

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

MARTY BOUVIER

Transcript of the Reasons for Sentence Delivered by The Honourable Justice L.A. Charbonneau, sitting in Yellowknife, in the Northwest Territories, on July 10, 2017.

APPEARANCES:

Mr. B. Green: Counsel for the Crown
Ms. A. Seaman: Counsel for the Accused

(Charges under s. 271 of the *Criminal Code*)

No information shall be published in any document or broadcast or transmitted in any way which could identify the victim or a witness in these proceedings pursuant to s. 486.4 of the *Criminal Code of Canada*

This transcript has been altered to protect the identity of the victim /young person pursuant to the direction of the presiding Judge

1 THE COURT: Marty Bouvier has pleaded
2 guilty to a charge of sexual assault, and it is
3 now my responsibility to impose a sentence on him
4 for that crime. Earlier today, I heard the
5 submissions of counsel, and they have jointly
6 submitted that a sentence of four years
7 imprisonment should be imposed for this offence.

8 For any given crime, there is never just one
9 fit sentence. There is always a range. The law
10 about how a sentencing judge should approach
11 sentencing when a joint submission is presented
12 is very clear. Joint submissions are to be given
13 very careful consideration and should never be
14 departed from lightly. For the reasons that
15 follow, I agree that what is being proposed here
16 by counsel is appropriate under all the
17 circumstances. But I do want to make it clear,
18 in particular to Mr. Bouvier, that he could have
19 faced a more significant sentence for this crime.
20 Four years is a significant jail term, but he
21 could have been facing an even more significant
22 jail term.

23 I want to refer briefly to the circumstances
24 of the offence to put my other comments in
25 context.

26 At the time of these events, J.C. was
27 15 years old, and Mr. Bouvier was 20. On the

1 evening this happened, January 1st, 2016, she ran
2 into him, and he invited her to a party. They
3 went there, and they both consumed alcohol. At
4 one point, he invited her to come for a walk with
5 him. They walked to an abandoned house and went
6 inside that house at his invitation. Once
7 inside, he pushed her on a mattress on the floor.
8 She told him to stop. He told her to remove her
9 pants, and she did so. He kissed her. Again,
10 she told him to stop. But he did not stop. He
11 had sexual intercourse with her.

12 Later that evening, the RCMP received a
13 complaint about a potential sexual assault and
14 began an investigation. They saw J. at the
15 health centre shortly after midnight on January
16 the 2nd. She was with her mother. J. was
17 shaking, and she was crying. She was very upset.

18 Based on the information that the police
19 officer received from J., he went to the
20 abandoned house and seized items. Those were
21 later submitted for DNA analysis, and the results
22 from that analysis were that material found on a
23 condom and on a blanket at the house matched
24 Mr. Bouvier's DNA. The test results, however,
25 only became available after the preliminary
26 hearing had already proceeded.

27 Mr. Bouvier has a criminal record.

1 Exhibit 2 includes transcripts of the sentencing
2 decisions for three of his convictions. Those
3 must be referred to because they show a very
4 disturbing trend.

5 The first is a sexual assault conviction
6 that Mr. Bouvier received in the Youth Criminal
7 Justice Court on July 10th, 2015. That offence
8 involved an act of forced intercourse with a
9 12-year-old. On that charge, but for his remand
10 time, he would have been sentenced to a custody
11 and supervision order of 135 days. Once credit
12 was given for the remand time, that sentence was
13 reduced to a custody and supervision order of
14 three days, followed by probation for one year.

15 On that same date, July 10th, 2015,
16 Mr. Bouvier was also sentenced on an assault
17 charge in adult court. That assault was
18 committed after he had been convicted of the
19 sexual assault charge, but before sentencing. So
20 he was still on process for the sexual assault
21 charge when he committed the assault. The facts
22 of that assault were that he attempted to drag a
23 12-year-old to a wooded area. By the time he
24 committed that offence, he was 19. He received a
25 jail term of four months followed by two years
26 probation. One of the conditions of that order
27 was that for the first year, he was not to have

1 any contact with a person under 16 outside of his
2 immediate family unless he was in the presence of
3 another sober adult person. He was also required
4 to take counselling and treatment to address his
5 alcohol abuse issues and with respect to sexual
6 behaviour, and he was prohibited from consuming
7 alcohol or other intoxicants.

8 The third sentencing that I have a
9 transcript for relates to a conviction for a
10 breach of probation. That was a breach of the
11 probation order that arose from the sentencing on
12 the assault charge. That offence was committed
13 in November 2015, about four months after that
14 sentencing. The condition that was breached was
15 the condition that Mr. Bouvier not have contact
16 with a person under 16.

17 The facts of that offence are very, very
18 disturbing. Mr. Bouvier confronted an
19 11-year-old at a restaurant. He called her
20 "sexy." He tried to convince her that he was
21 only 13. He told her that she "walked sexy."
22 This made the child afraid. She started to cry,
23 and she went to hide in the bathroom. Mr.
24 Bouvier was intoxicated on that occasion. So on
25 that day, he breached more than one condition of
26 the probation order that he was on.

27 The sentence imposed for that offence was

1 120 days, deemed served because of the remand
2 time. The sentencing judge was the same as the
3 judge who had sentenced him on the July 2015
4 court appearance. That judge placed Mr. Bouvier
5 on probation for three years, with a condition,
6 this time, that he not have any unsupervised
7 contact with anyone under 16 years. That
8 sentence was imposed in July 2016, so it was
9 actually imposed after the offence that I am
10 sentencing him for today was committed.

11 Mr. Bouvier is not to be punished again for
12 those offences, and I am very mindful of that.
13 But the fact is that the circumstances of these
14 three prior convictions raise grave concerns.
15 They show predatory behaviour on Mr. Bouvier's
16 part as far as young girls are concerned. The
17 sentences that were imposed and the comments that
18 were made by the Territorial Court judge at those
19 sentencings reflect an understandable concern on
20 the judge's part about his behaviour. The
21 sentences show an attempt to use various
22 sentencing tools to limit his opportunity to
23 commit similar crimes again.

24 Things that were said at the earlier of
25 these sentencings reflect a very clear
26 recognition that Mr. Bouvier needed treatment to
27 address both his issues with alcohol and other

1 underlying issues that have led to his conduct.
2 Unfortunately, Mr. Bouvier did not address his
3 issues. And now he has to be sentenced again for
4 a very serious offence.

5 Mr. Bouvier's counsel has told me about his
6 personal circumstances, including the fact that
7 he himself was sexually abused as a child.
8 Unfortunately, we often see this cycle repeated.
9 Something has to happen to break that cycle.
10 Mr. Bouvier, I think, needs help, professional
11 help. Alcohol alone cannot explain his
12 behaviour. Right now, he is a danger to young
13 girls and women, and if he does not address his
14 issues, he will be back before the Court.

15 Even at a young age, as of today, his
16 criminal record is such that I would expect the
17 Crown, if Mr. Bouvier commits similar crimes in
18 the future, is going to have to take a serious
19 look at the options under the *Criminal Code* to
20 have him dealt with either as a dangerous
21 offender or a long-term offender. So this is
22 where it has to stop. By this, I mean today, for
23 the safety of the members of his community but
24 also for his own sake; otherwise, Mr. Bouvier
25 will have no future.

26 The harm that the sexual abuse of children
27 causes is now well documented and well known.

1 The Alberta Court of Appeal talked about those
2 things many, many years ago in *R. v. S.W.B.*, 1992
3 AJ No. 601. As I have said several times in
4 other cases, that decision is now 25 years old,
5 but the comments made in it are as true now as
6 they were then. In fact, perhaps we know even
7 more now about the impact that these crimes have.
8 Mr. Bouvier knows, since it happened to him,
9 although perhaps he is still too young to have
10 any real insight into this.

11 The two Victim Impact Statements filed in
12 this case speak eloquently about this impact.
13 Sadly, we often read these types of reports from
14 victims. Just like J., victims of sexual assault
15 lose trust in others, isolate themselves, often
16 are suicidal, and engage in self-destructive
17 behaviour. It takes a long time to recover from
18 this kind of trauma, and it takes a lot of
19 support. Thankfully, it sounds as though J. has
20 that support from her mother and the rest of her
21 family. But it is terribly sad and unfair that
22 after having been victimized in this way by Mr.
23 Bouvier, she has felt, in a sense, further
24 victimized by having people talk to her about
25 this and about her in a way that may not have
26 been as supportive as we would like to see. It
27 is unfair that she feels that, somehow, this was

1 her fault. It was not her fault. Let there be
2 no mistake about that. The one who was
3 responsible for what happened here is
4 Mr. Bouvier.

5 It takes immense courage to disclose a
6 sexual assault in a small community, immense
7 courage. The Court hopes that J. and her family
8 will receive support from the community.
9 Communities need to rally behind victims of these
10 crimes and support them. They also need to help
11 offenders understand the seriousness of their
12 conduct and support them through rehabilitation
13 and to lead healthier lives and have healthier
14 relationships with their fellow community
15 members.

16 There is no doubt that this offence falls
17 within the parameters of a major sexual assault.
18 The main mitigating factor is the guilty plea, as
19 counsel have noted. It is not an early guilty
20 plea, far from it, but I do take into account
21 that the preliminary hearing took place before
22 the DNA results were known to Mr. Bouvier and his
23 counsel. I also take into account what the Crown
24 has said about how difficult the preliminary
25 hearing testimony was for J. In a sense, it cuts
26 both ways because that ties in with the fact that
27 there was a preliminary hearing, and she had to

1 testify. But it also speaks volumes as to what
2 she was spared in not having to testify again,
3 before a jury, about these events.

4 I adopt what I said in *R. v. Holman*, 2014
5 NWTSC 13, about the value of a guilty plea. It
6 spares the victims from having to testify. It
7 provides certainty of outcome. It hopefully can
8 end the uncertainty about what really happened
9 within the community, which is especially
10 important in a small community. It tells the
11 world in clear terms what happened and who was at
12 fault. Ideally, it would help with healing and
13 eventual closure, and, hopefully, that can be the
14 case here.

15 Mr. Bouvier has apologized today for what he
16 has done. He has apologized to the victim and
17 her family. He has apologized to his own family
18 for what he has put them through, which I am sure
19 must have been very difficult over the past few
20 years.

21 Hopefully, Mr. Bouvier will now take the
22 next step, because apologizing is only one step.
23 The next step goes beyond the words of an
24 apology. He has heard it said in Court several
25 times already now that his conduct is criminal
26 and disturbing. This conduct suggests that he
27 needs to address some issues within himself, and,

1 as I have already said, it is crucial that he do
2 that; otherwise, he will be back before the Court
3 and will spend longer and longer periods of time
4 in jail, and no one wants that to happen. He has
5 the support of his parents, and that makes him a
6 lot luckier than many of the people I have had to
7 sentence over the years. I recognize the
8 importance of their support.

9 Given the criminal record and the disturbing
10 particulars of some of the convictions, the
11 sentence imposed for this major sexual assault
12 could have been more significant than what is
13 being jointly suggested here, and it certainly
14 would have been much longer if Mr. Bouvier had
15 been convicted after trial. But the sentence
16 proposed, taking into account all of the factors,
17 is not unreasonable, in particular given the
18 mitigating effect of the guilty plea and the
19 *Gladue* and *Ipeelee* factors that I heard about
20 during submissions and that I have taken into
21 consideration.

22 The Crown has asked for a number of
23 ancillary orders, and those were not opposed by
24 defence.

25 There will be an order under the SOIRA
26 legislation, the *Sexual Offenders Information*
27 *Registration Act*, for a period of 20 years.

1 There will be the firearms prohibition, a
2 lifetime prohibition because Mr. Bouvier has
3 already received such a prohibition on one of his
4 earlier convictions.

5 It was not addressed during submissions, but
6 I do not believe I have any choice but to also
7 impose the victim of crimes surcharge pursuant to
8 the *Criminal Code*. The time to pay and default
9 time are provided by statute.

10 I will issue an order -- and I would like
11 the notes to reflect this, Madam Clerk -- that
12 any exhibits in police custody are to be returned
13 to their rightful owners, if that is appropriate,
14 or destroyed at the expiration of the appeal
15 period. The exhibits that were filed as part of
16 this sentencing hearing are to be retained on the
17 court file.

18 Would you stand up, please, Mr. Bouvier. I
19 will follow the joint submission. Had it not
20 been for the time you have spent on remand, I
21 would have imposed a sentence of four years. For
22 the 557 days that you have already spent in
23 custody, I am going to give you the maximum
24 credit that I am entitled to give you under the
25 law, which adds up to 715 days. That will leave
26 746 days to be served. In simple terms, that
27 means two years and 16 days left to be served.

1 Do you understand? Yes?

2 THE ACCUSED: Yeah.

3 THE COURT: You can sit down.

4 The last issue I have to address is that I
5 was urged by Mr. Bouvier's counsel to make a
6 recommendation that he be permitted to serve his
7 sentence in a northern institution. That request
8 is often made of me, and more often than not, I
9 agree to do so, recognizing that support from
10 loved ones and culturally relevant programs in
11 the custodial setting can be very important to a
12 person's rehabilitation. Although the Court's
13 recommendations are not always followed, because
14 placement is ultimately in the discretion of the
15 correctional authorities, I usually have no
16 difficulty in at least making the recommendation.
17 I have decided, in this case, not to make that
18 recommendation. I am not making a recommendation
19 either way. This, of course, does not mean that
20 the authorities will necessarily decide not to
21 keep Mr. Bouvier in a northern institution,
22 because I am sure they will take into
23 consideration his age, his culture, and the
24 family support he has in the NWT. The fact that
25 I am not endorsing the warrant of committal is
26 not determinative of the issue.

27 The reason I am not going to make the

1 endorsement in this case is that I think that
2 Mr. Bouvier needs more than family support to
3 take the next steps he needs to take if he does
4 not want to be back before the Court again. As I
5 said already, the facts from his earlier offences
6 as well as the facts on this one are very
7 disturbing. One does not need to be a
8 psychologist or a psychiatrist or a criminologist
9 to see the trend in these offences and to see
10 that Mr. Bouvier's conduct has targeted a certain
11 group of victims. This is very worrisome. I do
12 not know how these issues can be addressed or
13 where, but I do think that in shaping the plan
14 for Mr. Bouvier's sentence, the correctional
15 authorities need to pay close attention to that
16 aspect of matters and make decisions on placement
17 based upon where Mr. Bouvier can get the best and
18 the most effective help to address his problem.
19 That said, his request to remain in the north is
20 part of the record of this sentencing hearing. I
21 am certain that as placement is examined, he will
22 have an opportunity to reiterate that request,
23 and perhaps his counsel can assist him in making
24 sure that the authorities are well aware that he
25 would prefer to serve his sentence here and why,
26 and I am sure that they will take that into
27 account. But I do think that access to programs

1 geared to reducing his risk of re-offence need to
2 be the priority, as opposed to only dealing with
3 the alcohol issue, for instance.

4 Have I overlooked anything, Mr. Green?

5 MR. GREEN: I may have missed it, but I
6 don't know if Your Honour mentioned a DNA order.

7 THE COURT: I did miss it. Thank you for
8 reminding me. There will be a DNA order, as this
9 is a primary designated offence.

10 Anything further from defence?

11 MS. SEAMAN: Just the time to pay on the
12 victim crime surcharge , Your Honour.

13 THE COURT: I thought that was statutorily
14 provided.

15 Is it, Madam Clerk?

16 THE COURT CLERK: I believe it's 60 days from
17 release.

18 THE COURT: I am sorry?

19 THE COURT CLERK: I believe it's 60 days from
20 release.

21 THE COURT: I think it is statutory now,
22 Ms. Seaman. I --

23 Can you help, Mr. Green? I seem to -- I
24 never seem to -- I do not seem to recall ever
25 stipulating a time to pay.

26 MR. GREEN: I -- yes, I agree it's
27 statutory , 60 days from release.

1 THE COURT: So within 60 days from
2 release.
3 MS. SEAMAN: Thank you, Your Honour.
4 THE COURT: As is the -- and the default
5 time is statutory as well.
6 MS. SEAMAN: Thank you.
7 THE COURT: Before we close court, I do
8 want to commend you, counsel, for having resolved
9 this matter. I know it must not have been easy.
10 And I would suggest, if it is possible,
11 Mr. Green, that you or another member of your
12 office ensure that what Mr. Bouvier said this
13 morning by way of an apology is actually conveyed
14 to J.
15 MR. GREEN: I will undertake to do that,
16 Your Honour.
17 MS. SEAMAN: Thank you, Your Honour.
18 -----
19
20
21
22
23
24
25
26
27

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

CERTIFICATE OF TRANSCRIPT

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

Dated at the City of Edmonton, Province of Alberta, this 21st day of July, 2017.

Certified Pursuant to Rule 723
of the Rules of Court

Joanne Lawrence
Court Reporter