*R. v. Emile,* 2017 NWTSC 40 **S-1-CR-2016-000086 S-1-CR-2017-000039 S-1-CR-2017-000051**

# 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.

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**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.
28. He did not know Mr. Emile. Mr. Emile was at the
29. bar that night as well. He was apparently
30. walking toward the exit when, for an unknown
31. reason, he turned around, walked towards the
32. victim, and punched him in the nose. There was a
33. brief struggle after that, and the struggle was
34. stopped by one of the victim's friends and staff
35. at the bar. Mr. Emile was escorted out of the
36. bar. The victim suffered a broken nose as a
37. result of this assault.
38. The second incident happened a few months
39. later, on December 19th. The victim of that
40. second incident was a man named Landon Hahn.
41. That is also the name of the friend of the victim
42. in the August incident, the one who was there and
43. intervened to stop that assault. That seems like
44. a strange coincidence, but there is nothing in
45. the allegations before me that suggests that
46. there was any connection between the assault on
47. Mr. Hahn and the earlier incident.
48. Mr. Hahn and Mr. Emile had been at the same
49. house party. Mr. Hahn left the party with his
50. girlfriend and called a cab. Mr. Emile got into
51. that same cab, a minivan. Mr. Hahn asked where
52. Mr. Emile wanted to be dropped off, and again,
53. for an unknown reason, this led to an argument.
54. Mr. Emile punched Mr. Hahn in the face. Mr. Hahn
55. was knocked off his seat and fell between the
56. seat and the sliding door of the vehicle.
57. Mr. Emile, I was told, continued to punch him in
58. the head. The taxi driver stopped and opened the
59. side door of the vehicle. The victim fell out of
60. the vehicle. Mr. Emile continued to punch him.
61. Eventually, the victim was able to get back up,
62. and he started defending himself. Mr. Emile left
63. the area. Mr. Hahn went to the hospital, and it
64. was discovered that his jaw was broken. He was
65. medevaced to Edmonton for treatment. He had to
66. have plates installed into each side of his jaw,
67. and his jaw was wired shut with screws for a
68. period of time.
69. The third charge is a possession of cocaine
70. for the purposes of trafficking, which happened
71. in December of 2016 while Mr. Emile was on a
72. recognizance in relation to the two other
73. charges. On December 28th, Mr. Emile went to the
74. North Wright terminal in Yellowknife, saying that
75. he wanted to send a pair of boots to a
76. construction company in Tulita. The employee at
77. the counter felt that Mr. Emile was acting in a
78. strange manner because of how insistent he was
79. that the box be taped up. After Mr. Emile left,
80. the employee looked in the box, and he found, in
81. a vacuum-sealed bag, 20 grams of cocaine in one
82. of the boots. Mr. Emile was arrested on this
83. charge on January 19th, 2017. He has been in
84. custody since then.
85. As of today's date, the total number of
86. remand days is 109. If credited at
87. one-and-a-half day credit for each day of remand,
88. that works out to five-and-a-half months. I did
89. not hear anyone suggesting last week that
90. Mr. Emile should not get that amount of credit
91. for his remand time.
92. As far as Mr. Emile's own circumstances, I
93. have the benefit of a thorough pre-sentence
94. report that has provided me with a fair bit of
95. information about him. He is 33, almost 34 years
96. old. He is of Chipewyan and Cree descent. The
97. pre-sentence report refers to many things about
98. Mr. Emile that are quite positive. For about a
99. year before his arrest, he had been employed as a
100. welder-driller. He is described as an
101. outstanding employee with very good work ethic
102. and a great asset to his company. His manager
103. was obviously very impressed with his work and
104. told the author of the pre-sentence report that
105. he looks forward to having Mr. Emile back in his
106. employ when he is able to return to work. The
107. report also says that Mr. Emile has an active
108. lifestyle, enjoys various sports, goes out on the
109. land with family and friends to hunt. He is also
110. in a serious and committed relationship with his
111. partner. They have been together for
112. two-and-a-half years. She is very supportive of
113. him. She realized early on in the relationship
114. that alcohol is a problem for him, and she has
115. told him that he needs to address it. It sounds
116. as though she is going to be able to provide some
117. solid support for Mr. Emile after he is finished
118. serving his sentence. In that respect, Mr. Emile
119. is very fortunate to have that support because
120. many people come before the Court to be
121. sentenced, and they do not have any support. It
122. is very much to his partner's credit that she
123. wants to stand by him and help him. It is also
124. an indication that despite Mr. Emile's problems,
125. she sees the good and the positive in him. She
126. sees his potential, and that belief in his
127. potential and his basic good qualities as a
128. person is also reflected in the support letter
129. that was filed on his behalf at the sentencing
130. hearing and was marked as Exhibit S-6.
131. According to the author of the pre-sentence
132. report, Mr. Emile was honest and open during the
133. preparation of the report. He did not try to
134. minimize his actions. He did not try to blame
135. anyone, and he did not blame alcohol. He knows
136. he has an issue with managing his anger and that
137. it is particularly acute when he is intoxicated.
138. From everything I read in the report, it seems
139. that he is a very smart man, he has insight, and
140. he knows what he needs to do to be on a different
141. path for the rest of his life.
142. That Mr. Emile would have issues with anger
143. is hardly surprising, given some of the things
144. that happened during his childhood. Both his
145. parents are residential school survivors, and, as
146. is often the case, that left them traumatized and
147. harmed; and, as is often the case, that had an
148. impact on their children. I am not going to
149. refer to all the details of this that are set out
150. in the pre-sentence report, but I am talking
151. specifically about some of the details and
152. circumstances that are outlined at pages 3 and 4.
153. I have taken those circumstances into account.
154. Suffice it to say that things in the home were
155. sometimes very bad, that Mr. Emile was told and
156. taught that those problems had to be kept secret,
157. and he learned to do just that, to keep
158. everything inside. At a young age, he had to act
159. as a protector for his younger brother, a
160. responsibility that no child should ever have to
161. bear.
162. 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
163. has to be proven before compensation is granted.
164. Not in this area, and that says a lot about the
165. systemic nature of the harm that was done.
166. The harm was done not just to those who
167. attended. It was passed on to the next
168. generation. Again, we hear about this in general
169. terms. We heard people speak of
170. "intergenerational trauma." The things referred
171. to in Mr. Emile's pre-sentence report, as I said
172. already, are a very good illustration of this and
173. of a story repeated countless times. In simple
174. terms, the story goes like this: Children were
175. taken away from their communities, were cut off
176. from their culture and language, were deeply
177. traumatized in many ways, and missed out on
178. crucial aspects of their development. This would
179. be Mr. Emile's parents' generation. Then those
180. children became adults, eventually became parents
181. themselves. Those -- and there were many -- who
182. did not have the opportunity to get help to heal
183. from their own trauma continued to operate at
184. varying levels of dysfunction. For some, it was
185. obvious; for others, more subtle and sometimes
186. hidden. Many turned to alcohol and other
187. intoxicants to numb the pain. This, the anger,
188. the violence that often comes with it, then
189. affected their own children. That is Mr. Emile
190. and his siblings as they were growing up. And by
191. now, in 2017, these children are adults,
192. themselves traumatized by what happened in their
193. childhood and struggling with their past, numbing
194. their own pain and trauma with alcohol and drugs,
195. sometimes getting into trouble with the law,
196. sometimes harming others.
197. It has to stop somewhere or this terrible
198. cycle will just continue on and on, and there
199. will be no end to it. People can stop it. They
200. need help, but they can stop it. Mr. Emile can
201. be one of the ones to stop it.
202. The Court is required to take all of this,
203. all this background and this history and these
204. facts, into account when sentencing aboriginal
205. offenders. The *Criminal Code* says so, and the
206. Supreme Court of Canada says so. At the same
207. time, it must be recognized that the criminal
208. justice system at the sentencing stage cannot
209. solve all these problems. The tools that a Court
210. has on sentencing are very limited. The Court
211. does not create or administer treatment programs,
212. does not control the resources that are made
213. available to help people recover from all this
214. trauma. And, ultimately, the Court cannot make
215. people do anything. It cannot force people to
216. take treatment. It can separate dangerous people
217. from society for a period of time. It can impose
218. sentences that make it clear that violence and
219. abuse are not acceptable and there is no excuse
220. for it. It can try to craft sentences that
221. reflect the seriousness of a crime while also
222. recognizing the circumstances of the offender.
223. It can use the few tools it has to try to support
224. people's effort in rehabilitation and not crush
225. them. But it cannot single-handedly change
226. people, and it cannot heal people. Only the
227. people themselves can do that.
228. Sentencing is always complicated and
229. difficult because the Court is not permitted to
230. think only about the offender being sentenced.
231. The Court also has to be concerned about the
232. protection of the public. Because in this
233. terrible cycle that I have been talking about,
234. people are getting harmed. In this case, two
235. people got hurt, one quite badly, for no reason
236. and through no fault of their own. This cannot
237. be allowed to continue, and I know that Mr. Emile
238. knows that he cannot continue hurting people. It
239. is scary to hear about what happens when he is
240. intoxicated and his anger is triggered for
241. whatever reason. He does need to get it under
242. control and address it so no one else is harmed,
243. and also for his own good. Because if he
244. doesn't, it could well be that, one day, he might
245. actually kill someone. I say this not just
246. because of these two offences I have to sentence
247. him for today but also looking at his criminal
248. record. There are many convictions for crimes of
249. violence on it, including a few convictions for
250. assault causing bodily harm. This means he has
251. been in court before, having hurt people. He has
252. heard judges say he has to stop doing this. He
253. has been in jail before. And I just really hope
254. that today is going to be a true turning point
255. for him.
256. I want to say a few words also about the
257. drug charge. It's also of concern, of course.
258. Cocaine is a hard drug, and it causes a lot of
259. harm in our communities. People get addicted to
260. it, and they commit crimes to get money to be
261. able to buy more of it. The consumption of hard
262. drugs harms the consumer, but it also causes a
263. lot of other harm in the community. It causes
264. other crimes; it causes people to neglect their
265. children; it destroys lives. Anyone who has any
266. part in making cocaine available to others is
267. participating in a very destructive activity.
268. These drugs were going to a very small community,
269. and there is no doubt they would have caused harm
270. 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
271. defence position perhaps at the lower end, but
272. they are defensible positions in light of the
273. case law. The difference in positions about the
274. proper sentence for the drug charge stems from a
275. fundamental disagreement between Crown and
276. defence about how that offence should be
277. characterized.
278. The Crown says that this offence was
279. commercial trafficking and engages the starting
280. point of three years set out in the Alberta case
281. of *Maskell*, 1981 ABCA 50. *Maskell* has been
282. followed for years in the province of Alberta,
283. including in the case of *R. v. Lau*, 2004 ABCA
284. 408, referred to by the Crown. It has also been
285. followed in the Northwest Territories in many
286. cases, including R. v. Mohammed, 2015 NWTSC 38,
287. also referred to by the Crown. The three-year
288. starting point applies to what was described in
289. *Maskell* as "a commercial operation on something
290. more than a minimum scale." The Crown argues
291. that the December 2016 drug offence committed by
292. Mr. Emile falls into that category. I disagree.
293. As noted by defence counsel, the only evidence
294. before me is that Mr. Emile tried to ship
295. 20 grams of cocaine to Tulita. That clearly is
296. possession for the purpose of trafficking. The
297. Crown points out, and I agree, that this is not
298. an insignificant quantity of cocaine. At the
299. same time, there is nothing at all in the agreed
300. facts that provides indicia of a commercial
301. activity.
302. Quantity is a factor to consider in
303. assessing the nature of the offence, but in my
304. view, the quantity in this case is not so large
305. as to invite an irresistible conclusion of
306. commercial activity. Unlike what was the case in
307. *Mohammed*, for example, there is no other evidence
308. suggesting commercial activity here. There are
309. no score sheets; there is no money; there is no
310. drug paraphernalia. This is also not a situation
311. where, for example, an undercover police officer
312. had discussions with Mr. Emile about multiple
313. transactions, or how they could access a larger
314. quantity of drugs, or different kinds of drugs.
315. The bottom line is much remains unknown
316. about the reason why Mr. Emile was trying to send
317. this cocaine to Tulita. Only he knows what those
318. reasons are, and it may not have been possible to
319. discover the full story in this investigation. I
320. was not told who he was trying to send drugs to
321. or anything about the recipient, and as I have
322. mentioned, there is really no other evidence
323. aside from the fact that he was in fact trying to
324. ship the drugs there. It could be that Mr. Emile
325. stood to make money out of this, that he was part
326. of a chain of sorts in an operation, a commercial
327. operation. It could also be that he was sending
328. this to someone in Tulita not as part of a
329. commercial operation.
330. Alleging that this was part of a commercial
331. enterprise beyond a minimal scale is alleging an
332. aggravating factor. If that is disputed, it has
333. to be proven beyond a reasonable doubt. I am not
334. satisfied it has been, and for that reason, I
335. conclude that the three-year starting point does
336. not apply in this situation. That being so, on
337. that charge, I do not think that the range of
338. sentence sought by the Crown is what should be
339. imposed. A jail term of some significance is
340. still required, of course, because all that being
341. said, the fact remains, it is a serious offence,
342. and there was a large quality of cocaine found.
343. I've also taken into account the guilty
344. pleas and the fact that there were no preliminary
345. hearings in any of these cases. The Crown very
346. fairly has acknowledged that, despite the delay
347. in dealing with these matters, Mr. Emile's guilty
348. pleas are significantly mitigating. The pleas,
349. his comments to the author of the pre-sentence
350. report, and what he told me directly when he had
351. an opportunity to speak last week, all of these
352. things suggest to me that he is truly sorry for
353. what did and that he does truly want to address
354. the underlying issues that have led to this
355. conduct.
356. So, in the end, where does that leave me?
357. As I have already said, based on the cases filed
358. by counsel, I do not think that the positions of
359. Crown and defence are out of range as far as the
360. assault charges. I simply think that they
361. represent opposite ends of that range. Normally,
362. on a series of distinct events such as these, it
363. would be appropriate to impose consecutive
364. sentences. The principle of totality requires me
365. to ensure that the total sentence is not crushing
366. for Mr. Emile. This is because the law in this
367. country, as I have had occasion to note recently
368. in some other cases, is that we do not pile up
369. sentences on people without taking into
370. consideration the overall impact that those
371. sentences will have on the person.
372. There are really two ways to breathe life
373. into the totality principle. One is to reduce
374. each sentence so that the total is not crushing.
375. The second is to exercise the discretion that the
376. Court has to order that some or all of the
377. sentences are to be served concurrently. Here, I
378. have decided to do a mix of these two things. I
379. do not want to reduce the sentences on the two
380. assault charges too much because if I did, the
381. seriousness of each of these offences would no
382. longer be reflected in the sentence attributed to
383. each. Given the number of similar convictions
384. that Mr. Emile has on his record, I do not think
385. it would be appropriate to impose sentences that
386. would not reflect the seriousness of those
387. offences.
388. I sincerely hope that this is the last time
389. he is before the Court for a crime of violence.
390. I really, really do. But if he is ever back
391. before the Court again for a crime of violence,
392. if he does not follow through on his intention to
393. address his issues, and he does end up hurting
394. someone else, then I think it would be important
395. that his criminal record actually reflect that
396. these two assaults I am sentencing him for today
397. were quite serious, particularly the one that
398. resulted in the victim's jaw being broken. For
399. that reason, instead of reducing the two
400. sentences for the assaults as much as I might
401. otherwise have, to take into account the
402. principle of totality, I am going to order that
403. these two sentences be served concurrently.
404. I have arrived at the conclusion that the
405. following sentences could have been fit sentences
406. for these three offences, taking into account the
407. guilty pleas, the requirement for restraint, and
408. the acknowledgement of the principles set out in
409. the cases of *Gladue* and *Ipeelee*. I think 12
410. months for the first sentence would be fit,
411. 18 months for the second assault would be fit,
412. and 12 months consecutive for the drug charges
413. would be fit. That would add up to 30 months
414. globally. With the credit that everyone agrees
415. Mr. Emile should get for the time he spent on
416. custody, which is 5-and-a-half months, that would
417. bring the further total jail term down to 2 years
418. and 3 weeks, which is still a penitentiary
419. sentence.
420. We do not have federal penitentiaries in the
421. North. I have the power to make a recommendation
422. that Mr. Emile be permitted to serve a federal
423. sentence in the North, but I do not have the
424. power to order it, and I know for a fact --
425. because it has happened in the recent past --
426. that this Court's recommendations in that regard
427. are not always followed. I am not saying that
428. there may not be very good reasons for the
429. correctional authorities to send someone south
430. despite the Court's recommendation. But the
431. reality is that a recommendation by this Court is
432. simply that: it's a recommendation only. So in
433. my consideration of this matter, I have asked
434. myself, is this something that should be risked?
435. I realize that Mr. Emile may be eligible for
436. release a bit sooner if he receives a federal
437. sentence, but there is a chance he could be sent
438. to a penitentiary far away from his spouse and
439. support systems and in institutions that may not
440. have programs that are actually culturally
441. relevant to him. I know from matters that come
442. before the Court from time to time that the
443. institutions in the North do have programs to
444. address things like alcohol abuse and anger
445. issues. Not all the programs that are available
446. in the federal system are available in the north,
447. but many of those that it seems Mr. Emile might
448. need are available.
449. Without taking anything away from the
450. seriousness of what he has done and the harm he
451. has caused to his victims and the seriousness of
452. his involvement in trying to ship drugs to
453. Tulita, when I look at the big picture -- his
454. circumstances, his current situation, the
455. importance of restraint, and the ultimate goal of
456. his rehabilitation -- I have concluded, with some
457. hesitation, I have to admit, that it is best to
458. keep his overall sentence within the territorial
459. range to make sure that he can remain in the
460. north and to supplement his sentence with a
461. period of probation upon his release.
462. That period of probation is not intended to
463. be punitive. It is premised on the idea that
464. Mr. Emile will have access to services and
465. programs while he is in jail. He will have
466. access to anger management programs, alcohol
467. abuse programs, he will also have access to the
468. jail psychologist, and hopefully, all of this
469. will help him deal with his issues. But the path
470. is going to be a long one and will not end the
471. day that he walks out of the correctional
472. facility. The hard work will have to continue
473. well beyond that, and I think that having contact
474. and support of probation services may be of
475. assistance to him in terms of accessing ongoing
476. support, counselling, and possibly other programs
477. that may be offered outside of custody. And on
478. the whole, having given this a lot of thought, I
479. think that that is more likely to foster
480. long-term rehabilitation and the protection of
481. the public than a few more weeks in jail,
482. especially if that opens up the risk that he
483. could be sent to a southern penitentiary.
484. The Crown has asked for ancillary orders,
485. and those will be granted. There will be a DNA
486. order because these are primary designated
487. offences. There will be a firearms prohibition
488. order, which will commence today and expire
489. 10 years from Mr. Emile's release. He is in
490. custody, so I know he is not in possession of any
491. firearms, so the order will say that any firearms
492. that he may have are to be surrendered forthwith.
493. I am required by law to impose a victim of crimes
494. surcharge on indictable matters. Ms. Zimmer, 9 that is $100 --
495. MS. ZIMMER: Yes, Your Honour, it is.
496. THE COURT: -- per count? So that will be
497. imposed. Mr. Emile has good prospects for work,
498. so I will give him four months from release to
499. pay the surcharge, and as counsel have indicated
500. that there is no longer a request for restitution
501. order, I will not make such an order.
502. Can you stand up, please, Mr. Emile.
503. Mr. Emile, this is what I have decided to do.
504. For the assault causing bodily harm on Mr. Hill,
505. the sentence I impose is 12 months in jail. For
506. the assault causing bodily harm on Mr. Hahn, the
507. sentence is going to be 17 months concurrent, so
508. served at the same time as the other one. For
509. the possession of cocaine for the purpose of
510. trafficking, if you had not had any remand time,
511. I would have imposed a sentence of 12 months
512. consecutive. Because of the remand time, the
513. 109 days you have spent on remand, I am giving
514. you credit for five-and-a-half months, so that is
515. a further six-and-a-half months for the drug
516. charge. So in total, that adds up to
517. 23-and-a-half months, which is under two years
518. and is a territorial sentence. You understand?
519. You do?
520. THE ACCUSED: Yes, I...
521. THE COURT: You can have a seat now. I am
522. going to talk about the probation period. Listen
523. carefully, Mr. Emile, and if you need some time
524. to talk to your lawyer and you want her to tell
525. me something else, I will give you that chance,
526. okay? I just want to make sure you understand
527. what I am saying now.
528. I am going to include probation as part of
529. this sentence for the reason I have mentioned.
530. This is not to give you more grief or more
531. punishment. This is to help you because you have
532. a long road ahead. So the probation period will
533. be for a period of two years. Within 48 hours of
534. your release, you have to report to probation
535. services, and they will assign you a probation
536. officer. There is not going to be a lot of
537. conditions on this probation. Mandatory
538. conditions are that you have to report as
539. required, and if things are going well, I am sure
540. that your probation officer will not ask you to
541. report a lot. If you are working, if you
542. are functioning properly and you are doing well,
543. there probably will not be a need for a lot of
544. reporting, but that is one thing. The second
545. thing is I am going to include a condition that
546. you take counselling as recommended by your
547. probation officer, including alcohol counselling,
548. anger management counselling, and anything else
549. that they might suggest. You cannot be forced to
550. take treatment, and counselling does not work if
551. it is forced, but these people, that is their
552. job, to try to find things to help you.
553. I am going to add something else. For the
554. first six months of that probation period, you
555. are not going to be permitted to be inside a bar
556. or licenced premises other than a restaurant. I
557. am not going to have a term to prohibit you from
558. consuming alcohol because I do not want to set
559. you up for failure, but you will have to stay out
560. of bars for the first six months by virtue of my
561. order, and I strongly suggest that you make the
562. decision to stay out of bars and away from
563. alcohol, period. What happens when you drink is
564. dangerous, and I am really, seriously concerned
565. that if you continue to drink, one day, something
566. will trigger you, and you will end up killing
567. someone. The reason I am concerned about that is
568. that, sadly, in the last few months, I have had
569. to sentence a few people in homicide cases. I
570. had to sentence a man who killed, for no reason,
571. a person he really loved, and he was obviously
572. extremely upset at the sentencing hearing and so
573. was his whole family. And this was someone much
574. like you who, for whatever reason, had a lot of
575. anger, and when the alcohol mixed with that, it
576. made him act in very, very violent ways. So it
577. is really up to you. I cannot stop you from
578. drinking, and my sentence can only reach so far,
579. but I hope that you are able to address these
580. issues. Everything I have heard about you makes
581. me believe that you have a lot of potential and
582. you can actually overcome these issues, and it is
583. truly up to you, and you are lucky to have help
584. and support in doing that.
585. I want you to know that I have gone really
586. low today on this sentence. On the drug charge
587. alone, even if I disagree with how the Crown
588. characterized that offence, I could have easily
589. imposed a much longer sentence and on the other
590. two as well. The Crown was not out of line in
591. what it was asking. I could have sentenced you,
592. I think, to a global four-year sentence and
593. probably the Court of Appeal would not have
594. touched it. So I thought a lot about this since
595. last week, and I have decided to give you a
596. break, and I could say do not let me down, but I
597. am actually going to say do not let you down. Do
598. not let your partner down because there is no
599. reason why you cannot have a good life.
600. If you want to ask your lawyer something

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| --- | --- | --- |
| 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
28. time to prepare the documents.
29. Do you want some time with your client? Is
30. whatever is being discussed something that I
31. should know, or is it something that I should not
32. know?
33. MS. OJA: Well, it's only a surprise at
34. the fact that we're now under two years, I think,
35. and so that was the only thing that Mr. Emile
36. wasn't expecting, and so I'm just helping him
37. understand.
38. THE COURT: I would not have wanted to
39. inadvertently done something that was not good
40. for him. I would have expected that it would be
41. better for him not to risk ending up in a
42. southern penitentiary.
43. MS. OJA: M-hm.
44. THE COURT: That is the whole crux of my
45. intention, but if there is something that I have
46. somehow missed --
47. This is lower than your own lawyer was
48. asking, Mr. Emile, and I am not supposed to take
49. into account how the parole system works. I do
50. know that sometimes people get out sooner if they
51. get federal time, but some of them end up south,
52. and that is not a good place to be.
53. THE ACCUSED: Yes.
54. THE COURT: So?
55. MS. OJA: Perhaps, Your Honour, if I
56. could just take five minutes with Mr. Emile so
57. that he feels comfortable and understands the --
58. the decision that Your Honour has given.
59. THE COURT: Yes, I think it is certainly
60. worth taking the time. As I say, the law is that
61. in sentencing people, the Court is not permitted
62. to take things like when someone might be
63. eligible for parole, when someone might get out
64. on early release, so we are not allowed to take
65. that into account, but we are required to
66. consider what is best overall. And I know that I
67. cannot bind the hands of Corrections as far as a
68. penitentiary sentence.

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| 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 |

1. an unusual situation and a slightly awkward one.
2. Mr. Emile has given me his -- information about
3. the resources that he believes are available to
4. him here in the North, and I haven't had time to
5. confirm this, but it's his -- it's his
6. understanding that he would be able to access
7. much better resources if he were to be sent south
8. to a penitentiary, and it -- I have instructions
9. from Mr. Emile to -- to raise that with Your
10. Honour, and I'm not sure what the Court's
11. thoughts are on this, but it would be his
12. preference to serve a penitentiary length
13. sentence because he believes that he would be
14. much better served in the south. It sounds as
15. though Ms. Oliver, his partner, does plan on
16. moving south as well, and that may happen
17. regardless of -- of where he serves his sentence.
18. THE COURT: Oh, you mean -- so she is
19. planning on moving -- she is planning on moving
20. irrespective of what happens with his sentence?
21. MS. OJA: That's my understanding from
22. my discussions with him right now, and I
23. apologize for not making submissions on this
24. point. I don't think the Crown and I were alive
25. to the possibility that we could be dealing with
26. a territorial length of sentence.
27. THE COURT: Well --
28. MS. OJA: So it's a little bit awkward
29. at this point, but it's -- I thought I had an
30. obligation to at least raise it.
31. THE COURT: No, no, and I thank you for
32. telling me. It is interesting that Mr. Emile is
33. under this impression, and I know that there are
34. differences in programming between the southern
35. institutions and northern institutions. But
36. there are also significant differences between
37. some of the things that go on in the southern
38. institutions. I do not think Mr. Emile has ever
39. been to a penitentiary, ever served a
40. penitentiary sentence, and I have had the
41. occasion to sit on various hearings over the
42. years where I have heard descriptions about the
43. programming, but also some of the challenges that
44. northern aboriginal offenders find themselves
45. facing when in southern penitentiaries. Usually,
46. the argument is made that it is not a good place
47. to be, irrespective of the availability of
48. programs. It is often said they are much more
49. dangerous places to be. There is more gang
50. involvement. There is more violence. Not in all
51. of them, of course. And also, and more
52. importantly, perhaps, far less culturally
53. relevant programs. So the only thing about this
54. new information that is causing me to pause here
55. is the prospect that his spouse is planning to
56. move. And the other aspect, of course, is the
57. possibility of continued support and supervision
58. upon release, through Probation.
59. I have also heard in another recent
60. sentencing hearing that there are
61. situations where some of the programs available
62. in the southern institutions can be made
63. available to northern prisoners. In other words,
64. some of the people that serve their sentences in
65. the North sometimes can have access to other
66. types of programming that are delivered in the
67. southern institutions. Maybe not in this case.
68. I am grateful that you raised it, Ms. Oja, and
69. Mr. Emile, I am glad you raised it with your
70. counsel, but it would be rather inconsistent of
71. me to change my decision at this point, I think,
72. given my reasons for making that decision in the
73. first place. I do think that, on the whole, it
74. would be dangerous for Mr. Emile to be in a jail
75. setting for an extended period of time and then
76. be released into the community without any kind
77. of supports to assist in his reintegration. So I
78. am inclined not to change my decision.
79. Anything else you want to tell me? Do you
80. want to speak to me directly?
81. THE ACCUSED: Is that possible?
82. THE COURT: Well, it is always
83. dangerous --
84. THE ACCUSED: Okay.
85. THE COURT: -- depending on what you say,
86. so --
87. MS. OJA: I am just hesitant because I
88. know that Your Honour has essentially made a
89. decision, but Mr. Emile is just informing me that
90. Ms. Oliver does plan on moving, so.
91. THE COURT: Well -- is there anything you
92. want to say, Ms. Zimmer, at this point? I mean,
93. I am not -- the warrant has not been signed. I
94. am not -- I am not done. I can change my
95. decision. Do you have any position? I have a
96. few concerns, obviously. One is the ability of
97. Mr. Emile to have continued supervision after
98. release. The overall reach of my sentence as it
99. now stands is longer in time than what it would
100. be if I made this a penitentiary term. That is
101. one of my concerns. I know your position was
102. much different than what I have decided, which
103. puts us all in a bit of an awkward situation, but
104. I am interested in the Crown's view at this point
105. based on what I have just been told.
106. MS. ZIMMER: I mean, Your Honour, at this
107. point, it's the Crown's position that the
108. sentence that Your Honour has crafted was crafted
109. very carefully, and the aspects that were in it
110. also protected the public and the idea of the
111. rehabilitation, and so that ability that Your
112. Honour just spoke of, to have the probation
113. order, the Crown would point out that that is a
114. very important aspect of this sentence, as it
115. does give protection to the victim for another
116. two years, whereas if a penitentiary sentence at
117. this point was given that was just in the range
118. of two years, that protection would be lost, and
119. that protection would be lost also for the public
120. in general, as Your Honour had counselling and
121. rehabilitation as part of that probation order.
122. So the Crown would submit that if Your Honour is
123. thinking about changing the decision, Your Honour
124. would almost have to go right back to the drawing
125. board in terms of determining what the
126. appropriate sentence would be, as a sentence that
127. Your Honour imposed of just the -- the two years
128. plus the probation, it would not be the same if
129. that probation is just lost.
130. THE COURT: Anything else you want to say,
131. Ms. Oja?
132. MS. OJA: Mr. Emile has information from
133. his perspective about the programs that he has
134. been able to access, and I wonder if it makes any
135. sense to just have him provide that information
136. to Your Honour. I'm sort of in a bit of a
137. delicate situation at this point.
138. THE COURT: You mean programs he has had
139. access to while here?
140. MS. OJA: Yes.
141. THE COURT: All right. Well, I do not --
142. at this point, I do not see the harm.
143. Go ahead. Tell me what you want to tell me,
144. sir.
145. THE ACCUSED: Yes. The programs here that
146. I've taken, I'm just finishing one. The -- the
147. counselling here, it's -- there is no counsellor
148. in the facility. I've been trying to speak to
149. someone for the past three months I've been in
150. there, and it doesn't matter if I'm remand or
151. sentenced. The programs are very limited in
152. there. They've been catering just to the people
153. that are pretty much special needs. There is not
154. very much stuff I could -- for me -- to benefit
155. me from the program aspects of it, and I feel
156. that if I was to be able to get to a southern
157. institution that had better programs to help me
158. continue on -- Heather is moving regardless what
159. the outcome is of today, and it would be nice
160. because I would be close to her down there.
161. That's all I have to say.
162. THE COURT: Is your plan to remain in
163. southern Canada, Mr. Emile, after this --
164. THE ACCUSED: Yes.
165. THE COURT: -- is all over?
166. THE ACCUSED: Yeah. I won't be continuing
167. to work, but, I mean, I'll be -- my plan is to
168. move. We've been waiting until this whole court
169. is over so she can leave. She'll have to stay up
170. here with me until -- as my support until this is
171. all done. We were planning to relocate to the
172. south once everything is finished.
173. THE COURT: And you want to stay south
174. when everything is finished?
175. THE ACCUSED: Yes.
176. THE COURT: You can sit down. Well, the
177. problem I am facing is that in making my decision
178. on this case, I tried very hard to do what the
179. law says I am supposed to do and adopt an
180. approach in sentencing that would limit as much
181. as possible the period of time of incarceration
182. that will be imposed in accordance with the
183. principles that the Supreme Court of Canada has
184. outlined and the principles that bind me. The
185. problem is it is not just a matter of changing
186. one thing or add a month to make it a
187. penitentiary term. If I take myself outside of
188. the framework I have tried to apply and I
189. emphasize other things, then, as Ms. Zimmer has
190. pointed out, the entire sentence has to be
191. revisited, and the entire basis for exercising
192. the restraint diminishes. I have concerns about
193. what I am hearing from Mr. Emile. I am sure he
194. is telling me the truth as he understands it to
195. be; but I sit in criminal court very frequently,
196. and I have heard several sentencing hearings in
197. the past several months, including some where
198. there has been evidence called about programs
199. available territorially and federally. I did a
200. sentencing recently where I heard evidence
201. inmates detained in Yellowknife have far better
202. access to the services of a psychologist than
203. they do in southern institutions, for example. I
204. heard that evidence from the people who work in
205. those facilities and from a pre-sentence report
206. that stated that a certain offender had had far
207. better access to a psychologist and to certain
208. programs than they might have in the south. So I
209. am not comfortable changing my decision based on
210. Mr. Emile's understanding of what he might have
211. access to in the south. And I also think there
212. are aspects about penitentiary placement that he
213. may not be aware of that would not be necessarily
214. the best for his rehabilitation.
215. The thing I am the most concerned with is
216. the move of his spouse because it was very much
217. my thinking that it would be helpful to him to
218. have her nearby. But I am not convinced that at
219. this point I can essentially start from scratch.
220. The result might be actually quite severe if I
221. did. I am going to leave things the way they
222. are. The probation can be transferred on request
223. to Alberta if Mr. Emile decides to move. I have
224. already ordered a transcript of my decision, and
225. I am going to ask that it include everything that
226. has happened since the break, and I hope that the
227. authorities at North Slave Correctional or
228. wherever Mr. Emile serves his sentence are going
229. to make sure that he has access to the
230. programming he needs, and, if that includes the
231. possibility of access to programs that are
232. available elsewhere, that this be considered. So
233. thank you for bringing this to my attention, but
234. I will not change my decision at this point.
235. MS. OJA: Thank you very much, Your
236. Honour.
237. THE COURT: I wish you luck, Mr. Emile.
238. THE ACCUSED: Thank you.

# 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 12th day of May, 2017. 20
8. Certified Pursuant to Rule 723
9. of the Rules of Court 23

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25 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. Joanne Lawrence
2. Court Reporter