*R v Bernarde*, 2018 NWTSC 22 S-1-CR-2017-000029

# 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.

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**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
28. him, Mr. Delorme saw that the bolt and bullet
29. chamber were open. Mr. Delorme thought that the
30. gun, even if it was loaded, would probably
31. backfire because it looked too rusty to shoot.
32. It is important to say that Mr. Delorme was wrong
33. about this because the firearm was tested and, in
34. fact, it did fire.
35. That is the offence that Mr. Bernarde
36. committed. That is the crime I have to sentence
37. him for.
38. As for his circumstances, I know that he
39. turned 23 earlier this month. He is of Mountain
40. Dene descent. He was adopted shortly after birth
41. by his aunt and uncle. His biological mother was
42. not able to care for him because of serious
43. substance abuse issues that she had. In fact, I
44. heard that she consumed alcohol throughout her
45. pregnancy, and sadly this had a significant
46. impact on Mr. Bernarde.
47. Mr. Bernarde lives with Fetal Alcohol
48. Spectrum Disorder. This makes it more difficult
49. for him to function within the rules of society.
50. It makes it harder for him to control his
51. impulses. It makes it hard for him to connect
52. what he does with the consequences of what he
53. does.
54. 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
55. lot of violence including serious violence
56. directed at him.
57. At the sentencing hearing, Mr. Bernarde's
58. lawyer said that the information in the 2017
59. report was the correct information. I want
60. Mr. Bernarde to know that I believe what he says
61. when he says that the 2017 report is the one that
62. has the correct information. I have no reason
63. not to believe that. And it is also not hard at
64. all for me to understand why he did not talk
65. about those things when the 2008 Presentence
66. Report was prepared. After all, back then he was
67. only 13-years-old, and some of the things that
68. are described in the 2017 report would have been
69. very difficult to talk about even now but
70. certainly even more so when he was 13.
71. Mr. Bernarde has been in trouble with the
72. law regularly since a young age. He was not even
73. 13 when he was first sentenced in the Youth
74. Court. In the following years, he was in court
75. many times; for crimes against property and for
76. not following court orders. And this continued
77. after he turned 18.
78. His last conviction in May 2014 was for a
79. much more serious offence, though, than the
80. previous ones. It was for sexual assault. For
81. that crime, he received a fairly long jail term
82. and was placed on probation for three years. He
83. was still on probation when he committed the
84. robbery at the Rooster.
85. I agree with his lawyer that his criminal
86. record is as much a symptom as anything else, but
87. what worries me a lot is that his crimes seem to
88. be getting more serious. In the past, he stole
89. things. He didn't follow court orders. Those
90. are crimes, but sexual assault and robbery with a
91. firearm are far more serious crimes.
92. Turning briefly to the law, normally when
93. deciding what a sentence should be a judge has to
94. look at how serious the crime is and how much
95. blame the person who committed the crime should
96. receive for it. Normally a judge has a lot of
97. different choices on sentencing. Sometimes the
98. law gives the judge fewer choices. Sometimes the
99. law says that there is a minimum punishment for a
100. crime. And when that is the case, judges have to
101. follow the law.
102. Here the law says that because Mr. Bernarde
103. used a firearm in this robbery I have to sentence
104. him to at least four years in jail.
105. Mr. Bernarde's lawyer says that I do not have to
106. follow that law because that law is not valid.
107. The position is that the minimum sentence that
108. the law says I should give is simply too high to
109. be a valid law.
110. The Crown agrees that four years would be a
111. very high sentence for Mr. Bernarde, but the
112. Crown says it is not high enough to be invalid
113. law. So the Crown says I have to follow what the
114. *Criminal Code* says.
115. This has not been an easy decision to make.
116. It is not Mr. Bernarde's fault that he has an
117. FASD. I also know he has not received the
118. supports and structure that doctors and others
119. said he should have received when he was younger.
120. It does not seem fair that doctors, nurses,
121. psychologists said that he needed certain things
122. and that he did not get those things. And that
123. on top of that, he was left in a very bad home
124. situation with very little help.
125. At the same time, robbery is a serious
126. crime, and even when there is no weapon used, the
127. sentences for it are usually quite high. Here a
128. firearm was used. That makes the crime more
129. serious. In addition, Mr. Bernarde did not just
130. have the firearm with him, he pointed it directly
131. at Mr. Delorme. And that, too, makes the offence
132. more serious.
133. He also hid his face which means he thought
134. about what he was about to do and tried to make
135. sure he would not be caught. The fact that he
136. planned and thought about this, even if it was
137. not a complicated or long plan, also makes the
138. offence more serious.
139. The things in Mr. Bernarde's favour are that
140. he pleaded guilty. He admits what he did, and I
141. believe him when he says he is sorry. Also, I do
142. have to take into account his circumstances which
143. I have talked about already and his challenges.
144. These do not excuse his behaviour. They do not
145. give him a defence to this charge, but his level
146. of responsibility is lower than if he was someone
147. without the challenges that he has.
148. But looking at the sentences that are
149. usually imposed for robberies, looking at the
150. things that make this one more serious, and even
151. considering all the things in Mr. Bernarde's
152. favour, the difference between the four-year
153. sentence that the law says I must give him and
154. the sentence that I would give him if that law
155. was not there is not a big enough difference for
156. me to say that the law is invalid.
157. There have been other cases where people
158. have argued that this law is invalid. That this
159. minimum sentence is simply too high for certain
160. people. This happened in cases where the person
161. being sentenced also had special challenges like
162. a mental illness or addictions or other similar
163. circumstances. The courts in those cases decided
164. that the law was valid because of how serious it
165. is to use a firearm when committing a robbery.
166. And after careful consideration, I agree with
167. those other decisions.
168. So my conclusion is that I do not have the
169. choice. I have to follow what the law says. In
170. this case, it forces me to impose what I consider
171. to be a very severe sentence under the
172. circumstances, but because I have decided that it
173. is not severe to the point of making the law
174. invalid, I have to apply it. I am not going to
175. impose any more than what the law forces me to
176. do, however.
177. Mr. Bernarde has been in custody for a total
178. of 504 days, which works out to 756 days if I
179. give him a day and a half of credit for each day
180. he spent on remand. So I will give him the
181. maximum credit for that.
182. There are a number of orders that the Crown
183. has asked, and they are all mandatory.
184. There will be a firearms prohibition order.
185. Mr. Bernarde is already on one as a result of the
186. sexual assault conviction, but there has been no
187. notice filed that forces me to give him a life
188. prohibition. I am still going to make the
189. prohibition a little bit longer than the minimum,
190. because I am very concerned about the manner in
191. which he chose to use the firearm in this case.
192. So there will be a firearms prohibition order.
193. It will begin today and it will expire 15 years
194. from Mr. Bernarde's release.
195. There will be a DNA order, because robbery
196. is a primary designated offence.
197. There will be a Victim of Crime Surcharge of
198. $200. The time to pay and the default time are
199. set out in the statute.
200. With the credit that I am going to give
201. Mr. Bernarde, the jail term I will impose today
202. works out to two years and one week. The
203. sentence that I impose today will be below two
204. years, and that means that probation can be made
205. a part of the sentence.
206. Mr. Bernarde has not done very well with
207. following court orders in the past, and sometimes
208. that makes a judge not keen on putting someone on
209. probation; but in this case I am going to add a
210. Probation Order to the sentence, not for
211. punishment purposes but hopefully to help
212. Mr. Bernarde.
213. It is very clear that structure and
214. supervision are things that he needs. I know he
215. was on probation when he committed this offence,
216. but this time when he is released, he will have
217. been in jail for a longer time. I hope he will
218. have been able to benefit from some of the
219. supports and programs available in jail. And I
220. hope that he will have been able, with the help
221. of others, to make a better plan to stay out of
222. trouble and that being on probation might help
223. him stick with that plan.
224. I hope very much that the Probation Services
225. in Hay River, or wherever Mr. Bernarde will live
226. when he is released, will provide very close
227. supervision and guidance to him. Everyone must
228. recognize, the jail authorities and the probation
229. authorities, that Mr. Bernarde is not an ordinary
230. offender. He has very special needs, needs that
231. were identified by people who worked for the
232. government many years ago in the medical and
233. Social Services field. The supports that
234. everyone said he needed were never given to him,
235. and I hope that this will change and that perhaps
236. through the assistance of Probation Services he
237. will do better when he is released this time.
238. Mr. Bernarde cannot succeed in this alone.
239. That is very clear. I hope that whoever will be
240. assigned as his probation officer will deal with
241. him and supervise him in a manner that takes into
242. account his special needs. Mr. Bernarde is still
243. very young. A lot of what will happen in his
244. future will be up to him, but there is also a
245. responsibility on others, on the state, to
246. provide him with the supports that he needs.
247. As I said, I am very worried about the fact
248. that his crimes are getting more and more
249. serious. If he does not receive the help and
250. supports that he needs, I am scared that he will
251. end up hurting someone even more badly than he
252. already has. That would be awful for whoever the
253. next victim is, but it also would be awful for
254. Mr. Bernarde himself. So this time the system
255. has to do its part to try to prevent that from
256. happening.
257. Can you stand up, please, Mr. Bernarde.
258. Mr. Bernarde, as I said, I do not feel I
259. have a choice here. If you had not spent time in
260. custody already, the sentence would have been
261. four years, and that would have been a
262. penitentiary sentence. For the 504 days you have
263. already spent in custody, I am going to give you
264. credit for 756 days, and that works out to two
265. years and three weeks. And so what that means is
266. that the balance of the sentence is going to be
267. 23 months and one week, so just short of two
268. years, and that means that it is going to be
269. served here in the north.
270. THE ACCUSED: Okay.
271. THE COURT: You can sit down.
272. I really hope, Mr. Bernarde, that, while I
273. do not know if they are going to keep you in the
274. same place where you have been; but whatever you
275. have been doing and whatever help you have been
276. getting there, I hope that continues. I have
277. heard that you have skills and I hope that you
278. can get help focusing on that so that you can do
279. better the next time you are released.
280. THE ACCUSED: Yeah.
281. THE COURT: For the reasons I have given,
282. I am going to have this followed by probation for
283. three years. So you are going to have to report
284. to Probation within 24 hours. As soon as you are
285. released from the custody, you have to report to
286. them.
287. THE ACCUSED: (Affirmative, non-verbal
288. response).
289. THE COURT: And then report to them as
290. they direct you to.
291. THE ACCUSED: Yes.
292. THE COURT: I am going to direct that you
293. will live where your probation officer tells you
294. to live. This is not going to be written in the
295. order; but for the benefit of the transcript and
296. reference for the people who will be making
297. decisions about you, residency options, in my
298. view, should include possible placement into the
299. kind of supported living that the last
300. psychologist who worked with you thought you
301. needed. I know the options are limited in Hay
302. River, but hopefully they can help you find a
303. place where you will have the support you need.
304. THE ACCUSED: Yes.
305. THE COURT: The third condition is going
306. to be that you take any educational programs that
307. your probation officer might recommend. Now I
308. read in all of these documents I was given that
309. you are good with your hands. You are good at
310. repairing things, and there are a lot of people
311. who are not good at repairing things and need
312. people like you to do that work.
313. THE ACCUSED: Yeah.
314. THE COURT: So there is work for people
315. like you who are good at repairing snow machines,
316. ATVs, and small engines, and I know it is one of
317. those things that interests you. So if you keep
318. that up, perhaps you can have work and that will
319. help you stay out of trouble.
320. THE ACCUSED: Yes.
321. THE COURT: I have not put a condition
322. that you not drink, because I do not want to set
323. you up.
324. THE ACCUSED: Yeah.
325. THE COURT: For just being charged again,
326. but you have said yourself to the person that
327. wrote the Presentence Report that you do not
328. think you should drink.
329. THE ACCUSED: Yeah.
330. THE COURT: Bad things happen when you
331. drink.
332. THE ACCUSED: That's -- that's true. I'm
333. not going to lie about it, Your Honour. Yeah, I
334. mean I'm a young father. I just need to get
335. my -- straighten out everything.
336. THE COURT: Exactly. So I am not making
337. that a condition, but I hope you choose not to
338. drink.
339. THE ACCUSED: All right.
340. THE COURT: Ever again.
341. THE ACCUSED: (Affirmative, non-verbal
342. response).
343. THE COURT: Have I overlooked anything
344. from the Crown's perspective?
345. MR. GREEN: No, Your Honour. My friend
346. and I have agreed in principle on a forfeiture
347. and disposition order. There were a few exhibits
348. seized from Mr. Bernarde, and we will be filing
349. that over the counter. It will be an order on
350. consent.
351. 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
352. not see you back in court again.
353. THE ACCUSED: Yeah.
354. THE COURT: Thank you. We will close
355. court.

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# 8 CERTIFICATE OF TRANSCRIPT

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1. I, the undersigned, hereby certify that the
2. foregoing pages are a complete and accurate
3. transcript of the proceedings taken down by me in
4. shorthand and transcribed from my shorthand notes
5. to the best of my skill and ability.
6. Dated at the City of Edmonton, Province of
7. Alberta, this 28th day of March, 2018.

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1. Certified Pursuant to Rule 723
2. of the Rules of Court

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1. Linda Kimball
2. Court Reporter

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