R. v. Bugghins, 2017 NWTSC 53

 S-1-CR2016-000098

 IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

 IN THE MATTER OF:

 HER MAJESTY THE QUEEN

 - vs. -

 CHRISTOPHER TED BUGGHINS

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 Transcript of the Reasons for Sentence by The Honourable

 Justice A. M. Mahar, at Yellowknife in the Northwest

 Territories, on May 9th A.D., 2017.

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 APPEARANCES:

 Mr. B. MacPherson: Counsel for the Crown

 Mr. J. Bran: Counsel for the Accused

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 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

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 1 THE COURT: I have before me a

 2 38-year-old Aboriginal offender who has pled

 3 guilty to a single count of sexual assault.

 4 He has four children.

 5 When he drinks, he poses a serious risk to

 6 the public.

 7 The sexual assault in this case involved

 8 the spouse of a friend of his who woke up to

 9 find Mr. Bugghins' hands under the sleeping

 10 bag she was sleeping in, trying to undo her

 11 pants.

 12 If he was someone without a criminal

 13 record, this offence would fall at the lower

 14 end of such offences for the consideration of

 15 the Court. But, Mr. Bugghins has five prior

 16 convictions for sexual assault, all of which

 17 occurred while he was highly intoxicated, all

 18 of which he apparently has either limited or

 19 no memory of; and, collectively, they indicate

 20 that Mr. Bugghins poses a serious risk to the

 21 community.

 22 Regardless of the place on the spectrum of

 23 possible sexual offences that this conduct

 24 actually falls, the Court is well aware that

 25 invasions of other people's dignity, personal

 26 space, and intimacy leave lasting effects that

 27 go well beyond the level of violence or

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 1 clinical intrusion involved, and I take that

 2 into account in the sentence.

 3 In terms of denunciation, the community

 4 will not tolerate this sort of behaviour no

 5 matter what difficulties offenders are faced

 6 with. We simply cannot tolerate it. On the

 7 other hand, guidance of the legislature and

 8 the Supreme Court of Canada in dealing with

 9 all offenders, and specifically with

 10 Aboriginal offenders, is that understanding

 11 and compassion can never disappear from the

 12 sentencing process in an effort to condemn the

 13 behaviour of an accused.

 14 I have before me an individual who was

 15 given up essentially at birth because his

 16 mother could not stop drinking. I am not

 17 going to diagnose him as having some impulse

 18 control problems as a result of this, but it

 19 would be rather surprising if he didn't.

 20 He was adopted by, it appears to have

 21 been, a lovely couple who, after they had

 22 raised their own kids, decided that they

 23 wanted to assist other children in giving them

 24 a good life. But Mr. Bugghins found himself

 25 from the age of five until the age of nine or

 26 ten, nine, being physically and sexually

 27 abused in that environment as well. Not by

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 1 his parents; his parents never knew. He was

 2 afraid to tell them.

 3 When we think about the trauma that one

 4 incident of sexual assault can bring to a

 5 victim, it is staggering to think how much

 6 damage was likely done to Mr. Bugghins by four

 7 or five years of abuse. So he is a victim.

 8 And one of the unfortunate difficulties of

 9 criminal court is that we are often confronted

 10 with victims who become offenders. Mr.

 11 Bugghins is one of those people.

 12 While I have spoken of denunciation, I

 13 will speak of deterrence although to me they

 14 are linked and people have to understand that

 15 there are consequences for this type of

 16 behaviour, even if they are not in the

 17 position to exercise that thought process when

 18 they occur. Because of the general matter of

 19 living in a civil society, we all have to

 20 understand that there are consequences for

 21 this kind of bad behaviour. There is likely

 22 no particularly deterrent effect for Mr.

 23 Bugghins. He does not want to commit these

 24 offences when he is sober. He does not want

 25 to drink, but he has a very difficult time

 26 staying away from it.

 27 The paramount concern of this Court in

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 1 dealing with Mr. Bugghins is protection of the

 2 public - he has to be sent away both in terms

 3 of the gravity of the offence in the context

 4 of his record and also just to keep everybody

 5 safe for a while. I believe that I can do

 6 that at the lower end of what the Crown

 7 attorney is recommending - three years. So

 8 the sentence will be three years.

 9 He will be given full credit for the

 10 381 days of pre-trial custody that he has

 11 served, and somebody will have to do the math

 12 for me because I can't subtract 381 from 730

 13 that quickly. But whatever remaining days

 14 there are, he will serve.

 15 The Court often makes reference to what we

 16 have come to call Gladue factors. There is an

 17 inequality of circumstance resulting from the

 18 impact of settler colonialism on the

 19 indigenous people of Canada, which resulted in

 20 fractured communities, social disintegration,

 21 and the sort of circumstances that we are

 22 dealing with here today.

 23 I want to try and assist Mr. Bugghins in

 24 never finding himself back in front of the

 25 Court. Because if he does, this sad story

 26 could end up much sadder and Mr. Bugghins

 27 could very well end up spending the rest of

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 1 his life in the penitentiary. At a certain

 2 point the protection of the public would call

 3 for the segregation of the person forever, if

 4 they unable to get to the bottom of why they

 5 do what they do. What gives me some hope

 6 about Mr. Bugghins is that he does not appear

 7 to be a significant risk when he is sober.

 8 Whatever demons he is carrying, through no

 9 fault of his own, appear to be problems that

 10 he can at the very least control when he is

 11 sober, so I intend to help him do that.

 12 At the conclusion of your sentence, you

 13 will be placed on probation for a period of

 14 three years. First, I will make some

 15 recommendations on the warrant of committal.

 16 It is recommended that you be considered

 17 for placement in an in-house or residential

 18 treatment program if such becomes available to

 19 you. I will make a similar recommendation on

 20 your probation order.

 21 You will be placed on probation for a

 22 period of three years.

 23 You are to abstain absolutely from the

 24 possession or consumption of alcohol or other

 25 intoxicants. You are to take counselling as

 26 directed. You are to report to Probation

 27 Services within three days of your release

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 1 and, after that, as directed, and frequently.

 2 You are to participate in any treatment

 3 programs that are found for you. You are to

 4 reside as directed, specifically with a view

 5 to assisting you in dealing with your alcohol

 6 problem.

 7 I am going to get to the mandatory orders

 8 in a moment, Mr. MacPherson. Are there any

 9 other conditions that you wanted to see on the

 10 probation order?

 11 MR. MacPHERSON: A no-contact condition, Your

 12 Honour.

 13 THE COURT: There will be no contact

 14 with the complainant, directly or indirectly,

 15 or her husband or spouse?

 16 MR. MacPHERSON: With the complainant, Your

 17 Honour.

 18 THE COURT: Just the complainant?

 19 MR. MacPHERSON: Yes.

 20 THE COURT: I said with the complainant

 21 and her spouse.

 22 MR. MacPHERSON: Yes, I understand.

 23 THE COURT: Just the complainant?

 24 MR. MacPHERSON: Just the complainant.

 25 THE COURT: There will be no contact

 26 directly or indirectly with the complainant.

 27 Mr. Bran, any suggestions?

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 1 You are to submit, upon request, to a

 2 breathalyzer demand by a police officer.

 3 And you are to inform the RCMP and the

 4 probation officer of your residence and be

 5 willing to present yourself at the door of

 6 your residence upon request by the RCMP. So

 7 make sure that you are staying sober.

 8 You will be placed in the Sex Offender

 9 Registry for life.

 10 A section 109 firearms order for a period

 11 of ten years.

 12 Do you hunt? I will make a recommendation

 13 that you be considered for a limited permit

 14 under s. 113. Any objection to that, Mr.

 15 MacPherson?

 16 MR. MacPHERSON: No, Your Honour.

 17 MR. BRAN: Thank you, Your Honour.

 18 THE COURT: Thank you.

 19 There will be a DNA order. Not that it

 20 hasn't already been taken, I will make a DNA

 21 order in case there is some problem.

 22 Mr. MacPherson, is there anything that you

 23 can think of that I have forgotten?

 24 MR. MacPHERSON: Nothing further, thank you.

 25 THE COURT: Mr. Bran?

 26 THE CLERK: Victim crime, sir?

 27 THE COURT: A victim crime surcharge of

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 1 $200; thank you, Madam Clerk. I will give you

 2 five years to pay that.

 3 Did you want to say something, Mr.

 4 Bugghins?

 5 THE ACCUSED: I did the calculation of my

 6 time. 257 comes up to be 385.

 7 THE COURT: 257?

 8 THE ACCUSED: 257 days at time and a half

 9 equals 385.

 10 THE COURT: 385 days? Do you have a

 11 calculator on your computer, Madam Clerk?

 12 THE CLERK: No, I don't, sir.

 13 THE COURT: Why don't we see if we can

 14 round this 389 days -- or sorry, not 389, 381

 15 days into months. Why don't we call that --

 16 months are longer than 30 days, average. But

 17 if we call them 30 days, we have got ten --

 18 call it 13 months. Does that work for you,

 19 Mr. MacPherson?

 20 MR. MacPHERSON: Yes, Your Honour.

 21 THE COURT: 13 months out of 36, leaves

 22 us with 23 months.

 23 THE CLERK: Thank you, sir.

 24 THE COURT: So the sentence is

 25 23 months.

 26 If there is nothing else, we can close

 27 court.

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 1 Mr. Bugghins, I really do hope that you

 2 get the help that you need because I don't

 3 want to see you back here.

 4 THE ACCUSED: Me neither, Your Honour.

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 7 Certified to be a true and

 accurate transcript pursuant

 8 to Rules 723 and 724 of the

 Supreme Court Rules,

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 14 Lois Hewitt,

 Court Reporter

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