*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
28. no attempt made to disguise themselves. Behchoko
29. is a small community, and the gentlemen were
30. easily recognized. This was a crime of
31. remarkably limited sophistication in that there
32. was no way in which they were not going to be
33. caught.
34. Mr. Smith-Lafferty was so intoxicated that
35. he has no recollection of what occurred, but he
36. did decide to take responsibility for his
37. behaviour. He provided a statement to the RCMP
38. shortly after the incident indicating his
39. responsibility to the extent that he was able to
40. remember it.
41. I was also impressed by some of the comments
42. that he made to the probation officer who was
43. writing his presentence report. He indicated a
44. genuine degree of remorse for what had happened
45. and said that he wanted to apologize to
46. Mr. Mantla should he have the opportunity. I
47. will address that further when we get to the
48. issue of the probation order which I intend to
49. make.
50. The Crown attorney quite rightly points out
51. that under Section 348(1) of the Criminal Code,
52. it is an aggravating circumstance when a person
53. breaks into a residence, being either reckless or
54. knowing that the residence is occupied, and uses
55. violence as a result. I take this into account.
56. I also take into account Mr. Smith-Lafferty's
57. status as an indigenous offender. There are a
58. number of factors which were brought out in the
59. presentence report and in comments by both the
60. Crown and defence that flag certain issues that
61. the Court should be aware of. Mr. Smith-Lafferty
62. commenced drinking at a very young age. He was
63. only 13 years old when he started drinking. He
64. only made it as far as Grade 10 and did not
65. complete Grade 10, but, in fact, dropped out
66. early on.
67. He has had an on-again, off-again
68. relationship with the mother of his two very
69. small children that has been, in his own words,
70. toxic. It has been a very unhealthy
71. relationship, and he acknowledges that.
72. When his mother was speaking to the writer
73. of the presentence report, she was clear that it
74. is largely peer interactions, including his
75. girlfriend and his friends, that causes
76. Mr. Smith-Lafferty to fall back into familiar
77. patterns, start drinking, and find himself back
78. in front of the Court.
79. He appears to be a serious and well-mannered
80. young man when he is incarcerated. There were
81. some very positive comments made about him by his
82. case management officer at the North Slave
83. Correctional Centre. I take those into account
84. as well.
85. It is a fundamental principle of criminal
86. law that a sentence should be proportionate to
87. the gravity of the offence and the degree of
88. responsibility of the offender. I am concerned
89. with the protection of the public, and this is
90. addressed through denunciation of the criminal
91. act, deterrence of the offender, and an attempt
92. to promote rehabilitation, responsibility, and
93. reparations.
94. I struggled with the correct amount of time
95. to impose in this case. Mr. Smith-Lafferty
96. unfortunately has a long criminal record and has
97. not really been able to stay out of trouble very
98. long for most of his life. I think that could
99. change. He shows a real desire to want to help
100. his family and to want to get on with his life in
101. a way that does not involve spending all of his
102. time in jail, and I believe that.
103. The Crown attorney is asking for two years.
104. This is not an unreasonable request. In fact, I
105. believe the Crown has taken into account many of
106. the factors that the Court must take into
107. account. I commend the Crown on his very fair
108. 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
109. obvious remorse and his clear desire to do
110. better, I am going to go somewhat lower than what
111. the Crown attorney is requesting and at the upper
112. end of what was requested by the defence and
113. impose a sentence of 18 months in jail. I
114. believe that that is the lowest that I can go,
115. given the record and also given the seriousness.
116. I am going to make two recommendations on
117. the warrant of committal. One, that
118. Mr. Smith-Lafferty be considered for early
119. release, if they are able to find a program with
120. respect to alcohol treatment or other treatment.
121. The other recommendation I am going to be making
122. is that he be considered for early release and
123. for the temporary absence program if he is able
124. to find work. I think one of the most important
125. things for Mr. Smith-Lafferty
126. is that he get back into the economy. That was
127. clear in his comments to the probation officer
128. during the presentence report. Despite his lack
129. of formal education, what Mr. Smith-Lafferty
130. wants to do is get to work. And it is only going
131. to be to his benefit and to society's benefit if
132. he is able to do so.
133. Eighteen months is equal to 547 days. I
134. have given Mr. Smith-Lafferty credit for the
135. 74 actual days that he has served in relation to
136. this offence at a rate of 1.5-to-1; the number
137. being 111, which leaves him with 436 days left to
138. serve.
139. I am going to impose a number of ancillary
140. orders. Primarily there is a DNA order. It is
141. mandatory under the section. There will be a
142. Section 109 order, prohibiting him from the
143. possession of firearms or ammunition for a period
144. of ten years.
145. I am going to allow an exemption under
146. Section 113 which allows you to apply for a
147. limited permit if you decide you need to do any
148. hunting or if you get work that requires the use
149. of a firearm.
150. There will be a Section 738 order in the
151. amount of $800. This is a stand-alone
152. restitution order. It is a judgment of the
153. Court, but it is not going to be part of your
154. probation. I know you are going to have a
155. struggle finding work and you are going to have a
156. struggle paying for your family and for your own
157. needs, and I do not want to find you in breach of
158. your probation order simply because of a monetary
159. amount. I do believe, however, it is important
160. that you respect your share of the damage that
161. was caused. That is $500 for the door and $600
162. divided into two for the television set, for a
163. total of $800.
164. You will be placed on probation for a period
165. of three years.
166. You indicated to me that you could stay away
167. from alcohol. Do you still want to do that?
168. THE ACCUSED: Yeah.
169. THE COURT: I am going to make an order
170. that you abstain absolutely from the possession
171. or consumption of alcohol. I hope that I am
172. doing that for your own benefit. I know that
173. temptation is difficult, and if you have a reason
174. to say no, it might make things easier for you.
175. Another condition of your probation order is
176. to report within three days of your release and
177. after that as directed. You are to seek
178. employment and provide your probation officer
179. with an update on your attempts to do so. If you
180. gain employment, you are to attempt to maintain
181. it.
182. You are to have no contact, directly or
183. indirectly, with the victim in this matter,
184. Mr. Mantla, unless initiated by him, should
185. Mr. Mantla wish to allow an apology. I am going
186. to ask the probation officer to contact
187. Mr. Mantla to see if he wishes to do that. If
188. that is possible, then the probation officer can
189. facilitate a meeting to allow for an apology. It
190. is in everybody's best interest, and, as you said
191. when you were talking to the probation officer,
192. if it was you, you would feel pretty badly about
193. it too. It would be a nice way to put it behind
194. everyone when you get back to home.
195. I am not going to make a condition that you
196. reside in any particular place. Your children
197. right now are in Leduc, Alberta. You might have
198. a better chance of finding work here in
199. Yellowknife or in northern Alberta, wherever it
200. is that you intend to go. I just hope you are
201. able to find something, and hopefully your
202. probation officer will be able to help you do
203. that.
204. Mr. Potter, is there anything I have

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| 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) --

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| --- | --- | --- | --- | --- |
| 2 | THE | COURT REPORTER: | I can't hear her. |  |
| 3 | THE | COURT: | I can't hear you. | Sorry. If |

1. you want to stand up, please, and just speak
2. loudly so we can hear you.
3. UNIDENTIFIED SPEAKER: It's just that there was a
4. text letter that was sent from Kristen
5. (phonetic), the mother of his children, that text
6. me, 'cause she is out in Alberta and didn't know
7. how to send it to me, so she text it to me in
8. order for me to give it to a lawyer to read it
9. out loud to you.
10. THE COURT: Thank you for that.
11. Thank you, Mr. Bran.
12. MR. BRAN: Thank you.
13. And -- and I think I overheard your
14. conversation with Mr. Clerk that the restitution
15. was not a part of the probation; it's stand-alone?
16. THE COURT: It's a stand-alone
17. restitution.
18. MR. BRAN: Thank you.
19. THE COURT: There are civil remedies
20. attached to that, but it's not a criminal offence
21. to not pay it.
22. Mr. Smith-Lafferty, I hope that this is a
23. turning point in your life. We say these things
24. often, but I get the sense, reading your
25. presentence report, that there's a real hope in
26. this case that it is. You're at a very early age
27. for me to be saying that. So hopefully you can
28. take advantage of whatever education programs
29. there are at North Slave Correctional. Hopefully
30. they will be able to help you find work because I
31. really think that's the missing piece of the
32. puzzle here. If you're gainfully employed and
33. you're doing well for yourself, the other pieces
34. will fit together too. I hope that's the case.
35. Good luck.

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1. 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 10th day of September 2018.

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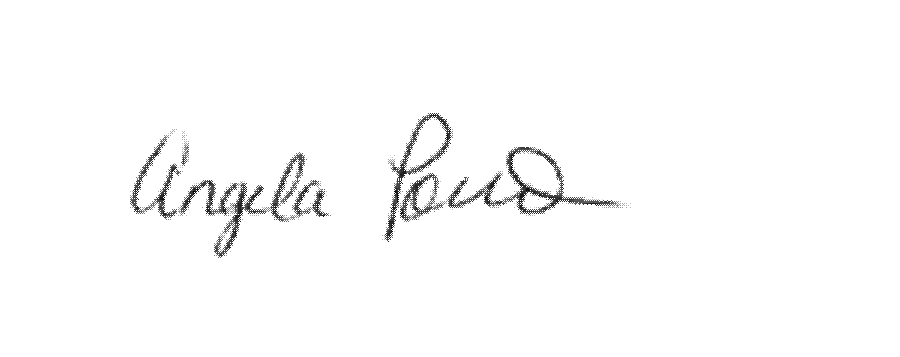
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1. Certified Pursuant to Rule 723



1. of the Rules of Court



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

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