

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

LYLE FRANK EMILE

Transcript of the Reasons for Sentence held before The Honourable Justice L.A. Charbonneau, sitting in Yellowknife, in the Northwest Territories, on May 8, 2017.

APPEARANCES:

Ms. M. Zimmer: Counsel for the Crown
Ms. K. Oja: Counsel for the Accused

(Charges under s. 267(b) of the *Criminal Code of Canada* and s. 5(2) of the *Controlled Drugs and Substances Act*)

1 THE COURT: Mr. Emile has pleaded guilty
2 to three offences today, and I have to impose a
3 sentence on him for those offences. In arriving
4 at my decision, I have considered, as I am
5 required to, the circumstances of the offences
6 that were committed, Mr. Emile's personal
7 circumstances, and the sentencing principles that
8 are set out in the *Criminal Code* and explained in
9 the case law.

10 I have a few things that I want to say this
11 morning. I am not going to talk about the
12 principle of law in any great detail, with a few
13 exceptions. I have considered the principles of
14 sentencing set out in the *Criminal Code*, and I
15 reviewed carefully all of the cases that counsel
16 brought to my attention. I am grateful for those
17 cases having been provided to me because they
18 were helpful in arriving at my decision, but I am
19 not going to discuss them in any great detail
20 this morning because I want to focus on the
21 circumstances of the offences and on Mr. Emile's
22 personal circumstances.

23 The first two offences are both assaults
24 causing bodily harm, and they both happened in
25 2015. The first happened on August 30th. That
26 evening, the victim had gone to a bar in
27 Yellowknife to play pool with one of his friends.

1 He did not know Mr. Emile. Mr. Emile was at the
2 bar that night as well. He was apparently
3 walking toward the exit when, for an unknown
4 reason, he turned around, walked towards the
5 victim, and punched him in the nose. There was a
6 brief struggle after that, and the struggle was
7 stopped by one of the victim's friends and staff
8 at the bar. Mr. Emile was escorted out of the
9 bar. The victim suffered a broken nose as a
10 result of this assault.

11 The second incident happened a few months
12 later, on December 19th. The victim of that
13 second incident was a man named Landon Hahn.
14 That is also the name of the friend of the victim
15 in the August incident, the one who was there and
16 intervened to stop that assault. That seems like
17 a strange coincidence, but there is nothing in
18 the allegations before me that suggests that
19 there was any connection between the assault on
20 Mr. Hahn and the earlier incident.

21 Mr. Hahn and Mr. Emile had been at the same
22 house party. Mr. Hahn left the party with his
23 girlfriend and called a cab. Mr. Emile got into
24 that same cab, a minivan. Mr. Hahn asked where
25 Mr. Emile wanted to be dropped off, and again,
26 for an unknown reason, this led to an argument.
27 Mr. Emile punched Mr. Hahn in the face. Mr. Hahn

1 was knocked off his seat and fell between the
2 seat and the sliding door of the vehicle.
3 Mr. Emile, I was told, continued to punch him in
4 the head. The taxi driver stopped and opened the
5 side door of the vehicle. The victim fell out of
6 the vehicle. Mr. Emile continued to punch him.
7 Eventually, the victim was able to get back up,
8 and he started defending himself. Mr. Emile left
9 the area. Mr. Hahn went to the hospital, and it
10 was discovered that his jaw was broken. He was
11 medevaced to Edmonton for treatment. He had to
12 have plates installed into each side of his jaw,
13 and his jaw was wired shut with screws for a
14 period of time.

15 The third charge is a possession of cocaine
16 for the purposes of trafficking, which happened
17 in December of 2016 while Mr. Emile was on a
18 recognizance in relation to the two other
19 charges. On December 28th, Mr. Emile went to the
20 North Wright terminal in Yellowknife, saying that
21 he wanted to send a pair of boots to a
22 construction company in Tulita. The employee at
23 the counter felt that Mr. Emile was acting in a
24 strange manner because of how insistent he was
25 that the box be taped up. After Mr. Emile left,
26 the employee looked in the box, and he found, in
27 a vacuum-sealed bag, 20 grams of cocaine in one

1 of the boots. Mr. Emile was arrested on this
2 charge on January 19th, 2017. He has been in
3 custody since then.

4 As of today's date, the total number of
5 remand days is 109. If credited at
6 one-and-a-half day credit for each day of remand,
7 that works out to five-and-a-half months. I did
8 not hear anyone suggesting last week that
9 Mr. Emile should not get that amount of credit
10 for his remand time.

11 As far as Mr. Emile's own circumstances, I
12 have the benefit of a thorough pre-sentence
13 report that has provided me with a fair bit of
14 information about him. He is 33, almost 34 years
15 old. He is of Chipewyan and Cree descent. The
16 pre-sentence report refers to many things about
17 Mr. Emile that are quite positive. For about a
18 year before his arrest, he had been employed as a
19 welder-driller. He is described as an
20 outstanding employee with very good work ethic
21 and a great asset to his company. His manager
22 was obviously very impressed with his work and
23 told the author of the pre-sentence report that
24 he looks forward to having Mr. Emile back in his
25 employ when he is able to return to work. The
26 report also says that Mr. Emile has an active
27 lifestyle, enjoys various sports, goes out on the

1 land with family and friends to hunt. He is also
2 in a serious and committed relationship with his
3 partner. They have been together for
4 two-and-a-half years. She is very supportive of
5 him. She realized early on in the relationship
6 that alcohol is a problem for him, and she has
7 told him that he needs to address it. It sounds
8 as though she is going to be able to provide some
9 solid support for Mr. Emile after he is finished
10 serving his sentence. In that respect, Mr. Emile
11 is very fortunate to have that support because
12 many people come before the Court to be
13 sentenced, and they do not have any support. It
14 is very much to his partner's credit that she
15 wants to stand by him and help him. It is also
16 an indication that despite Mr. Emile's problems,
17 she sees the good and the positive in him. She
18 sees his potential, and that belief in his
19 potential and his basic good qualities as a
20 person is also reflected in the support letter
21 that was filed on his behalf at the sentencing
22 hearing and was marked as Exhibit S-6.

23 According to the author of the pre-sentence
24 report, Mr. Emile was honest and open during the
25 preparation of the report. He did not try to
26 minimize his actions. He did not try to blame
27 anyone, and he did not blame alcohol. He knows

1 he has an issue with managing his anger and that
2 it is particularly acute when he is intoxicated.
3 From everything I read in the report, it seems
4 that he is a very smart man, he has insight, and
5 he knows what he needs to do to be on a different
6 path for the rest of his life.

7 That Mr. Emile would have issues with anger
8 is hardly surprising, given some of the things
9 that happened during his childhood. Both his
10 parents are residential school survivors, and, as
11 is often the case, that left them traumatized and
12 harmed; and, as is often the case, that had an
13 impact on their children. I am not going to
14 refer to all the details of this that are set out
15 in the pre-sentence report, but I am talking
16 specifically about some of the details and
17 circumstances that are outlined at pages 3 and 4.
18 I have taken those circumstances into account.
19 Suffice it to say that things in the home were
20 sometimes very bad, that Mr. Emile was told and
21 taught that those problems had to be kept secret,
22 and he learned to do just that, to keep
23 everything inside. At a young age, he had to act
24 as a protector for his younger brother, a
25 responsibility that no child should ever have to
26 bear.

27 Unfortunately, the things that are described

1 in the pre-sentence report are things we often
2 read in pre-sentence reports when dealing with
3 aboriginal offenders whose parents went to
4 residential schools. Mr. Emile's story is
5 similar, sadly, to many of the stories we hear in
6 court about people of his generation. We often
7 hear, in general terms, about the legacy of the
8 residential schools and the impact that this
9 shameful chapter of our country's history has had
10 on people. The Government of Canada has
11 acknowledged the harm that was done in various
12 ways, including through financial compensation
13 that was provided to people simply for having
14 attended these schools. Money, of course, can
15 never make up for this kind of harm. I mention
16 this only to underscore that the Government
17 itself provided compensation to people based on
18 the assumption, the acceptance, the basic premise
19 that aside from any other physical or sexual
20 abuse that may have gone on in those schools,
21 those who attended were harmed simply by having
22 attended. This is not just something that
23 advocates say or an opinion put forward in
24 studies. It is not just the opinion of certain
25 people. It was the official position taken by
26 the Government itself through its policy on this
27 issue. In the ordinary course of things, harm

1 has to be proven before compensation is granted.
2 Not in this area, and that says a lot about the
3 systemic nature of the harm that was done.

4 The harm was done not just to those who
5 attended. It was passed on to the next
6 generation. Again, we hear about this in general
7 terms. We heard people speak of
8 "intergenerational trauma." The things referred
9 to in Mr. Emile's pre-sentence report, as I said
10 already, are a very good illustration of this and
11 of a story repeated countless times. In simple
12 terms, the story goes like this: Children were
13 taken away from their communities, were cut off
14 from their culture and language, were deeply
15 traumatized in many ways, and missed out on
16 crucial aspects of their development. This would
17 be Mr. Emile's parents' generation. Then those
18 children became adults, eventually became parents
19 themselves. Those -- and there were many -- who
20 did not have the opportunity to get help to heal
21 from their own trauma continued to operate at
22 varying levels of dysfunction. For some, it was
23 obvious; for others, more subtle and sometimes
24 hidden. Many turned to alcohol and other
25 intoxicants to numb the pain. This, the anger,
26 the violence that often comes with it, then
27 affected their own children. That is Mr. Emile

1 and his siblings as they were growing up. And by
2 now, in 2017, these children are adults,
3 themselves traumatized by what happened in their
4 childhood and struggling with their past, numbing
5 their own pain and trauma with alcohol and drugs,
6 sometimes getting into trouble with the law,
7 sometimes harming others.

8 It has to stop somewhere or this terrible
9 cycle will just continue on and on, and there
10 will be no end to it. People can stop it. They
11 need help, but they can stop it. Mr. Emile can
12 be one of the ones to stop it.

13 The Court is required to take all of this,
14 all this background and this history and these
15 facts, into account when sentencing aboriginal
16 offenders. The *Criminal Code* says so, and the
17 Supreme Court of Canada says so. At the same
18 time, it must be recognized that the criminal
19 justice system at the sentencing stage cannot
20 solve all these problems. The tools that a Court
21 has on sentencing are very limited. The Court
22 does not create or administer treatment programs,
23 does not control the resources that are made
24 available to help people recover from all this
25 trauma. And, ultimately, the Court cannot make
26 people do anything. It cannot force people to
27 take treatment. It can separate dangerous people

1 from society for a period of time. It can impose
2 sentences that make it clear that violence and
3 abuse are not acceptable and there is no excuse
4 for it. It can try to craft sentences that
5 reflect the seriousness of a crime while also
6 recognizing the circumstances of the offender.
7 It can use the few tools it has to try to support
8 people's effort in rehabilitation and not crush
9 them. But it cannot single-handedly change
10 people, and it cannot heal people. Only the
11 people themselves can do that.

12 Sentencing is always complicated and
13 difficult because the Court is not permitted to
14 think only about the offender being sentenced.
15 The Court also has to be concerned about the
16 protection of the public. Because in this
17 terrible cycle that I have been talking about,
18 people are getting harmed. In this case, two
19 people got hurt, one quite badly, for no reason
20 and through no fault of their own. This cannot
21 be allowed to continue, and I know that Mr. Emile
22 knows that he cannot continue hurting people. It
23 is scary to hear about what happens when he is
24 intoxicated and his anger is triggered for
25 whatever reason. He does need to get it under
26 control and address it so no one else is harmed,
27 and also for his own good. Because if he

1 doesn't, it could well be that, one day, he might
2 actually kill someone. I say this not just
3 because of these two offences I have to sentence
4 him for today but also looking at his criminal
5 record. There are many convictions for crimes of
6 violence on it, including a few convictions for
7 assault causing bodily harm. This means he has
8 been in court before, having hurt people. He has
9 heard judges say he has to stop doing this. He
10 has been in jail before. And I just really hope
11 that today is going to be a true turning point
12 for him.

13 I want to say a few words also about the
14 drug charge. It's also of concern, of course.
15 Cocaine is a hard drug, and it causes a lot of
16 harm in our communities. People get addicted to
17 it, and they commit crimes to get money to be
18 able to buy more of it. The consumption of hard
19 drugs harms the consumer, but it also causes a
20 lot of other harm in the community. It causes
21 other crimes; it causes people to neglect their
22 children; it destroys lives. Anyone who has any
23 part in making cocaine available to others is
24 participating in a very destructive activity.
25 These drugs were going to a very small community,
26 and there is no doubt they would have caused harm
27 if they had made it to their destination.

1 The Crown is asking me to impose a global
2 sentence of four years for these three charges.
3 The Crown has said that fit sentences for each of
4 these crimes, taking everything into account,
5 would be 12 to 14 months for the first assault
6 causing bodily harm, two years for the second
7 assault causing bodily harm, and two to
8 two-and-a-half years for the drug charge, which
9 would, if simply added up, mean five to six years
10 imprisonment. The Crown recognizes that the
11 totality principle applies and has to be taken
12 into account and suggests that the overall
13 sentence be reduced to four years globally.

14 Defence counsel argues for lower ranges and
15 says that once totality is taken into account,
16 the global sentence could be in the range of 30
17 to 35 months. Really, the biggest gap between
18 the Crown's position and the defence's position
19 is with respect to what they say is appropriate
20 for the drug charge because defence says that 12
21 months would be sufficient to address that
22 offence.

23 For any type of crime, there is never just
24 one fit sentence. Always there is a range. For
25 the two assault charges, the Crown and defence
26 positions simply represent each end of the range.
27 The Crown's position is at the higher end; the

1 defence position perhaps at the lower end, but
2 they are defensible positions in light of the
3 case law. The difference in positions about the
4 proper sentence for the drug charge stems from a
5 fundamental disagreement between Crown and
6 defence about how that offence should be
7 characterized.

8 The Crown says that this offence was
9 commercial trafficking and engages the starting
10 point of three years set out in the Alberta case
11 of *Maskell*, 1981 ABCA 50. *Maskell* has been
12 followed for years in the province of Alberta,
13 including in the case of *R. v. Lau*, 2004 ABCA
14 408, referred to by the Crown. It has also been
15 followed in the Northwest Territories in many
16 cases, including *R. v. Mohammed*, 2015 NWTSC 38,
17 also referred to by the Crown. The three-year
18 starting point applies to what was described in
19 *Maskell* as "a commercial operation on something
20 more than a minimum scale." The Crown argues
21 that the December 2016 drug offence committed by
22 Mr. Emile falls into that category. I disagree.
23 As noted by defence counsel, the only evidence
24 before me is that Mr. Emile tried to ship
25 20 grams of cocaine to Tulita. That clearly is
26 possession for the purpose of trafficking. The
27 Crown points out, and I agree, that this is not

1 an insignificant quantity of cocaine. At the
2 same time, there is nothing at all in the agreed
3 facts that provides indicia of a commercial
4 activity.

5 Quantity is a factor to consider in
6 assessing the nature of the offence, but in my
7 view, the quantity in this case is not so large
8 as to invite an irresistible conclusion of
9 commercial activity. Unlike what was the case in
10 *Mohammed*, for example, there is no other evidence
11 suggesting commercial activity here. There are
12 no score sheets; there is no money; there is no
13 drug paraphernalia. This is also not a situation
14 where, for example, an undercover police officer
15 had discussions with Mr. Emile about multiple
16 transactions, or how they could access a larger
17 quantity of drugs, or different kinds of drugs.

18 The bottom line is much remains unknown
19 about the reason why Mr. Emile was trying to send
20 this cocaine to Tulita. Only he knows what those
21 reasons are, and it may not have been possible to
22 discover the full story in this investigation. I
23 was not told who he was trying to send drugs to
24 or anything about the recipient, and as I have
25 mentioned, there is really no other evidence
26 aside from the fact that he was in fact trying to
27 ship the drugs there. It could be that Mr. Emile

1 stood to make money out of this, that he was part
2 of a chain of sorts in an operation, a commercial
3 operation. It could also be that he was sending
4 this to someone in Tulita not as part of a
5 commercial operation.

6 Alleging that this was part of a commercial
7 enterprise beyond a minimal scale is alleging an
8 aggravating factor. If that is disputed, it has
9 to be proven beyond a reasonable doubt. I am not
10 satisfied it has been, and for that reason, I
11 conclude that the three-year starting point does
12 not apply in this situation. That being so, on
13 that charge, I do not think that the range of
14 sentence sought by the Crown is what should be
15 imposed. A jail term of some significance is
16 still required, of course, because all that being
17 said, the fact remains, it is a serious offence,
18 and there was a large quantity of cocaine found.

19 I've also taken into account the guilty
20 pleas and the fact that there were no preliminary
21 hearings in any of these cases. The Crown very
22 fairly has acknowledged that, despite the delay
23 in dealing with these matters, Mr. Emile's guilty
24 pleas are significantly mitigating. The pleas,
25 his comments to the author of the pre-sentence
26 report, and what he told me directly when he had
27 an opportunity to speak last week, all of these

1 things suggest to me that he is truly sorry for
2 what did and that he does truly want to address
3 the underlying issues that have led to this
4 conduct.

5 So, in the end, where does that leave me?
6 As I have already said, based on the cases filed
7 by counsel, I do not think that the positions of
8 Crown and defence are out of range as far as the
9 assault charges. I simply think that they
10 represent opposite ends of that range. Normally,
11 on a series of distinct events such as these, it
12 would be appropriate to impose consecutive
13 sentences. The principle of totality requires me
14 to ensure that the total sentence is not crushing
15 for Mr. Emile. This is because the law in this
16 country, as I have had occasion to note recently
17 in some other cases, is that we do not pile up
18 sentences on people without taking into
19 consideration the overall impact that those
20 sentences will have on the person.

21 There are really two ways to breathe life
22 into the totality principle. One is to reduce
23 each sentence so that the total is not crushing.
24 The second is to exercise the discretion that the
25 Court has to order that some or all of the
26 sentences are to be served concurrently. Here, I
27 have decided to do a mix of these two things. I

1 do not want to reduce the sentences on the two
2 assault charges too much because if I did, the
3 seriousness of each of these offences would no
4 longer be reflected in the sentence attributed to
5 each. Given the number of similar convictions
6 that Mr. Emile has on his record, I do not think
7 it would be appropriate to impose sentences that
8 would not reflect the seriousness of those
9 offences.

10 I sincerely hope that this is the last time
11 he is before the Court for a crime of violence.
12 I really, really do. But if he is ever back
13 before the Court again for a crime of violence,
14 if he does not follow through on his intention to
15 address his issues, and he does end up hurting
16 someone else, then I think it would be important
17 that his criminal record actually reflect that
18 these two assaults I am sentencing him for today
19 were quite serious, particularly the one that
20 resulted in the victim's jaw being broken. For
21 that reason, instead of reducing the two
22 sentences for the assaults as much as I might
23 otherwise have, to take into account the
24 principle of totality, I am going to order that
25 these two sentences be served concurrently.

26 I have arrived at the conclusion that the
27 following sentences could have been fit sentences

1 for these three offences, taking into account the
2 guilty pleas, the requirement for restraint, and
3 the acknowledgement of the principles set out in
4 the cases of *Gladue* and *Ipeelee*. I think 12
5 months for the first sentence would be fit,
6 18 months for the second assault would be fit,
7 and 12 months consecutive for the drug charges
8 would be fit. That would add up to 30 months
9 globally. With the credit that everyone agrees
10 Mr. Emile should get for the time he spent on
11 custody, which is 5-and-a-half months, that would
12 bring the further total jail term down to 2 years
13 and 3 weeks, which is still a penitentiary
14 sentence.

15 We do not have federal penitentiaries in the
16 North. I have the power to make a recommendation
17 that Mr. Emile be permitted to serve a federal
18 sentence in the North, but I do not have the
19 power to order it, and I know for a fact --
20 because it has happened in the recent past --
21 that this Court's recommendations in that regard
22 are not always followed. I am not saying that
23 there may not be very good reasons for the
24 correctional authorities to send someone south
25 despite the Court's recommendation. But the
26 reality is that a recommendation by this Court is
27 simply that: it's a recommendation only. So in

1 my consideration of this matter, I have asked
2 myself, is this something that should be risked?

3 I realize that Mr. Emile may be eligible for
4 release a bit sooner if he receives a federal
5 sentence, but there is a chance he could be sent
6 to a penitentiary far away from his spouse and
7 support systems and in institutions that may not
8 have programs that are actually culturally
9 relevant to him. I know from matters that come
10 before the Court from time to time that the
11 institutions in the North do have programs to
12 address things like alcohol abuse and anger
13 issues. Not all the programs that are available
14 in the federal system are available in the north,
15 but many of those that it seems Mr. Emile might
16 need are available.

17 Without taking anything away from the
18 seriousness of what he has done and the harm he
19 has caused to his victims and the seriousness of
20 his involvement in trying to ship drugs to
21 Tulita, when I look at the big picture -- his
22 circumstances, his current situation, the
23 importance of restraint, and the ultimate goal of
24 his rehabilitation -- I have concluded, with some
25 hesitation, I have to admit, that it is best to
26 keep his overall sentence within the territorial
27 range to make sure that he can remain in the

1 north and to supplement his sentence with a
2 period of probation upon his release.

3 That period of probation is not intended to
4 be punitive. It is premised on the idea that
5 Mr. Emile will have access to services and
6 programs while he is in jail. He will have
7 access to anger management programs, alcohol
8 abuse programs, he will also have access to the
9 jail psychologist, and hopefully, all of this
10 will help him deal with his issues. But the path
11 is going to be a long one and will not end the
12 day that he walks out of the correctional
13 facility. The hard work will have to continue
14 well beyond that, and I think that having contact
15 and support of probation services may be of
16 assistance to him in terms of accessing ongoing
17 support, counselling, and possibly other programs
18 that may be offered outside of custody. And on
19 the whole, having given this a lot of thought, I
20 think that that is more likely to foster
21 long-term rehabilitation and the protection of
22 the public than a few more weeks in jail,
23 especially if that opens up the risk that he
24 could be sent to a southern penitentiary.

25 The Crown has asked for ancillary orders,
26 and those will be granted. There will be a DNA
27 order because these are primary designated

1 offences. There will be a firearms prohibition
2 order, which will commence today and expire
3 10 years from Mr. Emile's release. He is in
4 custody, so I know he is not in possession of any
5 firearms, so the order will say that any firearms
6 that he may have are to be surrendered forthwith.
7 I am required by law to impose a victim of crimes
8 surcharge on indictable matters. Ms. Zimmer,
9 that is \$100 --

10 MS. ZIMMER: Yes, Your Honour, it is.

11 THE COURT: -- per count? So that will be
12 imposed. Mr. Emile has good prospects for work,
13 so I will give him four months from release to
14 pay the surcharge, and as counsel have indicated
15 that there is no longer a request for restitution
16 order, I will not make such an order.

17 Can you stand up, please, Mr. Emile.

18 Mr. Emile, this is what I have decided to do.
19 For the assault causing bodily harm on Mr. Hill,
20 the sentence I impose is 12 months in jail. For
21 the assault causing bodily harm on Mr. Hahn, the
22 sentence is going to be 17 months concurrent, so
23 served at the same time as the other one. For
24 the possession of cocaine for the purpose of
25 trafficking, if you had not had any remand time,
26 I would have imposed a sentence of 12 months
27 consecutive. Because of the remand time, the

1 109 days you have spent on remand, I am giving
2 you credit for five-and-a-half months, so that is
3 a further six-and-a-half months for the drug
4 charge. So in total, that adds up to
5 23-and-a-half months, which is under two years
6 and is a territorial sentence. You understand?
7 You do?

8 THE ACCUSED: Yes, I...

9 THE COURT: You can have a seat now. I am
10 going to talk about the probation period. Listen
11 carefully, Mr. Emile, and if you need some time
12 to talk to your lawyer and you want her to tell
13 me something else, I will give you that chance,
14 okay? I just want to make sure you understand
15 what I am saying now.

16 I am going to include probation as part of
17 this sentence for the reason I have mentioned.
18 This is not to give you more grief or more
19 punishment. This is to help you because you have
20 a long road ahead. So the probation period will
21 be for a period of two years. Within 48 hours of
22 your release, you have to report to probation
23 services, and they will assign you a probation
24 officer. There is not going to be a lot of
25 conditions on this probation. Mandatory
26 conditions are that you have to report as
27 required, and if things are going well, I am sure

1 that your probation officer will not ask you to
2 report a lot. If you are working, if you
3 are functioning properly and you are doing well,
4 there probably will not be a need for a lot of
5 reporting, but that is one thing. The second
6 thing is I am going to include a condition that
7 you take counselling as recommended by your
8 probation officer, including alcohol counselling,
9 anger management counselling, and anything else
10 that they might suggest. You cannot be forced to
11 take treatment, and counselling does not work if
12 it is forced, but these people, that is their
13 job, to try to find things to help you.

14 I am going to add something else. For the
15 first six months of that probation period, you
16 are not going to be permitted to be inside a bar
17 or licenced premises other than a restaurant. I
18 am not going to have a term to prohibit you from
19 consuming alcohol because I do not want to set
20 you up for failure, but you will have to stay out
21 of bars for the first six months by virtue of my
22 order, and I strongly suggest that you make the
23 decision to stay out of bars and away from
24 alcohol, period. What happens when you drink is
25 dangerous, and I am really, seriously concerned
26 that if you continue to drink, one day, something
27 will trigger you, and you will end up killing

1 someone. The reason I am concerned about that is
2 that, sadly, in the last few months, I have had
3 to sentence a few people in homicide cases. I
4 had to sentence a man who killed, for no reason,
5 a person he really loved, and he was obviously
6 extremely upset at the sentencing hearing and so
7 was his whole family. And this was someone much
8 like you who, for whatever reason, had a lot of
9 anger, and when the alcohol mixed with that, it
10 made him act in very, very violent ways. So it
11 is really up to you. I cannot stop you from
12 drinking, and my sentence can only reach so far,
13 but I hope that you are able to address these
14 issues. Everything I have heard about you makes
15 me believe that you have a lot of potential and
16 you can actually overcome these issues, and it is
17 truly up to you, and you are lucky to have help
18 and support in doing that.

19 I want you to know that I have gone really
20 low today on this sentence. On the drug charge
21 alone, even if I disagree with how the Crown
22 characterized that offence, I could have easily
23 imposed a much longer sentence and on the other
24 two as well. The Crown was not out of line in
25 what it was asking. I could have sentenced you,
26 I think, to a global four-year sentence and
27 probably the Court of Appeal would not have

1 touched it. So I thought a lot about this since
2 last week, and I have decided to give you a
3 break, and I could say do not let me down, but I
4 am actually going to say do not let you down. Do
5 not let your partner down because there is no
6 reason why you cannot have a good life.

7 If you want to ask your lawyer something
8 now, I will -- just between the two of you, I
9 will let you do that.

10 Would you like to have some private time
11 with your client?

12 MS. OJA: No, that's all right, Your
13 Honour. Thank you very much.

14 THE COURT: Have I overlooked anything
15 from the defence's point of view?

16 MS. OJA: Pardon me?

17 THE COURT: Have I overlooked anything
18 from the defence's point of view?

19 MS. OJA: No, Your Honour. Thank you.

20 THE COURT: Have I overlooked anything
21 from the Crown's point of view?

22 MS. ZIMMER: Your Honour, just in respect
23 to the probation order, Mr. Hahn did indicate
24 that he does not want to have any contact at all
25 with the accused, and so I think it may be
26 appropriate to ask for a no-contact condition as
27 well once he is released.

1 THE COURT: Yes. If that is something
2 that he would like, I do not see any reason not
3 to include a no-contact condition.

4 So, Mr. Emile, that will be a condition of
5 the probation as well. I think we can all
6 understand why Mr. Hahn wants that, and maybe, in
7 time, he will be ready for an apology, but even
8 past the probation period, I suggest that unless
9 he approaches you, you should avoid having any
10 contact with him. But for the period of
11 probation, you are ordered not to have any
12 contact with him. Do you understand?

13 THE ACCUSED: Can I have a minute with my...

14 THE COURT: Go ahead.

15 MS. OJA: Thank you, Your Honour.

16 THE COURT: Did you need an order with
17 respect to any exhibits, Ms. Zimmer? On
18 either -- I am assuming that -- well, actually, I
19 should not assume, but was anything seized that
20 you would like me to make an order about?

21 MS. ZIMMER: No, I don't believe so, Your
22 Honour. There was just the -- the cocaine that
23 was seized, and I believe that is automatic that
24 it would be destroyed.

25 THE COURT: All right. Then that
26 concludes this matter. We have a few more things
27 to do this morning, so the clerk will need some

1 time to prepare the documents.

2 Do you want some time with your client? Is
3 whatever is being discussed something that I
4 should know, or is it something that I should not
5 know?

6 MS. OJA: Well, it's only a surprise at
7 the fact that we're now under two years, I think,
8 and so that was the only thing that Mr. Emile
9 wasn't expecting, and so I'm just helping him
10 understand.

11 THE COURT: I would not have wanted to
12 inadvertently done something that was not good
13 for him. I would have expected that it would be
14 better for him not to risk ending up in a
15 southern penitentiary.

16 MS. OJA: M-hm.

17 THE COURT: That is the whole crux of my
18 intention, but if there is something that I have
19 somehow missed --

20 This is lower than your own lawyer was
21 asking, Mr. Emile, and I am not supposed to take
22 into account how the parole system works. I do
23 know that sometimes people get out sooner if they
24 get federal time, but some of them end up south,
25 and that is not a good place to be.

26 THE ACCUSED: Yes.

27 THE COURT: So?

1 MS. OJA: Perhaps, Your Honour, if I
2 could just take five minutes with Mr. Emile so
3 that he feels comfortable and understands the --
4 the decision that Your Honour has given.

5 THE COURT: Yes, I think it is certainly
6 worth taking the time. As I say, the law is that
7 in sentencing people, the Court is not permitted
8 to take things like when someone might be
9 eligible for parole, when someone might get out
10 on early release, so we are not allowed to take
11 that into account, but we are required to
12 consider what is best overall. And I know that I
13 cannot bind the hands of Corrections as far as a
14 penitentiary sentence.

15 MS. OJA: Yes.

16 THE COURT: That has been proven recently.
17 So --

18 MS. OJA: Yes.

19 THE COURT: -- if that is all, I will
20 stand down for --

21 MS. OJA: And I could also -- I was
22 going to have to ask for a brief moment to speak
23 with Mr. Takazo as well, so I could do both of
24 those at the same time.

25 THE COURT: All right. So why don't we
26 stand down for 15 minutes. If you need more
27 time, just let me know.

1 MS. OJA: Thank you.

2 THE COURT: And I will go back to my
3 office, Mr. Sheriff.

4 THE COURT CLERK: Order, all rise. Court is
5 adjourned for 15 minutes.

6 (ADJOURNMENT)

7 THE COURT CLERK: Order, all rise. Court is now
8 in session. Please be seated.

9 MS. OJA: Thank you, Your Honour. If I
10 could have Mr. Emile at counsel table again,
11 please.

12 THE COURT: Sure.

13 MS. OJA: And -- and thank you for the
14 time. I have spoken with him and find myself in
15 an unusual situation and a slightly awkward one.
16 Mr. Emile has given me his -- information about
17 the resources that he believes are available to
18 him here in the North, and I haven't had time to
19 confirm this, but it's his -- it's his
20 understanding that he would be able to access
21 much better resources if he were to be sent south
22 to a penitentiary, and it -- I have instructions
23 from Mr. Emile to -- to raise that with Your
24 Honour, and I'm not sure what the Court's
25 thoughts are on this, but it would be his
26 preference to serve a penitentiary length
27 sentence because he believes that he would be

1 much better served in the south. It sounds as
2 though Ms. Oliver, his partner, does plan on
3 moving south as well, and that may happen
4 regardless of -- of where he serves his sentence.

5 THE COURT: Oh, you mean -- so she is
6 planning on moving -- she is planning on moving
7 irrespective of what happens with his sentence?

8 MS. OJA: That's my understanding from
9 my discussions with him right now, and I
10 apologize for not making submissions on this
11 point. I don't think the Crown and I were alive
12 to the possibility that we could be dealing with
13 a territorial length of sentence.

14 THE COURT: Well --

15 MS. OJA: So it's a little bit awkward
16 at this point, but it's -- I thought I had an
17 obligation to at least raise it.

18 THE COURT: No, no, and I thank you for
19 telling me. It is interesting that Mr. Emile is
20 under this impression, and I know that there are
21 differences in programming between the southern
22 institutions and northern institutions. But
23 there are also significant differences between
24 some of the things that go on in the southern
25 institutions. I do not think Mr. Emile has ever
26 been to a penitentiary, ever served a
27 penitentiary sentence, and I have had the

1 occasion to sit on various hearings over the
2 years where I have heard descriptions about the
3 programming, but also some of the challenges that
4 northern aboriginal offenders find themselves
5 facing when in southern penitentiaries. Usually,
6 the argument is made that it is not a good place
7 to be, irrespective of the availability of
8 programs. It is often said they are much more
9 dangerous places to be. There is more gang
10 involvement. There is more violence. Not in all
11 of them, of course. And also, and more
12 importantly, perhaps, far less culturally
13 relevant programs. So the only thing about this
14 new information that is causing me to pause here
15 is the prospect that his spouse is planning to
16 move. And the other aspect, of course, is the
17 possibility of continued support and supervision
18 upon release, through Probation.

19 I have also heard in another recent
20 sentencing hearing that there are
21 situations where some of the programs available
22 in the southern institutions can be made
23 available to northern prisoners. In other words,
24 some of the people that serve their sentences in
25 the North sometimes can have access to other
26 types of programming that are delivered in the
27 southern institutions. Maybe not in this case.

1 I am grateful that you raised it, Ms. Oja, and
2 Mr. Emile, I am glad you raised it with your
3 counsel, but it would be rather inconsistent of
4 me to change my decision at this point, I think,
5 given my reasons for making that decision in the
6 first place. I do think that, on the whole, it
7 would be dangerous for Mr. Emile to be in a jail
8 setting for an extended period of time and then
9 be released into the community without any kind
10 of supports to assist in his reintegration. So I
11 am inclined not to change my decision.

12 Anything else you want to tell me? Do you
13 want to speak to me directly?

14 THE ACCUSED: Is that possible?

15 THE COURT: Well, it is always
16 dangerous --

17 THE ACCUSED: Okay.

18 THE COURT: -- depending on what you say,
19 so --

20 MS. OJA: I am just hesitant because I
21 know that Your Honour has essentially made a
22 decision, but Mr. Emile is just informing me that
23 Ms. Oliver does plan on moving, so.

24 THE COURT: Well -- is there anything you
25 want to say, Ms. Zimmer, at this point? I mean,
26 I am not -- the warrant has not been signed. I
27 am not -- I am not done. I can change my

1 decision. Do you have any position? I have a
2 few concerns, obviously. One is the ability of
3 Mr. Emile to have continued supervision after
4 release. The overall reach of my sentence as it
5 now stands is longer in time than what it would
6 be if I made this a penitentiary term. That is
7 one of my concerns. I know your position was
8 much different than what I have decided, which
9 puts us all in a bit of an awkward situation, but
10 I am interested in the Crown's view at this point
11 based on what I have just been told.

12 MS. ZIMMER: I mean, Your Honour, at this
13 point, it's the Crown's position that the
14 sentence that Your Honour has crafted was crafted
15 very carefully, and the aspects that were in it
16 also protected the public and the idea of the
17 rehabilitation, and so that ability that Your
18 Honour just spoke of, to have the probation
19 order, the Crown would point out that that is a
20 very important aspect of this sentence, as it
21 does give protection to the victim for another
22 two years, whereas if a penitentiary sentence at
23 this point was given that was just in the range
24 of two years, that protection would be lost, and
25 that protection would be lost also for the public
26 in general, as Your Honour had counselling and
27 rehabilitation as part of that probation order.

1 So the Crown would submit that if Your Honour is
2 thinking about changing the decision, Your Honour
3 would almost have to go right back to the drawing
4 board in terms of determining what the
5 appropriate sentence would be, as a sentence that
6 Your Honour imposed of just the -- the two years
7 plus the probation, it would not be the same if
8 that probation is just lost.

9 THE COURT: Anything else you want to say,
10 Ms. Oja?

11 MS. OJA: Mr. Emile has information from
12 his perspective about the programs that he has
13 been able to access, and I wonder if it makes any
14 sense to just have him provide that information
15 to Your Honour. I'm sort of in a bit of a
16 delicate situation at this point.

17 THE COURT: You mean programs he has had
18 access to while here?

19 MS. OJA: Yes.

20 THE COURT: All right. Well, I do not --
21 at this point, I do not see the harm.

22 Go ahead. Tell me what you want to tell me,
23 sir.

24 THE ACCUSED: Yes. The programs here that
25 I've taken, I'm just finishing one. The -- the
26 counselling here, it's -- there is no counsellor
27 in the facility. I've been trying to speak to

1 someone for the past three months I've been in
2 there, and it doesn't matter if I'm remand or
3 sentenced. The programs are very limited in
4 there. They've been catering just to the people
5 that are pretty much special needs. There is not
6 very much stuff I could -- for me -- to benefit
7 me from the program aspects of it, and I feel
8 that if I was to be able to get to a southern
9 institution that had better programs to help me
10 continue on -- Heather is moving regardless what
11 the outcome is of today, and it would be nice
12 because I would be close to her down there.
13 That's all I have to say.

14 THE COURT: Is your plan to remain in
15 southern Canada, Mr. Emile, after this --

16 THE ACCUSED: Yes.

17 THE COURT: -- is all over?

18 THE ACCUSED: Yeah. I won't be continuing
19 to work, but, I mean, I'll be -- my plan is to
20 move. We've been waiting until this whole court
21 is over so she can leave. She'll have to stay up
22 here with me until -- as my support until this is
23 all done. We were planning to relocate to the
24 south once everything is finished.

25 THE COURT: And you want to stay south
26 when everything is finished?

27 THE ACCUSED: Yes.

1 THE COURT: You can sit down. Well, the
2 problem I am facing is that in making my decision
3 on this case, I tried very hard to do what the
4 law says I am supposed to do and adopt an
5 approach in sentencing that would limit as much
6 as possible the period of time of incarceration
7 that will be imposed in accordance with the
8 principles that the Supreme Court of Canada has
9 outlined and the principles that bind me. The
10 problem is it is not just a matter of changing
11 one thing or add a month to make it a
12 penitentiary term. If I take myself outside of
13 the framework I have tried to apply and I
14 emphasize other things, then, as Ms. Zimmer has
15 pointed out, the entire sentence has to be
16 revisited, and the entire basis for exercising
17 the restraint diminishes. I have concerns about
18 what I am hearing from Mr. Emile. I am sure he
19 is telling me the truth as he understands it to
20 be; but I sit in criminal court very frequently,
21 and I have heard several sentencing hearings in
22 the past several months, including some where
23 there has been evidence called about programs
24 available territorially and federally. I did a
25 sentencing recently where I heard evidence
26 inmates detained in Yellowknife have far better
27 access to the services of a psychologist than

1 they do in southern institutions, for example. I
2 heard that evidence from the people who work in
3 those facilities and from a pre-sentence report
4 that stated that a certain offender had had far
5 better access to a psychologist and to certain
6 programs than they might have in the south. So I
7 am not comfortable changing my decision based on
8 Mr. Emile's understanding of what he might have
9 access to in the south. And I also think there
10 are aspects about penitentiary placement that he
11 may not be aware of that would not be necessarily
12 the best for his rehabilitation.

13 The thing I am the most concerned with is
14 the move of his spouse because it was very much
15 my thinking that it would be helpful to him to
16 have her nearby. But I am not convinced that at
17 this point I can essentially start from scratch.
18 The result might be actually quite severe if I
19 did. I am going to leave things the way they
20 are. The probation can be transferred on request
21 to Alberta if Mr. Emile decides to move. I have
22 already ordered a transcript of my decision, and
23 I am going to ask that it include everything that
24 has happened since the break, and I hope that the
25 authorities at North Slave Correctional or
26 wherever Mr. Emile serves his sentence are going
27 to make sure that he has access to the

1 programming he needs, and, if that includes the
2 possibility of access to programs that are
3 available elsewhere, that this be considered. So
4 thank you for bringing this to my attention, but
5 I will not change my decision at this point.

6 MS. OJA: Thank you very much, Your
7 Honour.

8 THE COURT: I wish you luck, Mr. Emile.

9 THE ACCUSED: Thank you.

10 -----

11 **CERTIFICATE OF TRANSCRIPT**

12

13 I, the undersigned, hereby certify that the
14 foregoing pages are a complete and accurate
15 transcript of the proceedings taken down by me in
16 shorthand and transcribed from my shorthand notes
17 to the best of my skill and ability.

18 Dated at the City of Edmonton, Province of
19 Alberta, this 12th day of May, 2017.

20

21 Certified Pursuant to Rule 723
22 of the Rules of Court

23

24

25

26

27

Joanne Lawrence
Court Reporter