*R. v. Bouvier*, 2017 NWTSC 55 **S-1-CR-2016-000065**

# IN THE SUPREM E COURT OF THE NORTHWEST TERRITORIES

**IN THE MATTE R 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.

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**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
28. evening this happened, January 1st, 2016, she ran
29. into him, and he invited her to a party. They
30. went there, and they both consumed alcohol. At
31. one point, he invited her to come for a walk with
32. him. They walked to an abandoned house and went
33. inside that house at his invitation . Once
34. inside, he pushed her on a mattress on the floor.
35. She told him to stop. He told her to remove her
36. pants, and she did so. He kissed her. Again,
37. she told him to stop. But he did not stop. He
38. had sexual intercourse with her.
39. Later that evening, the RCMP received a
40. complaint about a potential sexual assault and
41. began an investigation . They saw J. at the
42. health centre shortly after midnight on January
43. the 2nd. She was with her mother. J. was
44. shaking, and she was crying. She was very upset.
45. Based on the information that the police
46. officer received from J., he went to the
47. abandoned house and seized items. Those were
48. later submitted for DNA analysis, and the results
49. from that analysis were that material found on a
50. condom and on a blanket at the house matched
51. Mr. Bouvier's DNA. The test results, however,
52. only became available after the preliminary
53. hearing had already proceeded.
54. 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
55. any contact with a person under 16 outside of his
56. immediate family unless he was in the presence of
57. another sober adult person. He was also required
58. to take counselling and treatment to address his
59. alcohol abuse issues and with respect to sexual
60. behaviour, and he was prohibited from consuming
61. alcohol or other intoxicants.
62. The third sentencing that I have a
63. transcript for relates to a conviction for a
64. breach of probation . That was a breach of the
65. probation order that arose from the sentencing on
66. the assault charge. That offence was committed
67. in November 2015, about four months after that
68. sentencing . The condition that was breached was
69. the condition that Mr. Bouvier not have contact
70. with a person under 16.
71. The facts of that offence are very, very
72. disturbing . Mr. Bouvier confronted an
73. 11-year-old at a restaurant . He called her
74. "sexy." He tried to convince her that he was
75. only 13. He told her that she "walked sexy."
76. This made the child afraid. She started to cry,
77. and she went to hide in the bathroom. Mr.
78. Bouvier was intoxicated on that occasion. So on
79. that day, he breached more than one condition of
80. the probation order that he was on.
81. 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
82. underlying issues that have led to his conduct.
83. Unfortunately, Mr. Bouvier did not address his
84. issues. And now he has to be sentenced again for
85. a very serious offence.
86. Mr. Bouvier's counsel has told me about his
87. personal circumstances, including the fact that
88. he himself was sexually abused as a child.
89. Unfortunately, we often see this cycle repeated.
90. Something has to happen to break that cycle.
91. Mr. Bouvier, I think, needs help, professional
92. help. Alcohol alone cannot explain his
93. behaviour . Right now, he is a danger to young
94. girls and women, and if he does not address his
95. issues, he will be back before the Court.
96. Even at a young age, as of today, his
97. criminal record is such that I would expect the
98. Crown, if Mr. Bouvier commits similar crimes in
99. the future, is going to have to take a serious
100. look at the options under the *Criminal Code* to
101. have him dealt with either as a dangerous
102. offender or a long-term offender. So this is
103. where it has to stop. By this, I mean today, for
104. the safety of the members of his community but
105. also for his own sake; otherwise, Mr. Bouvier
106. will have no future.
107. The harm that the sexual abuse of children
108. causes is now well documented and well known.
109. The Alberta Court of Appeal talked about those
110. things many, many years ago in *R. v. S.W.B.*, 1992
111. AJ No. 601. As I have said several times in
112. other cases, that decision is now 25 years old,
113. but the comments made in it are as true now as
114. they were then. In fact, perhaps we know even
115. more now about the impact that these crimes have.
116. Mr. Bouvier knows, since it happened to him,
117. although perhaps he is still too young to have
118. any real insight into this.
119. The two Victim Impact Statements filed in
120. this case speak eloquently about this impact.
121. Sadly, we often read these types of reports from
122. victims. Just like J., victims of sexual assault
123. lose trust in others, isolate themselves, often
124. are suicidal, and engage in self-destructive
125. behaviour. It takes a long time to recover from
126. this kind of trauma, and it takes a lot of
127. support. Thankfully, it sounds as though J. has
128. that support from her mother and the rest of her
129. family. But it is terribly sad and unfair that
130. after having been victimized in this way by Mr.
131. Bouvier, she has felt, in a sense, further
132. victimized by having people talk to her about
133. this and about her in a way that may not have
134. been as supportive as we would like to see. It
135. is unfair that she feels that, somehow, this was
136. her fault. It was not her fault. Let there be
137. no mistake about that. The one who was
138. responsible for what happened here is
139. Mr. Bouvier.
140. It takes immense courage to disclose a
141. sexual assault in a small community, immense
142. courage. The Court hopes that J. and her family
143. will receive support from the community.
144. Communities need to rally behind victims of these
145. crimes and support them. They also need to help
146. offenders understand the seriousness of their
147. conduct and support them through rehabilitation
148. and to lead healthier lives and have healthier
149. relationships with their fellow community
150. members.
151. There is no doubt that this offence falls
152. within the parameters of a major sexual assault.
153. The main mitigating factor is the guilty plea, as
154. counsel have noted. It is not an early guilty
155. plea, far from it, but I do take into account
156. that the preliminary hearing took place before
157. the DNA results were known to Mr. Bouvier and his
158. counsel. I also take into account what the Crown
159. has said about how difficult the preliminary
160. hearing testimony was for J. In a sense, it cuts
161. both ways because that ties in with the fact that
162. there was a preliminary hearing, and she had to
163. testify. But it also speaks volumes as to what
164. she was spared in not having to testify again,
165. before a jury, about these events.
166. I adopt what I said in *R. v. Holman*, 2014
167. NWTSC 13, about the value of a guilty plea. It
168. spares the victims from having to testify. It
169. provides certainty of outcome. It hopefully can
170. end the uncertainty about what really happened
171. within the community, which is especially
172. important in a small community . It tells the
173. world in clear terms what happened and who was at
174. fault. Ideally, it would help with healing and
175. eventual closure, and, hopefully, that can be the
176. case here.
177. Mr. Bouvier has apologized today for what he
178. has done. He has apologized to the victim and
179. her family. He has apologized to his own family
180. for what he has put them through, which I am sure
181. must have been very difficult over the past few
182. years.
183. Hopefully, Mr. Bouvier will now take the
184. next step, because apologizing is only one step.
185. The next step goes beyond the words of an
186. apology. He has heard it said in Court several
187. times already now that his conduct is criminal
188. and disturbing . This conduct suggests that he
189. needs to address some issues within himself, and,
190. as I have already said, it is crucial that he do
191. that; otherwise, he will be back before the Court
192. and will spend longer and longer periods of time
193. in jail, and no one wants that to happen. He has
194. the support of his parents, and that makes him a
195. lot luckier than many of the people I have had to
196. sentence over the years. I recognize the
197. importance of their support.
198. Given the criminal record and the disturbing
199. particulars of some of the convictions, the
200. sentence imposed for this major sexual assault
201. could have been more significant than what is
202. being jointly suggested here, and it certainly
203. would have been much longer if Mr. Bouvier had
204. been convicted after trial. But the sentence
205. proposed, taking into account all of the factors,
206. is not unreasonable , in particular given the
207. mitigating effect of the guilty plea and the
208. *Gladue* and *Ipeelee* factors that I heard about
209. during submissions and that I have taken into
210. consideration.
211. The Crown has asked for a number of
212. ancillary orders, and those were not opposed by
213. defence.
214. There will be an order under the SOIRA
215. legislation , the *Sexual Offenders Information*
216. *Registration Act*, for a period of 20 years.
217. There will be the firearms prohibition, a
218. lifetime prohibition because Mr. Bouvier has
219. already received such a prohibition on one of his
220. earlier convictions.
221. It was not addressed during submissions, but
222. I do not believe I have any choice but to also
223. impose the victim of crimes surcharge pursuant to
224. the *Criminal Code*. The time to pay and default
225. time are provided by statute.
226. I will issue an order -- and I would like
227. the notes to reflect this, Madam Clerk -- that
228. any exhibits in police custody are to be returned
229. to their rightful owners, if that is appropriate,
230. or destroyed at the expiration of the appeal
231. period. The exhibits that were filed as part of
232. this sentencing hearing are to be retained on the
233. court file.
234. Would you stand up, please, Mr. Bouvier. I
235. will follow the joint submission . Had it not
236. been for the time you have spent on remand, I
237. would have imposed a sentence of four years. For
238. the 557 days that you have already spent in
239. custody, I am going to give you the maximum
240. credit that I am entitled to give you under the
241. law, which adds up to 715 days. That will leave
242. 746 days to be served. In simple terms, that
243. means two years and 16 days left to be served.
244. Do you understand ? Yes?
245. THE ACCUSED: Yeah.
246. THE COURT: You can sit down.
247. The last issue I have to address is that I
248. was urged by Mr. Bouvier's counsel to make a
249. recommendation that he be permitted to serve his
250. sentence in a northern institution . That request
251. is often made of me, and more often than not, I
252. agree to do so, recognizing that support from
253. loved ones and culturally relevant programs in
254. the custodial setting can be very important to a
255. person's rehabilitation . Although the Court's
256. recommendations are not always followed, because
257. placement is ultimately in the discretion of the
258. correctional authorities, I usually have no
259. difficulty in at least making the recommendation.
260. I have decided, in this case, not to make that
261. recommendation . I am not making a recommendation
262. either way. This, of course, does not mean that
263. the authorities will necessarily decide not to
264. keep Mr. Bouvier in a northern institution,
265. because I am sure they will take into
266. consideration his age, his culture, and the
267. family support he has in the NWT. The fact that
268. I am not endorsing the warrant of committal is
269. not determinative of theissue.
270. 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
271. geared to reducing his risk of re-offence need to
272. be the priority, as opposed to only dealing with
273. the alcohol issue, for instance.
274. Have I overlooked anything, Mr. Green?
275. MR. GREEN: I may have missed it, but I
276. don't know if Your Honour mentioned a DNA order.
277. THE COURT: I did miss it. Thank you for
278. reminding me. There will be a DNA order, as this
279. is a primary designated offence.

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| 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 dothat,
16. Your Honour.
17. MS. SEAMAN: Thank you, Your Honour.

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# 1 CERTIFICATE OF TRANSCRIPT

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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 21st day of July, 2017. 10
8. Certified Pursuant to Rule 723
9. of the Rules of Court 13

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1. Joanne Lawrence
2. Court Reporter

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