

R v TLOKKA and SMITH-LAFFERTY, 2018 NWTSC 48

S-1-CR-2016-000110

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

GUY TLOKKA and JACOB SMITH-LAFFERTY

Transcript of the Reasons for Sentence delivered by the Honourable Justice A.M. Mahar, sitting in Yellowknife, in the Northwest Territories, on the 7th day of August 2018.

APPEARANCES:

Mr. J. Potter:	Counsel for the Crown
Mr. J.K. Bran:	Agent for S. Fix
	Counsel for the Accused

(Charges under s. 254 (a) and 325 (1) (b) of the
Criminal Code of Canada)

1 THE COURT: Mr. Smith-Lafferty, if you'd
2 like to join Mr. Bran.

3 MR. BRAN: Thank you, Your Honour.

4 For the record, last name Bran, first
5 initial 'J'. I've been asked to appear as agent
6 for Mr. Fix, counsel for -- for the accused. So
7 I'm -- I'm here as his agent to receive the
8 decision and will be reporting back to Mr. Fix.

9 THE COURT: Thank you, Mr. Bran.

10 I will be ordering a transcript of today's
11 proceedings. I may substantially edit my
12 comments. In the event that any of the edited
13 comments are not exactly what I said here today,
14 the final version is the version that stands.

15 Back on July the 10th, Mr. Smith-Lafferty
16 pled guilty to a single count of breaking and
17 entering. It relates to an incident that
18 occurred on February the 8th, 2016.

19 At about 5:00 in the morning, two highly
20 intoxicated males kicked in the door of
21 Mr. Mantla's residence, woke him up by dragging
22 him out of bed, took him into the bathroom, and
23 proceeded to beat him up by kicking and punching
24 him. He suffered some relatively minor injuries,
25 but they did include a bloody lip, a bloody nose,
26 and bruising to his head. It was clearly a very
27 surprising and frightening incident. There was

1 no attempt made to disguise themselves. Behchoko
2 is a small community, and the gentlemen were
3 easily recognized. This was a crime of
4 remarkably limited sophistication in that there
5 was no way in which they were not going to be
6 caught.

7 Mr. Smith-Lafferty was so intoxicated that
8 he has no recollection of what occurred, but he
9 did decide to take responsibility for his
10 behaviour. He provided a statement to the RCMP
11 shortly after the incident indicating his
12 responsibility to the extent that he was able to
13 remember it.

14 I was also impressed by some of the comments
15 that he made to the probation officer who was
16 writing his presentence report. He indicated a
17 genuine degree of remorse for what had happened
18 and said that he wanted to apologize to
19 Mr. Mantla should he have the opportunity. I
20 will address that further when we get to the
21 issue of the probation order which I intend to
22 make.

23 The Crown attorney quite rightly points out
24 that under Section 348(1) of the Criminal Code,
25 it is an aggravating circumstance when a person
26 breaks into a residence, being either reckless or
27 knowing that the residence is occupied, and uses

1 violence as a result. I take this into account.

2 I also take into account Mr. Smith-Lafferty's
3 status as an indigenous offender. There are a
4 number of factors which were brought out in the
5 presentence report and in comments by both the
6 Crown and defence that flag certain issues that
7 the Court should be aware of. Mr. Smith-Lafferty
8 commenced drinking at a very young age. He was
9 only 13 years old when he started drinking. He
10 only made it as far as Grade 10 and did not
11 complete Grade 10, but, in fact, dropped out
12 early on.

13 He has had an on-again, off-again
14 relationship with the mother of his two very
15 small children that has been, in his own words,
16 toxic. It has been a very unhealthy
17 relationship, and he acknowledges that.

18 When his mother was speaking to the writer
19 of the presentence report, she was clear that it
20 is largely peer interactions, including his
21 girlfriend and his friends, that causes
22 Mr. Smith-Lafferty to fall back into familiar
23 patterns, start drinking, and find himself back
24 in front of the Court.

25 He appears to be a serious and well-mannered
26 young man when he is incarcerated. There were
27 some very positive comments made about him by his

1 case management officer at the North Slave
2 Correctional Centre. I take those into account
3 as well.

4 It is a fundamental principle of criminal
5 law that a sentence should be proportionate to
6 the gravity of the offence and the degree of
7 responsibility of the offender. I am concerned
8 with the protection of the public, and this is
9 addressed through denunciation of the criminal
10 act, deterrence of the offender, and an attempt
11 to promote rehabilitation, responsibility, and
12 reparations.

13 I struggled with the correct amount of time
14 to impose in this case. Mr. Smith-Lafferty
15 unfortunately has a long criminal record and has
16 not really been able to stay out of trouble very
17 long for most of his life. I think that could
18 change. He shows a real desire to want to help
19 his family and to want to get on with his life in
20 a way that does not involve spending all of his
21 time in jail, and I believe that.

22 The Crown attorney is asking for two years.
23 This is not an unreasonable request. In fact, I
24 believe the Crown has taken into account many of
25 the factors that the Court must take into
26 account. I commend the Crown on his very fair
27 submissions in this regard.

1 Defence counsel was asking for a range
2 between 12 and 18 months, and pointed out some
3 distinctions between this case and the case law
4 that was filed by the Crown. I do not fault the
5 Crown for those distinctions. It is difficult to
6 find cases that match in perfect form the cases
7 that we are dealing with.

8 I think, as I noted during our earlier
9 conversation about this during submissions, this
10 case is notable for its extreme lack of
11 sophistication, and but for the fact that it took
12 place in a dwelling house, we would be dealing
13 with a very different set of circumstances and a
14 very different sentence here today. But it did
15 take place in a dwelling house which makes it
16 significantly more serious than it would
17 otherwise be.

18 Two drunk men broke into the house, looking
19 for alcohol. It is a shame that both Mr. Mantla,
20 the victim, was terrorized on the morning in
21 question and that Mr. Smith-Lafferty is going to
22 end up spending a portion of his life
23 incarcerated as a result of it. Hopefully this
24 will be the last time Mr. Smith-Lafferty finds
25 himself in this kind of trouble.

26 Taking everything into account and giving
27 specific recognition to Mr. Smith-Lafferty's

1 obvious remorse and his clear desire to do
2 better, I am going to go somewhat lower than what
3 the Crown attorney is requesting and at the upper
4 end of what was requested by the defence and
5 impose a sentence of 18 months in jail. I
6 believe that that is the lowest that I can go,
7 given the record and also given the seriousness.

8 I am going to make two recommendations on
9 the warrant of committal. One, that
10 Mr. Smith-Lafferty be considered for early
11 release, if they are able to find a program with
12 respect to alcohol treatment or other treatment.
13 The other recommendation I am going to be making
14 is that he be considered for early release and
15 for the temporary absence program if he is able
16 to find work. I think one of the most important
17 things for Mr. Smith-Lafferty
18 is that he get back into the economy. That was
19 clear in his comments to the probation officer
20 during the presentence report. Despite his lack
21 of formal education, what Mr. Smith-Lafferty
22 wants to do is get to work. And it is only going
23 to be to his benefit and to society's benefit if
24 he is able to do so.

25 Eighteen months is equal to 547 days. I
26 have given Mr. Smith-Lafferty credit for the
27 74 actual days that he has served in relation to

1 this offence at a rate of 1.5-to-1; the number
2 being 111, which leaves him with 436 days left to
3 serve.

4 I am going to impose a number of ancillary
5 orders. Primarily there is a DNA order. It is
6 mandatory under the section. There will be a
7 Section 109 order, prohibiting him from the
8 possession of firearms or ammunition for a period
9 of ten years.

10 I am going to allow an exemption under
11 Section 113 which allows you to apply for a
12 limited permit if you decide you need to do any
13 hunting or if you get work that requires the use
14 of a firearm.

15 There will be a Section 738 order in the
16 amount of \$800. This is a stand-alone
17 restitution order. It is a judgment of the
18 Court, but it is not going to be part of your
19 probation. I know you are going to have a
20 struggle finding work and you are going to have a
21 struggle paying for your family and for your own
22 needs, and I do not want to find you in breach of
23 your probation order simply because of a monetary
24 amount. I do believe, however, it is important
25 that you respect your share of the damage that
26 was caused. That is \$500 for the door and \$600
27 divided into two for the television set, for a

1 total of \$800.

2 You will be placed on probation for a period
3 of three years.

4 You indicated to me that you could stay away
5 from alcohol. Do you still want to do that?

6 THE ACCUSED: Yeah.

7 THE COURT: I am going to make an order
8 that you abstain absolutely from the possession
9 or consumption of alcohol. I hope that I am
10 doing that for your own benefit. I know that
11 temptation is difficult, and if you have a reason
12 to say no, it might make things easier for you.

13 Another condition of your probation order is
14 to report within three days of your release and
15 after that as directed. You are to seek
16 employment and provide your probation officer
17 with an update on your attempts to do so. If you
18 gain employment, you are to attempt to maintain
19 it.

20 You are to have no contact, directly or
21 indirectly, with the victim in this matter,
22 Mr. Mantla, unless initiated by him, should
23 Mr. Mantla wish to allow an apology. I am going
24 to ask the probation officer to contact
25 Mr. Mantla to see if he wishes to do that. If
26 that is possible, then the probation officer can
27 facilitate a meeting to allow for an apology. It

1 is in everybody's best interest, and, as you said
2 when you were talking to the probation officer,
3 if it was you, you would feel pretty badly about
4 it too. It would be a nice way to put it behind
5 everyone when you get back to home.

6 I am not going to make a condition that you
7 reside in any particular place. Your children
8 right now are in Leduc, Alberta. You might have
9 a better chance of finding work here in
10 Yellowknife or in northern Alberta, wherever it
11 is that you intend to go. I just hope you are
12 able to find something, and hopefully your
13 probation officer will be able to help you do
14 that.

15 Mr. Potter, is there anything I have
16 forgotten?

17 MR. POTTER: I think just the victim of
18 crime surcharge, Sir.

19 THE COURT: \$200. I will allow two years
20 to pay that.

21 Mr. Bran, anything that comes to mind?

22 MR. BRAN: If I may just have a moment.

23 THE COURT: Sure.

24 It is okay, Mr. Sheriff.

25 THE COURT CLERK: I'm sorry, Your Honour.

26 What's the time to pay for the restitution?

27 THE COURT: It is a stand-alone

1 restitution order; so there is no time to pay.

2 THE COURT CLERK: There is no time.

3 THE COURT: It's just a stand-alone order.

4 It is under Section 38. It is not part of his
5 probation.

6 THE COURT CLERK: Okay.

7 MR. BRAN: Your Honour, my -- my -- my
8 client -- Mr. Fix's client advises me that he
9 doesn't have any questions about what has been
10 just handed down and doesn't have any -- any
11 issues with anything that may have been mentioned
12 in the past that was not addressed at this point.

13 I understand that his mother has arrived, is
14 sitting right behind us, and that she had a
15 support letter that she had on her phone. I was
16 indicating that because this is the -- the
17 decision being handed down, it -- it's -- at this
18 point, as far as I'm concerned, it may be too
19 late to provide that to the Court, probably most
20 essentially because it's -- it's on her phone; so
21 it wouldn't be something that could even be filed
22 at this point. So -- so that was the issue that
23 I was addressing very briefly here.

24 THE COURT: Thank you.

25 I'll just -- I'll just say, ma'am, that your
26 comments to the probation officer were very
27 helpful.

1 UNIDENTIFIED SPEAKER: (INAUDIBLE) --

2 THE COURT REPORTER: I can't hear her.

3 THE COURT: I can't hear you. Sorry. If

4 you want to stand up, please, and just speak

5 loudly so we can hear you.

6 UNIDENTIFIED SPEAKER: It's just that there was a

7 text letter that was sent from Kristen

8 (phonetic), the mother of his children, that text

9 me, 'cause she is out in Alberta and didn't know

10 how to send it to me, so she text it to me in

11 order for me to give it to a lawyer to read it

12 out loud to you.

13 THE COURT: Thank you for that.

14 Thank you, Mr. Bran.

15 MR. BRAN: Thank you.

16 And -- and I think I overheard your

17 conversation with Mr. Clerk that the restitution

18 was not a part of the probation; it's stand-alone?

19 THE COURT: It's a stand-alone

20 restitution.

21 MR. BRAN: Thank you.

22 THE COURT: There are civil remedies

23 attached to that, but it's not a criminal offence

24 to not pay it.

25 Mr. Smith-Lafferty, I hope that this is a

26 turning point in your life. We say these things

27 often, but I get the sense, reading your

1 presentence report, that there's a real hope in
2 this case that it is. You're at a very early age
3 for me to be saying that. So hopefully you can
4 take advantage of whatever education programs
5 there are at North Slave Correctional. Hopefully
6 they will be able to help you find work because I
7 really think that's the missing piece of the
8 puzzle here. If you're gainfully employed and
9 you're doing well for yourself, the other pieces
10 will fit together too. I hope that's the case.
11 Good luck.

12 _____
13 PROCEEDINGS ADJOURNED
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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 10th day of September 2018.

Certified Pursuant to Rule 722
of the Rules of Court

Angela Porco



Angela Porco, CSR(A)
Court Reporter