

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

TONY HOWARD KAKFWI

Transcript of the Reasons for Sentence delivered by The Honourable Justice L.A. Charbonneau, sitting in Fort Good Hope, in the Northwest Territories, on the 1st day of May, 2018.

APPEARANCES:

Mr. M. Fane: Counsel for the Crown
Mr. C. Davison: Counsel for the Accused

(Charges under s. 244.2, 264.2(1)(a), and 85(1)(a)
of the *Criminal Code*)

1 THE COURT: On November 25th, 2016, Tony
2 Kakfwi was in a state of profound distress. His
3 life in general had not been an easy one and he
4 had been spiraling downwards for many months. He
5 was upset about a lot of things including with
6 having had no heat at his house for a very long
7 time. He felt that promises he had received for
8 help were not being honoured.

9 He decided he would speak about this at the
10 annual Band meeting here in Fort Good Hope. He
11 drank some alcohol to work up the courage to
12 speak at the meeting. Because he was
13 intoxicated, he was not permitted to finish
14 speaking. He felt that some people at the
15 meeting were laughing at him, and he said some of
16 those things again this afternoon.

17 He snapped. He took extreme measures to be
18 heard, and what he did was something that shook
19 this community, scared people here very much, and
20 will probably take a very long time to recover
21 from even though no one was physically injured.

22 Today it is my difficult responsibility to
23 impose sentence on Mr. Kakfwi for what he did
24 that day. There are three charges that I have to
25 sentence him for. The first is having discharged
26 the firearm while being reckless as to the life
27 or safety of other people, the second is for

1 uttering death threats to the police officers who
2 were here in Fort Good Hope responding to the
3 call for help, and the third is for having used a
4 rifle while committing that offence of uttering
5 threats.

6 It is important for me to make clear today
7 that Mr. Kakfwi did not just recently take
8 responsibility for what he did that day. He has
9 apologized to his community in open court today
10 and had done so as well yesterday, but he entered
11 guilty pleas to the charges a long time ago.

12 It took a long time to get to this stage in
13 the sentencing hearing because a legal issue had
14 to be dealt with before we could have the
15 sentencing hearing. The *Criminal Code* says that
16 for two of the three charges that Mr. Kakfwi
17 faces there are mandatory minimum sentences. For
18 the reckless discharge of the firearm, the
19 *Criminal Code* says there is a mandatory minimum
20 sentence of four years, and Mr. Kakfwi challenged
21 the validity of that law. That issue had to be
22 decided by me before we could proceed to the
23 sentencing hearing, and I did decide that the
24 four-year minimum was contrary to the *Charter of*
25 *Rights*.

26 That does not answer the question as to what
27 sentence should be imposed for that offence. All

1 that means is there is no mandatory minimum. So
2 that is why it took a while to get to this point.

3 The Crown has argued that Mr. Kakfwi should
4 receive a global jail term between five and six
5 years for these offences. The Crown says that he
6 should get four to five years on the reckless
7 discharge of the firearm, one year concurrent for
8 the uttering threats charge, and one year
9 consecutive for the use of the firearm while
10 committing the threats.

11 Mr. Kakfwi is entitled to credit for just
12 over two years for the time he has already spent
13 in custody on this. So if I sentence him in the
14 manner suggested by the Crown, the further jail
15 term imposed today would be between three and
16 four years.

17 Defence's position is that the global
18 sentence should be less than that and should be
19 at most four years. With the credit that
20 Mr. Kakfwi is entitled to receive for the time he
21 has already spent in custody, this would mean a
22 further jail term of just under two years.

23 Sentencing is never an easy task for a
24 judge, and I have to say this case is not an easy
25 one. There are many things that have to be
26 considered, and for that reason, there is quite a
27 bit that I need to say this afternoon to explain

1 my decision to Mr. Kakfwi, to his family, and to
2 this community.

3 As is always the case on sentencing,
4 deciding what the sentence should be requires
5 consideration of the crimes that were committed,
6 the circumstances of the person who committed
7 them, and many principles of law that apply to
8 sentencing.

9 I am going to refer again to what happened
10 on the day of these events although it is well
11 known in this community. I have to talk about
12 what happened to put my decision in context.
13 What I am about to say is a summary of the facts
14 that were read into the record yesterday as well
15 as some additional facts that I was told about
16 through the lawyers' submissions, through the
17 Presentence Report, through some of the letters
18 of support that were filed at the sentencing
19 hearing, and also to an extent from Constable
20 Whynot's Victim Impact Statement.

21 On November 25th, 2016, the Fort Good Hope
22 Band was holding its annual meeting at the Band
23 hall, and Mr. Kakfwi went to that meeting. I
24 heard that he had been asking the Band for help
25 to get a wood stove to heat his house. This
26 issue had been going on for a number of years.
27 His view was that he had raised this issue many

1 times with the Band, had been promised certain
2 things, more specifically that he would get a
3 wood stove on a priority basis, but that promise
4 was not kept.

5 There were other things, many other things
6 that were going on in his life as well. He was
7 drinking a lot and he was on a downward spiral.
8 He had been suicidal. His drinking was more and
9 more out of control to the point that he was
10 drinking things that contain alcohol that are not
11 intended to be consumed, things like rubbing
12 alcohol. One such time led to him having be
13 medi-vac'd. Medical records were filed in
14 relation to that incident.

15 The day of the meeting he decided to go and
16 make his complaints known. He drank alcohol
17 before going to give himself courage to speak up.
18 When he did speak, he was intoxicated. The
19 microphone was taken from him and he was asked to
20 leave. He said some of people there laughed at
21 him and that made him feel even worse than he was
22 already feeling.

23 Some of the people who wrote letters on his
24 behalf also talk about this having happened. One
25 writer talks about him having been publicly
26 humiliated at the time of the meeting. I was not
27 there, and I do not know exactly what was said or

1 how, but whatever happened, it did make
2 Mr. Kakfwi snap.

3 He saw the lay minister at the hall. They
4 had a conversation. The lay minister knew that
5 Mr. Kakfwi was not all right and he knew that
6 Mr. Kakfwi needed more specialized help than he,
7 the lay minister, was able to give; but he was
8 talking to him and I am sure that he did the best
9 that he could at the time.

10 Mr. Kakfwi said that he wanted to take a
11 cigarette break during their conversation, and
12 the lay minister believed him. But instead,
13 Mr. Kakfwi went to the residence of someone he
14 knew where he knew he would be able to get his
15 hands on a firearm.

16 He got a firearm from that residence as well
17 as ammunition. It happened to be a very powerful
18 firearm. It is a firearm that fires ammunition
19 that is normally used for long-range big game
20 hunting. It is also used by the military of the
21 United States and law enforcement as a sniper
22 round. The weapon has a long range and, if
23 fired, would pass through most modern
24 construction materials used for exterior walls.
25 At a range of 100 feet, it would easily pass
26 through standard issue body armour used by police
27 officers.

1 Mr. Kakfwi's intention was to kill himself,
2 but he also wanted to make a point. He returned
3 to the parking area of the Band hall and he fired
4 five shots in the air. He then walked across the
5 street to the local Elders complex and went
6 inside one of the residence in that complex.

7 People obviously were terrified when
8 Mr. Kakfwi started to shoot. The RCMP were
9 called, and all four officers from the Fort Good
10 Hope detachment responded. It has not
11 specifically been said yesterday, but I imagine
12 that for a police officer, responding to that
13 kind of call, in an isolated community like
14 Fort Good Hope where there is no backup, is a
15 police officer's nightmare.

16 As Sergeant Sparrow and Constable Whynot
17 were approaching the Elders complex, one of the
18 things they and the other officers were concerned
19 about was to evacuate the other people who lived
20 in the complex.

21 As they were approaching, Mr. Kakfwi fired
22 one shot as a "warning" to them. Sergeant
23 Sparrow retreated to the RCMP vehicle for cover,
24 and Constable Whynot hid in some nearby bushes.

25 Mr. Kakfwi called his daughter and told her
26 to tell the police that he would shoot anyone who
27 approached the building. This was relayed to the

1 responding officers through the RCMP's
2 telecommunications system, and that is what forms
3 the basis of the uttering threats charge. It was
4 a very specific threat directed at the officers,
5 a threat made after shots had already been fired
6 so obviously it was taken very seriously.

7 Eventually Constable Whynot was able to
8 approach close enough to the building to speak to
9 Mr. Kakfwi. There was one point where Mr. Kakfwi
10 thought he heard the noise of someone approaching
11 the building, and he fired a second "warning
12 shot". It appears as though the noises that
13 Mr. Kakfwi heard may have been caused by the
14 officers who were trying to make sure that
15 everyone was safely out of the building. And it
16 is also part of the facts that shortly before
17 that second shot was fired someone had driven by
18 on a snowmobile.

19 Mr. Kakfwi fired a third shot at a 45 degree
20 angle through the awning of the apartment's
21 porch. He fired that shot towards the Band hall.
22 Some people had come out of the hall and were
23 yelling at him, and he fired that shot to get
24 those people back inside the building.

25 Three times during the standoff, which
26 lasted about two and a half hours, Constable
27 Whynot saw Mr. Kakfwi came out of the apartment

1 on to the porch. Each time he was holding the
2 rifle to his chin saying he wanted to kill
3 himself. He said things like he wanted to blow
4 his head off, that he wanted to send people a
5 message, and that no one cared about him.

6 Mr. Kakfwi was on the phone with his
7 daughter and some of his other children for
8 awhile and eventually, and thankfully, he came to
9 his senses.

10 One of the things that he realized, I heard
11 yesterday, was that Constable Whynot had spent a
12 long time outside and would be getting very cold
13 because it was minus 30 that day. Mr. Kakfwi
14 actually liked and respected Constable Whynot, as
15 he said this afternoon. Constable Whynot had
16 always treated him with respect. Constable
17 Whynot had always acknowledged him when he would
18 see him on the street. He would ask him how he
19 was doing. Constable Whynot had to arrest
20 Mr. Kakfwi on a number of occasions, but he
21 always treated him well, compassionately, and
22 showed him respect.

23 Mr. Kakfwi came out of the apartment with
24 the rifle. He put the rifle down when Constable
25 Whynot told him to do so. He told the officer
26 that the firearm had been emptied, and that was
27 true. Then he was arrested.

1 Mr. Kakfwi hugged both Constable Whynot and
2 Sergeant Sparrow when he surrendered, and that
3 says something about what he thought of them and
4 their disposition towards him.

5 Something has to be said about the impact
6 that these offences had. Constable Whynot is now
7 stationed in another community in the Northwest
8 Territories. He prepared a Victim Impact
9 Statement that was read yesterday by Sergeant
10 Sparrow. It is a very compelling Victim Impact
11 Statement, and it demonstrates, as does other
12 evidence before me, that Constable Whynot is an
13 exceptional police officer and an exceptional
14 person.

15 He explains how he felt when he received the
16 call, how he knew he was going into a dangerous
17 situation and was thinking of his family, how he
18 was worried for community members who he knew
19 were at the hall. He knew children were there.
20 He hoped he would not have to shoot Mr. Kakfwi.

21 Constable Whynot did not want to shoot
22 Mr. Kakfwi. He almost had to shoot him. I
23 cannot imagine how he would have felt for him to
24 have his finger on the trigger halfway pulled
25 after Mr. Kakfwi shot that third shot outside the
26 window, because Constable Whynot knew that if
27 Mr. Kakfwi lowered the rifle he would have no

1 choice but to kill him.

2 Police officers are trained to respond to
3 dangerous situations. They are also people who,
4 like all of us, are affected by traumatic events.
5 Mr. Kakfwi's intentions were to harm himself
6 only. I accept that, but he was also prepared to
7 fire to keep people away. These officers thought
8 that they were being shot at, that they were the
9 actual targets. Then they received a message
10 that they would be shot if they approached. They
11 were concerned for community members at the hall,
12 for the Elders in the complex, and they knew that
13 help and reinforcement was many, many hours away.
14 That would be an unbelievably scary and difficult
15 situation even for a trained professional.

16 Sergeant Sparrow did not prepare a Victim
17 Impact Statement, but she spoke to the author of
18 the Presentence Report about the impact that
19 these events had on her, things like: not being
20 sure she would come home alive from her shift;
21 calling family members while this was happening
22 to tell them she was not sure she would come home
23 from her shift; doing radio checks after each
24 shot was fired to make sure that all the other
25 officers were okay; thinking when one of them did
26 not answer right away that that person had been
27 shot; and after the fact, having nightmares,

1 having very startled actions to ordinary noises
2 like a table being dropped. Her comments as
3 recorded in the Presentence Report are also very
4 fair and very balanced.

5 The Presentence Report also refers to the
6 impact on the community. The Chief and other
7 community members spoke to the author of the
8 Presentence Report and said that this had a
9 lasting impact on people here. I do not doubt
10 that it did. As Constable Whynot put it in his
11 Victim Impact Statement, "Perceptions of safety
12 were altered".

13 The Presentence Report was prepared almost a
14 year ago, so things may have changed; but
15 certainly at that time, which was a whole seven
16 months after the incident, some people were still
17 reluctant to even attend this building, the Band
18 hall. Sergeant Sparrow reports actually hearing
19 that from a four-year-old child.

20 She also spoke about the fact that there was
21 an incident where the school and Band office were
22 under lockdown, because the Land Corporation had
23 received a call from an unhappy client who said
24 he was going to come down to talk to them. This
25 prompted this lockdown reaction, and I think it
26 is very telling. That particular unhappy client
27 did not show up with a gun and start shooting at

1 people, but the reaction people had to his call
2 shows just how much impact this event had on this
3 community, how scared people are that it is going
4 to happen again.

5 I find it terribly sad that people were so
6 scared that they felt uncomfortable and afraid
7 coming to this building. Community halls are
8 important buildings in our communities. It is a
9 place where feasts take place, where weddings
10 take place, where dances take place. It is
11 supposed to be a place for the community to come
12 together, enjoy each other's company and gather.
13 To think that people, children, would be scared
14 to come to that building is extremely sad.

15 I also heard that the RCMP now has a what
16 they call an active shooter plan in place for
17 buildings in the community that are considered
18 high risk. The RCMP has also started to educate
19 the community about what to do in an active
20 shooter situation; "active shooter" meaning, as I
21 understand, an incident when someone is firing a
22 gun.

23 Frankly it is a bit surreal to think of Fort
24 Good Hope, a community of less than 600 people,
25 having to have active shooter policies or active
26 shooter drills.

27 For sure, as defence counsel has pointed

1 out, the world is changing. There are many
2 reasons why everyone's sense of safety is
3 changing, but on the evidence before me it seems
4 very clear that Mr. Kakfwi's actions had a deep
5 impact on this community.

6 There is, of course, a lot more to
7 Mr. Kakfwi than what he did that day. The people
8 who prepared letters in support of him all say,
9 each in their own way, that he is not a bad
10 person. Constable Whynot and Sergeant Sparrow
11 actually say similar things, too; that he is not
12 an evil man and that he was desperate that day.

13 Mr. Kakfwi's circumstances must be taken
14 into account in deciding what sentence he should
15 receive, and those circumstances are very sad.
16 Mr. Kakfwi is now 50 years old. As I said at the
17 beginning, his has not been an easy life. I have
18 read carefully all the materials that were filed
19 and give me information about him and his
20 background. I am not going to refer to all of it
21 today, but I have considered it all.

22 The home environment that Mr. Kakfwi grew up
23 in was difficult. There was alcohol abuse and
24 domestic violence in the family. There was
25 poverty. There was physical and mental abuse.
26 The children were disciplined in very rough ways.
27 There were no physical displays of affection. In

1 short, Mr. Kakfwi grew up in an environment
2 where, as a child, his basic needs were not met.

3 He developed an alcohol addiction and in
4 some ways repeated the patterns that he had seen
5 growing up. His alcohol addiction created
6 significant difficulties for him. It created
7 difficulties with work, with his relationship.
8 It led him to poverty and difficult life
9 circumstances. And he spoke about that this
10 afternoon as well.

11 The amount of loss that Mr. Kakfwi has
12 experienced in his life is staggering. There
13 have been numerous deaths, some violent, several
14 suicides, that have had an impact on his life
15 including in recent years and including since he
16 has been in custody.

17 Mr. Kakfwi has attempted to take treatment
18 in the past for his addiction, but for various
19 reasons that did not work out, at times because
20 of his own actions and possibly because of other
21 circumstances. One thing that is very clear is
22 that it is crucial that he get treatment. There
23 is no residential treatment in the Northwest
24 Territories, but residential treatment is
25 available through other means. If Mr. Kakfwi is
26 serious about getting treatment, he is going to
27 have to get it outside the Territory, and I

1 sincerely hope that that can be arranged and that
2 he will go.

3 In recent months, he has made progress while
4 in custody. He has taken better care of himself.
5 He has taken some programs. The reality is that
6 with a long lasting addiction he probably will
7 need continued and prolonged treatment and
8 counselling to continue to beat this addiction.

9 I pause here to note that there are others,
10 sadly, who grew up in difficult circumstances in
11 this community and others and have faced similar
12 issues to those that Mr. Kakfwi has faced. One
13 of his siblings actually is reported saying in
14 the Presentence Report that alcohol abuse was
15 like an epidemic in this community when they were
16 growing up, and I am sad to say the same is true
17 for many other communities. Many people have
18 developed addictions and have had unhealthy
19 lifestyles.

20 It is important to remember, though, that
21 some people have successfully battled their
22 addictions. It is hard, but it can be done.
23 There are people in this community who have
24 overcome their hardships. There are people who
25 could help Mr. Kakfwi with his issues if he is
26 willing to go the distance, too. It will take
27 time and it will take forgiveness, but it can be

1 done.

2 The materials that were filed at the
3 sentencing hearing suggest that quite a few
4 people want to support Mr. Kakfwi and help him
5 with his rehabilitation. He has often felt alone
6 and that nobody cared about him, and I have no
7 doubt that is how he felt. It may be that in
8 part that was depression talking and the alcohol
9 talking, because the evidence before me suggests
10 that now at least there are people here who want
11 to help him. But the addiction has to be
12 addressed, otherwise outside support is not going
13 to change anything.

14 When we took the short break earlier this
15 afternoon, there were a large number of people
16 who lined up to give Mr. Kakfwi a hug and say a
17 few words to him, and that confirms my thinking
18 that there are people in this community who
19 actually are willing to help him and will be
20 there for him when he returns, whenever that is.

21 The information before me is that Mr. Kakfwi
22 has skills. He is good on the land. He has
23 learned about traditional activities and enjoys
24 those things. Those things may help him
25 reconnect with things that are important and
26 relevant for him, and they may help with his
27 healing; but as I said, the addiction has to be

1 addressed.

2 This afternoon I received one more support
3 letter from his daughter. I cannot imagine what
4 it was like for her to be the communicator
5 between the RCMP and her father in this terrible
6 two and a half hours that this incident lasted.
7 She was in an impossible situation. Her letter
8 is very moving. It talks about the level to
9 which her father's house was in disrepair and the
10 struggles he has had.

11 I just want to read from that letter, not
12 the whole letter but part of it. Ms. Kakfwi
13 writes:

14 Everyone always said they would help
15 my dad but no one would listen or
16 even gave him a look when he walked
17 by. The only time he would eat was
18 at a community feast but those would
19 only occur every so often. He
20 utilized and survived the best he
21 could. Being in the middle of
22 winter and unable to go anywhere for
23 any help would drive a person to do
24 what he did because he was
25 constantly being fed hopeless lies
26 of getting help. There is a crisis
27 of homelessness and poverty in Fort
Good Hope that just seems to go
unnoticed. Some people abuse it,
but others who need aren't treated
very well. Not putting anything on
anyone but there are people who are
so fortunate and lucky to live where
they live but laugh at the
struggling people who have nowhere
to turn to.

26 Ms. Kakfwi supports her father, and that is
27 understandable, and I hope that her words

1 resonate with some of the people who are here
2 today and that everyone will make it their
3 personal choice to try to help those who are less
4 fortunate.

5 I have to follow the law when I impose a
6 sentence. I cannot be guided simply by my
7 sympathy or my compassion for anybody involved,
8 whether it is the victims of a crime or the
9 person who committed the crime.

10 The most important sentencing principle I
11 have to follow is that a sentence has to be
12 proportionate to the seriousness of the offence
13 and the degree of blameworthiness of the person
14 who committed it.

15 There are things that reduce Mr. Kakfwi's
16 blameworthiness. No child should grow up in the
17 kind of environment he grew up in. Children
18 should be cared for and protected by their
19 parents and by adults in general. They should
20 not be exposed to the violence and dysfunction
21 that the Presentence Report talks about. The
22 circumstances of Mr. Kakfwi sadly are shared by
23 many indigenous people in this country.

24 Yesterday Mr. Kakfwi's lawyer talked about
25 two cases of the Supreme Court of Canada that
26 have laid down principles about how courts should
27 approach sentencing of indigenous offenders, and

1 I am talking of the cases of *R v Gladue*,
2 [1999] 1 S.C.R. 688, and *R v Ipeelee*,
3 [2012] 1 S.C.R. 433.

4 I am not going to quote from these cases,
5 but all the principles that defence counsel
6 talked about yesterday are found in those cases,
7 are the principles I must follow and I have done
8 my best to follow them.

9 I have taken judicial notice of systemic and
10 background factors that have had an impact on
11 indigenous people in this country as well as
12 taken into account Mr. Kakfwi's specific
13 circumstances. This is not a case where anyone
14 is suggesting that a sanction other than
15 imprisonment is appropriate. Some of the letters
16 of support suggest that I should consider house
17 arrest or time already served as a sentencing
18 decision on this matter, but even Mr. Kakfwi's
19 lawyer is not asking the court to do that and
20 that is a realistic position to take because of
21 what has happened. Those sentence would not
22 reflect the seriousness of what Mr. Kakfwi did.

23 The aspect of the principles set out in
24 those cases that is extremely important in this
25 case is the question of restraint. The Supreme
26 Court of Canada has not said that there is an
27 automatic reduction of sentencing when dealing

1 with an indigenous offender, but it has directed
2 sentencing courts to consider, when jail has to
3 be imposed, whether a shorter sentence than the
4 one that might otherwise be justified should be
5 imposed to take into account the circumstances of
6 the offender, in particular, anything that
7 reduces the blameworthiness.

8 Mr. Kakfwi's guilty plea is mitigating. It
9 has saved the time and resources that it would
10 have taken up if this matter had gone to trial.
11 It has avoided people having to come to court and
12 talk about what happened that day. From sitting
13 through many trials I know how difficult that is
14 for witnesses.

15 The Crown's case against Mr. Kakfwi would
16 have been a very strong case and that is a factor
17 that is sometimes considered in deciding how much
18 weight to give a guilty plea, but the fact of
19 avoiding a trial is always significant. And the
20 guilty plea and the early indication that it
21 would come is also a strong indication of
22 Mr. Kakfwi's remorse and willingness to take
23 responsibility for what he did.

24 I accept that he was in a distressed,
25 depressed state when all of this happened, and
26 that his intention was not to harm anyone. These
27 are things that are mitigating on sentencing,

1 things that reduce Mr. Kakfwi's blameworthiness.

2 But there are also things, and it has to be
3 said, that make these offences very serious.
4 Parliament is responsible for making the laws and
5 the courts are there to apply the laws.
6 Parliament has said in different ways, minimum
7 sentences being one of those ways but there are
8 other ways, how seriously it treats firearm
9 offences. And there is a reason for that.

10 As I said, when I gave my decision on the
11 constitutional challenge, firearms are everywhere
12 in northern communities. They are essential
13 tools for those who spend time on the land
14 fishing, trapping, and hunting. They are very
15 accessible. They are also very dangerous objects
16 that can do a lot of damage. The criminal
17 justice system's response to the misuse of
18 firearms has to be stern.

19 I said this in a very recent case, *R v*
20 *Bernarde* 2018 NWTSC 27. People know that
21 firearms can do a lot of damage. Having a
22 firearm pointed at someone or shot near people
23 will inevitably have exactly the effect that
24 Mr. Kakfwi's actions had that day. It is
25 terrifying.

26 And while I have a lot of compassion for
27 Mr. Kakfwi's situation and his level of despair,

1 I also have compassion for the police officers
2 that were involved in responding to this and for
3 all the community members who went from being at
4 their annual meeting to being in state of siege
5 and terror because Mr. Kakfwi chose this very
6 extreme manner to call attention to his issues.

7 One of the support letters make reference to
8 the fact that Mr. Kakfwi is a very good hunter
9 and that if he had wanted to hurt someone he
10 could have easily done so. I am sure that is
11 true. But the fact remains he was drunk, he was
12 upset, and he fired a very powerful firearm
13 several times. The level of risk to others was
14 very high.

15 And aside from that, the effect of what he
16 did would have been absolutely terrifying to
17 anyone who did not know his intentions. Those
18 who want to support Mr. Kakfwi must acknowledge,
19 as he has, the seriousness of what he did.

20 The second thing that makes this case
21 extremely serious was the confrontation with
22 police, and this ties in with my comments about
23 the misuse of firearms. I agree completely with
24 the comments that were made by the Nunavut Court
25 of Justice in *R v Kolola*, 2010 NUCJ 4, which were
26 repeated in *R v Utye*, 2013 NUCJ 14, about
27 deterring conduct of this sort towards police

1 officers, and that is for many reasons.

2 Police officers are there to protect the
3 public. They are there to enforce the law on
4 behalf of others. When they show up at a scene,
5 it is usually because someone has called for
6 their help. They come across difficult
7 situations as a matter of course as part of their
8 jobs. They encounter intoxicated people,
9 distressed people, angry people, uncooperative
10 people, hysterical people, severely injured
11 people. That is part of their job. They have to
12 make split second sometimes life or death
13 decisions, just like the ones that they had to
14 make in this case.

15 In this case, they did an admirable job of
16 doing what needed to be done to protect those who
17 needed protecting and without having to resort to
18 deadly force. Engaging in any kind of a standoff
19 or confrontation with police using a firearm,
20 placing a police officer in that impossible
21 situation of not wanting to shoot, not wanting to
22 risk getting shot or risk someone else getting
23 shot is, in all cases, extremely serious.

24 Mr. Kakfwi respected and liked these
25 officers. Yet he threatened to shoot them if
26 they came close, and he did shoot to keep them
27 away. While his initial intent was to harm

1 himself and draw attention to his problems, he
2 was prepared, in doing so, to use a firearm to
3 force others, including the police officers, to
4 do as he said.

5 Thankfully in the Northwest Territories
6 events like this one are relatively rare. Much
7 more rare, for example, than they seem to be in
8 Nunavut. This court has to do what it can to
9 denounce this conduct and ensure it stays that
10 way. By this I mean that it remains an
11 exceedingly rare occurrence that this happens.

12 I do accept that specific deterrence and
13 even general deterrence may not be particularly
14 effective or relevant when dealing with people
15 who are intoxicated and distressed, but there
16 remains the other sentencing objective,
17 denunciation. Sentences are one of the ways and
18 really the main way whereby the courts can
19 express society's condemnation of certain types
20 of conduct and conduct like Mr. Kakfwi's conduct
21 that day in general, but also in relation to the
22 police officers who responded to this call, has
23 to be denounced.

24 Mr. Kakfwi has a long criminal record. It
25 includes convictions for crimes of violence and
26 convictions for offences related to firearms.
27 The longest sentence he ever received was 12

1 months for uttering threats. The things I have
2 to sentence him for today by far are the most
3 serious crimes he has ever committed.

4 I agree with defence counsel completely that
5 it is very important that Mr. Kakfwi not be
6 resentenced over and over again for his criminal
7 record. The record is as much a symptom of his
8 difficulties as anything else; but certainly he
9 has known for a long time now that his alcohol
10 consumption leads to difficulties and to criminal
11 behaviour. Although dated, the conviction for
12 careless use of a firearm shows that he has
13 misused firearms in the past. He has not always
14 complied with prohibition from being in
15 possession of firearms or ammunition, and he has
16 committed crimes of violence. The criminal
17 record is not the most significant factor on this
18 sentencing, far from it; but I cannot disregard
19 it either.

20 I have also taken into account the fact that
21 Mr. Kakfwi was suicidal at the time of these
22 events and that his primary intention was to harm
23 himself. And I refer to that aspect of things in
24 my decision on the constitutional challenge as
25 well.

26 The fact that a person who is misusing a
27 firearm is suicidal does not reduce the risk that

1 person presents. On the contrary, it often
2 enhances that risk. A suicidal desperate person
3 has nothing to lose and may act in the most
4 reckless of ways. *R v Lyta*, 2013 NUCA 10, and
5 *R v Mikijuk*, 2017 NUCJ 02, from Nunavut are good
6 examples of this.

7 Depression and suicidal intentions combined
8 with the consumption of alcohol is a dangerous
9 mix. Add a firearm to that and you have real
10 potential for disaster. Suicidal people
11 sometimes end hurting others very badly. It is
12 for sure a very sad aspect of this case, but it
13 does not necessarily render what happened any
14 less serious.

15 As was discussed during the sentencing
16 submissions, these things are on a scale. The
17 reasonable hypothetical that was presented as
18 part of the constitutional challenge supposes an
19 offender who is suicidal and who is about to pull
20 the trigger to kill himself and has a friend push
21 the barrel of the gun at the last moment, still
22 fires and then immediately drops the firearm.
23 Those facts are at one end of the spectrum of
24 what a reckless discharge of a firearm can be.

25 At the other end of the spectrum, we have
26 the behaviour of a suicidal offender like
27 Mr. Lyta and others who, in their suicidal state,

1 fire at police officers' homes or behave in such
2 a way in the hope of eventually getting shot by
3 the police officers.

4 Mr. Kakfwi's actions were not as bad perhaps
5 as the conduct of Mr. Lyta, who shot several
6 times into police officers' homes, but they are
7 certainly not at the lower end of the scale
8 either. He was suicidal and depressed, but he
9 also wanted to make a point and to make that
10 point he essentially held members of this
11 community hostage. He first fired shots outside
12 the community hall which created chaos and panic.
13 Then he went inside a nearby building and fired
14 more shorts; two to keep the police away and one
15 to force people back into this building. And he
16 made it known to police through his daughter that
17 he would shoot them or anyone who approached. He
18 may not have intended to harm anyone, but these
19 actions were directed at others and could only
20 have the effect of instilling fear and terror in
21 others.

22 Having said all of that, the fact that
23 Mr. Kakfwi was suicidal and depressed has to be
24 taken into account, of course; but any sympathy
25 that I feel, and I do for his situation, has to
26 be balanced with the seriousness of what he
27 actually did.

1 I have been referred to a number of cases,
2 many that I had reviewed in my consideration of
3 the constitutional challenge. I am not going to
4 refer to those cases in great detail, but I have
5 read them all and considered them all.

6 Sentencing is a very individualized process
7 and it is highly dependent on the circumstances
8 of each case and sometimes on regional
9 differences. I am not aware of any other case
10 where an offender was sentenced for a reckless
11 discharge of a firearm in this jurisdiction. I
12 do not find sentencing decisions dealing with
13 other types of offences such as careless use of a
14 firearm or cases where the firearm was not
15 actually discharged particularly helpful in
16 deciding what should happen in this case.

17 Decisions from other jurisdictions are
18 helpful, of course, but also distinguishable in
19 various respects. *R v Gunner*, 2017 QCCQ 12563,
20 from Quebec has some similarities with this one.
21 As I noted in my constitutional ruling, I agree
22 with some aspects of the analysis in that case
23 but not with others. I am far from certain that
24 I would have imposed the same sentence as was
25 imposed in that case if this happened here. But
26 one thing of note is that the offender in *Gunner*
27 was 27 years old and had no criminal record.

1 Most of the offenders involved in the Nunavut
2 cases I was referred to were even younger, early
3 20s, and many had no record.

4 In this case the offender is a mature man,
5 who, although not a hardened criminal, has been
6 convicted of many offences throughout his life.

7 Other cases, such as *R v McMillan*, 2016 MBCA
8 12, and *R v Crockwell*, 2013 NLTD(G) 23, did not
9 occur in the context of an isolated northern
10 community.

11 Given the number of cases involving firearms
12 that are or have been before this court lately,
13 one of which is already under appeal, it may be
14 that we will get guidance from our Court of
15 Appeal in sentencing for these types of offences.
16 But for now, my own view is that the prevalence
17 of firearms in our communities and the limited
18 police resources and unavailability of immediate
19 backup are elements that are of great importance
20 in sentencing someone in any type of standoff
21 situation that involves a firearm. This is
22 particularly so when, as here, the person
23 demonstrates a willingness to fire multiple times
24 at different moments to force others to comply
25 with his will and when serious threats are
26 uttered. It is fortunate that no one was injured
27 in these events. If someone had been injured or

1 killed, then we would not be here dealing with
2 the same offence and the sentence obviously would
3 be far more severe. The very essence of the
4 offence of reckless discharge is to capture this
5 type of high risk behaviour committed with a
6 firearm. And in the context of the reality of
7 this jurisdiction, in my view, the court's
8 response to that type of offence has to be stern.

9 I am required to exercise as much restraint
10 as possible in sentencing Mr. Kakfwi, and I have
11 thought carefully about what that means. I am
12 required to take into account the things that
13 reduce his blameworthiness, and I have; but I
14 also have to balance this against the seriousness
15 of what he did and the importance of sending a
16 very clear message about seriously this court
17 views what he did. The range of sentence
18 proposed by his lawyer, in my view, would not
19 reflect the gravity of what happened here in
20 November of 2016.

21 Alcohol abuse has brought Mr. Kakfwi very
22 many difficulties. It has caused problems with
23 his work. It was a destructive factor in his
24 relationship. It has brought him frequently in
25 conflict with the law. Battling this addiction
26 will be a lifetime task for him. We hear about
27 how difficult it is to do so, but some people

1 have beat their addictions as I said already.
2 Some people in this community and others have
3 beat their addiction.

4 No matter what sentence I impose today
5 Mr. Kakfwi will be released at some point, and he
6 will have to make dealing with his addiction a
7 top priority. Otherwise it is only a matter of
8 time before the spiral starts again. I sincerely
9 hope he will be able to win his battle with his
10 addiction.

11 Based on everything I have heard I know that
12 he has strengths and qualities. He has support
13 from family members. I want to say again he has
14 spent a lot of time feeling alone, and that is
15 what happens to people who are depressed. The
16 fact is that he is not alone. There is a lot of
17 evidence in the letters that were filed, comments
18 in the Presentence Report, comments from the
19 police officers who were there that night, the
20 people that attended today, the people that went
21 to talk to him today during the break, all of
22 that shows that there are people who are willing
23 to help Mr. Kakfwi and support him.

24 I hope that as these proceedings come to an
25 end he will be able to turn the page on this and
26 look ahead and continue with his efforts to work
27 on himself, with counselling, and to get help to

1 deal with the issues from his past, and one day
2 return here and be the productive member of this
3 community that I know he can be.

4 I also hope that the conclusion of these
5 proceedings will be one more step in this
6 community moving forward. Based on everything I
7 have heard, I know that this was a very traumatic
8 event for this community. I also know that this
9 community has been through a lot of other
10 tragedies and very traumatic things over the past
11 few years. I hope that the community is able to
12 come together to heal together. And as I said
13 for this, there has to be forgiveness and there
14 has to be a kindness.

15 I hope that when Mr. Kakfwi returns, people
16 will help him so that his future can be brighter
17 than the past has been. One of the letters that
18 was filed yesterday is from Mr. Kakfwi's aunt,
19 Betty Barnaby. She speaks of a lot of things,
20 and I am not going to read her whole letter; but
21 she speaks, among other things, of the concerns
22 that was expressed for Mr. Kakfwi by the Elders
23 after his arrest. She talks about the onus under
24 Dene law for people to care and love each other.
25 She makes reference to intergenerational trauma
26 and initiatives that exists to help people
27 understand and deal with trauma.

1 Among other things, she says:

2 Many of our people behave in
3 ways that self destructive and
4 destructive to members of their
5 own group. We can't change what
6 we don't know. It's my hope that
7 our communities become informed
8 and that we stop the practices
9 that are destroying our people.

10 Ms. Barnaby expresses her support for Mr. Kakfwi
11 and finishes her letter saying:

12 Some understand, believe, and will
13 guide him.

14 Those are very important words. They are
15 important for the community and they are
16 important for Mr. Kakfwi to know now, remember in
17 the months to come, and to remember when he is
18 released. There are people here who will help
19 him.

20 There are certain orders that must be made
21 as part of this sentence. The first is a
22 firearms prohibition order. I always hesitate to
23 prohibit someone from having firearms when I know
24 that they are engaged in traditional activities
25 because I know that those are very worthwhile and
26 important to reconnect what is essential in life,
27 for many indigenous people. But given the nature
28 of this offence, an order not only has to be
29 made, but I think it has to be lengthy. I am
30 going to order a lifetime firearm prohibition in

1 this case. This does not mean that Mr. Kakfwi
2 cannot participate in traditional activities, but
3 it will limit certainly his ability to do so on
4 his own in most circumstances given what this
5 Territory is like. I hope that he finds people
6 that he can go out on the land with and continue
7 to pursue those activities that he is skilled at
8 and through which he can contribute to his
9 community.

10 There will also be a DNA order because this
11 is a primary designated offence.

12 I am obligated to impose a surcharge for
13 each of the three counts, \$200 each, and the time
14 to pay and default time are statutorily provided
15 for.

16 Mr. Kakfwi has been in custody since his
17 arrest, and that adds up to 521 days. If he is
18 given credit for a day and a half for each day he
19 spent on Remand, which is the normal practice,
20 and no one has suggested that that should not
21 happen here, this adds up to 781.5 days which
22 works out to two years, one month, and 21 days.

23 I will give him credit for 25 months for the
24 time he has spent on remand.

25 There is a mandatory minimum that applies to
26 the third charge he has pleaded guilty to. That
27 sentence has to be consecutive. That does not

1 mean that totality does not need to be
2 considered. In this respect, I have applied the
3 principles set out in the case of *R v Stauffer*,
4 2007 BCCA 7, as adopted in *R v C.G.J.L.*, 2013
5 ABCA 140. The principle of totality applies even
6 when a mandatory consecutive sentence must be
7 imposed. The approach that I have followed, as
8 suggested in those cases, is to decide what a fit
9 sentence would be for each of these offences and
10 adjust, if need be, to ensure that the overall
11 sentence is not crushing.

12 Mr. Kakfwi, can you stand up, please.

13 Mr. Kakfwi, I will give the details after,
14 but I have concluded that globally for these
15 terrible events the sentence would be five years
16 if you had not served any time on remand. I can
17 tell you that had this matter gone to trial given
18 what happened, the sentence would have been far
19 more significant. I am giving you 25 months
20 credit for the time you spent on remand so your
21 further jail term will be 35 months, just under
22 three years. You can sit down now.

23 For the record, the sentence will be broken
24 down as follows: On the reckless discharge, four
25 years, total remand time 521 days, credit for
26 that 25 months; a further jail term of 23 months.
27 On the uttering threats charge, 12 months

1 imprisonment concurrent. And on the use of
2 firearm while committing an indictable offence,
3 12 months imprisonment consecutive as mandated by
4 the *Criminal Code*, the total being 35 months.

5 The Warrant of Committal will be endorsed
6 with my strongest possible recommendation that
7 Mr. Kakfwi be permitted to serve his sentence in
8 the north. This is only a recommendation. The
9 authorities are not obligated to follow it, but I
10 want to state for the record that it is obvious
11 from what has been presented in this sentencing
12 hearing that Mr. Kakfwi has made progress while
13 he was incarcerated in the north. He has made
14 connections with some of the people in the
15 facilities, and he has made progress. It would
16 be a shame if he was not permitted to continue
17 making that progress with those same people.

18 I am directing that a transcript be prepared
19 of my reasons; and once filed, I direct the Clerk
20 of the Court to send a copy of it to Corrections
21 and it is my sincere hope that it will assist
22 with the Director of Corrections making decisions
23 as to placement.

24 I also ask that the Crown ensure, after the
25 transcript has been filed, that it be sent to the
26 RCMP here in Fort Good Hope so that it can be
27 made accessible to community members if anyone

1 wants to have access to it. This can be done
2 through the Band or through any other means
3 deemed appropriate.

4 I ask as well that, either through the Crown
5 or the officer who is present, my remarks be
6 conveyed to Constable Whynot as well as to
7 Sergeant Sparrow because I think she had to leave
8 to respond to a call just as I started giving my
9 decision. This could have ended much worse than
10 it did, and all the responding officers deserve
11 full credit for that not having happened.

12 Mr. Kakfwi, I know that you are sorry for
13 what you did. I have no doubt that you are. I
14 thought that after I read the Presentence Report,
15 but after having heard you speak, I am as
16 convinced as I could be that you are truly, truly
17 sorry. There is nothing you can do to change the
18 past. The only thing we have in life is the
19 present, and the present can help us shape the
20 future. And I hope that you find the strength to
21 do just that. And I hope you remember the people
22 that came today who gave you those hugs, who said
23 those words, and the people who wrote the
24 letters. Because those will be a part of your
25 future and your healing if you stick with your
26 plan to change your ways.

27 Before we close court, I want to thank the

1 staff for their assistance and counsel for their
2 submissions on this very difficult case.

3 The only outstanding matter, Mr. Fane, would
4 be the question of returning the firearm to its
5 rightful owner because the rightful owner of that
6 firearm had no involvement or responsibility for
7 this offence.

8 Have you been able to identify who that is?

9 MR. FANE: I have, Your Honour. The
10 owner of the rifle is George Voudrach, and my
11 submission would be that, in keeping with 491(2),
12 he's not a party to the offence and there are no
13 grounds to believe that the property would be
14 used in the commission of an offence, I have a
15 draft order to that effect that I have shown my
16 friend.

17 THE COURT: You are fine with the order,
18 Mr. Davison?

19 MR. DAVISON: Yes. I don't consider that I
20 really have a position to take, but certainly the
21 draft I looked at seems to cover the bases.

22 THE COURT: All right. I will look at the
23 order when we stand and it issue subject to any
24 changes I feel need to be made.

25 Have I overlooked anything from the Crown's
26 perspective, Mr. Fane?

27 MR. FANE: No, thank you, Your Honour.

1 THE COURT: Have I overlooked anything
2 from the defence perspective?

3 MR. DAVISON: No, thank you.

4 THE COURT: All right, thank you. We will
5 close court.

6 -----

7

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9 **CERTIFICATE OF TRANSCRIPT**

10

11 I, the undersigned, hereby certify that the
12 foregoing pages are a complete and accurate
13 transcript of the proceedings taken down by me in
14 shorthand and transcribed from my shorthand notes
15 to the best of my skill and ability.

16 Dated at the City of Edmonton, Province of
17 Alberta, this 22nd day of May, 2018.

18

19 Certified Pursuant to Rule 723
20 of the Rules of Court

21

22



23

Linda Kimball

24

Court Reporter

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