*R. v. Villeneuve,* 2017 NWTSC 56 **S-1-CR-2015-000148 IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES**

# IN THE MATTER OF:

**HER MAJESTY THE QUEEN**

**- v -**

**CALVIN GORDON VILLENEUVE**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** 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
28. offences of significant personal violence.
29. This case, dealing with a full intercourse
30. sexual assault against an underaged complainant,
31. is a crime of significant personal violence. It
32. is a serious crime.
33. At this point Mr. Villeneuve has lost the
34. presumption of innocence and he is now found
35. guilty. Not just presumed guilty, he is found
36. guilty until some further finding of the court.
37. So he is found to be a serious sexual offender
38. who is at this point untreated.
39. There is also the fact that, after being
40. granted judicial interim release, Mr. Villeneuve
41. committed three offences of breach of a court
42. order. While I accept the defence position that
43. the Crown knew about this all along and could
44. have taken steps to place Mr. Villeneuve in
45. custody, I do not find that argument compelling.
46. What Mr. Villeneuve has shown, and I agree that
47. it was earlier on in this process, he has shown
48. that he is unable to obey court orders. And that
49. was when he was facing the possibility of a trial
50. as opposed to the possibility of what in this
51. case is certain jail. Given the law in the
52. Northwest Territories, frankly given the law in
53. Canada, it would be almost incomprehensible that
54. Mr. Villeneuve would receive anything other than
55. a significant period of jail. So that is what he
56. is facing at this point.
57. It is not exactly the same as one of the
58. cases we looked at where somebody was facing a
59. mandatory minimum sentence of three years in
60. jail, but it is a significant period of jail. As
61. well, in terms of the strength of the Crown's
62. case, I do accept the reasoning in the case law
63. that suggests that a finding of guilt by a jury
64. substantially increases the strength of the
65. Crown's case. This is no longer an issue in
66. which we are dealing with a presumption of
67. innocence. The case has been tried and a
68. decision has been rendered and he has been found
69. guilty.
70. This case is not to be taken as unusual in
71. that were I dealing with this matter solely on
72. the basis of a conviction for this offence in the
73. absence of a criminal record and in the absence
74. of a specific criminal record dealing with
75. offences after the issuance of judicial interim
76. release, I would still keep him in custody. The
77. fact of the finding of guilt is not the sole
78. reason for doing that, but the strength of the
79. Crown's case tied in with the significant
80. seriousness of this offence and the need for the
81. public not only to be protected, but to feel
82. protected, which is contemplated by the tertiary
83. grounds, cry out for detention.
84. I am not suggesting that the onus in any way
85. shifts. It is still up to the Crown to establish
86. that detention is warranted. What I am
87. suggesting is that in cases like this of
88. significant personal violence the notion that
89. this is an exceptional or unusual application
90. does not apply in this jurisdiction.
91. So to sum up, some of the issues that I am
92. considering are, one, the only factor cannot be
93. the conviction; however, the strength of the
94. Crown's case having been augmented by the finding
95. of the jury; the seriousness of the offence which
96. is significant; the virtual certainty of
97. imprisonment for a significant period of time,
98. all suggest that under the tertiary grounds
99. detention be ordered.
100. With respect to the secondary grounds, the
101. fact of a finding of guilt on a charge of
102. significant personal violence puts the offender,
103. now convict, in a very different position than
104. the presumption of innocence would. This is not
105. the same thing as saying that the fact of
106. conviction mandates detention. What I am saying
107. is that we now have before us, as I indicated
108. earlier, an offender who has been found guilty of
109. a serious crime of violence and who has not
110. received any remedial attention. That brings
111. into issue the secondary ground.
112. As well, the breaches, which perhaps were
113. not taken as seriously before a finding of guilt,
114. indicate that this person could pose a
115. significant risk to re-offend, especially given
116. the fact that alcohol plays a part in his
117. offending.
118. Given all those concerns under the secondary
119. and tertiary grounds, I am finding that he must
120. remain in custody.
121. Now in terms of a return date for sentence,
122. we are looking at six weeks for the production of
123. the report. I am going to recommend on the
124. Warrant of Committal there will be Form 8 that
125. all efforts be made to keep him in Fort Smith.
126. Chances are that the writer of the report is
127. going to be acting in Fort Smith as well as going
128. to be getting in contact with the family.
129. Now, Mr. Bran, I will leave it up to you
130. actually.
131. So the choice is between here or Hay River
132. or Yellowknife. Where would your suggestion be?
133. MR. BRAN: My client wants to stay here.
134. I'm not sure in all reality it's going to be
135. practical -- it's going to be even permissible
136. given that his father is a staff member at the
137. local correctional centre, but his preference is
138. here. So I'll -- I'll leave the judicial
139. recommendation as it is. As I understand from
140. media reports, they are rarely followed in any
141. event.
142. THE COURT: I think I am just going to
143. leave the recommendation out then, Mr. Bran.
144. Thank you.
145. THE COURT CLERK: Do we have a date for the
146. Presentence Report?
147. THE COURT: Well, let us pick a date to go
148. back to court and at least address it. Chances
149. are we are going to be doing this in Yellowknife
150. in any event. You have got a designation of
151. counsel, right, Mr. Bran? He doesn't have to be
152. there for the first date just to speak to the
153. setting of the date.
154. MR. BRAN: I'm not sure I do have -- if
155. there is a designation on file, but if there is
156. not and if he is here, he could appear by video.
157. THE COURT: All right. Why do not we put
158. it to a criminal chambers approximately six weeks
159. from now to see if we have got the report. Then
160. I will order that the report be prepared for that
161. date.
162. 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

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| --- | --- | --- |
| 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 |

1. for that date, Mr. Bran. If you are in a
2. position to waive the need for him to come, you
3. can just let us know ahead of time, let the court
4. services know.
5. So there is a Form 8 with respect to the
6. detention and a Form 19 with respect to the
7. return date.
8. THE COURT CLERK: Thank you, sir.
9. THE COURT: Thank you.
10. THE COURT CLERK: We're done.
11. THE COURT: If there is nothing further,
12. we will close court.

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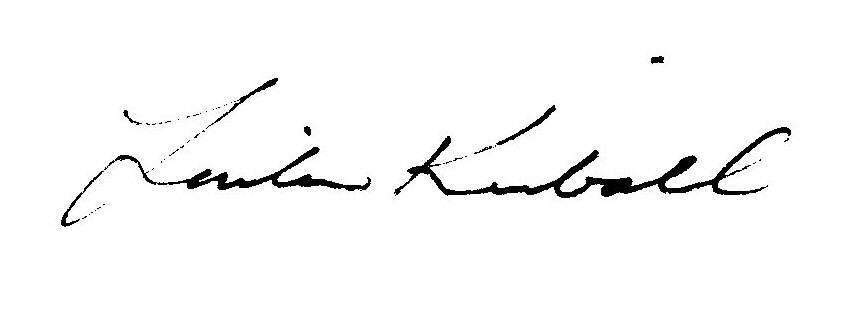
2 **ADJOURNED TO JULY 24, 2017, AT 10:00 A.M.**

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# 5 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 11th day of June, 2017. 14
8. Certified Pursuant to Rule 723
9. Of the Rules of Court 17

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1. Linda Kimball
2. Court Reporter

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