*R v Lafferty*, 2018 NWTSC 46 S-1-CR-2017-000111

S-1-CR-2017-000112

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

1. Yellowknife with friends consuming alcohol. She
2. was driven back to Behchoko. Her last
3. recollection is driving around Behchoko, but
4. after that, she has a blackout. She has no
5. memory of what Mr. Lafferty did to her. What
6. happened is known because of what other witnesses
7. saw and heard.
8. After they arrived in Behchoko, B.E. and
9. Nathanial Smith went to Mr. Lafferty's house, and
10. they continued to drink. Ms. E eventually passed
11. out on a couch. Mr. Smith tried to wake her up
12. before he left, but he was not able to.
13. Mr. Lafferty kicked Mr. Smith out of the
14. residence.
15. Sometime after this, Theona Mantla, who was
16. a friend of Ms. E, went to Mr. Lafferty's house.
17. She saw her friend passed out there. She tried
18. to wake her but was not able to. Mr. Lafferty
19. was the only other person there, and he was
20. awake. He asked her to leave and locked the door
21. 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
22. known to be a place where they could go and
23. party. A.G. started feeling dizzy and went to
24. one of the bedrooms, laid down, and fell asleep.
25. She woke up to Mr. Lafferty having intercourse
26. with her. She told him to stop, and he did not.
27. One of the other teens who had fallen asleep
28. on the couch heard noise and went to the bedroom.
29. She saw Mr. Lafferty having intercourse with A.G.
30. She said A.G.'s eyes were closed and that she was
31. crying. The teen who walked in on this got angry
32. and pushed Mr. Lafferty off A.G.
33. One of the other teens who had been at the
34. house but had left returned sometime after this.
35. He saw A.G. with her pants down and Mr. Lafferty
36. in the room with her. He started assaulting
37. Mr. Lafferty and punched him in the face. The
38. youths then left the house.
39. In the meantime, a neighbour who had heard
40. the fighting called the police. They attended
41. and found Mr. Lafferty passed out on the couch,
42. bleeding. He could not tell the officers his
43. name. He was lodged in cells to confirm his
44. identity, and the next day, he was charged with
45. sexual assault of A.G.
46. Police obtained a warrant to search the
47. house. They found a used condom in the back
48. bedroom. They also arranged for A.G. to be
49. examined. Forensic testing confirmed that her
50. DNA as well as Mr. Lafferty's were on the condom.
51. Mr. Lafferty has been in custody since that
52. day, October 22nd, 2016. It has taken quite some
53. time for this matter to be dealt with, but there
54. were a number of factors that contributed to the
55. delay in this matter getting concluded. And I
56. will just refer to that background briefly.
57. Mr. Lafferty's initial election was to have
58. his trials before a judge and jury. Preliminary
59. hearings had been scheduled to proceed in March
60. 2017, but he waived his right to those hearings
61. and no witnesses had to be called.
62. A pretrial conference was held in

15 August 2017 on the matter involving B.E. At

1. that time, it was expected the matter would go
2. to trial and that two weeks would be needed for
3. it. The time estimate was later revised to eight
4. days. In September 2017, the matter was
5. scheduled to proceed to trial in March 2018 on
6. the two short weeks on either side of the Easter
7. holiday.
8. Very soon after the docket issued, counsel
9. advised the Court that only five days would be
10. needed. They asked that the matter be
11. rescheduled. It could not proceed on either of
12. the two weeks that it had initially been
13. scheduled for because, as I said, those were
14. short weeks. The matter was rescheduled.
15. On the matter involving A.G., there were
16. early indications that it might resolve, and
17. everyone agreed to defer the holding of a
18. pretrial conference.
19. In December 2017, there was a change of
20. defence counsel. A few months later, the new
21. lawyer advised that there would be a re-election
22. to judge alone on both matters and that there was
23. a possibility of resolution, not just on the
24. matter involving A.G. but on the other one as
25. well.
26. In May 2018, there was another change of
27. counsel, and that was when Mr. Bran, who now
28. represents Mr. Lafferty, became counsel. A very
29. short time after Mr. Bran got on the record, the
30. Court received confirmation that both these
31. matters were resolved. Counsel requested an
32. appearance for the purpose of entering pleas
33. and for the facts to be read in, which was done

22 May 25th, 2018.

1. The reason I have gone over this history is
2. to make it clear that although these cannot be
3. characterized as early guilty pleas in the way we
4. normally think of it, the overall context,
5. including the changes in Mr. Lafferty's
6. representation, cannot be overlooked. And for
7. that reason, I agree with what has been said
8. about the credit that should be given to
9. Mr. Lafferty for his guilty pleas.
10. As of today, by my calculation, he has spent
11. a total of 657 days on remand, which corresponds,
12. roughly, to close to 22 months of pretrial
13. custody.
14. The law is well-established that, generally
15. speaking, while the discretion as to credit for
16. remand time lies with the sentencing judge,
17. offenders should ordinarily be credited for their
18. remand time, roughly on a ratio of one-and-a-half
19. days' credit for each day spent on remand. The
20. Crown takes the position here that there is no
21. reason for Mr. Lafferty not to receive credit for
22. his remand time on that ratio.
23. I have the benefit of the presentence report
24. that was prepared for this hearing. I am not
25. going to refer to it in details here, but I have
26. considered the information that was included in
27. it, and I have also carefully considered the
28. support letters and the other documents that were
29. filed earlier this week. Those documents assist
30. me in understanding more about who Mr. Lafferty
31. is.
32. 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
33. one part, he talks about the two of them making
34. out and her being awake, but later in the report,
35. he acknowledges he knows it is wrong to take
36. advantage of someone who is sleeping.
37. There is overwhelming evidence from the
38. admitted facts that B.E. was highly intoxicated
39. that evening and was passed out when these events
40. occurred. Two different people tried to wake her
41. up shortly before she was sexually assaulted.
42. Mr. Lafferty needs to come to terms with the
43. full measure of what he has done. With respect
44. to A.G., his comment in the presentence report is
45. that he wishes those young people had not come
46. by. But his place was known as a party place.
47. He needs to acknowledge some responsibility for
48. that, and there can be no excuse, no
49. justification, and no watering down of what he
50. did that day.
51. He raped a 13-year-old girl while she was
52. asleep. She woke up and told him to stop, and he
53. did not. Another person in the house heard her
54. crying. That is what happened, and that is
55. Mr. Lafferty's responsibility.
56. Another indication of lack of insight is
57. that with respect to both victims, when asked
58. about the effects he thinks his conduct had on
59. them, his response in both cases is that they
60. must be mad at him. I believe Mr. Lafferty when
61. he said earlier this week that he is sorry. I
62. believe that he is sorry. He also said that what
63. he did is stupid.
64. I am not sure that word "stupid" quite
65. captures what he has done. What he did was take
66. advantage of intoxicated persons for his own
67. sexual gratification. Both of his victims were
68. in a highly vulnerable position. One was
69. basically still a child. I agree it was a stupid
70. thing to do, but it was far more than that. It
71. was an awful breach of these people's personal
72. and sexual integrity, and it is conduct that we
73. know very well now causes terrible, terrible
74. harm.
75. The more Mr. Lafferty understands just how
76. much harm he caused to these two people, I am
77. sure, the worse he will feel. That is a
78. necessary passage, I think, for him to have the
79. strength to address his issues and never put
80. another person through this again. This has to
81. be the last time. Being sorry now is one thing,
82. and I accept he is, but it has to translate into
83. action and into concrete steps to change, and it
84. will be hard.
85. As the Crown prosecutor said, the law is
86. clear that deterrence and denunciation have to be
87. the primary sentencing objectives in a situation
88. like this. This type of sexual assault is very
89. prevalent in this jurisdiction. Year after year,
90. I have struggled to understand why this is so,
91. and I still do not understand why this is so, but
92. it continues to happen at an alarming rate in the
93. communities in the Northwest Territories. I
94. have, in other cases, called it an "epidemic",
95. and I continue to think that using that word is
96. not an exaggeration.
97. The solution to this problem is not
98. something that is in this Court's hands. The
99. Court deals with these matters after they have
100. happened, after the harm has been done, and the
101. Court has very limited tools. I continue to hope
102. that people in the various communities in this
103. jurisdiction will find ways to help stop this
104. terrible cycle so that everyone in the community
105. can feel safe and be safe, so that women and
106. girls may be able to go to sleep without having
107. to worry about waking up to being raped by a
108. friend or acquaintance or someone who just
109. happened to be in the house.
110. The fact that this happens so often does not
111. make it any less terrible. Communities and
112. people in general cannot get used to this and
113. cannot accept this as a fact of life. This is
114. not normal. This should not be happening. And
115. people in communities, if they decide to work
116. together, if they decide that enough is enough,
117. can help change things.
118. In the meantime, the Court can only use the
119. tools that it has, and for serious crimes like
120. this, the only tool is the imposition of a
121. significant jail term in the hope that while in
122. custody, Mr. Lafferty will be able to access
123. programs and treatment that will help him change
124. his ways. He has said he wants to change his
125. life, and I say again I believe him. He will
126. need help to do that, but, in the end, it will be
127. up to him. He is the only person who will have
128. control over his future actions.
129. Counsel have presented the Court with a
130. joint submission. I heard very detailed
131. submissions from the Crown explaining how it
132. came to the conclusion that what is being jointly
133. proposed would be a fit sentence. The law is
134. that when a joint submission is presented, it has
135. to be followed unless the judge finds it
136. completely unreasonable, so unreasonable that it
137. would cause reasonable people in the public to
138. lose faith in the justice system.
139. There are very aggravating things about
140. these offences: There were two separate sexual
141. assaults; the second one was committed a mere
142. three weeks after Mr. Lafferty was released on
143. the first one; he has a record for committing a
144. very similar crime in 1999 and received a
145. significant sentence that time, a sentence of two
146. years less a day; the two victims were extremely
147. vulnerable; and in A.G.'s case, her young age is
148. an aggravating factor.
149. But consideration must also be given to some
150. important mitigating factors. The guilty pleas
151. are very mitigating. They have spared these
152. victims the harm and trauma of having to talk
153. about these events in open court. They have
154. provided certainty of outcome for all involved.
155. And even in a case where there is forensic
156. evidence that assists the Crown, even when a case
157. appears on the surface to be strong, there are
158. never any guarantees when a matter goes to trial.
159. The standard of proof that the Crown faces is a
160. very high one. Giving up the right to have a
161. trial is giving up a lot. And with what I heard
162. in this particular case about one victim not
163. being cooperative with the Crown and issues with
164. young, vulnerable witnesses who are all
165. intoxicated at the time of the events for the
166. other matter, I do accept that these guilty pleas
167. 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
168. and given everything I have heard and read, I
169. think it represents a very restrained but fair
170. outcome.
171. Counsel have made it clear that an important
172. component of the joint position is to ensure that
173. the sentence results in Mr. Lafferty having
174. access to programs offered through the federal
175. correctional system. I agree that this is both
176. in his best interest and, also, ultimately in the
177. best interest of the community because the
178. reality is no matter what sentence I impose
179. today, Mr. Lafferty will eventually be released.
180. The best way for his community to be protected is
181. for him to be able to address the underlying
182. issues that have caused him to behave in this
183. manner.
184. Crown and defence agree that I should
185. endorse the warrant of committal to recommend
186. that he be given access to sexual-offender
187. programming, and I will do so. I am aware from
188. other sentencing hearings that the high-intensity
189. programs are only administered in southern
190. institutions. These are lengthy programs,
191. usually offered only once a year, and they cannot
192. be delivered in the north.
193. I make mention of this because
194. Mr. Lafferty's counsel has also asked that I
195. recommend that Mr. Lafferty be permitted to serve
196. his sentence in the north if at all possible.
197. Some of the people who wrote letters of support
198. have also asked for that. I often endorse
199. warrants of committal to ask that consideration
200. be given to enable offenders who are sentenced to
201. more than two years' imprisonment and have
202. support from their community to be permitted to
203. serve their sentence in the north. And I do this
204. because I understand it is very hard for families
205. who reside in the north to visit relatives and
206. loved ones who are detained in southern Canada.
207. Here, my only concern about doing so is that
208. it is important, I think, that priority be given
209. to ensuring that Mr. Lafferty has access to the
210. programming he needs. That is the most important
211. consideration as far as the long-term objective
212. of his rehabilitation and, also, the objective of
213. protecting the community. So I will word the
214. recommendations in such a way that I hope will
215. make this clear, and hopefully the transcript of
216. my remarks this morning will also make that
217. clear.
218. Going back to the principle of totality that
219. I have already referred to, there are two ways to
220. ensure that it is respected. The first, when
221. consecutive sentences are imposed, is to reduce
222. each sentence to ensure that the total is not
223. crushing. The second way is to depart from the
224. usual principle that distinct offences should
225. give rise to consecutive sentences and impose,
226. instead, sentences that are to be served
227. concurrently, which means at the same time.
228. As I said earlier this week during
229. submissions, while, certainly, these distinct
230. assaults should normally result in the imposition
231. of consecutive sentences, I am concerned about
232. doing that because to arrive at the total
233. sentence of four years and nine months, which is
234. what the joint submission is, I would have to
235. reduce each of these sentences to the point that
236. I do not think either of them would reflect the
237. true gravity of these crimes and the aggravating
238. factors. For that reason, I have decided to
239. exercise my discretion not to make the sentences
240. consecutive so that each of them reflects the
241. gravity of the offence.
242. I will deal with the ancillary orders. They
243. are part of the joint submission and are not
244. disputed, as I understand. There will be a DNA
245. order because these are primary designated
246. offences. There will be a lifetime order with
247. respect to the Sexual Offenders' Information
248. Registration Act because there is more than one
249. conviction. There will be a firearms prohibition
250. order which will commence today and expire ten
251. years after Mr. Lafferty's release from custody.
252. And as I have no discretion to do otherwise, I
253. will impose a victim of crime surcharge on each
254. of these counts.
255. Can you stand up, please, Mr. Lafferty.
256. Mr. Lafferty, I am going to go along with what
257. the lawyers have suggested. If you had not spent
258. any time in custody, my sentence would have been,
259. for the sexual assault on B.E., three years, and
260. for the sexual assault on A.G., it would have
261. been four years and nine months concurrent.
262. For the 657 days you have already spent in
263. custody, I am going to give you credit for two
264. years and eight months, which means that the
265. further jail terms will be, for the sexual
266. assault on B.E., four months, and for the sexual
267. assault on A.G., two years and one month
268. concurrent. So the further jail sentence will be
269. two years and one month. You can sit down.
270. The warrant of committal will be endorsed
271. with two recommendations. First that
272. Mr. Lafferty be given access to sexual-offender
273. treatment programming as soon as possible so that
274. he can complete that during his sentence. The
275. second is if at any point during his sentence,
276. Mr. Lafferty's programming needs do not require
277. him to be in a southern institution, that the
278. authorities give consideration to permit him to
279. serve those portions of his sentence in a
280. northern institution.
281. These are only recommendations. I cannot
282. make this decision; I cannot order these things
283. to happen. But the intent of these
284. recommendations is not to have a northern
285. placement if that would interfere with
286. Mr. Lafferty's programming and treatment needs.
287. I certainly understand the concerns
288. communicated to me through his lawyer, and his
289. family's concerns about the problem with distance
290. and him serving a sentence far away. But I think
291. the record makes it very clear that it is really
292. in his best interest to have access to treatment
293. programs. That will most probably mean that at
294. least some of the sentence will have to be served
295. somewhere else, but I am hopeful that, in the
296. long run, it will help him so that he can return
297. to his community after his release, benefit from
298. the support of those who want to help him, and,
299. as he has said he wants to do, change his life.
300. Is there anything that requires clarification
301. or that I have overlooked from the Crown's
302. perspective?

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| --- | --- | --- |
| 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 |

1. for your helpful submissions to help me
2. understand how you arrived at the joint
3. submission.
4. If there is nothing further on this matter,
5. madam clerk, we will close court.
6. Mr. Lafferty, my last words will be to wish
7. you luck, and I hope you are able to make the
8. changes you want to make. You are still very
9. young. You have a lot of time ahead of you, and
10. you have a lot of skills and good things going
11. for you. So I really hope you make the most of
12. the time you will have in custody and that you
13. can return to your community and be part of that
14. change I was talking about because it is much
15. needed.
16. Close court.

23

24 PROCEEDINGS ADJOURNED

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1 CERTIFICATE OF TRANSCRIPT:

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1. I, Angela Porco, certify that the foregoing
2. pages are a complete and accurate transcript of
3. the proceedings, taken down by me in shorthand
4. and transcribed from my shorthand notes to the
5. best of my skill and ability.
6. Dated at the City of Calgary, Province of
7. Alberta, this 9th day of September 2018.

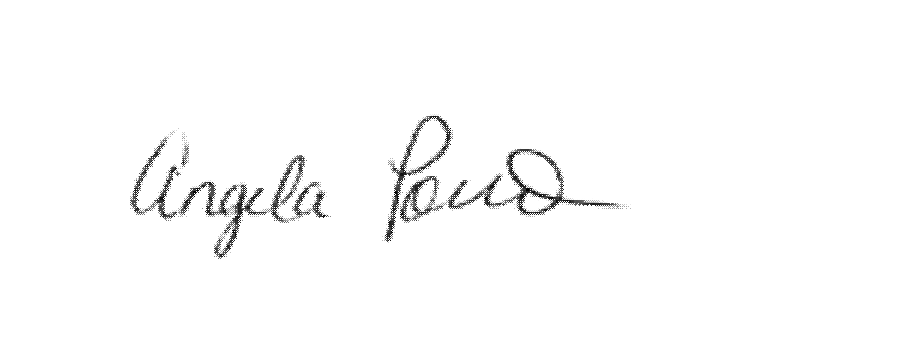
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1. Certified Pursuant to Rule 723



1. of the Rules of Court



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1. Angela Porco, CSR(A)
2. Court Reporter

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