

AMENDED ORIGINAL

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

E. A.

ORIGINAL amended as of June 28, 2017, to:

Page 17 Line 9: "credit for 12 and a half months"

Transcript of the Reasons for Sentence delivered by The Honourable Justice L. A. Charbonneau, sitting in Yellowknife, in the Northwest Territories, on the 24th day of August, 2016.

APPEARANCES:

Ms. A. Piche: Counsel for the Crown

Mr. L. Moore: Counsel for the Accused

(Charge under s. 151 of the Criminal Code of Canada)

No information shall be published in any document or broadcast or transmitted in any way which could identify the victim or a witness in these proceedings pursuant to s. 486.4 of the Criminal Code

This transcript has been altered to protect the identity of the victim/accused pursuant to the direction of the presiding Judge

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1 THE COURT: E.A. has pleaded guilty to a
2 charge of sexual interference. The victim, A.B.,
3 is the sister of Mr. A.'s common-law spouse. She
4 was ten years old at the time this happened. She
5 did not disclose this right away, but eventually
6 she did and Mr. A. was charged.

7 He chose to have a trial in this court, but
8 he waived his preliminary hearing.

9 The case was scheduled to proceed to trial
10 this week, but last week Mr. A. made arrangements
11 through his counsel to enter a guilty plea to the
12 charge.

13 The criminal courtroom is not usually a
14 place where happy subject matters are discussed.
15 More often than not, the cases that come before
16 this Court are very sad. Usually, someone has
17 been hurt badly. Often, the person who committed
18 the offence has also had a difficult life, and
19 that is very much the case here.

20 The man I have to sentence today, not so
21 long ago, was before this Court but not as an
22 accused. He was in this Court to testify about
23 horrific sexual abuse he suffered at the hands of
24 his own father when he was very young. Now I
25 have to sentence him for a sexual offence he
26 committed against a child who was young and very
27 vulnerable, just like he was when he was abused

1 by his father. That is terribly sad.

2 Mr. A. cried through most of the sentencing
3 hearing that took place earlier this week. I
4 have no doubt that he is remorseful for what he
5 did. That may not give the victim any comfort
6 right now, and maybe it never will, but based on
7 my observations of him in court and based on what
8 he said to me when he had the opportunity to
9 speak to me directly, I am quite convinced he is
10 genuinely sorry. I am also convinced that he
11 fully realizes what he has put her through and
12 how she might feel now. He knows because he has
13 been living, himself, with the impact of sexual
14 abuse for many, many years.

15 The first thing I have to take into account
16 on this sentencing, as in any sentencing, is what
17 Mr. A. did. The Agreed Statement of Facts sets
18 out what happened.

19 The events that led to this charge happened
20 during the spring or summer of 2011. A. was ten.
21 Her older sister and Mr. A. were in a common-law
22 relationship. They had a young son. A. lived
23 with them. One night a number of people were
24 visiting the residence. People were drinking.
25 A. fell asleep on a mattress with the little boy,
26 Mr. A.'s young son. She woke up to Mr. A.'s hand
27 down her pants. He was massaging her vaginal

1 area. She felt weird and scared and did not know
2 what to do, so she pretended to be asleep. She
3 opened her eyes at one point and Mr. A. quickly
4 removed his hand. She sat up and asked him where
5 her sister was and he said he did not know. She
6 moved to the other side of the bed and hugged
7 Mr. A.'s son. She fell asleep in that position.
8 She woke up a second time to Mr. A. doing the
9 same thing again, with his hand down her pants.
10 She did not open her eyes because she was scared.
11 She got up eventually and went to sleep on a bed
12 in another room.

13 This was not a prolonged assault. It was
14 not as intrusive as some sexual assaults we hear
15 about in the courts, yet it had a profound impact
16 on A. as she outlined in her Victim Impact
17 Statement which I will say more about later in
18 these Reasons.

19 The second thing I have to take into account
20 in this sentencing is Mr. A.'s personal
21 circumstances. He is an aboriginal offender, and
22 the principles outlined in the Supreme Court of
23 Canada cases of Gladue and Ipeelee apply to his
24 sentencing.

25 Mr. A. instructed his counsel to proceed to
26 a sentencing hearing without asking for a
27 pre-sentence report, but his counsel provided me

1 with information about his background and the
2 struggles that he has faced growing up. Those
3 circumstances are very tragic.

4 First of all, as I have already mentioned,
5 Mr. A. was before this Court two years ago as a
6 witness. His father faced trial on accusations
7 of having sexually assaulted him between the
8 years 1980 and 1985. Mr. A. was only four years
9 old when this abuse started. The sexual abuse
10 was serious and prolonged. The trial judge's
11 outline of the evidence heard in that trial can
12 be found in the sentencing decision reported at
13 2015 NWTSC 2. I do not think it is necessary to
14 repeat those details here today, but I will only
15 say that the abuse was very serious and lasted
16 for many years.

17 It is difficult to imagine the effect that
18 this kind and level of abuse would have on a
19 person, but there is much more. Mr. A.'s father
20 was violent to his spouse and to all his
21 children. There was considerable abuse going on
22 in the home.

23 Mr. A. started standing up to his father
24 when he was 11 years old. It is hard to picture
25 what it would be like for an 11-year-old little
26 boy to be in that position, especially
27 considering the abuse he himself had suffered at

1 the hands of his father.

2 Aside from the level of violence and
3 dysfunction that existed in the home, the level
4 of loss that Mr. A. experienced as a child and
5 teenager is staggering. When he was ten years
6 old, his sister drowned. A few years later,
7 three of his brothers committed suicide a year
8 apart from one another when Mr. A. was 13, 14,
9 and 15 years old. In addition, Mr. A. was in a
10 relationship for a time with a woman and they had
11 twin children, who I understand are now adults.

12 That young woman, the mother of the twins,
13 also committed suicide when she was 17 years old.
14 She shot herself in Mr. A.'s presence.

15 It is difficult to even begin to imagine the
16 impact that any one of these things happening in
17 a young person's life would be, let alone the
18 cumulative impact of it. Listening to it is
19 heartbreaking. Experiencing it must have been
20 unimaginably painful.

21 Mr. A. went to residential school at
22 Grollier Hall in Inuvik when he was nine.
23 Despite the horrific conditions that prevailed in
24 his home, he ran away from the school, I heard,
25 as often as he could. There is no information
26 before me as to what, if anything, happened to
27 him by way of abuse at Grollier Hall. I know

1 from cases that have been before this Court, and
2 are a matter of public record, that many students
3 at Grollier Hall were physically and sexually
4 abused. Of course I cannot speculate about
5 whether Mr. A. was one of those who this happened
6 to, but whether it did or not, as I said, the
7 fact that he would run away from there and try to
8 get home, despite the conditions that existed in
9 his family home, is very telling about how
10 negative the residential school experience was
11 for him, whatever the reasons.

12 Both of Mr. A.'s parents also went to
13 residential school. There is no information
14 before me as to any details of what their
15 experiences there might have been, but it is well
16 documented now that for some people that
17 experience was very destructive. This is all
18 part of what the courts have been directed to
19 take judicial notice of in the Supreme Court of
20 Canada decisions of Gladue and Ipeelee that I
21 have already referred to.

22 Mr. A. also suffered from health problems
23 from a very young age. He was born with a heart
24 problem and had a heart attack at age 15. I
25 heard he had a second one, a very serious one, in
26 2001.

27 Despite all of this, Mr. A. has been able to

1 maintain employment at different points in time.
2 He enjoys being out on the land, hunting and
3 trapping, to provide for community members. His
4 counsel said that Mr. A. finds it therapeutic to
5 be out on the land, and so maybe pursuing those
6 types of activities can be one of the foundations
7 for his rehabilitation and healing.

8 He has one brother and one sister left.
9 They, as well as his mother and several other
10 relatives, live in Ulukhaktok.

11 Mr. A. understands that A. does not want to
12 have anything to do with him, and now that he
13 knows that she resides in Ulukhaktok, he said
14 both directly and through his counsel that he is
15 not sure if he will be going back to that
16 community, his home community, when he is
17 released.

18 Mr. A. has a criminal record. Several of
19 the entries on that record are subsequent to the
20 offence that I am sentencing him for today. He
21 does not have any convictions for sexual
22 offences, but there are a number of convictions
23 for crimes of violence. He has received jail
24 terms before, but the most significant one, a
25 term of nine months' imprisonment, was for
26 trafficking in drugs, not for a crime of
27 violence. Still, from the point of view of the

1 protection of the public, the fact that he has
2 convictions for crimes of violence is a concern.

3 I am advised that Mr. A. has spent 253 days
4 on remand for this offence. Under our law he is
5 entitled to receive some credit for the time he
6 has spent on remand. The Crown prosecutor has
7 told me that she agrees that in accordance with
8 the principles set out in R. v. Summers, 2014 SCC
9 26, Mr. A. should receive credit for his remand
10 time on a ratio of one and a half days for every
11 day spent in custody, which works out to a credit
12 of 379 days. In simple terms, a year and two
13 weeks.

14 The Crown says an appropriate jail term for
15 this offence would be in the range of 15 months,
16 followed by probation for three years. Once the
17 credit is applied for the remand time, this would
18 translate into a further jail term of just under
19 three months. Defence counsel asks that I impose
20 a sentence of 12 months followed by probation.
21 That would translate into no further jail being
22 imposed today.

23 I agree with counsel that there are
24 significant Gladue and Ipeelee factors to
25 consider in this matter. Many offenders come
26 before the Court with difficult and tragic
27 backgrounds, but the combination of factors that

1 have impacted Mr. A.'s life is particularly
2 crushing.

3 Sadly, the courts often hear about offenders
4 having had struggles and difficult circumstances
5 growing up. Unfortunately, we often hear about
6 the kinds of things that I heard about earlier
7 this week happening in Mr. A.'s life. But I have
8 rarely heard anything that is overall as awful as
9 the global picture that his counsel presented.
10 As I already said, it is heartbreaking to hear
11 about and think about, and it is very difficult
12 to imagine what it must be like to live with such
13 memories.

14 It has to be said, as the Crown noted during
15 submissions, that these awful personal
16 circumstances do not excuse Mr. A.'s conduct.
17 His struggles and suffering as he was growing up,
18 although incredibly sad, do not diminish the
19 seriousness of his conduct towards A., nor does
20 it take anything away from the pain and suffering
21 that she now has to experience from what he did
22 to her. She now has to carry this with her for
23 the rest of her life. She will have to find a
24 way to be healthy and happy despite what has
25 happened to her. And this is perhaps what was
26 the saddest: The fact that a person who has been
27 treated terribly badly by someone who should have

1 been a protector turns around and, once an adult,
2 does the same thing to another vulnerable child.
3 We often hear about this cycle. Somehow that
4 cycle has to stop, and the only people who can
5 stop it are the individuals themselves.

6 The Court's role and duty is to uphold and
7 apply the sentencing principles that are set out
8 in the Criminal Code. The Court is powerless to
9 repair the harm done. Powerless to repair
10 through sentencing of his abuser the harm done to
11 Mr. A. when he was a little boy. And powerless
12 to repair the harm done to A. through sentencing
13 Mr. A. today.

14 Just a few weeks ago, in R. v. Ross, 2016
15 NWTSC 48, I, sadly, sentenced another person for
16 sexual assault on a child. I talked about the
17 legal principles that apply in sentencing for
18 serious sexual assaults of children and the
19 impact that sexual abuse has on children. The
20 offences committed in that case were more
21 intrusive than the ones here. They were major
22 sexual assaults within the meaning of the case
23 law, whereas here, the Crown fairly concedes that
24 they are not, although they were certainly not
25 trivial assaults.

26 But the sexual abuse of a child can have a
27 huge impact on that child even when the offence

1 is not the most serious or intrusive kind, and,
2 for that reason, what I said in the Ross decision
3 about this is relevant to this case as well even
4 if the assaults committed on A. were less
5 intrusive than the ones committed in that case.
6 I am not going to repeat all those things today,
7 but I simply adopt, for the purposes of this
8 case, what I said at pages 9 to 13 in the Ross
9 decision.

10 Anyone who is skeptical about the
11 devastating impact of sexual abuse on children,
12 even when it is less intrusive than intercourse
13 or digital penetration, should read A.'s Victim
14 Impact Statement. It is a powerful and
15 compelling Victim Impact Statement.

16 I understand that A. would have liked to
17 have been present in court and read it herself,
18 but she lives very far from here and that was not
19 possible. Her words were read into the record
20 earlier this week and I want to quote some of
21 them again. I want to quote what she said
22 because, in all of this, it is very important
23 that what happened to her and the effect that
24 this has had on her not be forgotten or
25 overlooked. She writes, among other things, the
26 following: (As read)

27 I feel hurt, empty and ugly
inside. When I told Janine what

1 he did to me I didn't cry, I sat
2 there feeling empty like it
 didn't bother me.

3 Then she says:

4 This one night I was so depressed
5 I cut my arm from my wrist to
6 halfway up my elbow. It never
7 stopped bleeding for half an
8 hour. I have this big hole in my
9 chest that no one can fix and
 still today I feel like the only
 way I can fix it is by stabbing
 myself in the chest because it
 hurts so much.

10 And then she writes:

11 This one nightmare in this same
12 house, something would be waiting
13 for me. Looking out the window
14 from inside, I would be terrified
15 to go in. This dream would come
16 over and over. Not too long ago
17 I had the same dream but there's
 this man on a chair outside the
 house staring at me. When I
 looked out the window near the
 end, I would look out the window
 and he would be gone. That was
 the most scariest feeling ever.

18 One of the things that sexual assault
19 victims often report is feeling ashamed and
20 feeling like it was their fault they were abused.
21 It is not their fault of course, and this needs
22 to be said at every opportunity that presents
23 itself.

24 A. is still young at 15, but she must be a
25 very strong young woman because she has insight
26 into this already. She knows this was not her
27 fault. So I will quote again something that she

1 writes in her Victim Impact Statement because it
2 was so true, absolutely 100 percent correct, and
3 her message is well worth repeating:

4 I want everyone to know what a
5 horrible thing he did [to me]. I
6 am not embarrassed about it. I
7 feel like girls and boys,
8 whichever one is the victim,
9 should not be. It's not on them.
10 They should be heard ...

11 A. is right, this is not on her; the
12 responsibility for this is Mr. A.'s.

13 It is aggravating that the victim of this
14 offence was very young. It is aggravating that
15 there were two assaults during the same night.
16 It is aggravating that Mr. A. was in a position
17 of trust vis-à-vis this child. It is aggravating
18 that the victim was asleep both times and
19 particularly vulnerable, and it is also
20 aggravating that Mr. A. has a criminal record
21 even though it does not include entries for
22 convictions for sexual offences.

23 However, the guilty plea is highly
24 mitigating even if it did not come early in the
25 proceedings. The victim lived with the anxiety
26 of preparing to testify for trial for some time,
27 but, in the end, the plea came soon enough that
28 she did not have to travel to Yellowknife for
29 this case. The preliminary hearing was waived.
30 So, in the end, she did not have to testify in

1 court about what happened to her. For having
2 seen countless times witnesses, children and
3 adults, having to testify about these kinds of
4 things in courtrooms, I know that sparing someone
5 from that is sparing them a lot.

6 Mr. A. was not spared that in the case where
7 he was the victim. He cannot undo what he did to
8 A., but he at least owned up to what he did and
9 avoided her having to live through the very
10 difficult experience of testifying in court. And
11 because the case where he was a witness went to
12 trial, he is well placed to know what having to
13 testify is like.

14 As I have already said, I accept that Mr. A.
15 is remorseful, and I know that he does not need
16 to hear from me the type of damage and harm that
17 this behaviour caused because he knows it
18 firsthand. To the extent I spoke of that today,
19 I spoke of it because it needs to be said
20 publicly as often as possible to hopefully one
21 day get to the point where these issues will not
22 be before the courts as often as they are today.

23 The Crown and Defence have both presented
24 reasonable, realistic, and compassionate
25 submissions at this sentencing hearing. As far
26 as what the sentence should be today, their
27 positions are not that far apart.

1 Restraint is always a consideration on
2 sentencing. The Criminal Code mandates that it
3 be given special attention in the sentencing of
4 aboriginal offenders. The positions taken by
5 counsel in this case reflect Mr. A.'s
6 exceptionally tragic background and recognize
7 that this case calls for exceptional restraint.

8 Mr. A. has already spent a considerable
9 period of time in custody and, on balance, I
10 agree with counsel that the goals of sentencing
11 can be achieved without him having to be subject
12 to a further jail term of any great significance.
13 In my view, those goals can be achieved through a
14 sentence amounting to something very close to
15 time served, followed by a lengthy period of
16 probation that will support, hopefully, his
17 rehabilitation.

18 I do think there is merit in having a short
19 additional period of imprisonment so that the
20 global sentence reflects the seriousness of the
21 offence but also for reasons actually related to
22 Mr. A.'s rehabilitation.

23 If I sentenced him to "time served" today
24 and he walked out of the building, he would not
25 have any time to decide what he is going to do,
26 where he is going to go, and develop perhaps a
27 strategy or plan to transition back into life

1 outside of jail. It is clear from what his
2 counsel told me, and what Mr. A. said himself,
3 that there are a lot of unknowns at this point as
4 far as what will happen when he is released, as
5 far as where he will live, as far as his
6 relationship with his common-law, and other
7 things as well. I am not sure it would be in the
8 interests of his rehabilitation and well being to
9 have him simply walk out of here today. At the
10 same time, for reasons that I already referred
11 to, I do not think a lengthy further term of
12 imprisonment is necessary to achieve the goals of
13 sentencing.

14 The Crown has sought ancillary orders and
15 those will issue. There will be a DNA order
16 because this a primary designated offence. There
17 will be an order that Mr. A. comply with the Sex
18 Offender Information Registration Act for a
19 period of 20 years.

20 We did not discuss this during submissions,
21 but the date of this offence pre-dates the
22 amendments to the provisions of the Code that
23 deal with the victim of crime surcharge, so I do
24 have jurisdiction to waive the surcharge. I am
25 going to do that in this case considering the
26 amount of time Mr. A. has already spent in
27 custody and his overall circumstances and

1 everything he will have to deal with when he is
2 released.

3 Mr. A., can you stand up, please. Mr. A.,
4 if it had not been for the time you have spent on
5 remand and taking into account your
6 circumstances, I would have imposed a jail term
7 of 13 and a half months imprisonment. For the
8 time that you have already spent on remand, the
9 253 days, I am going to give you credit for 12
10 and a half months, and what that means is that
11 there will be a further jail term of one month.
12 You understand?

13 THE ACCUSED: (No verbal response).

14 THE COURT: You can sit down.

15 This is going to be followed by a period of
16 probation for three years and those will include
17 only three conditions: You will have to report
18 to Probation Services within 24 hour of your
19 release; you will no contact direct or indirect
20 with A.B.; and you will take counselling as
21 recommended by your probation officer as long as
22 you consent. This has to be with your consent.
23 Counselling treatment cannot be forced on you,
24 but given everything that you have been through,
25 I think that it would be great if you could
26 access some help.

27 It is not up to me to decide, but this

1 additional month, I am sure, will not translate
2 into another full month in custody. I am quite
3 certain you will be released before that. You
4 will be released soon. So you have some time to
5 decide what you are going to do and where you are
6 going to go, and hopefully your case worker in
7 jail can assist you with that.

8 The probation order is there to protect A.
9 through the no contact condition, but it is also
10 there to assist you and I hope you will access
11 that help.

12 What I heard earlier this week is that you
13 have a lot of skills, and it is not too late to
14 have a productive life and to be there for your
15 son, and I sincerely hope that that is what you
16 will be able to do.

17 As I have said, this abuse has to stop
18 somewhere. The courts can stop it for a little
19 while by sending people to jail so they cannot
20 hurt anybody, but the true solution comes from
21 people, and I hope, in time, you can be part of
22 that solution.

23 Is there anything that I have overlooked,
24 Mr. Moore?

25 MR. MOORE: No, I don't think so.

26 THE COURT: Ms. Piché?

27 MS. PICHÉ: No. Thank you, Your Honour.

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THE COURT: I thank both of you for your
work in resolving this case and for your very
fair submissions. Close court.

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Certified Pursuant to Rule 723
of the Rules of Court

Jane Romanowich, CSR(A)
Court Reporter

