R. v. Irqqiut, 2017 NWTSC 18

S-1-CR2015000054

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- vs. -

SAMUAL IRQQIUT

Transcript of the Reasons for Sentence by The Honourable Justice L. A. Charbonneau, at Yellowknife in the Northwest Territories, on February 22nd A.D., 2017.

APPEARANCES:

Mr. D. Praught: Counsel for the Crown

Mr. P. Harte: Counsel for the Accused

Charge under s. 271 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 of Canada

THE COURT: I am ready to give my decision on this matter. I am asking that a transcript of my remarks be prepared. I will say that although I had sufficient time to make my decision, I had limited time to write my Reasons so I do anticipate that I may edit and possibly add some things to the transcript of the decision. I want to make sure that my Reasons for having come to the conclusion that I have are clear and complete.

I also want to remind everyone that there is in place an order prohibiting the publication of any information that could identify the victim in this matter. I will refer to her by using initials but if at any point I refer to her by name or if there are other things in my decision that disclose her identity, those are subject to a publication ban.

I have quite a bit to say on this matter to address the various issues that were raised during the submissions.

Today it is my responsibility to sentence Samual Irqqiut for a sexual assault that he committed on T.T. over two years ago in September of 2014.

In any sentencing, the Court has to take

into consideration the crime that was committed, the circumstances of the person who committed it, and the legal principles that govern sentencing. Some of these principles are set out in the Criminal Code and others come from the case law.

Before I turn more specifically to these things, I want to talk briefly about the procedural history of this case because it explains some of the delays in this matter coming to an end. In addition, aspects of how things unfolded are relevant to the decision that I have to make today.

Originally Mr. Irqqiut was charged with sexual assault and two other charges. He elected to have his trial in front of a court composed of a Judge and a jury. He was committed to stand trial after a preliminary hearing held on May 21st, 2015. His jury trial was eventually scheduled to proceed commencing on September 5th, 2016.

On August 21st, 2016, Mr. Irqqiut's counsel requested that the matter be brought forward ahead of the trial date so that a guilty plea could be entered. This was done.

On August 29th, 2016, Mr. Irqqiut pleaded guilty to the sexual assault charge and the

Crown indicated that it would not proceed on the other charges. The jury trial that had been scheduled to commence the following week was then cancelled.

Sentencing was adjourned so that consideration could be given to whether a pre-sentence report would be ordered. Eventually, a pre-sentence report was ordered. The sentencing hearing was scheduled to proceed on December the 5th.

On that date, Mr. Irqqiut admitted the facts alleged by the Crown, and I heard sentencing submissions. I was presented with a joint submission. Counsel were asking that I sentence Mr. Irqqiut to "time served". At that point, this would have amounted to a sentence of roughly three years and three months. I expressed concern about the joint submission and I gave counsel an opportunity to tell me more about how they had arrived to it and to make more submissions in support of it.

Crown counsel, who is not counsel before the Court today, said that he was not surprised that the Court had some concerns. He acknowledged that the sentence being proposed was low. The only additional

information that he provided in response to my inquiries about the basis for the joint position was that T.T. was very relieved to learn that this matter would resolve and that she would not have to testify at trial. Crown counsel did not say that she was reluctant, uncooperative, unable to testify, or hostile to the prosecution. He simply said that some preparation work would have been needed to get her ready to testify at the trial, that she was very nervous and worried about having to testify about these events, and that she was extremely relieved to learn that she would not have to.

As for Mr. Irqqiut's counsel, he asked that the matter be adjourned to give him an opportunity to obtain additional information about Mr. Irqqiut and, in particular, information from some of the professionals that Mr. Irqqiut had been in contact with while on remand. Counsel said that his desire to explore certain issues came from his discussions with Mr. Irqqiut, aspects of those conversations, as well as some rather troubling comments attributed to Mr. Irqqiut in the pre-sentence report.

The matter was adjourned a few times to

enable counsel to attempt to get additional information.

Without trying to summarize everything that defence counsel has said on the last few appearances, I will say that my understanding from what he said was that it has proven difficult, and actually impossible, for him to get anyone to provide additional information about Mr. Irqqiut's progress in his sessions with the psychologist at the jail, or any further information that would assist in clarifying some of the concerns that counsel had. The underlying reasons for these difficulties are not clear to me and it is not something that I can speculate about. Based on what counsel said, I am satisfied that he did everything that he could to try and get additional information and simply was not able to.

On the last appearance, he advised that he did not think there would be any point in adjourning the matter any further, as he did not expect that any further information would be forthcoming. On that appearance, counsel did file documents (sign-in sheets) showing Mr. Irqqiut's attendance at AA meetings. Those sheets have been marked as an exhibit.

They show a fairly regular attendance to AA meetings from November 2015 through to December 2016. For the most part, there appears to have been regular attendance by Mr. Irqqiut during that time frame.

I also have the benefit of a very thorough pre-sentence report and I will get back to that when I talk about Mr. Irqqiut's personal circumstances.

The first thing that I want to talk about are the circumstances of the offence. Obviously, that is one of the things that is important at any sentencing hearing.

Mr. Irqqiut and T.T. were in a relationship for a period of time in the past. This relationship had ended less than a year before the incident that led to this charge.

At the time of the incident, in September 2014, T.T. was 23 years old and Mr. Irrquit was 32.

Mr. Irqqiut sexually assaulted T.T. on September 28th, 2014. This was just 16 days after his release from custody for his last sentence. That sentence had been imposed as a result of his conviction for an assault causing bodily harm. T.T. was the victim of that assault. Although the CPIC printout

(filed as an exhibit) and the copy of the probation order attached to the pre-sentence report and relates to that sentence are inconsistent, on the whole, it appears that the sentence imposed on that day was eight months in jail and that six months credit were given for time that Mr. Irqqiut had spent on remand. This is the only way the numbers make sense because the sentence was imposed at the end of July and Mr. Irqqiut was released in September. So of all of the possible combinations arising from the conflicting information on the documents, a sentence of eight months, with six months credit given for remand time, is what makes most sense.

What is significant is that Mr. Irqqiut had just been released from custody for an offence committed against T.T. when he sexually assaulted her in September 2014.

On September 28th, Mr. Irqqiut spent some time with T.T. in Yellowknife. They drank alcohol together and they eventually went to a tent which is in a secluded area of green space in the city of Yellowknife. They were drinking there with another man and together, drank most of the 26-ounce bottle of hard liquor.

T.T. blacked out as a result of her alcohol consumption. Her next memory is being in the tent alone with Mr. Irqqiut. She did not feel safe being alone with him and she tried to leave. He prevented her from doing so. He grabbed her arm and pulled her back into the tent by the hair. By this point, T.T. was scared and was crying.

After pulling her back inside the tent, Mr. Irqqiut grabbed her head, moved it toward his penis, and told her to give him oral sex. She refused. He hit her in the face. Feeling she had no choice, she did what he was asking and started to give him oral sex.

The photos filed in the sentencing hearing show bruising on T.T.'s cheek, which I infer came from being struck at that point.

Mr. Irqqiut then told T.T. to take her pants off. Again, she did so because she felt she had no choice. He told her to turn around. She said she did not want to. He got angry and forced her down to the ground onto her stomach and held her down by her arms. He then had forced anal intercourse with her. She asked him to stop because it was causing her pain but he continued.

T.T. told Mr. Irqqiut she needed to

"poop". At that point he stopped having anal intercourse with her; however, he forced her again to give him oral sex. She did not want to do this, but he forced her by holding her by the hair and keeping her head down by his penis.

Mr. Irqqiut fell asleep or passed out during the second instance when he was forcing T.T. to give him oral sex. She was able to leave the tent. She could not find her pants so she covered herself with a sweater and then ran to a nearby hotel to get help. The staff at the hotel called the police.

T.T. was injured during this attack. When she was taken to the hospital for treatment, the medical staff observed bruising on various parts of her body, including her face, neck, arms and legs. There was also a small amount of blood near her anus.

Mr. Irqqiut was arrested that same day and he has been on remand ever since. The total number of days he has spent on remand as of today is 877 days. At this point, with the additional remand time that has accumulated since December 5th when the sentencing hearing started, and if he is given credit for his remand time on the ratio of one and a half

days credit for each day of remand, a sentence of time served would amount to a sentence of three years and seven months.

T.T. prepared a Victim Impact Statement. In it, she describes the impact that this offence had on her.

The things that she describes are, sadly, things we frequently see in Victim Impact Statements in sexual assault cases. T.T. talks about feeling scared of being out with friends, feeling sad and depressed. Initially she lied to her friends who were asking what was wrong with her. Then she became upset about lying to friends and family. She writes "at that point I just wanted to give up my life. I didn't want to be hurt again".

T.T. also talks about how she was physically injured in this attack, how her neck was sore, how she could not sit comfortably for a period of time. She also talks about feeling uncomfortable when she underwent the sexual assault examination at the hospital. That is not difficult to understand. A sexual assault examination involves a person's whole body being examined and scrutinized. Samples and swabs are taken from the genital and anal area of the body.

This would be uncomfortable and unpleasant at the best of times. To undergo this after having been the victim of a sexual assault must be horrible. T.T. says she was not comfortable with this but that she put her fear aside and "let the nurse do her job".

What T.T. wrote in her Victim Impact Statement confirms what we already know: Sexual abuse causes significant harm to the victims. Courts have long recognized this. We know that the psychological harm that is caused often lasts long after the bruises have healed.

There was a time where this type of crime was trivialized and its consequences not well understood. Perhaps that remains the case in some circles. But as far as the law goes, and as far as this Court is concerned, this is a very serious crime that has very serious consequences. And, unfortunately, it is a crime that is terribly prevalent in this jurisdiction.

I turn now to Mr. Irqqiut's own personal circumstances. They are also very important and must be taken into account on sentencing.

I have heard detailed submissions from his counsel about his background and personal

circumstances. And, as I have already noted, I have the benefit of a very thorough pre-sentence report that talks about Mr. Irqqiut's childhood and some of the tremendous hardships and losses he suffered as he was growing up and into his young adulthood. These are not pleasant things to talk about, and I know they were difficult for him to hear this all referred to during the submissions, but I need to talk about them.

Mr. Irqqiut has just turned 34. He was born in Taloyoak, which is an isolated community on Boothia Peninsula, in the Kitikmeot Region of Nunavut. Its population is about 800 people and in large majority Inuit. It is a very isolated community.

Mr. Irqqiut's family lived, in some respects, a traditional lifestyle. The family spent time on the land, hunted for seals, whale and caribou. The parents did not consume alcohol when they were out on the land. Mr. Irqqiut recalls he and his siblings were always excited to go out on the land.

Unfortunately, there were many difficulties in the family.

When not on the land, both parents abused alcohol. There was violence within the home.

Mr. Irqqiut recalls often going to the emergency shelter where he, his mother and siblings would remain until his father sobered up. In addition to the violence that occurred between his parents, according to Mr. Irqqiut, his mother was violent with the children.

The abuse of alcohol had a very detrimental impact on this family. There were times where all the money went to the purchase of alcohol instead of buying food. Mr. Irqqiut's sister was apprehended by Social Services at one point. There were times where Mr. Irqquit and his siblings would go to relatives' homes so that they would have a safe place to stay and so they would have something to eat. Mr. Irqqiut recalls feeling often scared and worried as a child.

At a young age, he discovered the existence of an incestuous relationship between his mother and one of his siblings. His father eventually found out about it too. This of course led to more conflict and violence in the family. Mr. Irqqiut reports that his father starved the family for two days as punishment for what he had discovered.

When he was 15 years old, one of Mr. Irqqiut's brothers committed suicide. This

occurred over the Christmas season and obviously had a huge traumatic impact on the family and on the whole community. Mr. Irqqiut's parents separated after this. He lived with his father from that point on. They consumed alcohol frequently together and, for a period of time, on a daily basis.

Around the same time, when Mr. Irqqiut was 16 or 17, he had a child with a woman from the community. The family of the child's mother did not approve of him so he was not able to have any contact with his child.

Mr. Irqqiut attempted to commit suicide when he was 17. He ended up at the psych ward in the hospital in Yellowknife and remained there for three months. He was given a prescription for medication when he got out but never got it filled. He was very angry at that point because he felt he had been forced to stay at the hospital, whereas he had been under the impression or belief, when he went there initially, that he was being admitted to a treatment center.

He returned to Taloyoak.

By the time he was 20, Mr. Irqqiut was abusing alcohol regularly. That is when he started having involvement with the criminal

justice system. His first conviction on the record is in 2003 and that's the year Mr. Irqqiut turned 20. He was, among other things, violent in intimate relationships.

When he was 24, he moved to Yellowknife and lived a transient lifestyle, residing for the most part at the Salvation Army. By then his mother had moved to Yellowknife as well but she still used alcohol and was not able to provide any kind of consistent support to him.

When Mr. Irqqiut was 27, his other brother committed suicide. He was not able to return to the community for the funeral. Mr. Irqqiut used alcohol to cope. His consumption increased after this event.

Over the last several years, Mr. Irqqiut has been in and out of jail, as is apparent from his criminal record. Many of his convictions are for assault. To date, the sentences he has received have been counted in months. But there is an escalation showing on the record.

The 2014 conviction for assault causing bodily harm was the most serious offence he had ever committed up to then, and it led to the longest sentence he had ever received. What I must sentence him for today is in an

entirely different category as far as seriousness. It is by far much much more serious than anything else that he has ever been convicted for.

Mr. Irqqiut, I heard, has had sporadic employment but of late, at least, the money that he has earned has largely gone to feed his alcohol addiction. It is obvious that before his arrest on this offence, he was literally trapped in a cycle of dysfunction.

This is a very sad chronicle of what Mr. Irqqiut's life has been up to now. It should be a surprise to no one that he turned to alcohol and other intoxicants, that he has displayed anger and violence, and that he has had a dysfunctional lifestyle. He is a victim of his own parents' alcohol abuse and dysfunction. It is very difficult to imagine what it must have been like for him as a little boy, worried and scared, with none of the supports that children need in order to develop in a healthy way. It was terribly sad to read this pre-sentence report and to hear the additional information provided to the Court by Mr. Irqqiut's counsel.

Several aspects of Mr. Irqqiut's personal circumstances and the losses that he has faced

are horrendous. And I could observe while this was being talked about at the sentencing hearing that he was still visibly upset hearing these things talked about. These are extremely tragic circumstances. It is impossible to imagine what living through the series of traumas and losses would do to a person. I have tried to give due consideration to all of that in arriving at my decision today.

I have talked about the circumstances of the offence and those of Mr. Irqqiut.

In making my decision I also have to consider the principles of sentencing. As I said, some are set out in the Criminal Code and others come from the case law.

I will address, first, the principles that flow from the fact that I was presented with a joint submission at this sentencing. Because when that happens, it alters the manner in which the Court has to proceed in deciding what sentence to impose.

For a long time, the law was that a joint submission should be given serious consideration by sentencing Judges, but there were different approaches across the country and different ways that this was explained.

In the recent case of R. v. Anthony-Cook, 2016 SCC 43, the Supreme Court of Canada unequivocally adopted the most stringent of the tests among those that had been used by the courts. The Supreme Court described this test as the "public interest" test.

At paragraph 29 of the decision, the Supreme Court said:

> Under this test, trial judges should not depart from a joint submission unless the proposed sentence would bring the administration of justice into disrepute, or is otherwise not in the public interest.
>
> This is a very high threshold and in explaining further what it meant, the Supreme Court of Canada referred to language used in cases from the Newfoundland and Labrador Court of Appeal, including these descriptions.
>
> A joint submission will bring the administration of justice into disrepute or be contrary to the public interest if, despite the public interest considerations that support imposing it, it is so "markedly out of line with the expectations of reasonable persons aware of the circumstances of the case that they would view it as a break down of the proper functioning of the criminal justice system".
>
> (...)
>
> When assessing a joint submission, trial Judges should "avoid rendering a decision that causes an informed and reasonable public

> to lose confidence in the institution of the courts". Anthony-Cook, para 33

At paragraph 34 of Anthony-Cook, the Supreme Court itself said, speaking of the rejection of a joint submission:

> Rejection denotes a submission so unhinged from the circumstances of the offence and the offender that its acceptance would lead reasonable and informed persons, aware of all of the relevant circumstances, including the importance of promoting certainty in resolution discussions, to believe that the proper functioning of the justice system had broken down.

The Supreme Court explained that this very high threshold is required because of the benefits of joint submissions and the importance for Crown and Defence to be able to have confidence that they will, generally, be followed. Anthony-Cook, paras 35-45.

One of the benefits of joint submissions for Crown and Defence is the certainty of outcome. That is what Crown counsel emphasized in this case as the main basis for the Crown having taken the position it did. The Supreme Court recognized the importance of this benefit. That is made clear in different parts of its decision.

The Court did note, however, that

certainty of outcome is not the ultimate goal of sentencing. At paragraph 43, the Court said, referring to the "public interest" test:

> This test also recognizes that certainty of outcome is not the ultimate goal of the sentencing process. Certainty must yield where the harm caused by accepting the joint submission is beyond the value gained by promoting certainty of results. Anthony-Cook, para 43.

Put another way, stringent as this test is, it does not mean that sentencing judges are required to "rubber stamp" a joint submission.

In this respect, I am in complete agreement with comments recently made by Chief Justice Wittmann of the Court of Queen's Bench of Alberta in R. v. Montoya, 2016 ABQB 660, and particularly at paragraphs 38 and 39:

> Regardless of a joint submission, a Court is still obliged to craft a sentence according to sentencing principles. The proportionality principle in section 718.1 is particularly salient. That is, the sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender. In Arcand, this principle was discussed extensively, including the meaning of the gravity of the offence and the degree of responsibility of the offender.
>
> Sentencing in this country is still an individualized process and in considering a joint submission it is still helpful to

> measure the proposed sentence against the proper application of sentencing principles to ensure that a sentencing range is generally respected. This engages the parity principle and involves looking at similar cases, that is, similar offences and similar offenders; the penalties imposed on similarly situated offenders in similar circumstances.

I should say that in Montoya, Chief Justice Wittmann followed the joint submission. I quote his comments because I strongly agree that general sentencing principles are part of the context in which the analysis mandated by the Supreme Court of Canada must be carried out.

Because I was presented with a joint submission, the question that I must ask myself in approaching this matter is not the one I normally would ask myself in making a sentencing decision. I must not ask myself simply "What do I think a fit sentence is for this offence?" Rather, what I have to ask myself is "Would sentencing Mr. Irqqiut to three years and seven months for this offence bring the administration of justice into disrepute? Would it be so markedly out of line with the expectations of reasonable persons aware of the circumstances of the case that they would view it as a breakdown of the

proper functioning of the criminal justice system? Would it cause an informed and reasonable public to lose confidence in the institution of the Court?"

Those questions cannot be answered in a vacuum. As noted in Montoya, I must assess those questions in light of general sentencing principles and I must take into account appellate case law that this Court is bound by, and in particular, leading authorities in sentencing offenders for serious sexual assaults.

With this is in mind, I now turn to general principles of sentencing.

The purpose of sentencing is set out in the Criminal Code at section 718:

> The purpose of sentencing is to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:
>
> (a) to denounce unlawful conduct;
>
> (b) to deter the offender and others from committing offences;
>
> (c) to separate offenders from society where necessary;
>
> (d) to assist in rehabilitating offenders,
>
> (e) to provide reparations for harm done to victims or to the community; and

> (f) to promote a sense of responsibility in offenders, and an acknowledgment of harm done to the victims and the community.

Deterrence means discouraging the offender before the Court and other people from committing similar offences. Denunciation means expressing society's disapproval of the conduct in question. Sentencing is not and should never be about revenge but sentencing is the expression of the Court's condemnation of certain conduct. When a crime is very prevalent, the need for that condemnation and a need to discourage the commission of these crimes is all the more pressing.

As has been commented on on numerous occasions by this Court, and as would be obvious to anyone who spends any time following what goes on in the criminal courts of this jurisdiction, sexual assault is a very prevalent crime here. It has been referred to as an epidemic. It affects people of all ages and is committed by people of all ages. It is a significant social problem in the Northwest Territories.

It is well established in law that when dealing with serious crimes of violence and serious sexual assaults, the paramount

sentencing objectives are deterrence and denunciation.

An offender's rehabilitation is also a sentencing objective. It is in everyone's interests that somehow Mr. Irqqiut find a way to break out of the pattern that he has been in for years - this pattern of drinking, destructive behaviour, harming others, harming this specific victim.

The pre-sentence report indicates that as of the time it was written in November of 2016, Mr. Irqqiut had started to take advantage of some of the resources available to him in the jail. In particular, he had been seeing one of the psychologists in the jail regularly and was showing signs of progress. This is an encouraging sign. But there are other aspects of the pre-sentence report that are quite disturbing.

Mr. Irqqiut started seeing the psychologist in May of 2016. The pre-sentence report, as I said, was prepared in November of 2016. And at that point, Mr. Irqqiut apparently, despite having attended AA for a period of time, told the author of the report he did not think he needed counselling or treatment to address his alcohol problem.

That's at page 6 of the report.

He also said that he did not think that he could comply with the condition to stay away from T.T. because of his perception that her father was pressuring him to maintain a relationship with her. That is at page 3 of the report.

The report states at page 4 that Mr. Irqqiut has used violence in prior intimate relationships and when discussing his last relationship, he appeared to justify his use of violence.

So as of November 2016, it appears that Mr. Irqqiut still had considerable work ahead of him as far as gaining insight into his conduct and taking full responsibility for his actions. And this was just a few months ago.

I have talked about the sentencing objectives. There are also a number of sentencing principles that are set out in the Criminal Code.

The fundamental principle of sentencing is proportionality. A sentence should be proportionate to the seriousness of the offence and to the degree of blameworthiness of the offender. Many other specific principles are set out in the Code.

I want to say a few words about restraint. It is an important sentencing principle and it has special implications in the sentencing of Aboriginal offenders. Those principles were explained by the Supreme Court of Canada in the cases of Gladue, [1999] 1 SCR 688, and Ipeelee, 2012 SCC 13, and they apply in this case. The Gladue and the Ipeelee cases talk about this principle of restraint, set out in section 718.f1(e) of the Criminal Code, and how it operates in the cases involving Aboriginal offenders. The cases explain the obligation that this provision places on sentencing Judges.

One of these obligations is to take judicial notice of systemic factors that have contributed to the overrepresentation of Aboriginal people in Canadian jails. Another is to take into account case-specific factors, namely, the specific circumstances faced by the offender who is before the Court. These things may have a bearing on the level of blameworthiness of an offender for the crime committed. If the blameworthiness is reduced because of those factors, it may affect the sentence ultimately imposed because of the fundamental principles of proportionality.

Another aspect of the direction given to sentencing Judges in these cases has to do with careful consideration of sanction: what sanction is the most appropriate and most likely to achieve the goals of sentencing, having regard to the personal circumstances of the offender before the Court and his or her Aboriginal heritage. Depending on the situation, the Court may be able to craft a sentence that is better aligned with the values of the offender and the offender's community - a more meaningful sentence, a more effective sentence. But of course the Court's ability to do that depends on the circumstances of each case and, importantly, on what options the Court has. Just because an offender is Aboriginal does not mean that the resources, programs, or individuals that are required to craft the desired sentence are there.

In this case, there is ample evidence before the Court about very difficult circumstances that Mr. Irqqiut has faced as a young Aboriginal child growing up in his home community. No doubt, no doubt at all, those circumstances have contributed to his difficulties over the years. Those

circumstances have to be taken into account. To be clear, Mr. Irqqiut was victimized as a child. He was a victim of abuse and neglect. He suffered consequences from events that he had absolutely no control over and no responsibility for. As he grew up, he faced numerous tragic losses. It is no surprise, as I already said, that he developed issues with substance abuse, anger and violence.

But the fact that the root causes of his behaviours may be readily identifiable does not change anything to the harm that this behaviour can cause and has caused, including the harm caused to T.T. who is also Aboriginal.

As our Court of Appeal recently noted in R. v. Bonnetrouge, 2017 NWTCA 1, paragraph 22:

> If a person is dangerous, Gladue factors may explain how he came to be dangerous but that does not make him any less dangerous.

Those comments were made in the context of dangerous offender proceedings, which of course engage different considerations than does a regular sentencing hearing. But I think the point is the same. Compassion and understanding about how a person came to be where they are at in life is one thing, but it

does not remove the reality of the danger that they present to others.

The crime of sexual assault covers a wide range of possible conducts and it can give rise to a wide range of possible sentences. In this jurisdiction, as in some others, the starting-point approach has been adopted by our Court of Appeal. This guides sentencing Judges in the exercise of their discretion.

There is no question at all that the sexual assaults committed by Mr. Irqqiut (and by this I mean the three different ways in which he sexually assaulted T.T.) fit the definition of "a major sexual assault" as defined in R. v. Arcand, 2010 ABCA 363, and adopted by our Court of Appeal in R. v. A.J.P.J., 2011 NWTCA 2. The starting-point for a single act that constitutes a major sexual assault is three years imprisonment.

Adopting a starting-point approach, as I often say, must not be confused with creating a minimum sentence. A starting-point, as was explained at length in Arcand simply reflects the objective seriousness of a type of offence. It tells sentencing courts where to begin in the analysis. It does not tell them where to stop.

When a starting-point applies, the sentence must be adjusted to reflect the aggravating and mitigating factors of the case. That is part of the principles that I must take into account on this matter in deciding whether I should follow the joint submission.

The question comes down to whether this is one of those cases where, in the words of the Supreme Court of Canada in Anthony-Cook, accepting the joint submission would cause harm beyond the value gained by promoting certainty of result.

As I have already said, the starting-point for a "major sexual assault" is three years. In this case, there are a number of aggravating factors.

The first is that the sexual assault involved multiple violations of T.T.'s personal and sexual integrity. There was forced anal intercourse and two separate instances of Mr. Irqqiut forcing her to give him oral sex.

The second is that Mr. Irqqiut used violence to perpetrate his assault. When T.T. tried to resist, she was grabbed by the hair and forced back in the tent. She was struck

in the face when she refused to comply with his demand for oral sex. She was pinned to the ground during the forced anal intercourse. The violence used in the commission of the offence is highly aggravating.

The third aggravating factor is that T.T. suffered injuries as a result of this attack, including injuries to her anus and bruising to various parts of her body. The photographs filed show bruising to her face, arm, leg and neck. And when she was examined, there was blood around her anus. Her Victim Impact Statement confirms that she was hurt physically as well as emotionally.

This was a prolonged assault during which Mr. Irqqiut showed complete contempt and disregard for T.T. At one point during the anal intercourse she told him he was hurting her but he just kept on doing what he was doing.

Another very significant aggravating factor is that Mr. Irqqiut had barely been released from jail (only two weeks before this incident) from serving a sentence for having committed an assault on T.T. and causing bodily harm to her. This is extremely aggravating.

His criminal record, as I have said, has a number of convictions for assault. It also shows an escalation in that violence and an escalation of violence against T.T.

Mr. Irqqiut was on probation for the assault causing bodily harm against T.T. when this happened. He was not actually supposed to have any contact with her. It is true that initially she was in his presence voluntarily. But she was not the one who was bound by a court order; he was.

There is some element of breach of trust here because of the parties' past relationship but it is not as significant as it would be if they still had been in a relationship.

T.T. was intoxicated and therefore more vulnerable when the attack started but this is not as much of a factor as it would be if she had been sleeping or passed out when the attack started.

But on the whole there are a number of highly aggravating factors that suggest that a significant increase from the three year starting-point is necessary to reflect the seriousness of this crime.

These aggravating factors must be balanced with the mitigating factors. The main one

here is the guilty plea.

Mr. Irqqiut's decision to plead guilty came a few weeks before the start of his jury trial. At that point, jury summonses had been served of course. But there was sufficient time to post notices and advertise to prospective jurors that they did not need to attend. There was also time for the Crown to cancel its witnesses. This included one, I am told, who would have had to travel from Ontario.

The guilty plea no doubt saved court time and resources, although as far as court time is concerned, it must be recognized that on a week's notice it is virtually impossible for this Court to schedule another trial in the place of the one that has collapsed.

The most significant aspect of the guilty plea is that it avoided the need for T.T. to testify about these events in front of a jury and it provided certainty of outcome in this case. The Court knows that is always a relief for victims and always an important consideration.

But given its timing, this guilty plea cannot be given the same mitigating effect as would be the case if it had been entered at an

early opportunity. Here, it came very close to the start of the trial, after a preliminary hearing was held. T.T. had to testify at that preliminary inquiry.

On December 5th, Crown counsel noted in submissions that it was what he called an "abbreviated preliminary hearing" or a "focused preliminary hearing". T.T.'s statement was introduced into evidence in lieu of her testimony in-chief. Crown counsel mentioned that the cross-examination was focused and limited.

The cross-examination may not have been as lengthy as is sometimes the case, but T.T. did have to answer questions about all aspects of the sexual assault. She also had to live for over a year after that preliminary hearing with the belief that this trial would go ahead and that she would have to testify again. Without taking away from the fact that a guilty plea is an important mitigating factor to consider on sentencing, and all things being relative, the timing of the plea and the fact that T.T. did have to testify about these events at a preliminary hearing, must also be taken into account in assessing the mitigating impact of this plea.

On the whole, all of this suggests to me that a sentence significantly higher than the three-year starting-point is required in this case.

I have read carefully the three cases submitted by the Crown: R. v. Laviolette, 2003 NWTSC 26; R. v. P.D.C., 2005 NWTSC 69; and R. v. C.M., 2005 NWTSC 100. I am not going to go into those cases in any great detail. I will only say that there are, as is often the case, distinguishing features in all of them.

It is true they all involve serious sexual assaults. But in P.D.C., the offender was youthful, had no record, had pleaded guilty at a very early opportunity, and there had not been a preliminary hearing. None of these cases were cases where there was previous violence against the same victim. None of them were cases where a very serious crime was committed only weeks after the offender was released from a sentence imposed as a result of an offence against the same victim.

I also note that these three cases date back 12 to 14 years. It is perhaps telling, considering how many sexual assaults come before this Court, that no recent case was submitted in support of the joint position.

Against the backdrop of sentences imposed by this Court on a regular basis for this, unfortunately, very prevalent type of crime, I see the three cases submitted as outliers as opposed to being representative of the sentences ordinarily imposed by this Court in serious sexual assault cases.

I want to make it clear I have not lost sight of Mr. Irqqiut's tragic circumstances in all of this.

This is a very difficult case. It is difficult because, as I have already said, Mr. Irqqiut has suffered immensely in his life. He has been exposed to numerous traumatic events and it is no surprise that he has ended up with many personal issues, including issues with anger, substance abuse, and addiction issues. It is perhaps not surprising at all that for many years he has lived a dysfunctional self-destructive lifestyle and, that as part of destructive lifestyle, he has harmed other people. Unfortunately he is not the only one in that position. I want to address this because it is something that defence counsel referred to at length in his submissions on December the 5th.

The addiction issues, the problems related

to suicide, sexual abuse, and violence generally, are staggering in this jurisdiction. Many people have suffered severe trauma and are now harming others, causing more trauma and causing that cycle to continue. Breaking the cycle requires more than an acknowledgment that the situation exists and declarations of good intentions. They require resources. They require the programs and the people to administer them. They require treatment options. Until those things are available, it is reasonable to expect that the cycle will continue and more people will be hurt.

The harm that was done to Aboriginal people in this jurisdiction, and elsewhere in Canada, has been documented, acknowledged, and studied. We know, sadly, about the level of trauma that many people have lived through over the years. We know a lot of that harm was the result of actions by the state. Still, as counsel noted in submissions, there continues to be so little by way of resources to assist people who live every day with the aftermath and consequences of all this harm, compared to the need. This is terrible because not only are many people not able to

get the help they need to address their own issues, but the problems are growing exponentially.

Some victims of yesterday become the abusers of today. And as more people are abused, harmed and traumatized, it is fairly predictable that some in this new generation of victims and traumatized people, unless they get help, may well turn into abusers and cause more harm to the next generation. And on and on this cycle goes.

I do not know what would be needed to help address the issues some people face, with individual trauma, intergenerational trauma, the addiction issues, violence issues, sexual abuse issues. Cases like this one, and sadly many others, underscore the pressing and urgent need for ways to help people move byond this cycle and these tragic outcomes.

I return to the basic question that I started with: Would a sentence of three years and seven months be contrary to the public interest given the overall circumstances of this case?

After much anxious consideration, and with the greatest respect for the contrary view, my own view is that imposing the sentence

suggested would cause a reasonably informed public to lose confidence in the institution of the Court because such a sentence would not adequately protect the public and it would not reflect the many serious aggravating features of this case.

Mr. Irqqiut's terrible background helps understand why he has anger and why he is violent. And it is true that he does not appear, until recently during this time on remand, to have had access to the help and resources that he needs to address the high level of trauma he experienced as a child, teenager, and young adult. But the fact remains that those issues and his anger, in conjunction with his substance abuse, have resulted in him causing harm to others in the past and grave harm to T.T. on this occasion. He did so a very short time after his release from the sentence that he had received after having harmed her on a previous occasion. And he also had yet another conviction for an assault on her dating back to 2013.

As of when the pre-sentence report was prepared and despite having started to work on himself with the help of the psychologist for six months before the report was prepared, Mr.

Irqquit still said he did not think he could stay away from T.T. and he still did not seem to think he needed treatment for his alcohol issues. This raises very serious concerns about the adequacy of the proposed sentence to adequately address the sentencing objectives.

The proposed sentence is not an insignificant sentence of course, but in my respectful view it would be contrary to the public interest because it would overemphasize Mr. Irqqiut's tragic personal circumstances at the exclusion of other things that must also be acknowledged at this sentencing, not the least of which is the harm caused to T.T. who, as I have mentioned, is Aboriginal. She is entitled to the same protection from the Court as anyone else.

In my view, doing what I have been asked to do would offend the fundamental principle of proportionality.

As I have already said, the test adopted by the Supreme Court in Anthony-Cook instructs sentencing judges to consider how a reasonable and informed public would view a sentence. I have to say that is probably much easier said than done when it comes right down to it. All that I can do is consider carefully the

fundamental principles of sentencing, the approach that our Court of Appeal directs me to take, and decide whether what is being proposed is so low and so offensive to those principles that it could result in the loss of confidence that the Supreme Court of Canada talks about. I have concluded that it would.

That leaves the question of what sentence should be imposed. In deciding that, I have exercised as much restraint as I feel I can in the circumstances, while keeping in mind the other sentencing principles and objectives as well.

There will, of course, be credit for the time Mr. Irqqiut has spent on remand. Mr. Irqqiut has spent a total of 877 days on remand, which amounts to three years and seven months if I give him credit on a ratio of one and a half day credit for each day spent on remand.

The last time this matter was before the Court, counsel raised an issue about whether probation would be available if, after having given Mr. Irqqiut credit for his remand time, I impose a further jail term that is two years or less. It was suggested perhaps it was not because the sentence that would have been

imposed but for the remand time would be in excess of two years.

I told counsel at the time I thought probation was available and that I would examine the issue further. I was advised, after we concluded the proceedings in court, that counsel, having considered the matter further, were of the view that probation was available if the further jail term imposed is two years or less.

I have looked into this further. Probation is available here. The issue was addressed directly by the Supreme Court of Canada in R. v. Mathieu, 2008 SCC 21.

Section 731 of the Criminal Code says that a Court can order probation in addition to a jail term not exceeding two years. In Mathieu, the Supreme Court interpreted that "two years" to be a reference to the jail term imposed after consideration of remand time. The amendments to the provisions of the Code that deal with credit to be given for remand time do not alter in any way the Supreme Court of Canada's reasoning in that regard. Probation is available if the further jail term that I impose today is two years or less.

It is very clear to me that it is

absolutely necessary for Mr. Irqqiut to have the benefit of supervision and support for as long as possible after his release, given the magnitude of the issues that he has to try to work through. As I have already said, the pre-sentence report raises many concerns about his level of insight into his behaviour and as much as the issues he has faced in his life make it easy to understand why he has those issues, the fact remains that until they are addressed, he presents a threat to public safety.

The Crown has asked for a number of ancillary orders. They are all mandatory for this type of offence.

This is a primary designated offence so there will be a DNA order.

There will be an order that Mr. Irqqiut comply with the requirements of the Sex Offender Information Registration Act for a period of 20 years.

There will be a firearms prohibition that will commence today and expire ten years after his release, under section 109 of the Criminal Code.

There will be the victim of crime surcharge, as I have no discretion to waive

it.

Can you stand up, please, sir.

Mr. Irqqiut, for the sexual assault that you have committed against T.T., if you did not have any remand time I would have imposed a sentence of four years and ten months. I am giving you credit for three years and seven months for the time that you have already spent in custody. So there will be a further jail term of 15 months.

You can sit down.

This will be followed by a period of probation for three years. The conditions will be that Mr. Irqqiut be under the supervision of a probation officer;

That he report to a probation officer within 24 hours of his release from custody, and thereafter as required;

That he have no contact with T.T.; and,

That he take counselling and treatment as directed and as can be arranged by the probation officer as long as he consents to it. Treatment cannot be imposed on Mr. Irqqiut but I really hope that if it is offered, he will take advantage of it.

Whatever the reasons why there were some recent difficulties with the process that had

started with the psychologist in the jail, I sincerely hope that now that these proceedings are over, Mr. Irqqiut will be able to resume seeing the psychologist and that he will continue to do so after his release, as I have been told that this is an available option. I sincerely hope that being under the supervision of the probation officer and having help from that probation officer will be of assistance to him after his release.

Mr. Irqqiut is still young and it is not too late for him to try to break out of this. I really hope that he gets the help that he needs to change the direction of his life.

Mr. Praught, from your perspective is there anything that I have overlooked?

MR. PRAUGHT: No, Your Honour.

THE COURT: Mr. Harte, anything that I have overlooked?

MR. HARTE: No, thank you, Your Honour.

THE COURT: Any other conditions of probation that I could include that could assist him?

MR. HARTE: Not -- residential treatment is an available option, if that is something that can be set up via probation, and so I can't think of anything else.

THE COURT: I will simply say that when the time comes, this order can be amended in any way to add strength to it in terms of of Mr. Irqqiut being able to access treatment, I would certainly consider an application to vary. For example, if an order of this Court would add pressure or facilitate placement or anything along those lines that would be helpful to Mr. Irqqiut, I would urge you, Mr. Harte, to bring the matter back. Because it is very clear on the evidence before me that significant intervention is needed; you made that point and I agree. The Court only has limited options and really no control over what is available. But if there is anything that this Court can do that would assist, then I would invite an application to amend the probation order so that this can be done.

MR. HARTE: Thank you, Your Honour.

THE COURT: I thank counsel for their submissions. We will close court.

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

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Lois Hewitt,
Court Reporter