

R v Betsidea, 2018 NWTSC 8

S-1-CR2016000088

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- vs. -

ANTHONY BETSIDEA

Transcript of the Reasons for Sentence by The Honourable
Justice K. M. Shaner, at Yellowknife in the Northwest
Territories, on January 12th A.D., 2018.

APPEARANCES:

Ms. J. Scott: Counsel for the Crown

Mr. L. Moore: Counsel for the Accused

Charge under s. 348(1)(b) and s. 271 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

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1 THE COURT: On November 6th, 2017,
2 following a trial by judge alone, Anthony
3 Betsidea was found guilty of two charges:
4 First, breaking and entering with intent
5 contrary to section 348(1)(a) of the Criminal
6 Code; and secondly, sexual assault contrary to
7 section 271 of the Criminal Code.

8 These proceedings are subject to a
9 publication ban with respect to information
10 that would identify the victim. Accordingly,
11 when I am talking about the victim in this
12 case and in these reasons, I will refer to her
13 as "the victim" rather than by her initials or
14 her name.

15 I have had an opportunity to hear from
16 Crown and defence counsel with respect to the
17 length of the sentence that they feel would be
18 appropriate.

19 I have also read and considered the
20 pre-sentence report that was prepared by
21 Probation Services on January 9th, 2018.
22 Defence counsel's submission and the
23 pre-sentence report were particularly helpful
24 to me with respect to learning about Mr.
25 Betsidea.

26 And finally, I have considered the Victim

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1 victim and her mother and which Ms. Scott read
2 out in court yesterday.

3 Sentencing is an individualized process.
4 The sentencing objectives are set out in the
5 Criminal Code and they apply with varying
6 degrees of emphasis depending on the nature of
7 the offence and the circumstances of it and
8 the offender's circumstances. They include
9 denunciation and deterrence, both specific and
10 general, rehabilitation, reparation, and the
11 promotion of a sense of responsibility in
12 offenders.

13 In both break and enter with intent and
14 sexual assault the key objectives, and those
15 which attract the most emphasis, are
16 denunciation and deterrence. A sentence must
17 be imposed in accordance with certain
18 principles as well and these, too, are found
19 in the Criminal Code.

20 The fundamental principle of sentencing is
21 proportionality. That is, the sentence must
22 reflect the seriousness of the offence and the
23 degree of responsibility of the offender.

24 Other principles are parity; that is, that
25 similar sentences must be imposed on similar
26 offenders for similar crimes; and totality and

27 restraint.

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1 Finally, when the Court is imposing
2 sentence on an Indigenous offender, it must
3 consider all available sanctions other than
4 prison which are reasonable and consistent
5 with the harm done to the victim and the
6 community.

7 The last principle must be applied with
8 regard to what are referred to as Gladue
9 factors in an offender's background. Those
10 are systemic factors such as intergenerational
11 trauma, poverty, addiction, food and housing
12 insecurity, substandard education, and others
13 which are all too often found in the
14 backgrounds of Indigenous offenders. The
15 stated purpose of that is to address the
16 disproportionately high number of Indigenous
17 offenders in the Canadian prison system.

18 The Crown in this case is seeking a global
19 sentence in the range of two and a half to
20 three years. Defence counsel argues that
21 these crimes together attract a more lenient
22 sentence in the range of 16 to 18 months.

23 The facts leading to the convictions were
24 set out in my reasons for decision that I gave
25 on November 6th, 2017, but I will summarize
26 them here for the sake of context.

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1 the victim, a young Dene woman, was sleeping
2 on a couch in the livingroom of her house in
3 Déline. She lived alone and when she went to
4 sleep, there was no one else in the home. The
5 door to the house was broken at the time and
6 it could neither be shut all the way nor
7 locked. The victim tried to make the door as
8 secure as possible before she went to sleep
9 that night.

10 The victim and Mr. Betsidea knew each
11 other. They lived in the same small community
12 and the victim was friends with Mr. Betsidea's
13 former common-law partner. The victim also
14 testified that they were cousins albeit
15 distantly related ones. Mr. Betsidea lived a
16 short distance from the victim's home. It is
17 fair to characterize their relationship as one
18 of acquaintances.

19 The victim awoke sometime after falling
20 asleep on the couch because she felt someone
21 touching her. She found that Mr. Betsidea was
22 kneeling at the end of the couch by her feet
23 and he was tugging at her pants. Mr. Betsidea
24 said "please". The victim told him to get out
25 and she kicked at him. She thought that he
26 had left and she got up and went to the

27 bathroom to check herself for mucous.

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1 When she returned to the livingroom Mr.
2 Betsidea was there again. He asked her for a
3 cigarette. She again told him to leave and
4 this time he did.

5 The victim then called a friend and asked
6 him to start walking to her house and meet her
7 en route. She left her house, met her friend,
8 and they walked to his house where she went to
9 sleep. Her friend testified that the victim
10 was upset and angry when they met up.

11 Later that day the victim gave a statement
12 to the police at the RCMP detachment in
13 Déline.

14 The victim provided two Victim Impact
15 Statements - the first in November of 2016,
16 and the other in October of 2017. As I said,
17 these were read out in court yesterday by the
18 Crown prosecutor.

19 In the first statement, the victim said
20 that the event led her to drink and feel
21 suicidal. In the second statement she said,
22 among other things, that she continues to feel
23 traumatized and scared. It is clear that
24 these crimes have had a lasting negative
25 impact on her.

26 The effect on the victim's mother has also

27 been significant. Among other things, she

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1 describes being unable to think, worrying
2 about her daughter's safety, getting up and
3 checking the windows, being sad and crying all
4 the time, and isolating herself from her
5 family and her community. She also said that
6 the incident has made her feel like a failure.

7 Information about Mr. Betsidea was
8 provided through the pre-sentence report as
9 well as through his counsel.

10 Mr. Betsidea is a Dene man. He is 42
11 years old and he has lived most of his life in
12 Déline. He was in a common-law relationship
13 for a fairly significant period of time and he
14 has two children from that relationship.

15 He spent his early years up until about
16 age seven with his grandparents, learning
17 traditional skills. He is fluent in both
18 North Slavey and English and he practices many
19 of the skills that he learned from his
20 grandparents even now.

21 Unfortunately, life became very chaotic
22 when he returned to live with his parents,
23 both of whom were victims of the residential
24 school system themselves.

25 The home was plagued by violence and
26 substance abuse. At times Mr. Betsidea's

1 family's cabin to escape the violence. Mr.
2 Betsidea and his siblings were also neglected
3 and impoverished.

4 Mr. Betsidea's family life was marked by
5 tragedy in later years as well. There were
6 seven children in the family - five boys and
7 two girls. Of the five brothers, Mr. Betsidea
8 is the only one who is still alive. Two of
9 his brothers died from suicide, one died in an
10 accident where alcohol was a factor, and one
11 perished after becoming lost while hunting.

12 Not only did Mr. Betsidea suffer the
13 effects of the intergenerational trauma
14 brought on by the residential school system,
15 he is himself a direct survivor of the
16 residential school experience.

17 He left his home in Déline to attend high
18 school in Inuvik for Grade 9. He had been a
19 capable student. Tragically, while attending
20 high school in Inuvik, he was sexually abused
21 and this led him to quit. It also led him to
22 start using alcohol and drugs. These have
23 been part of his life consistently since that
24 time and have led to his interactions with the
25 justice system.

26 That said, it appears Mr. Betsidea has

27 gained insight into this and he has had a

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1 number of periods of sobriety.

2 Mr. Betsidea has not ever had long term
3 labour market employment in the traditional
4 sense as we understand it, however it appears
5 that this is a function of the limited
6 opportunities in his community of Déline.

7 He spends a significant amount of time on
8 the land, he carves, he cuts and sells
9 firewood in the community. He has certainly
10 not been idle.

11 To his credit, Mr. Betsidea has obtained a
12 number of skills and certifications over the
13 years as well and he has been working on
14 upgrading his education.

15 Mr. Betsidea has a criminal record dating
16 back to 1991 when he was a youth. Convictions
17 have been sustained roughly every two to three
18 years since then. There are 32 convictions in
19 all, excluding the ones in this case. Eleven
20 of the convictions are for breaking and
21 entering, four are for assault, including
22 assault with a weapon, five are for uttering
23 threats. The remaining ones include failing
24 to comply with court orders, failing to attend
25 court, possession of a weapon, and mischief.

26 The break and enter convictions appear to

27 be property-related. The most severe sentence

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1 that he received was 18 months in 2003 for
2 breaking into a business.

3 The last conviction for break and enter
4 with intent was in 2010. Mr. Betsidea was
5 sentenced to four months incarceration
6 followed by 12 months probation.

7 There are no convictions for sexual
8 assault or other related crimes on his record.

9 When asked to make submissions on his own
10 behalf, Mr. Betsidea apologized for the grief
11 these charges have caused the victim and her
12 family. His apology was not taken as an
13 admission of guilt and was not taken by me as
14 accepting responsibility for what happened.

15 There are a number of aggravating factors
16 in this case and those must be taken into
17 account as well as any mitigating ones in
18 imposing sentence.

19 The victim in this case was asleep and
20 thus in a very vulnerable state. Further, she
21 was asleep in her own home, a place where she
22 had the right to be safe and to be without
23 fear. Upon being awakened, the victim told
24 Mr. Betsidea to leave. He either did not
25 leave at all or he left momentarily and came
26 back in. Either way, he continued to violate

27 the sanctity of the victim's home.

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1 All of this was a terrifying ordeal for
2 the victim. She was scared to the point of
3 having to leave her home in the early hours of
4 the morning and go to a friend's house. As
5 she pointed out in her Victim Impact
6 Statement, she continues to feel traumatized
7 and scared.

8 It will be recalled that during
9 submissions yesterday there was discussion
10 about the characterization of the sexual
11 assault in this case and whether it is a
12 "major sexual assault" or not.

13 I emphasize again that the distinction
14 between a sexual assault that falls into the
15 category of a "major sexual assault" and one
16 that does not fall into that category is not
17 meant to, nor does it in fact, diminish the
18 seriousness with which this Court views all
19 sexual assaults.

20 All sexual assaults are violations of the
21 victim's sexual integrity and the consequences
22 for the victims are serious regardless of the
23 category into which the sexual assault in the
24 particular case falls for the purpose of
25 sentencing.

26 By itself, the fact that formed the basis

27 of the sexual assault, specifically that Mr.

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1 Betsidea was tugging on the victim's pants,
2 means that it does not fall into the category
3 of a "major sexual assault". That said, the
4 circumstances surrounding it work to move it
5 towards the more serious end of the spectrum.

6 In R. v. T. L. G., 2006 ABCA 313, which
7 was submitted by the Crown, the Alberta Court
8 of Appeal discusses at paragraph 12 how what
9 may appear to be a less serious sexual assault
10 can turn into something more serious by reason
11 of the circumstances under which it occurs.

12 The Court stated:

13 In those cases, a sentencing Judge
14 must consider not only the actual
15 nature of the sexual assault, that
16 is the type of touching, but the
17 context within which it takes
18 place.

19 The fact that this sexual assault took
20 place in the context of a break and enter
21 makes it more serious. Again, the victim was
22 asleep alone in her own home. Mr. Betsidea,
23 having wrongfully entered her home, took
24 advantage of her vulnerable state thereby
25 violating her personal sexual integrity as
26 well as the sanctity of her home. From any
27 perspective, it would be terrifying to wake up
28 and find someone tugging at your clothing and

27 to not know what had happened beforehand or

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1 how long it had been occurring. That has got
2 to have a lasting impact on anyone.

3 The other aggravating factor is Mr.
4 Betsidea's criminal record. It is aggravating
5 particularly because of the number of
6 convictions for break and enter. He knows it
7 is wrong. He knows the consequences. Yet, he
8 continues.

9 I am unable to identify any mitigating
10 factors in this case.

11 Mr. Betsidea does have significant Gladue
12 factors in his background, and I have taken
13 them into account in my deliberations.

14 He had a traumatic childhood characterized
15 by violence, substance abuse and poverty, no
16 doubt due in large part to his parents own
17 experiences in residential school. He himself
18 was a victim of sexual violence at a very
19 young age and he left school as a result.

20 It is not at all surprising to me that Mr.
21 Betsidea started using drugs and alcohol at a
22 young age, that he continues to struggle with
23 alcohol addiction, that his educational and
24 career opportunities have been limited, and
25 that he has a long history of criminal
26 behaviour.

1 Mr. Betsidea's moral blameworthiness.

2 Nevertheless, Mr. Betsidea has been found
3 guilty of two very serious crimes.

4 Breaking and entering into a dwelling
5 house with intent is an indictable offence
6 with a maximum penalty of life imprisonment.
7 Parliament considers it very serious.

8 Sexual assault carries with it a maximum
9 sentence of ten years in the case of an adult
10 victim. Moreover, sexual assault is a rampant
11 crime in the Northwest Territories. It is
12 something that we see in this Court all too
13 often.

14 The Crown filed a number of authorities in
15 support of the length of sentence that she is
16 seeking. She also fairly conceded that each
17 of these cases has fairly different
18 circumstances and that it is difficult to find
19 anything that it completely on point.

20 In R. v. Simpson, 2015 NWTSC 45, the
21 offender had a criminal record that included
22 four convictions for sexual offences including
23 one against the same victim. In that case,
24 the offender received a sentence of three
25 years. This followed a guilty plea and the
26 sentence imposed followed a joint submission

27 by Crown and defence.

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1 In R. v. Sunrise, 2006 NWTSC 47, the
2 offender was sentenced for breaking and
3 entering and committing sexual assault and
4 breaking and entering with intent to commit
5 theft. He pleaded guilty to the latter and
6 was found guilty of the former following a
7 trial. The offender broke into his former
8 partner's home and sexually assaulted her
9 while she was passed out from intoxication.

10 The offender received a sentence of two
11 years for the sexual assault and one year
12 consecutive for the other offence. He had a
13 lengthy criminal record of some 30 convictions
14 and it included three convictions for break
15 and enter and one for sexual assault.

16 R. v. Kochon, 2010 NWTSC 24, involved a
17 very serious prolonged major sexual assault
18 which took place in the victim's home in the
19 presence of her 7-year-old daughter. The
20 offender was sentenced to four years following
21 a trial.

22 The Crown also submitted cases from the
23 New Brunswick, Manitoba and Alberta Courts of
24 Appeal.

25 In R. v. Flatfoot, 2009 MBCA 109, the
26 Manitoba Court of Appeal sentenced a youthful

27 offender with a minimal previous record to

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1 four years incarceration for a break and enter
2 and a sexual assault on a minor. The
3 circumstances of the sexual assault are not
4 specified in that case, however, it was not
5 characterized as a "major sexual assault".

6 In R. v. Maisonneuve, 2014 NBCA 32, the
7 New Brunswick Court of Appeal imposed a
8 sentence of nine months incarceration followed
9 by 18 months probation. The offender in that
10 case broke into the victim's home through a
11 basement window, went to her bedroom, and
12 touched her breasts. The victim was
13 profoundly affected, sustaining both financial
14 and emotional harm. The offender was 21 at
15 the time. There is little information about
16 the offender's background or the criminal
17 record in that case.

18 In R. v. T. L. G., which I have mentioned
19 previously, the offender was the victim's
20 neighbor. He entered the house through an
21 unlocked door, removed all of his clothing and
22 climbed into bed with the two victims - a
23 mother and her ten-year-old daughter. They
24 were asleep at the time. He touched the
25 mother all over her body, including her
26 genitals, and he touched the daughter and

27 tried to kiss her on the lips. The offender

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1 had pleaded guilty following a preliminary
2 inquiry and he was sentenced initially to two
3 years less one day followed by three years
4 probation. The Court of Appeal set aside that
5 sentence and imposed a sentence of four years.

6 The case that I have before me is
7 troubling, and it calls out for a sentence
8 that sends a message to both Mr. Betsidea and
9 society at large that this conduct cannot be
10 tolerated.

11 Entering someone's home without permission
12 in the middle of the night is a serious crime.
13 It violates profoundly one's sense of peace
14 and safety. Touching the victim in a sexual
15 manner exacerbates the seriousness even
16 further. This type of contact has lasting and
17 significant consequences for the victims,
18 their lives, and their loved ones.

19 That said, the circumstances of this
20 particular case are distinguishable from those
21 in Simpson, Sunrise, Kochon, Flatfoot and
22 T.L.G. with respect to both the acts
23 perpetuated on the victims and, in the cases
24 of Simpson, Sunrise and Kochon, the nature of
25 the offender's criminal history. Accordingly,
26 that must be taken into account in the

27 sentence that I ultimately impose.

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1 Factually, this case is much closer to
2 Maisonneuve although there are significant
3 differences in the offender profile.

4 In my view, the amount of incarceration
5 that the Crown seeks is not justified. At the
6 same time, what defence counsel proposes will
7 not achieve the goals of denunciation and
8 deterrence nor will it sufficiently recognize
9 Mr. Betsidea's degree of moral blameworthiness
10 or the impact of this on the victim and her
11 family. That Mr. Betsidea's last conviction
12 for break and enter attracted a short sentence
13 of under a year does not justify a shorter
14 sentence in this case.

15 Mr. Betsidea committed two serious crimes.
16 They were prosecuted by indictment. In
17 particular, breaking and entering with intent
18 to commit an indictable offence must be
19 prosecuted by indictment when it involves a
20 dwelling house and that elevates it to a much
21 higher level. The sentence has to reflect
22 that.

23 Taking into account the circumstances of
24 this offence, the impact on the victim, Mr.
25 Betsidea's circumstances and the jurisprudence
26 from this jurisdiction and others, it is my

27 view that with respect to the offence of

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1 breaking and entering with intent, a period of
2 custody of two years less a day, followed by
3 probation, will achieve the goals of
4 denunciation and deterrence while recognizing
5 both the impact on the victim and Mr.
6 Betsidea's particular circumstances.

7 The probationary aspect of the sentence
8 will contribute structure and hopefully lead
9 Mr. Betsidea to the resources required to keep
10 him on a better path following his
11 incarceration.

12 It is further my view that the appropriate
13 sentence for this offence of sexual assault in
14 this case is eight months. And it is also
15 appropriate that those two sentences be served
16 concurrently, taking into account the totality
17 principle.

18 Mr. Betsidea, will you please stand.

19 Mr. Betsidea, I sentence you to a term of
20 two years less a day of imprisonment and 18
21 months probation for the crime of break and
22 enter with intent to commit an indictable
23 offence.

24 I further sentence you to a term of eight
25 months for the crime of sexual assault.

26 You will serve the prison terms

27 concurrently and the probation will begin upon

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1 your release. Do you understand this
2 sentence?

3 THE ACCUSED: Yes, Your Honour.

4 THE COURT: All right, you can sit down.

5 From the two years less a day, 142 days
6 will be deducted which represents credit for
7 the time that you have spent in remand
8 awaiting trial and then your sentence, and
9 this is calculated on the basis of 95 days at
10 a credit rate of 1.5 days for each day in the
11 the pre-sentence custody.

12 I will also impose an order that you
13 provide a sample of your bodily fluids for DNA
14 analysis and a lifetime SOIRA order.

15 There will be a firearms prohibition as
16 well, which will remain in effect for ten
17 years. But, because you are a subsistence
18 hunter, Mr. Betsidea, you may apply for an
19 exemption to possess a firearm for that
20 purpose pursuant to section 113 of the
21 Criminal Code. Mr. Moore can explain that to
22 you.

23 The terms of your probation will be those
24 that are found in the Criminal Code;
25 particularly, you will keep the peace and be
26 of good behavior. You will not communicate

27 directly or indirectly with the victim without

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1 expressed permission of this Court. You will
2 make appearances in court as required. You
3 will notify your probation officer promptly of
4 any change in your address, name or
5 occupation. And you will report to a
6 probation officer within two working days of
7 your release.

8 I am not going to impose any condition
9 that you abstain from using substances because
10 those are your choices to make for yourself.
11 I would, however, encourage you to continue to
12 work on yourself, Mr. Betsidea, as you have
13 been doing, to address the trauma in your own
14 life and importantly to learn how to deal with
15 that trauma in a more constructive manner.

16 Is there anything else, counsel?

17 MS. SCOTT: Not from the Crown, Your
18 Honour.

19 MR. MOORE: Nothing further, Your
20 Honour.

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Supreme Court Rules,

Lois Hewitt,
Court Reporter

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