

**IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES**

**IN THE MATTER OF:**

HER MAJESTY THE QUEEN

- v -

CALVIN GORDON VILLENEUVE

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Transcript of the Ruling on Bail Hearing delivered by The Honourable Justice A. Mahar, sitting in Fort Smith, in the Northwest Territories, on the 2nd day of June, 2017.

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**APPEARANCES:**

Ms. M. Zimmer: Counsel for the Crown  
Mr. J. Bran: 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*

1 THE COURT: Thank you, Mr. Bran.

2 I will likely edit this decision  
3 substantially. There is value in doing this  
4 sooner rather than later. I don't see any reason  
5 to adjourn, but I may wish to go beyond the usual  
6 editing for grammar, editing for minor matters,  
7 and edit more substantially for content. None of  
8 the editing will impact on the basic reasoning or  
9 the decision that I am now about to make.

10 This is an application by the Crown under  
11 Section 523 of the *Criminal Code* for the  
12 revocation of bail upon conviction of  
13 Mr. Villeneuve.

14 One of the first comments I want to make is  
15 with respect to the case law that was provided.  
16 There is apparently a limited amount of case law  
17 on this issue. We have been provided with case  
18 law substantially from the Ontario Superior Court  
19 where it is indicated that these sorts of  
20 applications in Superior Court are unusual.

21 I take the position that they are far from  
22 unusual in the Northwest Territories. Perhaps it  
23 is a function of the sorts of offences that we  
24 are dealing with. It is tragically too common  
25 that when the court is dealing with convictions,  
26 after trial specifically or especially jury  
27 trials, we are dealing with convictions for

1 offences of significant personal violence.

2 This case, dealing with a full intercourse  
3 sexual assault against an underaged complainant,  
4 is a crime of significant personal violence. It  
5 is a serious crime.

6 At this point Mr. Villeneuve has lost the  
7 presumption of innocence and he is now found  
8 guilty. Not just presumed guilty, he is found  
9 guilty until some further finding of the court.  
10 So he is found to be a serious sexual offender  
11 who is at this point untreated.

12 There is also the fact that, after being  
13 granted judicial interim release, Mr. Villeneuve  
14 committed three offences of breach of a court  
15 order. While I accept the defence position that  
16 the Crown knew about this all along and could  
17 have taken steps to place Mr. Villeneuve in  
18 custody, I do not find that argument compelling.  
19 What Mr. Villeneuve has shown, and I agree that  
20 it was earlier on in this process, he has shown  
21 that he is unable to obey court orders. And that  
22 was when he was facing the possibility of a trial  
23 as opposed to the possibility of what in this  
24 case is certain jail. Given the law in the  
25 Northwest Territories, frankly given the law in  
26 Canada, it would be almost incomprehensible that  
27 Mr. Villeneuve would receive anything other than

1 a significant period of jail. So that is what he  
2 is facing at this point.

3 It is not exactly the same as one of the  
4 cases we looked at where somebody was facing a  
5 mandatory minimum sentence of three years in  
6 jail, but it is a significant period of jail. As  
7 well, in terms of the strength of the Crown's  
8 case, I do accept the reasoning in the case law  
9 that suggests that a finding of guilt by a jury  
10 substantially increases the strength of the  
11 Crown's case. This is no longer an issue in  
12 which we are dealing with a presumption of  
13 innocence. The case has been tried and a  
14 decision has been rendered and he has been found  
15 guilty.

16 This case is not to be taken as unusual in  
17 that were I dealing with this matter solely on  
18 the basis of a conviction for this offence in the  
19 absence of a criminal record and in the absence  
20 of a specific criminal record dealing with  
21 offences after the issuance of judicial interim  
22 release, I would still keep him in custody. The  
23 fact of the finding of guilt is not the sole  
24 reason for doing that, but the strength of the  
25 Crown's case tied in with the significant  
26 seriousness of this offence and the need for the  
27 public not only to be protected, but to feel

1           protected, which is contemplated by the tertiary  
2           grounds, cry out for detention.

3           I am not suggesting that the onus in any way  
4           shifts. It is still up to the Crown to establish  
5           that detention is warranted. What I am  
6           suggesting is that in cases like this of  
7           significant personal violence the notion that  
8           this is an exceptional or unusual application  
9           does not apply in this jurisdiction.

10          So to sum up, some of the issues that I am  
11          considering are, one, the only factor cannot be  
12          the conviction; however, the strength of the  
13          Crown's case having been augmented by the finding  
14          of the jury; the seriousness of the offence which  
15          is significant; the virtual certainty of  
16          imprisonment for a significant period of time,  
17          all suggest that under the tertiary grounds  
18          detention be ordered.

19          With respect to the secondary grounds, the  
20          fact of a finding of guilt on a charge of  
21          significant personal violence puts the offender,  
22          now convict, in a very different position than  
23          the presumption of innocence would. This is not  
24          the same thing as saying that the fact of  
25          conviction mandates detention. What I am saying  
26          is that we now have before us, as I indicated  
27          earlier, an offender who has been found guilty of

1 a serious crime of violence and who has not  
2 received any remedial attention. That brings  
3 into issue the secondary ground.

4 As well, the breaches, which perhaps were  
5 not taken as seriously before a finding of guilt,  
6 indicate that this person could pose a  
7 significant risk to re-offend, especially given  
8 the fact that alcohol plays a part in his  
9 offending.

10 Given all those concerns under the secondary  
11 and tertiary grounds, I am finding that he must  
12 remain in custody.

13 Now in terms of a return date for sentence,  
14 we are looking at six weeks for the production of  
15 the report. I am going to recommend on the  
16 Warrant of Committal there will be Form 8 that  
17 all efforts be made to keep him in Fort Smith.  
18 Chances are that the writer of the report is  
19 going to be acting in Fort Smith as well as going  
20 to be getting in contact with the family.

21 Now, Mr. Bran, I will leave it up to you  
22 actually.

23 So the choice is between here or Hay River  
24 or Yellowknife. Where would your suggestion be?

25 MR. BRAN: My client wants to stay here.  
26 I'm not sure in all reality it's going to be  
27 practical -- it's going to be even permissible

1 given that his father is a staff member at the  
2 local correctional centre, but his preference is  
3 here. So I'll -- I'll leave the judicial  
4 recommendation as it is. As I understand from  
5 media reports, they are rarely followed in any  
6 event.

7 THE COURT: I think I am just going to  
8 leave the recommendation out then, Mr. Bran.  
9 Thank you.

10 THE COURT CLERK: Do we have a date for the  
11 Presentence Report?

12 THE COURT: Well, let us pick a date to go  
13 back to court and at least address it. Chances  
14 are we are going to be doing this in Yellowknife  
15 in any event. You have got a designation of  
16 counsel, right, Mr. Bran? He doesn't have to be  
17 there for the first date just to speak to the  
18 setting of the date.

19 MR. BRAN: I'm not sure I do have -- if  
20 there is a designation on file, but if there is  
21 not and if he is here, he could appear by video.

22 THE COURT: All right. Why do not we put  
23 it to a criminal chambers approximately six weeks  
24 from now to see if we have got the report. Then  
25 I will order that the report be prepared for that  
26 date.

27 MS. ZIMMER: Yes, Your Honour. I just

1 wanted to put on the record that the family and  
2 the victim do have an interest and they would  
3 like to be present for the sentencing. For that  
4 reason, they would prefer that it did occur here  
5 as opposed to in Yellowknife.

6 THE COURT: It poses a significant  
7 challenge. I think I have overused that word  
8 this morning, but it poses a real challenge for  
9 us because of the amount of work that we are  
10 trying to deal with with court. It is a  
11 difference between two days and one morning. So  
12 we will see. I will make a note of that.

13 We will speak to the matter next in  
14 Yellowknife, and I would ask you, Ms. Zimmer, if  
15 you or one of your colleagues could at least  
16 remind the court at that point in time of the  
17 wishes of the complainant, or the victim.

18 MS. ZIMMER: Yes, Your Honour.

19 THE COURT: Very good. So the next date  
20 will be in Yellowknife and it is simply to speak  
21 to a date. It is not the actual date.

22 Do you have a date six weeks from now?  
23 Madam Clerk?

24 THE COURT CLERK: I don't have a calendar, sir.

25 MR. BRAN: Your Honour, perhaps July the  
26 3rd. It's a Monday. I think that's five weeks,  
27 but the following two weeks I'm not in



1           Yellowknife. I'm --

2           MS. ZIMMER:                    The 3rd is a holiday I  
3           believe. That's the long weekend.

4           THE COURT:                    It is the Canada Day weekend.

5           MR. BRAN:                         Well, then that's not going to  
6           work.

7           THE COURT:                    Well, we are looking for about  
8           six weeks out in any event.

9           MR. BRAN:                         Perhaps the 24th? It's seven  
10          weeks.

11          THE COURT:                    All right. July 24th, 10  
12          o'clock, to set a date; and I will order that the  
13          Presentence Report be prepared before that date.

14          THE COURT CLERK:            Thank you, Your Honour.

15          THE COURT:                    Okay. I will order a Form 19  
16          for that date, Mr. Bran. If you are in a  
17          position to waive the need for him to come, you  
18          can just let us know ahead of time, let the court  
19          services know.

20                 So there is a Form 8 with respect to the  
21          detention and a Form 19 with respect to the  
22          return date.

23          THE COURT CLERK:            Thank you, sir.

24          THE COURT:                    Thank you.

25          THE COURT CLERK:            We're done.

26          THE COURT:                    If there is nothing further,  
27          we will close court.

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ADJOURNED TO JULY 24, 2017, AT 10:00 A.M.

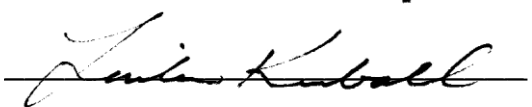
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**CERTIFICATE OF TRANSCRIPT**

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 11th day of June, 2017.

Certified Pursuant to Rule 723  
Of the Rules of Court

  
Linda Kimball  
Court Reporter