

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

PETER LAFFERTY AKA PETER JOHN LAFFERTY

Transcript of the Reasons for Sentence delivered by the Honourable Justice L.A. Charbonneau, sitting in Yellowknife, in the Northwest Territories, on the 10th day of August 2018.

APPEARANCES:

Ms. J. Scott: Counsel for the Crown

Mr. J.K. Bran: Counsel for the Accused

(Charges under s. 271 of the *Criminal Code of Canada*)

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*

1 THE COURT: Peter Lafferty has pleaded
2 guilty to two charges of sexual assault, and it
3 is now my responsibility to impose sentence on
4 him on these charges.

5 The first sexual assault happened on
6 October 1st, 2016. The victim, B.E., had been in
7 Yellowknife with friends consuming alcohol. She
8 was driven back to Behchoko. Her last
9 recollection is driving around Behchoko, but
10 after that, she has a blackout. She has no
11 memory of what Mr. Lafferty did to her. What
12 happened is known because of what other witnesses
13 saw and heard.

14 After they arrived in Behchoko, B.E. and
15 Nathaniel Smith went to Mr. Lafferty's house, and
16 they continued to drink. Ms. E eventually passed
17 out on a couch. Mr. Smith tried to wake her up
18 before he left, but he was not able to.
19 Mr. Lafferty kicked Mr. Smith out of the
20 residence.

21 Sometime after this, Theona Mantla, who was
22 a friend of Ms. E, went to Mr. Lafferty's house.
23 She saw her friend passed out there. She tried
24 to wake her but was not able to. Mr. Lafferty
25 was the only other person there, and he was
26 awake. He asked her to leave and locked the door
27 behind her.

1 She left, but she was concerned for B.E.; so
2 she went to another residence, and she called the
3 police. The police received that call shortly
4 after 3:30 in the morning. They attended the
5 residence, but there was no response at the door.
6 Based on the information they had, they were
7 concerned for B.E.'s safety; so they broke down
8 the door. They found Mr. Lafferty laying on the
9 couch. B.E. was laying fully clothed and on the
10 mattress on the floor. Witnesses who had been in
11 the house earlier said that there had not been a
12 mattress on the floor before. Police found a
13 used condom on the floor and a condom wrapper in
14 Mr. Lafferty's jeans.

15 B.E. was examined by a nurse. Exhibits were
16 sent for forensic analysis and confirmed that
17 Mr. Lafferty had sexual intercourse with her that
18 night. It is also an admitted fact that B.E. was
19 incapable of consenting to any sexual activity at
20 the time this happened.

21 Mr. Lafferty was arrested that night and
22 released on an undertaking later that day.

23 The second offence happened on October 22nd,
24 2016. In the early-morning hours, A.G., who was
25 13 at the time, and other teenagers were at
26 Mr. Lafferty's house, drinking alcohol and
27 smoking marijuana. Mr. Lafferty's house was

1 known to be a place where they could go and
2 party. A.G. started feeling dizzy and went to
3 one of the bedrooms, laid down, and fell asleep.
4 She woke up to Mr. Lafferty having intercourse
5 with her. She told him to stop, and he did not.

6 One of the other teens who had fallen asleep
7 on the couch heard noise and went to the bedroom.
8 She saw Mr. Lafferty having intercourse with A.G.
9 She said A.G.'s eyes were closed and that she was
10 crying. The teen who walked in on this got angry
11 and pushed Mr. Lafferty off A.G.

12 One of the other teens who had been at the
13 house but had left returned sometime after this.
14 He saw A.G. with her pants down and Mr. Lafferty
15 in the room with her. He started assaulting
16 Mr. Lafferty and punched him in the face. The
17 youths then left the house.

18 In the meantime, a neighbour who had heard
19 the fighting called the police. They attended
20 and found Mr. Lafferty passed out on the couch,
21 bleeding. He could not tell the officers his
22 name. He was lodged in cells to confirm his
23 identity, and the next day, he was charged with
24 sexual assault of A.G.

25 Police obtained a warrant to search the
26 house. They found a used condom in the back
27 bedroom. They also arranged for A.G. to be

1 examined. Forensic testing confirmed that her
2 DNA as well as Mr. Lafferty's were on the condom.

3 Mr. Lafferty has been in custody since that
4 day, October 22nd, 2016. It has taken quite some
5 time for this matter to be dealt with, but there
6 were a number of factors that contributed to the
7 delay in this matter getting concluded. And I
8 will just refer to that background briefly.

9 Mr. Lafferty's initial election was to have
10 his trials before a judge and jury. Preliminary
11 hearings had been scheduled to proceed in March
12 2017, but he waived his right to those hearings
13 and no witnesses had to be called.

14 A pretrial conference was held in
15 August 2017 on the matter involving B.E. At
16 that time, it was expected the matter would go
17 to trial and that two weeks would be needed for
18 it. The time estimate was later revised to eight
19 days. In September 2017, the matter was
20 scheduled to proceed to trial in March 2018 on
21 the two short weeks on either side of the Easter
22 holiday.

23 Very soon after the docket issued, counsel
24 advised the Court that only five days would be
25 needed. They asked that the matter be
26 rescheduled. It could not proceed on either of
27 the two weeks that it had initially been

1 scheduled for because, as I said, those were
2 short weeks. The matter was rescheduled.

3 On the matter involving A.G., there were
4 early indications that it might resolve, and
5 everyone agreed to defer the holding of a
6 pretrial conference.

7 In December 2017, there was a change of
8 defence counsel. A few months later, the new
9 lawyer advised that there would be a re-election
10 to judge alone on both matters and that there was
11 a possibility of resolution, not just on the
12 matter involving A.G. but on the other one as
13 well.

14 In May 2018, there was another change of
15 counsel, and that was when Mr. Bran, who now
16 represents Mr. Lafferty, became counsel. A very
17 short time after Mr. Bran got on the record, the
18 Court received confirmation that both these
19 matters were resolved. Counsel requested an
20 appearance for the purpose of entering pleas
21 and for the facts to be read in, which was done
22 May 25th, 2018.

23 The reason I have gone over this history is
24 to make it clear that although these cannot be
25 characterized as early guilty pleas in the way we
26 normally think of it, the overall context,
27 including the changes in Mr. Lafferty's

1 representation, cannot be overlooked. And for
2 that reason, I agree with what has been said
3 about the credit that should be given to
4 Mr. Lafferty for his guilty pleas.

5 As of today, by my calculation, he has spent
6 a total of 657 days on remand, which corresponds,
7 roughly, to close to 22 months of pretrial
8 custody.

9 The law is well-established that, generally
10 speaking, while the discretion as to credit for
11 remand time lies with the sentencing judge,
12 offenders should ordinarily be credited for their
13 remand time, roughly on a ratio of one-and-a-half
14 days' credit for each day spent on remand. The
15 Crown takes the position here that there is no
16 reason for Mr. Lafferty not to receive credit for
17 his remand time on that ratio.

18 I have the benefit of the presentence report
19 that was prepared for this hearing. I am not
20 going to refer to it in details here, but I have
21 considered the information that was included in
22 it, and I have also carefully considered the
23 support letters and the other documents that were
24 filed earlier this week. Those documents assist
25 me in understanding more about who Mr. Lafferty
26 is.

27 As is the case for any offender, there is

1 much more to Mr. Lafferty than these two serious
2 crimes he has committed. According to the
3 materials before me, Mr. Lafferty is a talented
4 artist, and he hopes to eventually make a living
5 from this. According to his uncle, who has
6 employed him in the past doing construction work,
7 he is a reliable worker, and he works well with
8 others on the jobsite.

9 It is clear that Mr. Lafferty has taken some
10 steps and has attempted to better his life and
11 better himself despite some of the challenges he
12 has faced. He has made use of some of the
13 resources that were available to him on remand.
14 He has seen the psychologist at the jail. He has
15 attended AA meetings fairly regularly during some
16 stretches of time; although, looking at the
17 attendance sheets, there seems to also have been
18 some gaps in his attendance.

19 From the presentence report, I know that
20 Mr. Lafferty's childhood had some good sides but
21 also some struggles. His grandmother raised him.
22 She was not violent with him, and she did not
23 abuse alcohol. They spent time on the land and
24 engaged in traditional activities. On the other
25 hand, an uncle who lived with them was sometimes
26 violent when drinking, and Mr. Lafferty was
27 afraid of him when he used alcohol.

1 The letter from Mr. Lafferty's mother
2 outlines some other struggles that he went
3 through, how her then husband treated
4 Mr. Lafferty, and that although she has attempted
5 to reach out and assist him over the years, that
6 never worked out.

7 When he addressed the Court at the
8 conclusion of submissions, Mr. Lafferty talked
9 about numerous losses he has suffered. He has
10 lost several relatives to cancer. He said that
11 he is afraid. He said that he is sorry for what
12 he did. And these things are also reflected in
13 some of the comments in the presentence report.

14 There are things that are made very clear on
15 the evidence before me. First, alcohol is a
16 serious problem for Mr. Lafferty. The report
17 says that his consumption of alcohol went
18 completely out of control when he learned that
19 his mother has cancer, but it is obvious that
20 alcohol has been a problem for him in the past
21 and was a problem for him well before that event.

22 I heard, among other things, that his
23 conviction from 1999 for sexual assault occurred
24 in very similar circumstances to the ones in
25 these cases, that is, in a situation where
26 alcohol was used to excess by everyone including
27 him.

1 Mr. Lafferty has accessed treatment programs
2 before. He likely will need help again to
3 address his addiction. It is positive and
4 encouraging that he has accessed some programming
5 while on remand, and I am referring, again, in
6 part, to the attendance at AA. As I mentioned,
7 the attendance sheets suggest that he attended
8 regularly during certain periods of time, but
9 there have been some significant gaps. I do not
10 know why that is. I do not know why for some
11 stretches of time he went and for other stretches
12 of time he did not.

13 One way or another, Mr. Lafferty is going to
14 have to find a way, somehow, to address his
15 drinking because it is very clear that it leads
16 him to very bad places. Achieving sobriety is
17 very difficult, but it is a necessary step
18 towards rehabilitation for him. That will mean
19 changing his own conduct, and it probably also
20 will mean changing lifestyles, changing friends
21 because this will be a lifelong battle.

22 I have to say, there are a few aspects of
23 the presentence report that raise concerns in my
24 mind from the point of view of Mr. Lafferty's
25 insight into his behaviour. With respect to the
26 assault on B.E., his comments to the author of
27 the report are somewhat contradictory because, in

1 one part, he talks about the two of them making
2 out and her being awake, but later in the report,
3 he acknowledges he knows it is wrong to take
4 advantage of someone who is sleeping.

5 There is overwhelming evidence from the
6 admitted facts that B.E. was highly intoxicated
7 that evening and was passed out when these events
8 occurred. Two different people tried to wake her
9 up shortly before she was sexually assaulted.

10 Mr. Lafferty needs to come to terms with the
11 full measure of what he has done. With respect
12 to A.G., his comment in the presentence report is
13 that he wishes those young people had not come
14 by. But his place was known as a party place.
15 He needs to acknowledge some responsibility for
16 that, and there can be no excuse, no
17 justification, and no watering down of what he
18 did that day.

19 He raped a 13-year-old girl while she was
20 asleep. She woke up and told him to stop, and he
21 did not. Another person in the house heard her
22 crying. That is what happened, and that is
23 Mr. Lafferty's responsibility.

24 Another indication of lack of insight is
25 that with respect to both victims, when asked
26 about the effects he thinks his conduct had on
27 them, his response in both cases is that they

1 must be mad at him. I believe Mr. Lafferty when
2 he said earlier this week that he is sorry. I
3 believe that he is sorry. He also said that what
4 he did is stupid.

5 I am not sure that word "stupid" quite
6 captures what he has done. What he did was take
7 advantage of intoxicated persons for his own
8 sexual gratification. Both of his victims were
9 in a highly vulnerable position. One was
10 basically still a child. I agree it was a stupid
11 thing to do, but it was far more than that. It
12 was an awful breach of these people's personal
13 and sexual integrity, and it is conduct that we
14 know very well now causes terrible, terrible
15 harm.

16 The more Mr. Lafferty understands just how
17 much harm he caused to these two people, I am
18 sure, the worse he will feel. That is a
19 necessary passage, I think, for him to have the
20 strength to address his issues and never put
21 another person through this again. This has to
22 be the last time. Being sorry now is one thing,
23 and I accept he is, but it has to translate into
24 action and into concrete steps to change, and it
25 will be hard.

26 As the Crown prosecutor said, the law is
27 clear that deterrence and denunciation have to be

1 the primary sentencing objectives in a situation
2 like this. This type of sexual assault is very
3 prevalent in this jurisdiction. Year after year,
4 I have struggled to understand why this is so,
5 and I still do not understand why this is so, but
6 it continues to happen at an alarming rate in the
7 communities in the Northwest Territories. I
8 have, in other cases, called it an "epidemic",
9 and I continue to think that using that word is
10 not an exaggeration.

11 The solution to this problem is not
12 something that is in this Court's hands. The
13 Court deals with these matters after they have
14 happened, after the harm has been done, and the
15 Court has very limited tools. I continue to hope
16 that people in the various communities in this
17 jurisdiction will find ways to help stop this
18 terrible cycle so that everyone in the community
19 can feel safe and be safe, so that women and
20 girls may be able to go to sleep without having
21 to worry about waking up to being raped by a
22 friend or acquaintance or someone who just
23 happened to be in the house.

24 The fact that this happens so often does not
25 make it any less terrible. Communities and
26 people in general cannot get used to this and
27 cannot accept this as a fact of life. This is

1 not normal. This should not be happening. And
2 people in communities, if they decide to work
3 together, if they decide that enough is enough,
4 can help change things.

5 In the meantime, the Court can only use the
6 tools that it has, and for serious crimes like
7 this, the only tool is the imposition of a
8 significant jail term in the hope that while in
9 custody, Mr. Lafferty will be able to access
10 programs and treatment that will help him change
11 his ways. He has said he wants to change his
12 life, and I say again I believe him. He will
13 need help to do that, but, in the end, it will be
14 up to him. He is the only person who will have
15 control over his future actions.

16 Counsel have presented the Court with a
17 joint submission. I heard very detailed
18 submissions from the Crown explaining how it
19 came to the conclusion that what is being jointly
20 proposed would be a fit sentence. The law is
21 that when a joint submission is presented, it has
22 to be followed unless the judge finds it
23 completely unreasonable, so unreasonable that it
24 would cause reasonable people in the public to
25 lose faith in the justice system.

26 There are very aggravating things about
27 these offences: There were two separate sexual

1 assaults; the second one was committed a mere
2 three weeks after Mr. Lafferty was released on
3 the first one; he has a record for committing a
4 very similar crime in 1999 and received a
5 significant sentence that time, a sentence of two
6 years less a day; the two victims were extremely
7 vulnerable; and in A.G.'s case, her young age is
8 an aggravating factor.

9 But consideration must also be given to some
10 important mitigating factors. The guilty pleas
11 are very mitigating. They have spared these
12 victims the harm and trauma of having to talk
13 about these events in open court. They have
14 provided certainty of outcome for all involved.
15 And even in a case where there is forensic
16 evidence that assists the Crown, even when a case
17 appears on the surface to be strong, there are
18 never any guarantees when a matter goes to trial.
19 The standard of proof that the Crown faces is a
20 very high one. Giving up the right to have a
21 trial is giving up a lot. And with what I heard
22 in this particular case about one victim not
23 being cooperative with the Crown and issues with
24 young, vulnerable witnesses who are all
25 intoxicated at the time of the events for the
26 other matter, I do accept that these guilty pleas
27 should be given maximum mitigating weight.

1 The specific circumstances of Mr. Lafferty
2 as an Indigenous offender must also be
3 considered. The principles that are engaged
4 because of this are engaged daily in this
5 jurisdiction; so I am not going to repeat them
6 here. But restraint is a particularly important
7 factor and sentencing principle when sentencing
8 for Indigenous offenders. And even aside from
9 the specific application of restraint to
10 sentencing of Indigenous offenders, no sentence
11 should ever be longer than what is needed to
12 achieve the objectives of sentencing.

13 I also have to consider the principle of
14 totality. Sentencing Mr. Lafferty for these two
15 crimes is not simply a matter of deciding what
16 sentence should be imposed for each offence and
17 adding them up. I am required to take into
18 account the global effect of the sentences. This
19 is to ensure that the overall impact of the
20 sentence is not crushing on Mr. Lafferty and does
21 not turn into something that is counterproductive.

22 There is never just one right number or one
23 right sentence for any given crime. There is
24 always a range. The joint submission is
25 certainly not at the high end of the range of
26 what could be imposed for these two offences, but
27 considering all of the circumstances in this case

1 and given everything I have heard and read, I
2 think it represents a very restrained but fair
3 outcome.

4 Counsel have made it clear that an important
5 component of the joint position is to ensure that
6 the sentence results in Mr. Lafferty having
7 access to programs offered through the federal
8 correctional system. I agree that this is both
9 in his best interest and, also, ultimately in the
10 best interest of the community because the
11 reality is no matter what sentence I impose
12 today, Mr. Lafferty will eventually be released.
13 The best way for his community to be protected is
14 for him to be able to address the underlying
15 issues that have caused him to behave in this
16 manner.

17 Crown and defence agree that I should
18 endorse the warrant of committal to recommend
19 that he be given access to sexual-offender
20 programming, and I will do so. I am aware from
21 other sentencing hearings that the high-intensity
22 programs are only administered in southern
23 institutions. These are lengthy programs,
24 usually offered only once a year, and they cannot
25 be delivered in the north.

26 I make mention of this because
27 Mr. Lafferty's counsel has also asked that I

1 recommend that Mr. Lafferty be permitted to serve
2 his sentence in the north if at all possible.
3 Some of the people who wrote letters of support
4 have also asked for that. I often endorse
5 warrants of committal to ask that consideration
6 be given to enable offenders who are sentenced to
7 more than two years' imprisonment and have
8 support from their community to be permitted to
9 serve their sentence in the north. And I do this
10 because I understand it is very hard for families
11 who reside in the north to visit relatives and
12 loved ones who are detained in southern Canada.

13 Here, my only concern about doing so is that
14 it is important, I think, that priority be given
15 to ensuring that Mr. Lafferty has access to the
16 programming he needs. That is the most important
17 consideration as far as the long-term objective
18 of his rehabilitation and, also, the objective of
19 protecting the community. So I will word the
20 recommendations in such a way that I hope will
21 make this clear, and hopefully the transcript of
22 my remarks this morning will also make that
23 clear.

24 Going back to the principle of totality that
25 I have already referred to, there are two ways to
26 ensure that it is respected. The first, when
27 consecutive sentences are imposed, is to reduce

1 each sentence to ensure that the total is not
2 crushing. The second way is to depart from the
3 usual principle that distinct offences should
4 give rise to consecutive sentences and impose,
5 instead, sentences that are to be served
6 concurrently, which means at the same time.

7 As I said earlier this week during
8 submissions, while, certainly, these distinct
9 assaults should normally result in the imposition
10 of consecutive sentences, I am concerned about
11 doing that because to arrive at the total
12 sentence of four years and nine months, which is
13 what the joint submission is, I would have to
14 reduce each of these sentences to the point that
15 I do not think either of them would reflect the
16 true gravity of these crimes and the aggravating
17 factors. For that reason, I have decided to
18 exercise my discretion not to make the sentences
19 consecutive so that each of them reflects the
20 gravity of the offence.

21 I will deal with the ancillary orders. They
22 are part of the joint submission and are not
23 disputed, as I understand. There will be a DNA
24 order because these are primary designated
25 offences. There will be a lifetime order with
26 respect to the Sexual Offenders' Information
27 Registration Act because there is more than one

1 conviction. There will be a firearms prohibition
2 order which will commence today and expire ten
3 years after Mr. Lafferty's release from custody.
4 And as I have no discretion to do otherwise, I
5 will impose a victim of crime surcharge on each
6 of these counts.

7 Can you stand up, please, Mr. Lafferty.
8 Mr. Lafferty, I am going to go along with what
9 the lawyers have suggested. If you had not spent
10 any time in custody, my sentence would have been,
11 for the sexual assault on B.E., three years, and
12 for the sexual assault on A.G., it would have
13 been four years and nine months concurrent.

14 For the 657 days you have already spent in
15 custody, I am going to give you credit for two
16 years and eight months, which means that the
17 further jail terms will be, for the sexual
18 assault on B.E., four months, and for the sexual
19 assault on A.G., two years and one month
20 concurrent. So the further jail sentence will be
21 two years and one month. You can sit down.

22 The warrant of committal will be endorsed
23 with two recommendations. First that
24 Mr. Lafferty be given access to sexual-offender
25 treatment programming as soon as possible so that
26 he can complete that during his sentence. The
27 second is if at any point during his sentence,

1 Mr. Lafferty's programming needs do not require
2 him to be in a southern institution, that the
3 authorities give consideration to permit him to
4 serve those portions of his sentence in a
5 northern institution.

6 These are only recommendations. I cannot
7 make this decision; I cannot order these things
8 to happen. But the intent of these
9 recommendations is not to have a northern
10 placement if that would interfere with
11 Mr. Lafferty's programming and treatment needs.

12 I certainly understand the concerns
13 communicated to me through his lawyer, and his
14 family's concerns about the problem with distance
15 and him serving a sentence far away. But I think
16 the record makes it very clear that it is really
17 in his best interest to have access to treatment
18 programs. That will most probably mean that at
19 least some of the sentence will have to be served
20 somewhere else, but I am hopeful that, in the
21 long run, it will help him so that he can return
22 to his community after his release, benefit from
23 the support of those who want to help him, and,
24 as he has said he wants to do, change his life.

25 Is there anything that requires clarification
26 or that I have overlooked from the Crown's
27 perspective?

1 MS. SCOTT: No, Your Honour.

2 THE CHAIR: Anything from your
3 perspective, Mr. Bran?

4 MR. BRAN: No. Thank you.

5 THE CHAIR: All right. I thank counsel
6 for their work on resolving these two cases and
7 for your helpful submissions to help me
8 understand how you arrived at the joint
9 submission.

10 If there is nothing further on this matter,
11 madam clerk, we will close court.

12 Mr. Lafferty, my last words will be to wish
13 you luck, and I hope you are able to make the
14 changes you want to make. You are still very
15 young. You have a lot of time ahead of you, and
16 you have a lot of skills and good things going
17 for you. So I really hope you make the most of
18 the time you will have in custody and that you
19 can return to your community and be part of that
20 change I was talking about because it is much
21 needed.

22 Close court.

23

24 PROCEEDINGS ADJOURNED

25

26

27

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

CERTIFICATE OF TRANSCRIPT:

I, Angela Porco, 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 Calgary, Province of Alberta, this 9th day of September 2018.

Certified Pursuant to Rule 723
of the Rules of Court

Angela Porco



Angela Porco, CSR(A)
Court Reporter