R. v. Simpson, 2017 NWTSC 72 S-1-CR-2016-000113

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

SAMUEL SIMPSON

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Transcript of the Reasons for Sentence delivered by The

Honourable Justice K. M. Shaner, sitting in Yellowknife, in

the Northwest Territories, on the 4th day of October, 2017.

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APPEARANCES:

Ms. A. Paquin: Counsel for the Crown

Mr. J. Bran: Counsel for the Accused

(Charge under s. 249(3) of the Criminal Code)

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1 THE COURT: On September 7th, 2017, Samuel

2 Simpson pleaded guilty to the following charge:

3 On or about the 25th day of July, 2016, between

4 the Hamlet of Behchoko and the City of

5 Yellowknife, in the Northwest Territories, did

6 operate a motor vehicle in a manner that was

7 dangerous to the public and thereby caused bodily

8 harm to Alice Zoe-Chocolate, contrary to Section

9 249(3) of the Criminal Code.

10 This is a serious offence which carries with

11 it a maximum sentence of ten years' imprisonment.

12 After hearing the facts read in court on

13 September 28th, 2017, I was satisfied that the

14 elements of the offence had been made out and I

15 directed that a conviction be entered.

16 The facts can be summarized as follows.

17 Mr. Simpson and Ms. Zoe-Chocolate were in a

18 romantic relationship which was described in the

19 agreed facts as a boyfriend-girlfriend

20 relationship.

21 On July 25th, 2016, they were in a cabin on

22 Highway 3 with two other people. The cabin was

23 located between Yellowknife and Behchoko.

24 Ms. Zoe-Chocolate and Mr. Simpson got into

25 an argument which became physical.

26 It was approximately 6:30 in the morning.

27 Ms. Zoe-Chocolate left the cabin and proceeded on

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1 foot to the highway where she flagged down a car

2 headed towards Yellowknife. The car was being

3 driven by Mr. Nelson Football who was headed to

4 work to a camp on the highway. Ms. Zoe-Chocolate

5 got into his car and Mr. Football started driving

6 again in the direction of Yellowknife.

7 Meanwhile, Mr. Simpson left the cabin and

8 got into his vehicle, a Jeep Cherokee. He

9 started driving down the highway in the direction

10 of Behchoko toward Mr. Football's oncoming car.

11 Mr. Football was concerned Mr. Simpson would hit

12 him, so he stopped.

13 Mr. Simpson stopped his vehicle, got out and

14 approached the driver's side of Mr. Football's

15 car. The window was down a few inches.

16 Mr. Simpson yelled at Ms. Zoe-Chocolate to get

17 out of the car. Ms. Zoe-Chocolate asked

18 Mr. Football to give her a ride to his workplace

19 because she did not wish to go with Mr. Simpson.

20 Mr. Football closed his window. Mr. Simpson

21 pushed on the window with both hands.

22 Mr. Football drove away with

23 Ms. Zoe-Chocolate in the car. Mr. Simpson got

24 back into his vehicle and followed. He chased

25 Mr. Football's vehicle and caught up to it after

26 about one minute.

27 Mr. Simpson slammed his Jeep into the back

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1 of Mr. Football's vehicle. This caused

2 Mr. Football to lose control of his car and go

3 off the road. Mr. Football's car spun around and

4 flipped into the bush. It came to a rest upside

5 down in a swamp beside the highway.

6 Mr. Football was able to undo his seatbelt

7 and get out of the car. He then helped

8 Ms. Zoe-Chocolate to get out of the car.

9 Mr. Simpson drove by, but did not stop at

10 that scene. He just kept driving.

11 The events were seen by Rene Baumgarten who

12 was driving to Behchoko. He saw Mr. Simpson's

13 vehicle chase Mr. Football's car at a high rate

14 of speed. He also saw that Mr. Football's car

15 was in the proper lane but Mr. Simpson's vehicle

16 was straddling the centreline. Because of this,

17 Mr. Baumgarten pulled over on the side of the

18 road and stopped. Mr. Baumgarten continued to

19 watch the two vehicles and he saw Mr. Simpson's

20 Jeep hit Mr. Football's car.

21 Mr. Baumgarten turned his vehicle around and

22 he followed Mr. Simpson's vehicle. He passed the

23 accident scene, but seeing that Mr. Football was

24 able to get out of the car, he did not stop right

25 away. Shortly after, though, he turned around

26 and returned to the accident scene.

27 Mr. Baumgarten and Mr. Football then saw

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1 Mr. Simpson drive past the accident scene again.

2 Mr. Simpson did not stop.

3 Mr. Baumgarten drove Mr. Football and

4 Ms. Zoe-Chocolate to his work camp. An ambulance

5 came and took both of them to the Health Centre

6 in Behchoko. After that, Ms. Zoe-Chocolate was

7 taken to Stanton Hospital in Yellowknife.

8 Ms. Zoe-Chocolate was released from the hospital

9 the same day.

10 Mr. Football had a scratched leg, a backache,

11 and a stiff neck as a result of the accident.

12 Ms. Zoe-Chocolate had pain almost everywhere

13 in her body. She had a bruise at her hip area

14 where the seatbelt had passed and she had a

15 burning sensation where she had contact with the

16 seatbelt. She had scratches to her knees, her

17 arms, and her head. She had lumps all over her

18 head and scratches and bruising on her elbow.

19 She required pain medication.

20 Mr. Baumgarten reported the incident to an

21 RCMP officer. Constable Ryan arrived at the

22 crash scene and took pictures, which form part of

23 the agreed facts. Constable Ryan later

24 discovered Mr. Simpson's vehicle in the parking

25 lot at the Behchoko cemetery. Mr. Simpson was

26 located at a house in Behchoko a little while

27 later. He was intoxicated. There is no

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1 suggestion that he was intoxicated when he was

2 driving earlier in the day, however.

3 The pictures of the accident scene show tire

4 skid marks where Mr. Football's car left the road

5 and where the car came to a stop some distance

6 from the road. The car is upside down, the

7 windows at the rear of the car are broken, and

8 the back of the car is smashed.

9 Mr. Simpson's vehicle is shown with damage

10 to the front end towards the passenger side.

11 Both Mr. Simpson and his lawyer provided

12 this Court with information yesterday about

13 Mr. Simpson's background. I am grateful for this

14 because it did enable me to gain insight into

15 Mr. Simpson's background and insight into who he

16 is as a person.

17 Mr. Simpson is 58 years old and he is a

18 Tlicho citizen. He grew up in Wekweeti, speaking

19 exclusively Tlicho and did not learn English

20 until he was in his teens or early 20s. He has

21 lived a very traditional lifestyle. By some act

22 of grace, he was not forced to attend residential

23 school. He did not attend government-run day

24 school either. As such, he does not have a

25 formal education as that term is commonly used,

26 but it is fair to say, based on what I heard from

27 both Mr. Simpson and his counsel, that he is

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1 nevertheless a highly educated man.

2 He is very skilled at hunting and trapping,

3 having learned these skills from his own father

4 and then continuing on his own in his teenage

5 years and as an adult. He is also a qualified

6 heavy equipment operator, and he has worked for a

7 diamond mine for many years before taking early

8 retirement.

9 Before the events that bring him to court

10 today occurred, he was working for various mining

11 companies in bear and other wildlife management.

12 Mr. Simpson is a widower. His wife died of

13 cancer in 2014. He has two children and he has

14 grandchildren.

15 Mr. Simpson said yesterday that he is sorry

16 for the harm that he caused. He also said that

17 he has thought a great deal about what happened

18 that day. He has trouble sleeping because of it.

19 I understood him to say that he feels true

20 remorse, that he realizes the harm he caused and

21 that he recognizes what he did was wrong.

22 Mr. Simpson has a very limited and dated

23 criminal record. It contains three convictions

24 for causing bodily harm in 1983, and an assault

25 conviction in 1985 as well as a breach of

26 probation, and an impaired driving conviction in

27 2001. It is also noted that he breached his

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1 recognizance with respect to this charge.

2 I also gained insight into Mr. Simpson and

3 who he is from the three letters of support. One

4 of those letters was written by Ms. Zoe-Chocolate.

5 She makes many positive comments about

6 Mr. Simpson and the support that he provided her

7 and her children when they were together. She

8 says he is a helper in the community and a good

9 provider for his children and grandchildren.

10 One puzzling comment in her letter, however,

11 is that she says she exaggerated in what she told

12 the police about what happened that day and that

13 she made a false statement. She also says she

14 does not remember what happened that day. I draw

15 no conclusions about what motivated

16 Ms. Zoe-Chocolate to make that statement. But,

17 there are two other witnesses to the crash, being

18 Mr. Baumgarten and Mr. Football, and there are

19 pictures of the crash site, so Ms. Zoe-Chocolate's

20 statement does not make me question the truth of

21 the facts that were agreed on. That said, it is

22 clear that she cares very much for Mr. Simpson

23 and she holds him in high regard.

24 I also understand, or I assume from her

25 comments in her letter and her Victim Impact

26 Statement that she has been able to come to terms

27 with this very terrifying ordeal.

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1 Two other letters of support came to court

2 as well. One is from the Senior Administrative

3 Officer of the Tlicho Community Government in

4 Wekweeti, Mr. Moretti. The letter from

5 Mr. Moretti says in part:

6 Mr. Samuel Simpson is still

grieving for the loss of his wife

7 that passed away a few years ago.

He was also supporting his

8 daughter financially when he was

working so he could help his

9 grandchildren. He also takes

medication for health reasons.

10 The family feels that if given a

lesser sentence, he could prove to

11 be a good citizen, father and

brother to his family and friends.

12

13 The letter from his family and friends shows

14 a hardworking, helpful person who was a dedicated

15 husband and a supportive and caring father and

16 grandfather. Importantly, it states that his

17 family and friends are there to support him.

18 The Crown and defence are very far apart in

19 what each thinks is an appropriate sentence. The

20 Crown wants a sentence of three years in prison,

21 a five- to seven-year driving prohibition, an

22 order for DNA, and a ten-year firearms

23 prohibition under Section 109. The Section 109

24 is mandatory because the victim in this case was

25 Mr. Simpson's intimate partner. Defence counsel

26 suggests a custodial sentence, a prison sentence,

27 of nine months is appropriate, and he also

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1 suggests that probation would be a reasonable

2 option.

3 The range of sentences imposed in dangerous

4 driving cases is very wide. This is shown in the

5 cases that both the Crown and the defence counsel

6 gave to me during submissions.

7 I am not going to summarize all of the cases

8 in these reasons, but I have read and considered

9 each of the cases which was submitted and I note

10 the following that emerges: Denunciation and

11 deterrence are the primary sentencing objectives

12 for this offence and others like it.

13 The two most important goals in sentencing

14 in this kind of an offence are to keep the

15 general public and the offender themselves from

16 doing it again and to denounce or portray

17 society's disapproval of this kind of conduct.

18 The types and seriousness of the injury to

19 the victims influences sentence. The more

20 serious the injury, the longer the sentence.

21 In the case of R. v. Shular, 2013 ABPC 268,

22 2013 CarswellAlta 2013; aff'd 2014 ABCA 241, 2014

23 CarswellAlta 1237; the offender was sentenced to

24 concurrent sentences of four and six years for

25 two counts of criminal negligence causing bodily

26 harm. One of the victims suffered a traumatic

27 brain injury and two broken legs.

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1 In R. v. Balcha, 2004 CarswellOnt 1152, the

2 offender hit the victim with his car and then

3 backed over him. The victim had a dislocated

4 jaw, two broken ribs, a sprained ankle, a

5 punctured lung, a broken nose, and broken

6 cheekbones. He needed to be in the hospital for

7 nine days and he required ten months of

8 rehabilitation treatment. The offender was

9 sentenced to two years less a day in jail and

10 there was a one-year driving prohibition.

11 From the Yukon there is a case called R. v.

12 Kloepfer, 2016 YKSC 56. The offender drove his

13 truck into an "S" shaped curve on a road.

14 He wound up hitting one victim in the

15 shoulder with the side mirror of his truck and

16 then sideswiping another victim, causing a back

17 injury. When he came upon the people that he

18 hit, he accelerated. He went faster. He then

19 left the scene of the accident. The offender was

20 sentenced to five months in jail followed by a

21 two-year driving prohibition.

22 In R. v. Modeste, 2012 NWTSC 16, 2012

23 CarswellNWT 22, the offender hit the victim with

24 a skidoo as the victim was walking away. The

25 victim was flipped into the air and fell on the

26 ground and bruised his forehead and broke his

27 leg.

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1 Mr. Modeste was sentenced to 17 months of

2 jail and one-year driving prohibition.

3 The circumstances of the offence itself are

4 influential in the sentence. For example, in the

5 Shular case, there was a long chase by two

6 vehicles. Among other things, the two vehicles

7 boxed in the victim's vehicle on the road. The

8 Court, in that case, described it as a "sustained

9 hunt". The Court also concluded that the

10 offender had a high degree of moral

11 blameworthiness. By contrast, in Kloepfer, the

12 dangerous driving was for a short period of time,

13 and even though the offender was considered to

14 have a high degree of responsibility, his

15 sentence was under a year.

16 Finally, courts are influenced by varying

17 aggravating and mitigating circumstances that are

18 unique to each person's case.

19 Driving is a privilege. People who use our

20 roads and highways must have confidence that

21 other people drive in a way that is safe. There

22 must be a clear message sent to those who do not

23 comply with the proper rules of the road that

24 this type of conduct will not be tolerated.

25 There is too much at risk. And so in this type

26 of offence, jail time is usually imposed.

27 In this case it is very lucky that everyone

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1 involved, Ms. Zoe-Chocolate, Mr. Football,

2 Mr. Baumgarten, and Mr. Simpson, did not suffer

3 any permanent injuries, or even worse. A wrecked

4 car can be replaced with money and bruises can

5 heal, but other injuries or losses are not so

6 easily overcome.

7 Mr. Simpson's responsibility in this

8 situation is very high. He acted without thought

9 and without regard for the safety of Mr. Football

10 and Ms. Zoe-Chocolate and without regard for the

11 safety of the drivers and other occupants of

12 other vehicles on the highway, like

13 Mr. Baumgarten. Any reasonable person would know

14 that ramming a car on a highway, even without

15 going faster than the speed limit, would result

16 in some type of car accident, and such a person

17 would also know that there would be great

18 potential for injury or even death.

19 It is also aggravating that Mr. Simpson

20 passed by the accident scene not once, but twice

21 and he never stopped to see if the people were

22 all right.

23 This being said, there are many reasons to

24 exercise restraint in this case. While I do not

25 wish to imply that Ms. Zoe-Chocolate did not

26 suffer harm, her injuries were relatively minor

27 compared to those of victims in the other cases

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1 that I talked about here. That supports a

2 sentence at the lower end of the range.

3 There are also a number of mitigating

4 factors. Mr. Simpson pled guilty. I know it

5 came after a preliminary inquiry and not at the

6 first opportunity, but, still, it came well

7 before trial.

8 Even though Mr. Simpson has a criminal

9 record, it is very old and it is almost entirely

10 irrelevant. That does not make it a mitigating

11 factor, but because of the very productive and

12 peaceful life that Mr. Simpson has led, the

13 criminal record does not concern me. Mr. Simpson

14 has led a life characterized mostly by good

15 conduct, and this suggests that Mr. Simpson is

16 someone who is not likely to reoffend. It also

17 suggests that what happened here, though very,

18 very serious, was out of character.

19 I was struck by the degree of remorse that

20 Mr. Simpson expressed when he made his own

21 submissions yesterday. He said he was sorry. He

22 said that he has given a great deal of thought to

23 what he has done.

24 Mr. Simpson also has support from his

25 community, his friends and family. While that is

26 not a mitigating factor in the classic sense, I

27 view it as very important. Mr. Simpson has a

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1 good support system and that will help him in his

2 rehabilitation.

3 I accept that proportionality is always the

4 overriding sentencing principle. What that means

5 is that the punishment must be proportionate to

6 Mr. Simpson's responsibility for this crime.

7 Restraint continues to be important, too, and

8 this is found in Section 718.2(d) and (e) of the

9 Criminal Code. Section 718.2(d) provides that an

10 offender should not be deprived of liberty if

11 less restrictive punishment may be appropriate in

12 the circumstances. Section 718.2(e) provides

13 that all other available punishments beside

14 imprisonment that are reasonable and consistent

15 with the harm done to the victims should be

16 considered for all offenders but especially

17 indigenous offenders.

18 The purpose of Section 718.2(e) is, of

19 course, well established, and that is it is to

20 address the over-representation of indigenous

21 people in our prisons. Even though when the

22 Court is asked to apply 718.2(e) it is often in

23 the context of considering systemic Gladue

24 factors, that is not a requirement and, in my

25 view, it is something to be applied in the case

26 of all indigenous offenders.

27 In all of the circumstances, I find that the

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1 penalty the Crown is seeking is excessive. I

2 also recognize, though, that the Crown came to

3 court and made its submissions without the

4 benefit of knowing very much about Mr. Simpson,

5 there being no pre-sentence report.

6 I also realize that the Crown was

7 prosecuting a very serious offence and that there

8 were some aggravating circumstances.

9 The injuries could have been far more

10 serious and, in fact, death could have easily

11 resulted from what happened.

12 Again, though, having regard to all of the

13 principles and objectives of sentencing, it would

14 be unjust to sentence Mr. Simpson to a

15 penitentiary term.

16 This Court can send a message of

17 denunciation and deterrence, both general and

18 specific, with a much shorter period of custody,

19 a period of probation, and a driving prohibition.

20 All of these things are punitive. They restrict

21 freedom. They restrict movement, especially for

22 someone who lives in a rural area like

23 Mr. Simpson. That Mr. Simpson's ability to have

24 and use a firearm is going to be restricted in a

25 community where hunting, trapping and being on

26 the land remain such important and integral parts

27 of life will also have a deterrent effect, both

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1 specifically and generally.

2 Mr. Simpson, can you please stand up.

3 Mr. Simpson, I sentence you to a period of

4 incarceration of 300 days, which is approximately

5 ten months. This will be followed by probation

6 for one year and a driving prohibition for one

7 year to take effect, both of these, upon your

8 release. You can sit down.

9 Mr. Simpson, as of today, has been on remand

10 for 197 days.

11 You will be credited at a rate of 1.5 days

12 for each day served, which results in a total of

13 295.5 days, and that will be deducted from his

14 sentence. So that will leave you with 4.5 days

15 until the expiration of the warrant.

16 The probation order will contain a number of

17 conditions that I am going to explain now, and,

18 Mr. Bran, I will just ask that afterwards perhaps

19 you and Ms. Wood can go over them with

20 Mr. Simpson.

21 You will keep the peace and be of good

22 behaviour. You will not communicate directly or

23 indirectly with Nelson Football or Rene

24 Baumgarten without their a consent and that

25 consent must be given in writing.

26 With respect to Ms. Zoe-Chocolate, I am not

27 going to make an order restricting communication

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1 with her, and this is because she expressed

2 unequivocally in her letter of support, as well

3 as in her Victim Impact Statement, that she

4 wishes to have contact with Mr. Simpson, and so,

5 in my view, imposing this condition would be

6 inappropriate.

7 You will have to appear in court if you are

8 required to do so, and you have to report to a

9 probation officer within a week of your release

10 and then, after that, as directed by the

11 probation officer. You will, as I said, be

12 subject to a driving prohibition for one year.

13 With respect to the firearm prohibition

14 under Section 109 of the Criminal Code, it is

15 mandatory and it will run for ten years. I am

16 satisfied, however, that Mr. Simpson is a

17 subsistence hunter who requires a firearm to hunt

18 and trap for sustenance and that he uses his

19 firearm for employment, and, accordingly, I will

20 order under Section 113(1) of the Criminal Code

21 that the Chief Firearms Officer or Registrar, as

22 the case may be, may authorize Mr. Simpson to

23 have a firearm for the purposes of hunting or

24 employment.

25 In making this order, I have considered

26 Mr. Simpson's criminal record. Specifically, it

27 contains no weapons offences and the violent

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1 offences on it are all over 30 years old. I

2 recognize, again, that the offence of which

3 Mr. Simpson has been convicted is a very serious

4 one; however, it is one for which he has accepted

5 responsibility. I also note that Mr. Simpson has

6 had and used firearms for many years, since he

7 was very young, and in all of those years, it

8 appears that he used his firearms with the

9 appropriate care and respect.

10 It should be noted that although I can make

11 this order, the Chief Firearms Officer or the

12 Registrar, as the case may be, may feel that

13 additional conditions should be imposed on the

14 use of the firearm, and this order does not

15 restrict them in imposing what they consider

16 appropriate conditions.

17 Finally, I decline to grant the DNA order

18 that has been requested by the Crown. This is a

19 secondary designated offence in the Criminal Code

20 and so the order is not mandatory. In my view,

21 having regard to the circumstances of the

22 offence, it would be an unnecessary and serious

23 intrusion upon Mr. Simpson's personal integrity.

24 Mr. Simpson has an insignificant criminal record

25 and he has for the most part led an exemplary

26 life. I see no connection between this offence

27 and the need to take bodily fluids and place them

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1 in a databank. I see no way that that would be

2 useful and it is not in the interests of justice.

3 .................................

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6 Certified Pursuant to Rule 723

of the Rules of Court

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Jane Romanowich, CSR(A)

10 Court Reporter

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