

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

**IN THE MATTER OF:**

HER MAJESTY THE QUEEN

- v -

TONY LYNETTE MARIE TOBAC

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Transcript of the Reasons for Sentence held before The Honourable Justice S. H. Smallwood, sitting in Yellowknife, in the Northwest Territories, on the 16th day of March, 2018.

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**APPEARANCES:**

Ms. M. Zimmer: Counsel for the Crown  
Mr. P. Harte: Counsel for the Accused

(Charges under s. 5(1) of the *Criminal Code*)

1 THE COURT: Good afternoon.

2 MS. ZIMMER: Good afternoon, Your Honour.

3 MR. HARTE: I'll have my client join me,  
4 if I may, Your Honour.

5 THE COURT: Yes, that's fine.

6 Tony Tobac has pleaded guilty  
7 to trafficking in cocaine contrary to Section  
8 5(1) of the *Controlled Drugs and Substances Act*.  
9 She entered her plea on August 21, 2017, and a  
10 presentence report was ordered. The matter was  
11 subsequently scheduled for January 22, 2018, and  
12 I heard sentencing submissions at that time. It  
13 was adjourned to February 5, 2018, when it was  
14 again adjourned to March 2, 2018, for further  
15 submissions following the release of the reasons  
16 and the decision of the Court of Appeal in *R v*  
17 *Joe*, 2018 NWTCA 1. It is now my task to sentence  
18 Ms. Tobac for this offense.

19 The facts of the offense are  
20 that between March 9 and 17, 2017, the RCMP in  
21 Yellowknife were conducting a drug trafficking  
22 investigation called Project Glacier. The  
23 project focused primarily on investigating  
24 suspected dial a dope phone numbers. On March  
25 13th, 2017, at approximately 4:05, an undercover  
26 officer called the suspected dial a dope number  
27 to purchase cocaine. The officer spoke briefly

1 to a male and a female who said that they would  
2 call back. About a minute later the officer  
3 received a call and he was advised to go to the  
4 side door of an apartment building in  
5 Yellowknife.

6 At approximately 4:27 p.m. the  
7 officer arrived at the apartment building and  
8 called the number. A male answered and said that  
9 he would be right down, and shortly after  
10 Ms. Tobac opened the side door of the apartment  
11 building and walked with the officer to the base  
12 of the stairwell. She told the officer that her  
13 name was "Tony" and that "he sent me down".  
14 Ms. Tobac then sold the officer one piece of  
15 crack cocaine weighing 0.4 grams for \$80. After  
16 the transaction Ms. Tobac ran up the stairs and  
17 met a male at the next landing.

18 On March 16th the RCMP  
19 executed a search warrant at a unit in the  
20 apartment building, which was the apartment that  
21 Ms. Tobac shared with Russel Hamilton. A number  
22 of items were seized, including cell phones,  
23 score sheets, and a scale with white residue.

24 The Crown is seeking a  
25 sentence of 10 months imprisonment and the  
26 defence is urging the Court to consider a  
27 sentence of 90 days incarceration to be served

1           intermittently, followed by a period of  
2           probation.

3                                 There have been many cases in  
4           this jurisdiction in which offenders have been  
5           sentenced for trafficking in cocaine or crack  
6           cocaine. There are a range of sentences that can  
7           be imposed, and for the most part they're now  
8           sentences of imprisonment based on the appellate  
9           case law applicable in this jurisdiction. The  
10          cases provide some guidance for an appropriate  
11          range of sentence and demonstrate the consistent  
12          approach of the Courts in sentencing those who  
13          traffic in cocaine.

14                                Courts in this jurisdiction  
15          have consistently imposed sentences meant to  
16          denounce and to deter offenders who are  
17          trafficking cocaine. And it has been said in  
18          many of those cases that the drug trade  
19          trafficking in cocaine and crack cocaine has had  
20          a devastating effect on the people in Yellowknife  
21          and elsewhere in the Northwest Territories.  
22          Cocaine destroys lives and families. People who  
23          are addicted to this drug commit other offenses  
24          to get money to purchase cocaine. They traffic  
25          in cocaine to fund their own addictions. And  
26          nowhere is this more evident than in this case.  
27          Ms. Tobac sold cocaine because she is an addict

1 who needed money to buy cocaine and alcohol and  
2 needed money to get by.

3 Ms. Tobac is of Slavey descent  
4 from the Sahtu community in Fort Good Hope.  
5 Section 718.2(e) requires me to consider  
6 available sanctions other than imprisonment that  
7 are reasonable in the circumstances paying  
8 particular attention to the circumstances of  
9 aboriginal offenders.

10 The Supreme Court of Canada in  
11 the cases of *Gladue* and *Ipeelee* have considered  
12 the application of Section 718.2(e) in the  
13 context of sentencing aboriginal offenders. One  
14 of the impetuses behind Section 718.2(e) was the  
15 overrepresentation of aboriginal people in  
16 Canadian penitentiaries. The Supreme Court of  
17 Canada in *Gladue* noted that in 1997 aboriginal  
18 people constituted close to 3 percent of the  
19 population of Canada, but amounted to 12 percent  
20 of all federal inmates. In *Gladue* the Court  
21 noted at paragraph 64 and 65:

22 It is reasonable to assume that  
23 Parliament in singling out aboriginal  
24 offenders for distinct sentencing  
25 treatment in Section 718.2(e)  
26 intended to attempt to address the  
27 social problem to some degree. The

1 provision may properly be seen as  
2 Parliament's direction to members of  
3 the judiciary to inquire into the  
4 causes of the problem and to endeavor  
5 to remedy it to the extent that a  
6 remedy is possible through the  
7 sentencing process.

8 It is clear that sentencing  
9 innovation by itself can not remove  
10 the causes of aboriginal offending  
11 and the greater problem of aboriginal  
12 alienation from the criminal justice  
13 system. The unbalanced ratio of  
14 imprisonment for aboriginal offenders  
15 flows from a number of sources,  
16 including poverty, substance abuse,  
17 lack of education, and the lack of  
18 employment opportunities for  
19 aboriginal people.

20 The Supreme Court of Canada  
21 emphasized that sentencing Courts have a role to  
22 play in addressing this problem, but acknowledged  
23 that this is not something that can be dealt with  
24 by the Courts alone. Crimes by aboriginal  
25 offenders will not end simply because Courts  
26 consider alternatives to incarceration for them.

27 Indeed, the statistics

1 provided by counsel for Ms. Tobac and the  
2 submissions reveal that the problem of aboriginal  
3 overrepresentation in prisons has not gotten any  
4 better. In fact, it's gotten much worse.  
5 Aboriginal people represent approximately 3  
6 percent of the population, but in 2015/2016  
7 aboriginal adults accounted for 28 percent of  
8 admissions to federal corrections services and 27  
9 percent of provincial and territorial custodial  
10 admissions. For aboriginal women, the  
11 overrepresentation was even more pronounced.  
12 Aboriginal females accounted for 38 percent of  
13 female admissions to provincial and territorial  
14 sentence custody in comparison to 26 percent of  
15 aboriginal males.

16 What is required is an attempt  
17 to deal with the root causes of crime by  
18 aboriginal offenders. Factors like poverty,  
19 substance abuse, unemployment, poor housing, lack  
20 of education, et cetera. Most of these factors  
21 are outside of the Court's control and require  
22 steps by Government and society to address these  
23 problems. The Courts cannot build houses, give  
24 someone a job, educate someone. While there are  
25 some limited tools at the Court's disposal, many  
26 times they are not enough. But we continue to  
27 see aboriginal offenders before this Court on a

1 daily basis and we have to impose sentences  
2 taking into account Section 718.2(e) and do what  
3 we can to give effect to the principle and  
4 guidance referred to in *Gladue* and *Ipeelee*.

5 As stated in *Gladue*, what I am  
6 required to do is:

7 Give attention to the unique  
8 background and systemic factors which  
9 may have played a part in bringing  
10 the particular offender before the  
11 Courts. In cases where such factors  
12 have played a significant role it is  
13 incumbent upon the sentencing judge  
14 to consider these factors in  
15 evaluating whether imprisonment would  
16 actually serve to deter or to  
17 denounce crime in a sense that would  
18 be meaningful to the community of  
19 which the offender is a member.

20 In this case I have the  
21 benefit of a presentence report, which provides  
22 information about Ms. Tobac's background and  
23 circumstances, as well as I've heard from counsel  
24 for Ms. Tobac in his submissions. And what I've  
25 heard reflects many of the factors referred to in  
26 *Gladue* and *Ipeelee*. Ms. Tobac has had a  
27 difficult upbringing and has had a difficult



1 life. She was raised by her mother after her  
2 parents separated. Her mother abused alcohol.  
3 And Ms. Tobac moved between her mother's home and  
4 her grandparents' home in Fort Good Hope where  
5 she grew up. Her grandparents drank as well and  
6 Social Services were often involved in  
7 Ms. Tobac's life. She was in foster homes while  
8 growing up. She was exposed to violence and was  
9 physically abused by her mother. And when living  
10 with her mother there was often no food in the  
11 house.

12 Ms. Tobac began using alcohol  
13 at 13 or 14 years old and when the presentence  
14 report was prepared she stated that she used  
15 alcohol regularly and often drank to the point  
16 that she blacked out. Ms. Tobac said to the  
17 writer of the presentence report that she had  
18 drunk alcohol on a daily basis and did so up  
19 until she was four months pregnant with her  
20 second child. She has two children, she was  
21 unable to care for her oldest child, who was  
22 adopted by her mother. However, her mother  
23 continues to struggle with alcohol abuse and that  
24 child was in foster care at the time of the  
25 preparation of the report.

26 Ms. Tobac is now 27 years old.  
27 She moved to Yellowknife when she was 22 and her

1 time in Yellowknife has been marked with  
2 drinking, drugs, homelessness, and fighting.  
3 She's often been homeless while living in  
4 Yellowknife, although that situation has recently  
5 changed. Ms. Tobac began using crack cocaine a  
6 few years ago and used it initially twice a week  
7 while drinking alcohol daily. Eventually she  
8 used crack cocaine daily and did so throughout  
9 her pregnancy. She's been in several  
10 relationships, which have been marked by the  
11 abuse of alcohol and violence. She was in a  
12 relationship for several years, where there was  
13 the abuse of alcohol and in which she was abused.  
14 When that relationship ended Ms. Tobac was in  
15 another relationship which also involved  
16 violence. And she's now in another relationship  
17 which both she and her partner have abused  
18 alcohol and drugs. She has a child as a result  
19 of this relationship. At the time of the offense  
20 she was pregnant with her son. Ms. Tobac  
21 acknowledged using alcohol and crack cocaine  
22 throughout her pregnancy and said to the preparer  
23 of the presentence report that she engaged in  
24 trafficking to support her addiction and to get  
25 by. Social Services has been involved with  
26 Ms. Tobac since the birth of her son and they  
27 continue to monitor her situation.

1 Ms. Tobac has been unemployed  
2 and lives on income support. With the money that  
3 she receives it is difficult to pay her monthly  
4 expenses. And I'm sure the added cost of buying  
5 alcohol and drugs only adds to that burden.  
6 Money spent on crack cocaine or alcohol is money  
7 that is not being used to buy food or pay for  
8 other necessities.

9 Ms. Tobac learned traditional  
10 skills from her grandmother and attended cultural  
11 events in Fort Good Hope. Since she's moved to  
12 Yellowknife she has not kept up with those  
13 activities.

14 One thing that was noted in  
15 the presentence report was that Ms. Tobac does  
16 not display any insight as to how her actions  
17 have affected others in the community. And  
18 counsel for Ms. Tobac addressed this in his  
19 submissions saying that this was not surprising  
20 because Ms. Tobac is herself an addict and is not  
21 looking at this from the perspective of the  
22 effect on the community or society, but looking  
23 at it in the context of herself as an addict.  
24 And I think that approach does explain it to an  
25 extent.

26 Life has not been easy for  
27 Ms. Tobac and it will not become easier just like

1           that. Without some positive changes, your life  
2           will continue as it has, marked by violence,  
3           alcohol, and drug abuse, having your child taken  
4           from your care. It is a difficult cycle to break  
5           when that is how you have been raised and that is  
6           what you know. But for your child's sake, and  
7           for yours, Ms. Tobac, I hope that you take the  
8           opportunity that's given to you by this sentence  
9           to make some changes. Particularly as you have  
10          another child along the way. Don't make your  
11          child go through the same stuff that you did  
12          while growing up. You didn't deserve it, and  
13          your children do not deserve it.

14                           Counsel have provided cases  
15          which deal with sentencing offenders for  
16          trafficking in cocaine, and I don't intend to  
17          review all of them, but I have read them and I  
18          have read quite a few other sentencing decisions  
19          of this Court dealing with trafficking in  
20          cocaine. And I've observed that there is a  
21          considerable range in sentence depending on, for  
22          example, the offender, their personal  
23          circumstances, their criminal record, whether  
24          there was a guilty plea, whether there was a  
25          trial, the number of transactions involved, the  
26          amount of drugs involved, the nature of the drugs  
27          involved, the role of the offender in a criminal

1 organization, if any, and their motivation for  
2 trafficking in drugs.

3 A recent case by the Northwest  
4 Territories Court of Appeal in *R v Joe* dealt with  
5 sentencing for an aboriginal female offender who  
6 was found guilty of possession of cocaine for the  
7 purpose of trafficking and possession of  
8 marijuana for the purpose of trafficking. The  
9 amount of marijuana in that was 236 and a half  
10 grams and 8 grams of crack cocaine. As well  
11 there were a number of marijuana joints that were  
12 seized and over \$5,000 in cash. In that case the  
13 offender had entered a guilty plea, although it  
14 was noted that it was not at an early  
15 opportunity. There had been a pretrial  
16 application with respect to the search prior to  
17 the guilty plea. The offender in that case had  
18 no criminal record and was 37 years of age.  
19 There was a presentence report before the Court  
20 which indicated that the offender was a user of  
21 cocaine and the report was overall considered  
22 somewhat positive. The sentencing judge in that  
23 case imposed a sentence of probation but did not  
24 include any other sentencing disposition with it  
25 and the matter was appealed on this basis. Both  
26 Crown and defence agreed that imprisonment should  
27 have been imposed, however, defence sought that

1 the sentence be stayed. The Court of Appeal  
2 noted that the sentencing objectives are  
3 deterrence and denunciation and that they should  
4 not be undermined. In discussing the *Gladue*  
5 factors applicable to the offender, the Court did  
6 not refer to them extensively but stated:

7 In relation to *Gladue* and *Ipeelee*  
8 considerations, we accept that the  
9 respondent's upbringing in a home  
10 marked by violence and alcohol abuse  
11 leading to her being raised in foster  
12 care for a period of time impacts  
13 moral culpability for these offenses  
14 as an aboriginal offender. However,  
15 these considerations support the  
16 imposition of a minimal sentence of  
17 12 months. They do not justify the  
18 imposition of a stay of what is  
19 otherwise a fit and proper sentence.

20 The situation in *Joe* is  
21 distinguishable from this case. In that case  
22 both the Crown and defence agreed on appeal that  
23 a sentence of one year imprisonment was  
24 appropriate. As well, the amount of drugs  
25 involved in that case were significantly more  
26 than in this case. This case involved one  
27 transaction of 0.4 grams of crack cocaine.

1 As stated by Justice  
2 Charbonneau in *R v Grandjambe*, 2018 NWTSC 3 at  
3 page 7:

4 For any given offense there is never  
5 just one appropriate sentence. There  
6 is always a range. Usually in this  
7 jurisdiction people who traffic in  
8 cocaine can expect even on a guilty  
9 plea to receive sentences that are  
10 close to the two year mark.

11 In saying this, this is not a  
12 starting point sentence or a guideline, but an  
13 observation by Justice Charbonneau of the  
14 sentencing practices in this jurisdiction. A  
15 review of the case law demonstrates that  
16 sentencing for cases involving trafficking in  
17 cocaine can involve penitentiary sentences and  
18 can also involve sentences as low as in the 7 to  
19 10 month range. So the sentence of 10 months  
20 proposed by the Crown is certainly reasonable.

21 Looking to the factors that  
22 are applicable in this case. In mitigation,  
23 Ms. Tobac has entered a guilty plea and she did  
24 so at an early opportunity. There was no  
25 preliminary inquiry in this matter. The case was  
26 not overly complicated and would not likely have  
27 been a difficult case for the Crown to prove.

1 But the guilty plea avoided the need for a trial  
2 and reflects Ms. Tobac's acceptance of  
3 responsibility for her actions, so she should  
4 receive full credit for the guilty plea.

5 Ms. Tobac does have a criminal  
6 record. She has 11 convictions from 2005 in  
7 youth court through to 2011. There are  
8 convictions for property offenses, but the bulk  
9 of her criminal record consists of convictions  
10 for offenses against the administration of  
11 justice.

12 Looking at the circumstances  
13 of the offense, while trafficking in cocaine is a  
14 serious offense, and as I've said, the Courts  
15 treat this type of offense seriously, this  
16 offense is not the most serious of offenses that  
17 have come before this Court. It involved one  
18 transaction of selling 0.4 grams of crack cocaine  
19 to an undercover officer. Ms. Tobac's  
20 involvement is at the lower end of culpability.  
21 Certainly her situation is different from many of  
22 the offenders this Court has seen recently who  
23 were involved in Project Green Manalishi.  
24 There's no evidence that she is involved in a  
25 criminal organization. And her role can be  
26 described as someone who assists and participates  
27 in a dial a dope operation. She was motivated by



1 money to the extent that selling drugs allowed  
2 her to be able to buy her own cocaine and it  
3 allowed her to get by to buy things for her child  
4 and to pay bills.

5 Dealing first with the  
6 ancillary orders that were requested by the  
7 Crown, Section 5(1) of the *Controlled Drugs and*  
8 *Substances Act* is a secondary designated offense  
9 pursuant to Section 487.04. And there will be an  
10 order pursuant to Section 487.051 for the taking  
11 of Ms. Tobac's DNA for the DNA data bank.  
12 Pursuant to Section 109 of the *Criminal Code*, a  
13 firearms prohibition order is mandatory and  
14 Ms. Tobac will be prohibited from possessing  
15 firearms for a period of 10 years following her  
16 release from imprisonment. There will also be  
17 the victim of crime surcharge of \$200 payable in  
18 accordance with the regulations.

19 I have considered what an  
20 appropriate sentence might be given the  
21 circumstances of the offense, the applicable  
22 sentencing principles, and Ms. Tobac's personal  
23 circumstances. As I said, the sentence that the  
24 Crown is proposing is reasonable and in another  
25 similar case I would have no hesitation in  
26 imposing that sentence. I believe that Ms.  
27 Tobac's personal circumstances fall within what

1 is referred to in *Gladue* and *Ipeelee*. There are  
2 significant factors in Ms. Tobac's life which  
3 justify the use of restraint in sentencing and in  
4 the circumstances I'm going to exercise even more  
5 restraint than I might otherwise. I cannot  
6 impose a sentence as low as what is being sought  
7 by defence counsel because I cannot ignore the  
8 sentencing principles of deterrence and  
9 denunciation.

10 But I am taking a chance,  
11 Ms. Tobac, that things in your life have begun to  
12 change and the prospects of rehabilitation need  
13 to be emphasized. So I am considering that in  
14 sentencing you. Please stand up.

15 For the offense of trafficking  
16 in cocaine I sentence you to a period of  
17 imprisonment of 6 months. This will be followed  
18 by a period of probation of 18 months which will  
19 include the statutory conditions and additional  
20 conditions. So you'll be required to keep the  
21 peace and be of good behaviour, to appear when  
22 required do to so by the Court, to notify the  
23 Court or the probation officer in advance of any  
24 change of name or address, notify the Court or  
25 the probation officer of any change of employment  
26 or occupation. You will also have to report to  
27 the probation officer within two days of your

1 release and thereafter as directed, and if you  
2 agree and subject to the programs available and  
3 your acceptance in that program, take and  
4 participate actively in a treatment program. You  
5 will take any counselling as directed by your  
6 probation officer, including any programs that  
7 are deemed by your probation officer to be  
8 suitable, including programs addressing alcohol  
9 and drug abuse, violence and trauma, parenting  
10 and pre or postnatal programs.

11 Do you understand those  
12 conditions?

13 THE ACCUSED: Yeah.

14 THE COURT: Okay, thank you. You may sit  
15 down.

16 I have considered imposing  
17 conditions with respect to the abstention from  
18 alcohol or non-prescription drugs, but I have  
19 decided not to impose those conditions as I think  
20 it ignores the reality of how difficult it is to  
21 overcome these addictions and it may set Ms.  
22 Tobac up to fail.

23 All right, counsel, is there  
24 anything else we need to address?

25 MR. HARTE: I think I'm missing something,  
26 Your Honour, but at this point not that I can --  
27 not that I can think of.

1 THE COURT: Okay.

2 MR. HARTE: Thank you.

3 MS. ZIMMER: Sorry, Your Honour, I was just  
4 checking and I don't think there's anything else  
5 from the Crown's perspective.

6 THE COURT: Okay. All right, thank you,  
7 counsel, for your submissions and your  
8 cooperation when I requested to have additional  
9 submissions following the release of the Court of  
10 Appeal decision. Thank you. It's been very  
11 helpful.

12 MR. HARTE: Thank you for the opportunity  
13 to make further submissions, Your Honour.

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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 20th day of March, 2018.

Certified Pursuant to Rule 723  
Of the Rules of Court



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Allison Willard  
Court Reporter