R. v. E.A., 2016 NWTSC 50 S-1-CR-2015-000095

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

Official Court Reporters

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

Official Court Reporters

1

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

Official Court Reporters

2

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

Official Court Reporters

3

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

Official Court Reporters

4

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

Official Court Reporters

5

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

Official Court Reporters

6

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

Official Court Reporters

7

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

Official Court Reporters

8

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

Official Court Reporters

9

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

Official Court Reporters

10

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

Official Court Reporters

11

1 he did to me I didn't cry, I sat

there feeling empty like it

2 didn't bother me.

3 Then she says:

4 This one night I was so depressed

I cut my arm from my wrist to

5 halfway up my elbow. It never

stopped bleeding for half an

6 hour. I have this big hole in my

chest that no one can fix and

7 still today I feel like the only

way I can fix it is by stabbing

8 myself in the chest because it

hurts so much.

9

10 And then she writes:

11 This one nightmare in this same

house, something would be waiting

12 for me. Looking out the window

from inside, I would be terrified

13 to go in. This dream would come

over and over. Not too long ago

14 I had the same dream but there's

this man on a chair outside the

15 house staring at me. When I

looked out the window near the

16 end, I would look out the window

and he would be gone. That was

17 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

Official Court Reporters

12

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

horrible thing he did [to me]. I

5 am not embarrassed about it. I

feel like girls and boys,

6 whichever one is the victim,

should not be. It's not on them.

7 They should be heard ...

8 A. is right, this is not on her; the

9 responsibility for this is Mr. A.'s.

10 It is aggravating that the victim of this

11 offence was very young. It is aggravating that

12 there were two assaults during the same night.

13 It is aggravating that Mr. A. was in a position

14 of trust vis-à-vis this child. It is aggravating

15 that the victim was asleep both times and

16 particularly vulnerable, and it is also

17 aggravating that Mr. A. has a criminal record

18 even though it does not include entries for

19 convictions for sexual offences.

20 However, the guilty plea is highly

21 mitigating even if it did not come early in the

22 proceedings. The victim lived with the anxiety

23 of preparing to testify for trial for some time,

24 but, in the end, the plea came soon enough that

25 she did not have to travel to Yellowknife for

26 this case. The preliminary hearing was waived.

27 So, in the end, she did not have to testify in

Official Court Reporters

13

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.

Official Court Reporters

14

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

Official Court Reporters

15

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

Official Court Reporters

16

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

Official Court Reporters

17

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.

Official Court Reporters

18

1 THE COURT: I thank both of you for your

2 work in resolving this case and for your very

3 fair submissions. Close court.

4 ...................................

5

6

7 Certified Pursuant to Rule 723

of the Rules of Court

8

10

Jane Romanowich, CSR(A)

11 Court Reporter

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

Official Court Reporters

19