*R. v. K.M.,* 2017 NWTSC 33 S-1-YO-2014-000005

# IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

**IN THE MATTER OF:**

**HER MAJESTY THE QUEEN**

**- v -**

**K.M.**

**(A YOUNG PERSON)**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_** Transcript of the Reasons for Sentence delivered by The Honourable Judge L.A. Charbonneau, sitting in Yellowknife, in the Northwest Territories, on the 20th day of April, 2017.

# APPEARANCES:

Ms. A. Piche: Ms. J. Scott:

Counsel for the Crown Counsel for the Crown

Mr. C.B. Davison: Counsel for the Accused

**N O T I C E : S E C T I O N 1 1 0 P U B L I C A T I O N B A N N O L O N G E R I N**

**E F F E C T B y o p e r a t i o n o f P a r a g r a p h 1 1 0 ( 2 ) ( a ) o f t h e**

***Y o u t h C r i m i n a l J u s t i c e A c t* , e f f e c t i v e M a y 1 , 2 0 1 7 , a t 4 : 0 0 P M , t h e p u b l i c a t i o n b a n r e g a r d i n g t h e y o u n g**

**p e r s o n w h o i s s u b j e c t t o t h e s e p r o c e e d i n g s i s n o l o n g e r i n e f f e c t .**

1. THE COURT: On March 22nd, 2014, K.M. beat
2. Charlotte Lafferty to death in Fort Good Hope.
3. He was found guilty of this crime following a
4. jury trial that was held in Yellowknife in
5. January and February 2016.
6. The Crown has applied to have him sentenced
7. as an adult. The hearing into that application
8. took place a few months ago. There was a lot of
9. evidence and a lot of factors for me to consider
10. in arriving at a decision. I have prepared a
11. written decision that is much more detailed than
12. what I will say today.
13. Today, I will summarize the main reasons why
14. I have reached the decision that I have.
15. It has taken some time to get to this point
16. in these proceedings, because, as I have just
17. said, the trial took place a long time ago.
18. There were a few reasons why it took so long
19. and I want to explain that. First of all, the
20. evidence that needed to be gathered for this
21. application was much more extensive than would be
22. the case in an ordinary sentencing hearing. The
23. second reason is that we had the first stage of
24. the sentencing hearing, the Victim Impact
25. Statement hearing in Fort Good Hope and not in
26. Yellowknife.
27. I decided that the Court should go to Fort
    1. Good Hope for that part of the hearing, because I
    2. know the impact that this crime had on that
    3. community. I decided it was important for as
    4. many people as possible to have a chance to read
    5. their Victim Impact Statements to the Court
    6. themselves, if they wished. And even if they did
    7. not wish to read them themselves, that they could
    8. be present and hear them read by someone else. I
    9. also thought it was important that as many people
    10. as possible, even those who did not want to
    11. prepare a Victim Impact Statement, could be there
    12. and hear those that were being read so those
    13. people could be there for at least part of these
    14. proceedings.
    15. I think everyone understands it would not
    16. have been possible to have this jury trial in
    17. Fort Good Hope, and I suspect everyone
    18. understands that it would have been very
    19. difficult to have the whole sentencing hearing in
    20. Fort Good Hope. But by having the Victim Impact
    21. Statement hearing there, I felt the community
    22. could be involved, to some degree, in these
    23. proceedings.
    24. From that hearing in Fort Good Hope, from
    25. having listened to the trial evidence over three
    26. weeks, from reading everything I have read that I
    27. have been provided, I know that Ms. Lafferty's
28. death has had a profound impact on a lot of
29. people; on her children, on her parents, on her
30. whole family and on the community.
31. There is nothing that I can do to take away
32. that pain and that loss, and I really, really
33. wish there was. I can only hope that as the
34. trial and sentencing proceedings come to an end,
35. it can be one more, perhaps small step towards
36. healing. We must never lose hope for healing.
37. But I also understand that in this case that will
38. be a very long road for people.
39. The circumstances of Ms. Lafferty's death
40. were the subject of evidence at trial. That
41. evidence was referred to during the hearing of
42. the Crown's application. The Crown's case was a
43. circumstantial case. It was a very strong
44. circumstantial case. The evidence showed that on
45. the night of her death, Ms. Lafferty had been
46. socializing with a number of other people in Fort
47. Good Hope, and K.M. was part of that group.
48. People were drinking, but there is no evidence
49. that either K.M. or Ms. Lafferty were grossly
50. intoxicated. At one point, while they were at
51. Leanna McNeely's house, Ms. Lafferty and Miranda
52. McNeely went back to Miranda's house to get
53. another mickey of vodka. K.M. went with them.
54. Cora Rabisca, who had been babysitting at
55. Miranda's house, talked her out of going back
56. out. Miranda gave the mickey to Ms. Lafferty,
57. and then Ms. Lafferty and K.M. left.
58. It seemed clear that Ms. Lafferty was killed
59. not very long after that. Miranda's house is
60. very close to the elder's complex, and it was
61. behind that building that K.M. killed
62. Ms. Lafferty.
63. The evidence about the attack itself came
64. from Mr. Kotchile, who saw part of it, and also
65. from observations that were made at the scene by
66. police officers and observations made during the
67. autopsy of Ms. Lafferty's body. It is difficult
68. for anyone to read about these circumstances or
69. to think about them, and I realize it is
70. especially painful for Ms. Lafferty's loved ones.
71. I have referred to those details in my
72. written decision, reported at *R. v. K.M., 2017*
73. NWTSC 26, and I do not think it is necessary to
74. repeat all of that now. I will say only that the
75. evidence shows that this was a particularly
76. violent and brutal beating and it was prolonged.
77. It involved the use of a weapon. It included a
78. very high level of violence. And it included
79. extremely contemptuous and degrading behaviour
80. towards Ms. Lafferty.
81. The officer who was first at the scene said
    1. that it was "almost undescribable, like the scene
    2. from a horror movie". The evidence adduced at
    3. trial showed that this was not an exaggeration on
    4. his part. The circumstances of this crime are
    5. shocking.
    6. In deciding this application, I have to take
    7. those circumstances into account, but the
    8. seriousness, even shocking nature of the offence,
    9. cannot overshadow or overwhelm all the other
    10. things that I am required to consider. And I
    11. have been very careful, very conscious of this in
    12. reaching my decision.
    13. The difference between an adult sentence and
    14. a youth sentence is enormous. An adult sentence,
    15. which is what the Crown is asking me to impose,
    16. is automatically life imprisonment with parole
    17. ineligibility for ten years. The maximum youth
    18. sentence, which is what K.M.'s counsel says I
    19. should impose, is a global sentence of ten years,
    20. the first six being imprisonment, and the last
    21. four being under the scope of a community
    22. supervision order in the community.
    23. K.M. was 17 when he killed Ms. Lafferty, and
    24. that is why these proceedings are governed by the
    25. *Youth Criminal Justice Act*. Under our law,
    26. youths who commit crimes are dealt with in a
    27. system separate from the adult system. That is
82. because our law recognizes that youths do not
83. have the same level of maturity as adults. They
84. are more vulnerable. Their moral judgment is
85. less developed. So even charged with the most
86. serious of offences, they are dealt with
87. differently than adults. They are presumed to be
88. less blameworthy, less culpable for crimes they
89. commit. K.M. benefits from that presumption.
90. To have K.M. sentenced as an adult, the
91. Crown has the onus of showing two things: The
92. first is that this presumption of diminished
93. blameworthiness has been rebutted, and the second
94. is that a youth sentence would not be long enough
95. to hold K.M. accountable for his actions.
96. The first issue, the issue of diminished
97. responsibility, has to do with the level of
98. maturity, vulnerability, and capacity for moral
99. judgment that K.M. had at the time that he
100. committed this offence. In examining that issue,
101. I have the benefit of two presentence reports,
102. the psychiatric and psychological assessments
103. that were prepared, and, to a lesser extent,
104. other information I have about K.M. through the
105. support letters that were filed. There were also
106. aspects of the circumstances of the offence, as
107. revealed by the trial evidence, that I found
108. relevant in examining K.M.'s level of maturity in
109. March 2014.
110. In terms of what I have considered more
111. specifically, I have, of course, considered the
112. evidence of Dr. Sultana. She is a youth forensic
113. psychiatrist. She was part of the team who
114. assessed K.M. in 2016. He was only in her unit
115. for about three weeks, but she works with youths
116. all the time. The turnover rate in that unit is
117. very high, so she sees many youths as part of her
118. work.
119. Her opinion was that K.M.'s level of
120. maturity, compared to other youths in the unit,
121. was striking. She said he showed logical
122. thinking processes, he was able to weigh pros and
123. cons, understand right from wrong, and plan
124. logically. She did not see him display any
125. emotional immaturity during the time of the
126. assessment. And she also said that from her
127. review of the materials that she had access to,
128. she did not think there had been any changes in
129. his maturity level over the course of the time he
130. was in custody.
131. I am not required, of course, to accept the
132. evidence of any witness, including an expert
133. witness. But Dr. Sultana's opinion was part of
134. what I considered in arriving at my assessment.
135. The presentence reports support
     1. Dr. Sultana's conclusions in some ways. They say
     2. that during his time at the youth facility and at
     3. the adult facility, K.M. was never a difficult
     4. inmate to manage. He was cooperative with staff,
     5. he was polite, he was engaged in the programs
     6. available to him. He made efforts to upgrade his
     7. schooling and succeeded in doing that. He
     8. involved himself with a lot of other things. And
     9. that behaviour continued when he was transferred
     10. to the adult facility. In other words, it is not
     11. as if the correctional staff noted a great
     12. evolution or change in K.M.'s behaviour from when
     13. he was first taken into custody and as time was
     14. passing. His behaviour and presentation seemed
     15. to be consistent throughout and consistent with
     16. what Dr. Sultana observed.
     17. Another factor I have considered is age.
     18. K.M. was less than a month away from turning 18
     19. when this happened. Age, of course, is not
     20. determinative of maturity, but it is not an
     21. irrelevant factor either.
     22. I also considered K.M.'s personal
     23. circumstances and background.
     24. At the time this happened, he had been in a
     25. long-term relationship. His girlfriend stayed
     26. with him almost every night, and that
     27. relationship had been going on for about a year.
136. That is more in the nature of an adult
137. relationship than teenage dating or romance.
138. K.M. had had some work experience, even if it was
139. only with summer jobs. He had been given
140. vehicles by family members, which suggests they
141. thought he was responsible and mature enough to
142. own a vehicle.
143. There are things about the events the night
144. that Ms. Lafferty died that also are helpful, in
145. my opinion, in assessing K.M.'s level of maturity
146. at the time. That night, he was hanging out with
147. young adults. He is the one who initiated
148. contact with Mr. Boniface, who was almost 30
149. years old at the time. He was spending time with
150. people who were in their early 20s. The trial
151. evidence does not suggest that he was simply
152. tagging along. In fact, other young people who
153. were trying to tag along were not allowed in
154. Mr. Boniface's house.
155. The evidence also showed that K.M. was quite
156. capable of being assertive with these adults. He
157. followed Ms. Lafferty and Miranda McNeely to
158. Miranda's house, even though they had told him to
159. wait. He made it known when he was getting
160. impatient and wanted Ms. Lafferty to hurry up
161. when they were at Miranda's house, and he wanted
162. to go.
     1. His conduct after the offence also suggests
     2. a level of calm and maturity. He did run away
     3. from Constable Pudsey, but his actions afterwards
     4. were not those of a panicked person. They were
     5. logical and well-thought out things. He went out
     6. looking for his girlfriend, not frantically all
     7. over the place, but at the last place he had seen
     8. her.
     9. Then, when he did not find her, he went home
     10. and went to his room. However he was feeling at
     11. that point, he was able to keep his emotions in
     12. check. The same is true, and even more
     13. remarkable, in relation to the next day, when
     14. news of what happened started to spread and
     15. people started asking him questions.
     16. K.M. was poised and calm enough to make up a
     17. story when confronted by his mother about why he
     18. had blood on him when he came home that morning.
     19. He was able to keep his composure, talking with
     20. Charlotte Lafferty's own mother as she was
     21. standing in front of him asking where he had last
     22. seen her daughter. He had the presence of mind
     23. to lie to her about that to deflect attention
     24. away from himself for any involvement with her
     25. death. And he did the same when he was
     26. questioned by his girlfriend.
     27. K.M.'s counsel has asked me to consider
         1. other aspects of the evidence that he argued
         2. suggest lack of maturity and lack of adult
         3. thinking on K.M.'s part that night. For example,
         4. that fact that the crime was impulsive; the
         5. indications in the materials that K.M. lacks
         6. empathy that he has a tendency to minimize; the
         7. fact that he made no attempt to hide
         8. Ms. Lafferty's body or the murder weapon or cover
         9. up what he had done.
         10. I have considered these arguments carefully.
         11. As far as lack of empathy and acting impulsively,
         12. I accept that these can be features of
         13. immaturity, but they can be features of many
         14. other things; such as, antisocial behaviour.
         15. These things are not determinative of anything.
         16. As for things that K.M. did or did not do
         17. after he killed Ms. Lafferty, on balance, I find
         18. that they point more towards maturity than lack
         19. thereof, particularly, things he did the
         20. following morning when he was questioned by
         21. people.
         22. In the absence of any evidence about what
         23. K.M. was thinking at various points during these
         24. events, the fact is that much, much remains
         25. unknown. And I am not permitted to speculate
         26. about any of that.
         27. In that regard, I do not want to be
             1. misunderstood. K.M. had the right not to testify
             2. at trial. He had the right not to testify on the
             3. application. And he had the right not to discuss
             4. the offence with any of the people who spoke to
             5. him in preparation for this hearing. He
             6. absolutely had that right and I am not suggesting
             7. otherwise. I simply mean that there is no
             8. evidence of his side of things, of what prompted
             9. this violence, what his motivations or thinking
             10. processes were before, during, and after
             11. Ms. Lafferty was killed.
             12. That being the case, the simple fact that
             13. impulsive action can sometimes be a sign of
             14. immaturity is not something that I find outweighs
             15. the rest of the evidence that points to K.M.
             16. having had the moral compass of an adult back in
             17. 2014. Nor do the other things that his counsel
             18. raised during submissions.
             19. So on the first branch of the test, I find
             20. that the Crown has met its onus.
             21. The second thing that the Crown has to
             22. establish is that a youth sentence would not be
             23. sufficient in length to hold K.M. accountable for
             24. his crime.
             25. The examination of accountability requires
             26. that I ask two questions. The first is: Would a
             27. youth sentence be long enough to reflect the
163. seriousness of this crime? And the second is:
164. Would a youth sentence be long enough to provide
165. reasonable assurances, not guarantees, but
166. reasonable assurances, of his rehabilitation to
167. the point that he could be safely reintegrated
168. into society? And, again, to assess that, K.M.'s
169. circumstances and the circumstances of the
170. offence are what I must turn to.
171. I will look first at the second question:
172. Would a youth sentence be long enough to provide
173. reasonable assurances of his rehabilitation?
174. Would a global sentence of ten years be long
175. enough to provide reasonable assurances that he
176. can be rehabilitated and safely reintegrated into
177. society?
178. Predicting how long treatment will take and
179. what long-term risk is, are very difficult
180. things.
181. Dr. Sultana could not put a timeline on what
182. would be required for K.M. He has not displayed
183. any violence while in custody, and he seems to
184. have functioned very well within a structured
185. environment. And he has not had access to
186. alcohol or drugs, so his substance abuse problem
187. is under control at this point.
188. What would happen if he were free of
189. controls is unknown, however, at this point. Any
190. treatment would have to factor in K.M.'s
191. intellectual challenges that were identified
192. through the testing that he underwent. This is
193. not an insurmountable problem, but it could mean
194. that the treatment might take longer.
195. Dr. Sultana's opinion was that without
196. significant intervention, K.M. would continue to
197. present a risk for further violence. She is, of
198. course, a psychiatrist. But even leaving aside
199. her opinion and looking at the evidence from a
200. lay person standpoints, I find that conclusion is
201. inescapable.
202. K.M.'s actions on March 22nd, 2014 speak for
203. themselves. This is extreme violence and
204. extremely disturbing behaviour for which, as of
205. now, there is absolutely no explanation. It is
206. conduct that is in stark contrast with how his
207. family members describe him and with how he has
208. behaved while in custody.
209. K.M. displayed disturbing violence in
210. November of 2013 as well, although obviously not
211. at all to the same degree. That was the incident
212. that led to his conviction for assault causing
213. bodily harm. There were submissions at the
214. hearing about what to make and not to make of
215. certain comments he made to the author of the
216. presentence report that was prepared before that
217. sentencing, and whether those comments showed
218. lack of empathy.
219. Defence counsel pointed out that there were
220. earlier altercations between K.M. and the victim
221. of that offence, the details of which were not
222. presented to me. Defence counsel argued that
223. without knowing more about those details, no
224. conclusions, really, should be drawn from what
225. K.M. said to the author of the presentence
226. report.
227. Regardless, though, of the earlier
228. altercations, according to the facts that K.M.
229. admitted to at the sentencing for that offence,
230. there came a point where the victim was down,
231. trying to protect himself, not fighting back, and
232. K.M. continued to punch him and kick him while he
233. was down. People told him to stop and he did
234. not. He threw a bench at the victim. And he
235. admitted to having caused fairly significant
236. injuries to him. This conduct, continuing to
237. repeatedly kick and punch someone who is down and
238. not fighting back, is disturbing conduct.
239. As of now, there is no evidence about what
240. the root causes of K.M.'s violence are. It is
241. very possible that some of the difficulties from
242. his childhood, the alcohol abuse and domestic
243. violence in the home, abuse that he may have
244. suffered at a young age, and, most certainly, the
245. tragic death of his younger sister in 2012, are
246. part of the answer. But we do not know. Until
247. the causes are identified, no treatment plan can
248. be developed.
249. Dr. Sultana said K.M. was not ready for
250. treatment when she saw him in 2016, and the
251. evidence supports that conclusion. It is
252. difficult to know whether K.M. has any insight
253. into what he has done and into the enormous
254. amount of harm it has caused. Perhaps, even more
255. importantly, not knowing what caused him to act
256. this way, not knowing what issues need to be
257. addressed, also means not knowing what might
258. trigger him to act in this extremely violent way
259. again.
260. On the evidence before me, there are no
261. reasonable assurances that a youth sentence would
262. be long enough to rehabilitate him and allow his
263. safe reintegration into the community. But even
264. if I did think that a youth sentence would be
265. sufficient to achieve those objectives, that is
266. not the only thing I have to consider in deciding
267. whether a youth sentence would be sufficient to
268. hold him accountable for his conduct.
269. I also have to consider whether a youth
270. sentence would be long enough to reflect the
271. seriousness of this offence. And having given
272. this a lot of thought, bearing in mind the
273. principles that I am required to follow under the
274. *Youth Criminal Justice Act,* I am profoundly
275. convinced that a youth sentence would not be
276. sufficient to reflect the seriousness of this
277. offence.
278. As I said at the beginning, and for the
279. reasons I already mentioned, I am not going to
280. repeat here the details of the circumstances of
281. Ms. Lafferty's death or the details of the
282. injuries that were inflicted on her, but it is
283. difficult to imagine a more brutal attack.
284. I accept that it was impulsive and
285. unplanned. Still, at one point, K.M. decided to
286. kill her. He was not merely reckless about the
287. consequences of what he did. The only reasonable
288. conclusion that can be drawn from what he did to
289. her was that he intended to kill her.
290. The evidence also establishes that he
291. intended to degrade her. K.M. did this to
292. someone he knew, a relative from his own
293. community, and someone who, just shortly before,
294. he had been socializing with and getting along
295. with. This is a senseless gratuitous act and it
296. defies any comprehension.
297. I have not overlooked the positive things
     1. about.
     2. K.M.'s background, the efforts that he has
     3. made while in custody, and the support that he
     4. has from his family. But given the circumstances
     5. of this offence, I am convinced that a youth
     6. sentence would not reflect the seriousness of the
     7. offence. It would simply not be a just sentence.
     8. As I have said, the evidence does include
     9. positive things about K.M. He has a lot of
     10. skills and he has a lot of support from quite a
     11. few people. He is going to need that support for
     12. a long time. And I can only hope that in time he
     13. will come to terms with what he has done.
     14. I feel compelled to add this: In my
     15. respectful view, those who want to support K.M.
     16. and help him through the long process ahead, must
     17. also come to terms with what he has done. They
     18. must support him, when the time comes, in trying
     19. to understand where the terrible violence that he
     20. is capable of comes from, and help him find ways
     21. to address those issues with the assistance of
     22. professionals.
     23. Wanting to protect a loved one is
     24. understandable, but the starting point for truly
     25. helpful support has to be an acknowledgement of
     26. the truth. Support based on anything other than
     27. the truth is not going to help K.M. in the long
298. run.
299. Because I have concluded that the Crown's
300. application to have K.M. sentenced as an adult
301. should be granted, the sentence that I must
302. impose today is mandatory.
303. K.M., please stand up. K.M., for the murder
304. of Charlotte Lafferty, I sentence you to life
305. imprisonment with no eligibility for parole until
306. you have served ten years. 10

# 11 CERTIFICATE OF TRANSCRIPT

12

1. I, the undersigned, hereby certify that the
2. foregoing pages are a complete and accurate
3. transcript of the proceedings taken down by me in
4. shorthand and transcribed from my shorthand notes
5. to the best of my skill and ability.
6. Dated at the City of Edmonton, Province of
7. Alberta, this 7th day of May, 2017. 20
8. Certified Pursuant to Rule 723
9. of the Rules of Court 23

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1. Leanne Harcourt, CSR(A)
2. Court Reporter