R. v. Shatilla, 2017 NWTSC 25 S-1-CR-2015-000014

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

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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

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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

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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

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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

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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

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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,

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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,

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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

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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,

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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

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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

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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

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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

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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

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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.

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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.

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20 Certified to be a true and

accurate transcript, pursuant

21 to Rules 723 and 724 of the

Supreme Court Rules.

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24 Joel Bowker

Court Reporter

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