In order to invoke a lifetime
7 direction it is the case that (2.1) would have to
8 be at play because the 20 year prohibition deals
9 with where the maximum term of imprisonment is 10
10 or 14 years. So in view of the Crown's
11 submission that multiple offences are involved
12 here, the direction will be for a period of life.
13 My understanding from counsel is that the
14 charges were laid prior to the amendments to the
15 Criminal Code, and I just want to go back to
16 that. Are we ad idem on that with respect to
17 victim fine surcharge?
18 MS. MILLER: Yes, Your Honour.
19 THE COURT: All right. In light of the
20 fact that an incarceratory sentence has been
21 imposed, the victim fine surcharge is waived in
22 relation to both counts.
23 I do wish to thank counsel for their helpful
24 submissions throughout the trial and throughout
25 the sentencing.
26 That concludes the proceeding today. Thank
27 you very much.

Official Court Reporters

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Certified correct to the best
3 of my skill and ability.

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5 ______________________________
Annette Wright
6 Court Reporter

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