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

Official Court Reporters

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

27 Impact Statements that were submitted by the

Official Court Reporters 1

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.

Official Court Reporters 2

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.

27 In the early hours of March 27th, 2016,

Official Court Reporters 3

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.

Official Court Reporters 4

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

Official Court Reporters 5

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

27 mother would take the children and flee to the

Official Court Reporters 6

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

Official Court Reporters 7

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

Official Court Reporters 8

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.

Official Court Reporters 9

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.

Official Court Reporters 10

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

must consider not only the actual

14 nature of the sexual assault, that

is the type of touching, but the

15 context within which it takes

place.

16

17 The fact that this sexual assault took

18 place in the context of a break and enter

19 makes it more serious. Again, the victim was

20 asleep alone in her own home. Mr. Betsidea,

21 having wrongfully entered her home, took

22 advantage of her vulnerable state thereby

23 violating her personal sexual integrity as

24 well as the sanctity of her home. From any

25 perspective, it would be terrifying to wake up

26 and find someone tugging at your clothing and

27 to not know what had happened beforehand or

Official Court Reporters 11

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.

27 This background diminishes to some degree

Official Court Reporters 12

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.

Official Court Reporters 13

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

Official Court Reporters 14

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

Official Court Reporters 15

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.

Official Court Reporters 16

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

Official Court Reporters 17

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

Official Court Reporters 18

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

Official Court Reporters 19

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.

21 -------------------------------------------

22

23

24

25

26

27

Official Court Reporters 20

1 Certified to be a true and

accurate transcript pursuant

2 to Rules 723 and 724 of the

Supreme Court Rules,

3

4

5

6

7 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

8 Lois Hewitt,

Court Reporter

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

Official Court Reporters 21