

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

DENNIS SHATILLA

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Transcript of the Reasons for Sentence by The Honourable  
Justice K. M. Shaner, sitting in Hay River, in the  
Northwest Territories, on the 10th day of April, 2017.

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APPEARANCES:

Mr. B. MacPherson: Counsel for the Crown  
Mr. M. Hansen: Counsel for the Defence

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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

1 THE COURT: I am going to preface my  
2 remarks with this: Sentencing is the worst  
3 aspect of my job. It often means that I have  
4 to send somebody to jail, significantly disrupt  
5 their life and the lives of their loved ones,  
6 and I say this because it is important for you  
7 to know, Mr. Shatilla, that I have put a lot  
8 of thought into this. I have given a great  
9 deal of consideration to the circumstances  
10 of the case, the submissions of your lawyer,  
11 and the submissions of Mr. MacPherson.

12 Mr. Shatilla was found guilty of sexual  
13 assault following a jury trial, which was held  
14 here in Hay River January 30th until February  
15 1st, 2017. There is a publication ban respecting  
16 information that could identify the victim in  
17 this case, and accordingly I will refer to her  
18 as the victim in these reasons and not by her  
19 name.

20 The circumstances of the offence came out  
21 primarily through the evidence of the victim,  
22 and the circumstances are these:

23 During the evening in the early part of  
24 2014 Mr. Shatilla was visiting the home of the  
25 victim's father. The victim was there. The  
26 two men were friends. As well, Mr. Shatilla  
27 was and continues to be the spouse of the

1 victim's cousin. The victim was 13 at the  
2 time and Mr. Shatilla was 19.

3 The victim did not live at her father's  
4 home all the time; sometimes she lived with  
5 her grandmother. She said in her evidence  
6 that she went back and forth between the  
7 two houses and she did have a bedroom at her  
8 father's home. The victim also said that her  
9 father was drinking a lot during that period  
10 of time, and that evening the two men, her  
11 father and Mr. Shatilla, were drinking beer  
12 in the living room. The victim was in the  
13 living room with them. She was sitting in  
14 a chair playing a videogame.

15 At some point her father fell asleep in  
16 the living room, although when he testified  
17 he said he had no recollection of any of the  
18 events of that evening. After the father fell  
19 asleep, Mr. Shatilla picked up the victim from  
20 the chair in which she was sitting and he carried  
21 her, as she described it, "like a groom carries a  
22 bride", into her bedroom. She said this made her  
23 feel nervous and scared and that she was afraid  
24 to call out to her father.

25 Mr. Shatilla placed her on the bed in her  
26 bedroom and asked her if she wanted to do it.

27 At first she said she did not answer, but then

1 she told him no. When he initially tried to  
2 pull her pants off she pushed his hands away  
3 and she pushed him to try and get him off of  
4 her. He pinned her to the bed with his weight,  
5 however, and proceeded to take her pants and her  
6 underwear off. He placed his hand over her mouth  
7 and he had sexual intercourse with her.

8 The victim heard her father stir and she  
9 managed to push Mr. Shatilla off of her this  
10 time. Mr. Shatilla told her not to tell anyone  
11 what had happened. He got dressed and went back  
12 into the living room. The victim got dressed,  
13 and she left the home and went to her cousin's  
14 house.

15 Much of the information that is before  
16 me about Mr. Shatilla comes from a pre-sentence  
17 report which was prepared by Probation Services  
18 following the trial. Mr. Shatilla is a young  
19 man, he is currently 22 years of age. He is  
20 indigenous and he grew up in Buffalo Narrows,  
21 in Saskatchewan. According to the pre-sentence  
22 report the only other place he has lived is Hay  
23 River, where his wife and her family are from.

24 He was raised in what he describes in the  
25 report as a stable family. He got along well  
26 with his parents, who he indicated did not abuse  
27 alcohol and did not abuse or neglect Mr. Shatilla

1 and his siblings. Mr. Shatilla was diagnosed  
2 with attention deficit disorder and attention  
3 deficit hyperactivity disorder by the time he was  
4 eight years old. He struggled greatly in school,  
5 and it appears he did not progress beyond grade  
6 7. He told the author of the pre-sentence report  
7 that his learning difficulties led him to feel  
8 dumb and to have low self-esteem. Ultimately  
9 as a result he began to rebel. He received  
10 numerous suspensions and his parents finally  
11 took him out of school when he was 13 or 14.

12 Mr. Shatilla has not sustained long-term,  
13 permanent employment. He worked for a year  
14 at a store in Buffalo Narrows when he was 15.  
15 He then worked for his parents who ran an RV  
16 park there. He started working in Hay River  
17 as a labourer on and off for businesses here  
18 when he was 18. He indicated to the report's  
19 author that he wishes to upgrade his education  
20 and skills and hopefully obtain his GED.

21 It appears from the report Mr. Shatilla  
22 is a social drinker, and up to the point of  
23 his recent incarceration, he used cannabis on  
24 a daily basis. He had planned to curb his use  
25 in any event because it was a source of friction  
26 between him and his spouse. Mr. Shatilla and  
27 his spouse have two young children and another

1 child is due this month. They recently secured  
2 housing in Buffalo Narrows, Saskatchewan. His  
3 wife's family is here in Hay River.

4 The Criminal Code sets out the principles  
5 and objectives of sentencing that provide  
6 a framework to guide judges in imposing  
7 a sentence that is just and appropriate.  
8 The objectives are these: Denunciation  
9 of unlawful conduct; deterrence, aimed both  
10 at the offender and at the public at large;  
11 separating offenders from society where it  
12 is necessary; rehabilitation; reparation;  
13 and promoting a sense of responsibility in  
14 offenders and acknowledgment of the harm  
15 done to victims and to the community.

16 The emphasis that is placed on each of  
17 these objectives very much depends on what  
18 the offence is, the circumstances under which  
19 it was committed, and the circumstances of the  
20 offender. Where the offence involves the abuse  
21 of a person under 18 years of age, as is the  
22 case here, the Criminal Code requires the  
23 sentencing judge to give primary consideration  
24 to the objectives of denunciation and deterrence.

25 The Criminal Code also sets out a number  
26 of principles to be applied in determining  
27 what is an appropriate sentence. The most

1 important principle in sentencing is that  
2 of proportionality. That is, a sentence must  
3 be proportionate to the gravity of the offence  
4 and the degree of responsibility of the offender.

5 In determining what is a fit sentence judges  
6 are also guided by the principles of restraint  
7 and parity. The principle of restraint requires  
8 consideration of all available sanctions, other  
9 than imprisonment, that are reasonable in the  
10 circumstances, with particular attention to  
11 the circumstances of indigenous offenders.  
12 Parity of sentence means that there should  
13 be similar treatment for like offences and  
14 offenders, bearing in mind that it does not  
15 call for identical sentences to be imposed  
16 for the same crime. That is because no two  
17 cases are identical, no two offenders are  
18 identical.

19 For many years this Court has followed  
20 the principles articulated by the Alberta Court  
21 of Appeal in *R. v. S.(W.B.)*, which was filed by  
22 the Crown, (1992) 73 CCC (3d) 530; 1992 CanLII  
23 2761; *R. v. Sandercock*, [1986] 1 WWR 291; 1985  
24 ABCA 218 (CanLII); and more recently the case  
25 of *R. v. Arcand*, [2011] 7 WWR 209; 2010 ABCA  
26 363 (CanLII).

27 The *S.(W.B.)* case, among other things,

1 sets out a four-year jail term as the starting  
2 point for a serious sexual assault on a child  
3 by a person in a position of trust or authority.  
4 It is also cited often as an articulation of the  
5 sad consequences of sexual assault on children.  
6 Sandercock stands for the proposition that for  
7 a serious sexual assault the starting point is  
8 three years jail, assuming a mature accused with  
9 no previous criminal record. Arcand confirms  
10 this, as well as articulating more thoroughly  
11 what constitutes a serious sexual assault. These  
12 are not, to be clear, minimum sentences. Judges  
13 must consider aggravating and mitigating factors  
14 and increase or reduce the sentence accordingly.

15 Section 718.2 of the Criminal Code deems  
16 a number of factors to be aggravating, although  
17 it is not an exhaustive list. These include  
18 evidence that the offender abused a person  
19 under 18 years of age and that the offender  
20 was in a position of trust in relation to  
21 the victim.

22 Now, with respect to whether or not  
23 Mr. Shatilla was in a position of trust in  
24 relation to the victim the Crown and defence  
25 disagree.

26 In the case of R. v. G.L., 2011 NWTSC 36,  
27 Justice Vertes considered whether an offender,



1           who was a family friend and who had assaulted  
2           the victims in their home, was in a position of  
3           trust, thus elevating the starting point to the  
4           four years contemplated in S.(W.B.). He found  
5           the offender was not in a position of trust,  
6           stating:

7  
8                     For there to be a position of  
9                     trust there must be some ongoing  
10                    relationship, some status between  
11                    the offender and the child, that  
12                    is more than merely occasional  
13                    or transitory.

14  
15                    In the circumstances here I am unable to  
16                    conclude that Mr. Shatilla was in a position  
17                    of trust as that term is contemplated in  
18                    S.(W.B.), and therefore, it is the three-year  
19                    starting point which should apply. That is not  
20                    to say, however, that his status as a friend and  
21                    relative and his being a frequent visitor to the  
22                    home are not aggravating factors.

23                    There are a number of aggravating factors  
24                    that arise out of the circumstances of this  
25                    particular case. Mr. Shatilla is the husband  
26                    of the victim's cousin, and at the time a  
27                    friend, no doubt a trusted one. He was a

1 frequent visitor to the house. The victim  
2 was 13, the offender was 19 with a child and  
3 a wife and another child on the way at the  
4 time of the offence.

5 I cannot be certain that the offence was  
6 premeditated, but it was certainly predatory  
7 and opportunistic. Mr. Shatilla seized on the  
8 opportunity to sexually assault the victim once  
9 her father fell asleep. He took advantage of  
10 her youth, her fear and her trust in adults.  
11 He pinned her down with his weight, held his  
12 hand over her mouth, and he raped her, and  
13 then he told her not to tell anyone. Clearly  
14 he knew what he was doing was wrong.

15 In contrast, there is very little by way  
16 of mitigation. There is no evidence of remorse  
17 and there was no guilty plea. That Mr. Shatilla  
18 exercised his right to a trial is certainly not  
19 aggravating, but the mitigative effect of sparing  
20 the victim the need to testify is not available  
21 to him.

22 The Crown is seeking a custodial sentence  
23 of four and a half to five years. It is the  
24 Crown's position that a sentence in this  
25 range is necessary to attain the objectives  
26 of sentencing, particularly denunciation  
27 and specific and general deterrence which,

1 as I noted earlier, must be given primary  
2 consideration. The defence submits that  
3 the sentence should be in the range of  
4 three to three and a half years.

5 This is clearly and definitively a very  
6 serious sexual assault, and in my view the  
7 ends of justice cannot be achieved unless  
8 a significant custodial sentence is imposed.  
9 Sexual assault is all too common in the  
10 Northwest Territories, and sexual crimes  
11 against children are particularly disturbing  
12 and harmful, not only to the victims, but  
13 to our society generally. The consequences  
14 of sexual assault for victims are profound.

15 In R. v. S.(W.B.), Supra Justice MacDonald  
16 of the Court of Appeal of Alberta considered  
17 the effects of sexual abuse crimes against  
18 children. He stated:

19  
20 When a man has assaulted a child  
21 for his sexual gratification, then  
22 even if no long-lasting physical  
23 trauma is suffered by the child it  
24 is reasonable to assume that the  
25 child may have suffered emotional  
26 trauma, the effects of which may  
27 survive longer than bruises or

1 broken bones and may even be  
2 permanent.

3  
4 He goes on to say:

5  
6 From this information it is  
7 abundantly clear that there is  
8 one salient fact which must govern  
9 the approach to be taken by the  
10 Court in sentencing in cases of  
11 sexual abuse of children: that in  
12 every case of the sexual abuse of  
13 a child there is a very real risk  
14 of very real harm to the child.  
15 This cardinal fact can be relied  
16 upon even when there is no expert  
17 or non-expert evidence called in  
18 the particular case to establish  
19 that the particular child, who  
20 was the victim, has suffered  
21 some specific traumatic effect  
22 or effects.

23  
24 Mr. Shatilla bears significant moral  
25 blameworthiness in this offence. Children  
26 are so vulnerable. They are in a weak position  
27 in relation to adults. Adults hold all of

1 the cards. Adults are supposed to protect  
2 children, not harm them. They are supposed  
3 to be responsible. Children should be able  
4 to trust them, particularly in that child's  
5 own home.

6 In her victim impact statement the victim  
7 said she had to take counselling, she has taken  
8 antidepressants and, most disturbingly, she was  
9 hospitalized following a suicide attempt, which  
10 she relates to this event, and she is afraid to  
11 be alone.

12 I have considered Mr. Shatilla's young  
13 age. He is a very young adult, and when this  
14 happened he was even younger, although as the  
15 Crown pointed out he was a mature young adult  
16 with a family. I believe he was mature enough  
17 to know that what he was doing was wrong. Being  
18 young, however, he has significant potential for  
19 rehabilitation and this militates in favour of  
20 a somewhat reduced period of incarceration and  
21 must be taken into account.

22 I have considered Mr. Shatilla's indigenous  
23 status. Defence counsel agreed with the Crown  
24 that there are no systemic Gladue factors which  
25 have been identified. Mr. Shatilla, as I said,  
26 had a stable upbringing and a good home.  
27 However, his lawyer argued that Mr. Shatilla's

1 status should nevertheless be factored in and  
2 considered because he is still a member of  
3 a demographic group which has generally been  
4 subject to significant systemic challenges  
5 in this country.

6 It may well be that there are cases where  
7 the fact that a person is indigenous may in  
8 and of itself serve to diminish his or her  
9 moral blameworthiness or otherwise lead a  
10 Court to impose a more lenient sentence.  
11 This is not one of those cases. This was  
12 a serious crime with substantial and prolonged  
13 consequences for the victim. The sentence  
14 must send a strong and unequivocal message  
15 to Mr. Shatilla, the victim and this community,  
16 that sexual assaults will not be tolerated  
17 and that those that commit these offences  
18 will be subject to serious consequences.

19 Mr. Shatilla, can you please stand up.  
20 Dennis Shatilla, upon being convicted of  
21 sexual assault and upon consideration of  
22 the circumstances and nature of this offence,  
23 as well as your personal circumstances, your  
24 indigenous heritage and your age, I sentence  
25 you to a term of four years imprisonment. This  
26 term will be reduced by the amount of time you  
27 have spent in custody awaiting the disposition

1 of your case which, including the day of your  
2 arrest, is 70 days. On the basis of credit at  
3 a rate of 1.5 days for each day of pre-sentence  
4 custody that works out to 104 days that will  
5 be deducted from the four years you will serve.  
6 You can sit down.

7 There were a number of ancillary orders  
8 that the Crown sought. I will impose the  
9 firearms prohibition under Section 109 of the  
10 Criminal Code, and you were seeking ten years,  
11 Mr. MacPherson?

12 MR. MACPHERSON: Yes.

13 THE COURT: That section provides for  
14 a mandatory prohibition on firearms where a  
15 person is convicted of an indictable offence  
16 in the commission of which violence against  
17 a person was used, threatened or attempted,  
18 and for which the person may be sentenced  
19 for ten years or more. In the event that you  
20 wish to seek relief, partial relief from this  
21 prohibition for the purpose of subsistence  
22 hunting, Mr. Shatilla can certainly make  
23 the appropriate application to the firearms  
24 authorities for that purpose.

25 There will be an order for bodily fluids  
26 to be taken from Mr. Shatilla for DNA analysis,  
27 and an order requiring him to comply with the

1 Sex Offender Information Registration Act  
2 pursuant to Section 490.012 of the Criminal  
3 Code. Mr. MacPherson, the Crown is seeking  
4 that for 20 years?  
5 MR. MACPHERSON: Yes, Your Honour.  
6 THE COURT: That will be in effect for  
7 20 years. Were there any other ancillary orders?  
8 MR. MACPHERSON: No, thank you.  
9 MR. HANSEN: If I may, I just wish to be  
10 clear. The ancillary order, in answering that  
11 question, it seems to be inferred, but not stated  
12 explicitly, that a Section 113 exemption under  
13 the firearms is permitted?  
14 THE COURT: He has to make the  
15 application, it is not up to me to make  
16 the exemption.  
17 MR. HANSEN: As I understand it, it  
18 is an operation of law that there must be  
19 a statement that he can make an application  
20 under 113.  
21 THE COURT: Yes, he can make the  
22 application.  
23 MR. HANSEN: Yes, thank you.  
24 THE COURT: All I am saying is that  
25 I cannot guarantee the outcome of that  
26 application or direct it.  
27 MR. HANSEN: No, of course.



1 THE COURT: Finally, I will make a  
2 recommendation and ask that it be endorsed  
3 on the Warrant for Committal that Mr. Shatilla  
4 be permitted to serve his sentence at SMCC.  
5 That was what you were seeking?  
6 MR. HANSEN: Yes, Ma'am.  
7 THE COURT: However, that will be up  
8 to the Corrections authorities to make that  
9 determination. Is there anything else?  
10 MR. MACPHERSON: No, thank you.  
11 MR. HANSEN: No, thank you.  
12 THE COURT: Thank you.  
13 THE CLERK: Your Honour, is there a  
14 victim surcharge, a victim of crime surcharge?  
15 THE COURT: There is a victim of crime  
16 surcharge by operation of law, yes. Thank you.  
17 We will adjourn.

18 -----

19  
20 Certified to be a true and  
21 accurate transcript, pursuant  
22 to Rules 723 and 724 of the  
23 Supreme Court Rules.

24 \_\_\_\_\_  
25 Joel Bowker  
26 Court Reporter  
27