

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

CAMERON BERNARDE

Transcript of the Reasons for Sentence delivered by The Honourable Justice L.A. Charbonneau, sitting in Yellowknife, in the Northwest Territories, on the 26th day of March, 2018.

APPEARANCES:

Mr. B. Green: Counsel for the Crown
Mr. P.J. Harte: Counsel for the Accused

(Charges under s. 344(b), 87, 88,
117.01(1), 351(2), 91(1), 733.1(1), and 85(1)(a)
of the *Criminal Code of Canada*)

1 THE COURT: Mr. Bernarde has pleaded
2 guilty to a charge of robbery. Sentencing is
3 never easy for a sentencing judge, and in this
4 case, it is even harder. I was given a lot of
5 information about Mr. Bernarde in the medical
6 reports and other documents that his lawyer gave
7 me. Those documents talk about his medical and
8 psychological condition. I also had two
9 Presentence Reports that were filed. One was
10 prepared several years ago in 2008. The other
11 was prepared in 2017. And, of course, the
12 lawyers gave me case law and they made lengthy
13 submissions at the sentencing hearing.

14 As I have just told Mr. Bernarde, it is my
15 responsibility to make sure that I explain my
16 decision in this case, like it would be in any
17 case; but because some of the issues that were
18 raised in this matter were complicated, I want to
19 make sure that the reasons I give are complete
20 and for that reason I am going to prepare a
21 written decision. Today I will try to explain in
22 a shorter version why I have decided what I have.

23 In sentencing Mr. Bernarde, I have to take
24 into account, as would be the case in any
25 sentencing, the crime that the person has
26 committed, the circumstances of the person who
27 has committed it, and what the law says.

1 So dealing first with the offence, what I
2 heard is that the night before this crime
3 happened Mr. Bernarde had been drinking with one
4 of his friends. He left the friend's house
5 apparently intending on going home to bed, but
6 that is not what he ended up doing. Instead, he
7 got a firearm from his home and he went to the
8 Rooster Gas Bar in Hay River. When he entered
9 the Rooster, he was wearing a hoodie and
10 something covering his face. By then it was the
11 early morning hours of November 8th, 2016.

12 William Delorme was working as the cashier
13 at the time. Mr. Bernarde pointed the firearm
14 directly at him and demanded money from the till
15 and the nearby automatic teller machine.
16 Mr. Delorme gave Mr. Bernarde about \$200 from the
17 till.

18 The police investigated. They discovered
19 that Mr. Bernarde was the one who had done this,
20 and they arrested him. He gave a statement to
21 the police, and he admitted that he was the one
22 who had done this.

23 Mr. Delorme said afterwards that he was not
24 afraid when this was happening because
25 Mr. Bernarde seemed nervous and he did not seem
26 to be a very good criminal. Mr. Delorme said
27 that when Mr. Bernarde pointed the firearm at

1 him, Mr. Delorme saw that the bolt and bullet
2 chamber were open. Mr. Delorme thought that the
3 gun, even if it was loaded, would probably
4 backfire because it looked too rusty to shoot.
5 It is important to say that Mr. Delorme was wrong
6 about this because the firearm was tested and, in
7 fact, it did fire.

8 That is the offence that Mr. Bernarde
9 committed. That is the crime I have to sentence
10 him for.

11 As for his circumstances, I know that he
12 turned 23 earlier this month. He is of Mountain
13 Dene descent. He was adopted shortly after birth
14 by his aunt and uncle. His biological mother was
15 not able to care for him because of serious
16 substance abuse issues that she had. In fact, I
17 heard that she consumed alcohol throughout her
18 pregnancy, and sadly this had a significant
19 impact on Mr. Bernarde.

20 Mr. Bernarde lives with Fetal Alcohol
21 Spectrum Disorder. This makes it more difficult
22 for him to function within the rules of society.
23 It makes it harder for him to control his
24 impulses. It makes it hard for him to connect
25 what he does with the consequences of what he
26 does.

27 The information I was given is also that he

1 has some intellectual challenges. That is not
2 his fault either. I understand that it must be
3 hard for him. For example, it must have been
4 very frustrating to be in school. He is very
5 good at certain things and has difficulties with
6 others.

7 I know from one of the Presentence Reports
8 that he is a very good bush man. His grandfather
9 taught him well. I also know he is good at
10 fixing things. He has a harder time with other
11 things like abstract concepts, planning, and
12 sometimes with making good decisions.

13 Mr. Bernarde would have needed a lot of
14 support and structure growing up. He will need
15 supports and structure throughout his life to
16 function properly in his community. The need for
17 these supports was identified clearly when he was
18 very young. Unfortunately, he never received
19 those supports. Instead, he grew up in a
20 difficult environment, according to the
21 Presentence Report that was prepared in 2017.

22 I want to say here that I know there is very
23 conflicting information between the 2008 report
24 and the 2017 report. The 2008 report says he
25 grew up in a loving home and was probably loved
26 more than his siblings. The report from 2017
27 says there was alcohol abuse in the home and a

1 lot of violence including serious violence
2 directed at him.

3 At the sentencing hearing, Mr. Bernarde's
4 lawyer said that the information in the 2017
5 report was the correct information. I want
6 Mr. Bernarde to know that I believe what he says
7 when he says that the 2017 report is the one that
8 has the correct information. I have no reason
9 not to believe that. And it is also not hard at
10 all for me to understand why he did not talk
11 about those things when the 2008 Presentence
12 Report was prepared. After all, back then he was
13 only 13-years-old, and some of the things that
14 are described in the 2017 report would have been
15 very difficult to talk about even now but
16 certainly even more so when he was 13.

17 Mr. Bernarde has been in trouble with the
18 law regularly since a young age. He was not even
19 13 when he was first sentenced in the Youth
20 Court. In the following years, he was in court
21 many times; for crimes against property and for
22 not following court orders. And this continued
23 after he turned 18.

24 His last conviction in May 2014 was for a
25 much more serious offence, though, than the
26 previous ones. It was for sexual assault. For
27 that crime, he received a fairly long jail term

1 and was placed on probation for three years. He
2 was still on probation when he committed the
3 robbery at the Rooster.

4 I agree with his lawyer that his criminal
5 record is as much a symptom as anything else, but
6 what worries me a lot is that his crimes seem to
7 be getting more serious. In the past, he stole
8 things. He didn't follow court orders. Those
9 are crimes, but sexual assault and robbery with a
10 firearm are far more serious crimes.

11 Turning briefly to the law, normally when
12 deciding what a sentence should be a judge has to
13 look at how serious the crime is and how much
14 blame the person who committed the crime should
15 receive for it. Normally a judge has a lot of
16 different choices on sentencing. Sometimes the
17 law gives the judge fewer choices. Sometimes the
18 law says that there is a minimum punishment for a
19 crime. And when that is the case, judges have to
20 follow the law.

21 Here the law says that because Mr. Bernarde
22 used a firearm in this robbery I have to sentence
23 him to at least four years in jail.

24 Mr. Bernarde's lawyer says that I do not have to
25 follow that law because that law is not valid.
26 The position is that the minimum sentence that
27 the law says I should give is simply too high to

1 be a valid law.

2 The Crown agrees that four years would be a
3 very high sentence for Mr. Bernarde, but the
4 Crown says it is not high enough to be invalid
5 law. So the Crown says I have to follow what the
6 *Criminal Code* says.

7 This has not been an easy decision to make.
8 It is not Mr. Bernarde's fault that he has an
9 FASD. I also know he has not received the
10 supports and structure that doctors and others
11 said he should have received when he was younger.
12 It does not seem fair that doctors, nurses,
13 psychologists said that he needed certain things
14 and that he did not get those things. And that
15 on top of that, he was left in a very bad home
16 situation with very little help.

17 At the same time, robbery is a serious
18 crime, and even when there is no weapon used, the
19 sentences for it are usually quite high. Here a
20 firearm was used. That makes the crime more
21 serious. In addition, Mr. Bernarde did not just
22 have the firearm with him, he pointed it directly
23 at Mr. Delorme. And that, too, makes the offence
24 more serious.

25 He also hid his face which means he thought
26 about what he was about to do and tried to make
27 sure he would not be caught. The fact that he

1 planned and thought about this, even if it was
2 not a complicated or long plan, also makes the
3 offence more serious.

4 The things in Mr. Bernarde's favour are that
5 he pleaded guilty. He admits what he did, and I
6 believe him when he says he is sorry. Also, I do
7 have to take into account his circumstances which
8 I have talked about already and his challenges.
9 These do not excuse his behaviour. They do not
10 give him a defence to this charge, but his level
11 of responsibility is lower than if he was someone
12 without the challenges that he has.

13 But looking at the sentences that are
14 usually imposed for robberies, looking at the
15 things that make this one more serious, and even
16 considering all the things in Mr. Bernarde's
17 favour, the difference between the four-year
18 sentence that the law says I must give him and
19 the sentence that I would give him if that law
20 was not there is not a big enough difference for
21 me to say that the law is invalid.

22 There have been other cases where people
23 have argued that this law is invalid. That this
24 minimum sentence is simply too high for certain
25 people. This happened in cases where the person
26 being sentenced also had special challenges like
27 a mental illness or addictions or other similar

1 circumstances. The courts in those cases decided
2 that the law was valid because of how serious it
3 is to use a firearm when committing a robbery.
4 And after careful consideration, I agree with
5 those other decisions.

6 So my conclusion is that I do not have the
7 choice. I have to follow what the law says. In
8 this case, it forces me to impose what I consider
9 to be a very severe sentence under the
10 circumstances, but because I have decided that it
11 is not severe to the point of making the law
12 invalid, I have to apply it. I am not going to
13 impose any more than what the law forces me to
14 do, however.

15 Mr. Bernarde has been in custody for a total
16 of 504 days, which works out to 756 days if I
17 give him a day and a half of credit for each day
18 he spent on remand. So I will give him the
19 maximum credit for that.

20 There are a number of orders that the Crown
21 has asked, and they are all mandatory.

22 There will be a firearms prohibition order.
23 Mr. Bernarde is already on one as a result of the
24 sexual assault conviction, but there has been no
25 notice filed that forces me to give him a life
26 prohibition. I am still going to make the
27 prohibition a little bit longer than the minimum,

1 because I am very concerned about the manner in
2 which he chose to use the firearm in this case.
3 So there will be a firearms prohibition order.
4 It will begin today and it will expire 15 years
5 from Mr. Bernarde's release.

6 There will be a DNA order, because robbery
7 is a primary designated offence.

8 There will be a Victim of Crime Surcharge of
9 \$200. The time to pay and the default time are
10 set out in the statute.

11 With the credit that I am going to give
12 Mr. Bernarde, the jail term I will impose today
13 works out to two years and one week. The
14 sentence that I impose today will be below two
15 years, and that means that probation can be made
16 a part of the sentence.

17 Mr. Bernarde has not done very well with
18 following court orders in the past, and sometimes
19 that makes a judge not keen on putting someone on
20 probation; but in this case I am going to add a
21 Probation Order to the sentence, not for
22 punishment purposes but hopefully to help
23 Mr. Bernarde.

24 It is very clear that structure and
25 supervision are things that he needs. I know he
26 was on probation when he committed this offence,
27 but this time when he is released, he will have

1 been in jail for a longer time. I hope he will
2 have been able to benefit from some of the
3 supports and programs available in jail. And I
4 hope that he will have been able, with the help
5 of others, to make a better plan to stay out of
6 trouble and that being on probation might help
7 him stick with that plan.

8 I hope very much that the Probation Services
9 in Hay River, or wherever Mr. Bernarde will live
10 when he is released, will provide very close
11 supervision and guidance to him. Everyone must
12 recognize, the jail authorities and the probation
13 authorities, that Mr. Bernarde is not an ordinary
14 offender. He has very special needs, needs that
15 were identified by people who worked for the
16 government many years ago in the medical and
17 Social Services field. The supports that
18 everyone said he needed were never given to him,
19 and I hope that this will change and that perhaps
20 through the assistance of Probation Services he
21 will do better when he is released this time.

22 Mr. Bernarde cannot succeed in this alone.
23 That is very clear. I hope that whoever will be
24 assigned as his probation officer will deal with
25 him and supervise him in a manner that takes into
26 account his special needs. Mr. Bernarde is still
27 very young. A lot of what will happen in his

1 future will be up to him, but there is also a
2 responsibility on others, on the state, to
3 provide him with the supports that he needs.

4 As I said, I am very worried about the fact
5 that his crimes are getting more and more
6 serious. If he does not receive the help and
7 supports that he needs, I am scared that he will
8 end up hurting someone even more badly than he
9 already has. That would be awful for whoever the
10 next victim is, but it also would be awful for
11 Mr. Bernarde himself. So this time the system
12 has to do its part to try to prevent that from
13 happening.

14 Can you stand up, please, Mr. Bernarde.

15 Mr. Bernarde, as I said, I do not feel I
16 have a choice here. If you had not spent time in
17 custody already, the sentence would have been
18 four years, and that would have been a
19 penitentiary sentence. For the 504 days you have
20 already spent in custody, I am going to give you
21 credit for 756 days, and that works out to two
22 years and three weeks. And so what that means is
23 that the balance of the sentence is going to be
24 23 months and one week, so just short of two
25 years, and that means that it is going to be
26 served here in the north.

27 THE ACCUSED: Okay.

1 THE COURT: You can sit down.

2 I really hope, Mr. Bernarde, that, while I
3 do not know if they are going to keep you in the
4 same place where you have been; but whatever you
5 have been doing and whatever help you have been
6 getting there, I hope that continues. I have
7 heard that you have skills and I hope that you
8 can get help focusing on that so that you can do
9 better the next time you are released.

10 THE ACCUSED: Yeah.

11 THE COURT: For the reasons I have given,
12 I am going to have this followed by probation for
13 three years. So you are going to have to report
14 to Probation within 24 hours. As soon as you are
15 released from the custody, you have to report to
16 them.

17 THE ACCUSED: (Affirmative, non-verbal
18 response).

19 THE COURT: And then report to them as
20 they direct you to.

21 THE ACCUSED: Yes.

22 THE COURT: I am going to direct that you
23 will live where your probation officer tells you
24 to live. This is not going to be written in the
25 order; but for the benefit of the transcript and
26 reference for the people who will be making
27 decisions about you, residency options, in my

1 view, should include possible placement into the
2 kind of supported living that the last
3 psychologist who worked with you thought you
4 needed. I know the options are limited in Hay
5 River, but hopefully they can help you find a
6 place where you will have the support you need.

7 THE ACCUSED: Yes.

8 THE COURT: The third condition is going
9 to be that you take any educational programs that
10 your probation officer might recommend. Now I
11 read in all of these documents I was given that
12 you are good with your hands. You are good at
13 repairing things, and there are a lot of people
14 who are not good at repairing things and need
15 people like you to do that work.

16 THE ACCUSED: Yeah.

17 THE COURT: So there is work for people
18 like you who are good at repairing snow machines,
19 ATVs, and small engines, and I know it is one of
20 those things that interests you. So if you keep
21 that up, perhaps you can have work and that will
22 help you stay out of trouble.

23 THE ACCUSED: Yes.

24 THE COURT: I have not put a condition
25 that you not drink, because I do not want to set
26 you up.

27 THE ACCUSED: Yeah.

1 THE COURT: For just being charged again,
2 but you have said yourself to the person that
3 wrote the Presentence Report that you do not
4 think you should drink.

5 THE ACCUSED: Yeah.

6 THE COURT: Bad things happen when you
7 drink.

8 THE ACCUSED: That's -- that's true. I'm
9 not going to lie about it, Your Honour. Yeah, I
10 mean I'm a young father. I just need to get
11 my -- straighten out everything.

12 THE COURT: Exactly. So I am not making
13 that a condition, but I hope you choose not to
14 drink.

15 THE ACCUSED: All right.

16 THE COURT: Ever again.

17 THE ACCUSED: (Affirmative, non-verbal
18 response).

19 THE COURT: Have I overlooked anything
20 from the Crown's perspective?

21 MR. GREEN: No, Your Honour. My friend
22 and I have agreed in principle on a forfeiture
23 and disposition order. There were a few exhibits
24 seized from Mr. Bernarde, and we will be filing
25 that over the counter. It will be an order on
26 consent.

27 THE COURT: All right. So that can be

1 brought to my attention, Madam Clerk.

2 Mr. Harte, anything I have overlooked from
3 your perspective?

4 MR. HARTE: No, Your Honour, thank you.

5 THE COURT: Do you understand things I
6 have said, Mr. Bernarde?

7 THE ACCUSED: What's that?

8 THE COURT: Do you understand what I have
9 said?

10 THE ACCUSED: I'll get Peter to explain it
11 to me a little later.

12 THE COURT: Okay. I hope that things work
13 out for you, Mr. Bernarde. This was not an easy
14 decision to make. I am not enjoying imposing a
15 further jail term on you, but what you did was
16 very serious and it could have ended very badly.

17 THE ACCUSED: Yes.

18 THE COURT: So the main thing is you need
19 to stay out of court.

20 THE ACCUSED: Yeah.

21 THE COURT: You need to focus on the good
22 things and on your skills, and I am hoping that
23 by saying the things I said today and the things
24 I will write in my written decision that will
25 also go to the Correctional authorities that they
26 will do what they can and Probation Services will
27 do what they can to really help you so that we do

1 not see you back in court again.

2 THE ACCUSED: Yeah.

3 THE COURT: Thank you. We will close
4 court.

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8 **CERTIFICATE OF TRANSCRIPT**

9

10 I, the undersigned, hereby certify that the
11 foregoing pages are a complete and accurate
12 transcript of the proceedings taken down by me in
13 shorthand and transcribed from my shorthand notes
14 to the best of my skill and ability.

15 Dated at the City of Edmonton, Province of
16 Alberta, this 28th day of March, 2018.

17

18 Certified Pursuant to Rule 723
19 of the Rules of Court

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23

Linda Kimball

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Court Reporter

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