*R v Kakfwi*, 2018 NWTSC 30 **S-1-CR-2017-000022**

# 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.

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**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
28. uttering death threats to the police officers who
29. were here in Fort Good Hope responding to the
30. call for help, and the third is for having used a
31. rifle while committing that offence of uttering
32. threats.
33. It is important for me to make clear today
34. that Mr. Kakfwi did not just recently take
35. responsibility for what he did that day. He has
36. apologized to his community in open court today
37. and had done so as well yesterday, but he entered
38. guilty pleas to the charges a long time ago.
39. It took a long time to get to this stage in
40. the sentencing hearing because a legal issue had
41. to be dealt with before we could have the
42. sentencing hearing. The *Criminal Code* says that
43. for two of the three charges that Mr. Kakfwi
44. faces there are mandatory minimum sentences. For
45. the reckless discharge of the firearm, the
46. *Criminal Code* says there is a mandatory minimum
47. sentence of four years, and Mr. Kakfwi challenged
48. the validity of that law. That issue had to be
49. decided by me before we could proceed to the
50. sentencing hearing, and I did decide that the
51. four-year minimum was contrary to the *Charter of*
52. *Rights*.
53. That does not answer the question as to what
54. sentence should be imposed for that offence. All
55. that means is there is no mandatory minimum. So
56. that is why it took a while to get to this point.
57. The Crown has argued that Mr. Kakfwi should
58. receive a global jail term between five and six
59. years for these offences. The Crown says that he
60. should get four to five years on the reckless
61. discharge of the firearm, one year concurrent for
62. the uttering threats charge, and one year
63. consecutive for the use of the firearm while
64. committing the threats.
65. Mr. Kakfwi is entitled to credit for just
66. over two years for the time he has already spent
67. in custody on this. So if I sentence him in the
68. manner suggested by the Crown, the further jail
69. term imposed today would be between three and
70. four years.
71. Defence's position is that the global
72. sentence should be less than that and should be
73. at most four years. With the credit that
74. Mr. Kakfwi is entitled to receive for the time he
75. has already spent in custody, this would mean a
76. further jail term of just under two years.
77. Sentencing is never an easy task for a
78. judge, and I have to say this case is not an easy
79. one. There are many things that have to be
80. considered, and for that reason, there is quite a
81. bit that I need to say this afternoon to explain
82. my decision to Mr. Kakfwi, to his family, and to
83. this community.
84. As is always the case on sentencing,
85. deciding what the sentence should be requires
86. consideration of the crimes that were committed,
87. the circumstances of the person who committed
88. them, and many principles of law that apply to
89. sentencing.
90. I am going to refer again to what happened
91. on the day of these events although it is well
92. known in this community. I have to talk about
93. what happened to put my decision in context.
94. What I am about to say is a summary of the facts
95. that were read into the record yesterday as well
96. as some additional facts that I was told about
97. through the lawyers' submissions, through the
98. Presentence Report, through some of the letters
99. of support that were filed at the sentencing
100. hearing, and also to an extent from Constable
101. Whynot's Victim Impact Statement.
102. On November 25th, 2016, the Fort Good Hope
103. Band was holding its annual meeting at the Band
104. hall, and Mr. Kakfwi went to that meeting. I
105. heard that he had been asking the Band for help
106. to get a wood stove to heat his house. This
107. issue had been going on for a number of years.
108. His view was that he had raised this issue many
109. times with the Band, had been promised certain
110. things, more specifically that he would get a
111. wood stove on a priority basis, but that promise
112. was not kept.
113. There were other things, many other things
114. that were going on in his life as well. He was
115. drinking a lot and he was on a downward spiral.
116. He had been suicidal. His drinking was more and
117. more out of control to the point that he was
118. drinking things that contain alcohol that are not
119. intended to be consumed, things like rubbing
120. alcohol. One such time led to him having be
121. medi-vac'd. Medical records were filed in
122. relation to that incident.
123. The day of the meeting he decided to go and
124. make his complaints known. He drank alcohol
125. before going to give himself courage to speak up.
126. When he did speak, he was intoxicated. The
127. microphone was taken from him and he was asked to
128. leave. He said some of people there laughed at
129. him and that made him feel even worse than he was
130. already feeling.
131. Some of the people who wrote letters on his
132. behalf also talk about this having happened. One
133. writer talks about him having been publicly
134. humiliated at the time of the meeting. I was not
135. there, and I do not know exactly what was said or
136. how, but whatever happened, it did make
137. Mr. Kakfwi snap.
138. He saw the lay minister at the hall. They
139. had a conversation. The lay minster knew that
140. Mr. Kakfwi was not all right and he knew that
141. Mr. Kakfwi needed more specialized help than he,
142. the lay minster, was able to give; but he was
143. talking to him and I am sure that he did the best
144. that he could at the time.
145. Mr. Kakfwi said that he wanted to take a
146. cigarette break during their conversation, and
147. the lay minister believed him. But instead,
148. Mr. Kakfwi went to the residence of someone he
149. knew where he knew he would be able to get his
150. hands on a firearm.
151. He got a firearm from that residence as well
152. as ammunition. It happened to be a very powerful
153. firearm. It is a firearm that fires ammunition
154. that is normally used for long-range big game
155. hunting. It is also used by the military of the
156. United States and law enforcement as a sniper
157. round. The weapon has a long range and, if
158. fired, would pass through most modern
159. construction materials used for exterior walls.
160. At a range of 100 feet, it would easily pass
161. through standard issue body armour used by police
162. 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
163. responding officers through the RCMP's
164. telecommunications system, and that is what forms
165. the basis of the uttering threats charge. It was
166. a very specific threat directed at the officers,
167. a threat made after shots had already been fired
168. so obviously it was taken very seriously.
169. Eventually Constable Whynot was able to
170. approach close enough to the building to speak to
171. Mr. Kakfwi. There was one point where Mr. Kakfwi
172. thought he heard the noise of someone approaching
173. the building, and he fired a second "warning
174. shot". It appears as though the noises that
175. Mr. Kakfwi heard may have been caused by the
176. officers who were trying to make sure that
177. everyone was safely out of the building. And it
178. is also part of the facts that shortly before
179. that second shot was fired someone had driven by
180. on a snowmobile.
181. Mr. Kakfwi fired a third shot at a 45 degree
182. angle through the awning of the apartment's
183. porch. He fired that shot towards the Band hall.
184. Some people had come out of the hall and were
185. yelling at him, and he fired that shot to get
186. those people back inside the building.
187. Three times during the standoff, which
188. lasted about two and a half hours, Constable
189. Whynot saw Mr. Kakfwi came out of the apartment
190. on to the porch. Each time he was holding the
191. rifle to his chin saying he wanted to kill
192. himself. He said things like he wanted to blow
193. his head off, that he wanted to send people a
194. message, and that no one cared about him.
195. Mr. Kakfwi was on the phone with his
196. daughter and some of his other children for
197. awhile and eventually, and thankfully, he came to
198. his senses.
199. One of the things that he realized, I heard
200. yesterday, was that Constable Whynot had spent a
201. long time outside and would be getting very cold
202. because it was minus 30 that day. Mr. Kakfwi
203. actually liked and respected Constable Whynot, as
204. he said this afternoon. Constable Whynot had
205. always treated him with respect. Constable
206. Whynot had always acknowledged him when he would
207. see him on the street. He would ask him how he
208. was doing. Constable Whynot had to arrest
209. Mr. Kakfwi on a number of occasions, but he
210. always treated him well, compassionately, and
211. showed him respect.
212. Mr. Kakfwi came out of the apartment with
213. the rifle. He put the rifle down when Constable
214. Whynot told him to do so. He told the officer
215. that the firearm had been emptied, and that was
216. 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
217. choice but to kill him.
218. Police officers are trained to respond to
219. dangerous situations. They are also people who,
220. like all of us, are affected by traumatic events.
221. Mr. Kakfwi's intentions were to harm himself
222. only. I accept that, but he was also prepared to
223. fire to keep people away. These officers thought
224. that they were being shot at, that they were the
225. actual targets. Then they received a message
226. that they would be shot if they approached. They
227. were concerned for community members at the hall,
228. for the Elders in the complex, and they knew that
229. help and reinforcement was many, many hours away.
230. That would be an unbelievably scary and difficult
231. situation even for a trained professional.
232. Sergeant Sparrow did not prepare a Victim
233. Impact Statement, but she spoke to the author of
234. the Presentence Report about the impact that
235. these events had on her, things like: not being
236. sure she would come home alive from her shift;
237. calling family members while this was happening
238. to tell them she was not sure she would come home
239. from her shift; doing radio checks after each
240. shot was fired to make sure that all the other
241. officers were okay; thinking when one of them did
242. not answer right away that that person had been
243. shot; and after the fact, having nightmares,
244. having very startled actions to ordinary noises
245. like a table being dropped. Her comments as
246. recorded in the Presentence Report are also very
247. fair and very balanced.
248. The Presentence Report also refers to the
249. impact on the community. The Chief and other
250. community members spoke to the author of the
251. Presentence Report and said that this had a
252. lasting impact on people here. I do not doubt
253. that it did. As Constable Whynot put it in his
254. Victim Impact Statement, "Perceptions of safety
255. were altered".
256. The Presentence Report was prepared almost a
257. year ago, so things may have changed; but
258. certainly at that time, which was a whole seven
259. months after the incident, some people were still
260. reluctant to even attend this building, the Band
261. hall. Sergeant Sparrow reports actually hearing
262. that from a four-year-old child.
263. She also spoke about the fact that there was
264. an incident where the school and Band office were
265. under lockdown, because the Land Corporation had
266. received a call from an unhappy client who said
267. he was going to come down to talk to them. This
268. prompted this lockdown reaction, and I think it
269. is very telling. That particular unhappy client
270. did not show up with a gun and start shooting at
271. people, but the reaction people had to his call
272. shows just how much impact this event had on this
273. community, how scared people are that it is going
274. to happen again.
275. I find it terribly sad that people were so
276. scared that they felt uncomfortable and afraid
277. coming to this building. Community halls are
278. important buildings in our communities. It is a
279. place where feasts take place, where weddings
280. take place, where dances take place. It is
281. supposed to be a place for the community to come
282. together, enjoy each other's company and gather.
283. To think that people, children, would be scared
284. to come to that building is extremely sad.
285. I also heard that the RCMP now has a what
286. they call an active shooter plan in place for
287. buildings in the community that are considered
288. high risk. The RCMP has also started to educate
289. the community about what to do in an active
290. shooter situation; "active shooter" meaning, as I
291. understand, an incident when someone is firing a
292. gun.
293. Frankly it is a bit surreal to think of Fort
294. Good Hope, a community of less than 600 people,
295. having to have active shooter policies or active
296. shooter drills.
297. 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
298. short, Mr. Kakfwi grew up in an environment
299. where, as a child, his basic needs were not met.
300. He developed an alcohol addiction and in
301. some ways repeated the patterns that he had seen
302. growing up. His alcohol addiction created
303. significant difficulties for him. It created
304. difficulties with work, with his relationship.
305. It led him to poverty and difficult life
306. circumstances. And he spoke about that this
307. afternoon as well.
308. The amount of loss that Mr. Kakfwi has
309. experienced in his life is staggering. There
310. have been numerous deaths, some violent, several
311. suicides, that have had an impact on his life
312. including in recent years and including since he
313. has been in custody.
314. Mr. Kakfwi has attempted to take treatment
315. in the past for his addiction, but for various
316. reasons that did not work out, at times because
317. of his own actions and possibly because of other
318. circumstances. One thing that is very clear is
319. that it is crucial that he get treatment. There
320. is no residential treatment in the Northwest
321. Territories, but residential treatment is
322. available through other means. If Mr. Kakfwi is
323. serious about getting treatment, he is going to
324. have to get it outside the Territory, and I
325. sincerely hope that that can be arranged and that
326. he will go.
327. In recent months, he has made progress while
328. in custody. He has taken better care of himself.
329. He has taken some programs. The reality is that
330. with a long lasting addiction he probably will
331. need continued and prolonged treatment and
332. counselling to continue to beat this addiction.
333. I pause here to note that there are others,
334. sadly, who grew up in difficult circumstances in
335. this community and others and have faced similar
336. issues to those that Mr. Kakfwi has faced. One
337. of his siblings actually is reported saying in
338. the Presentence Report that alcohol abuse was
339. like an epidemic in this community when they were
340. growing up, and I am sad to say the same is true
341. for many other communities. Many people have
342. developed addictions and have had unhealthy
343. lifestyles.
344. It is important to remember, though, that
345. some people have successfully battled their
346. addictions. It is hard, but it can be done.
347. There are people in this community who have
348. overcome their hardships. There are people who
349. could help Mr. Kakfwi with his issues if he is
350. willing to go the distance, too. It will take
351. time and it will take forgiveness, but it can be
352. done.
353. The materials that were filed at the
354. sentencing hearing suggest that quite a few
355. people want to support Mr. Kakfwi and help him
356. with his rehabilitation. He has often felt alone
357. and that nobody cared about him, and I have no
358. doubt that is how he felt. It may be that in
359. part that was depression talking and the alcohol
360. talking, because the evidence before me suggests
361. that now at least there are people here who want
362. to help him. But the addiction has to be
363. addressed, otherwise outside support is not going
364. to change anything.
365. When we took the short break earlier this
366. afternoon, there were a large number of people
367. who lined up to give Mr. Kakfwi a hug and say a
368. few words to him, and that confirms my thinking
369. that there are people in this community who
370. actually are willing to help him and will be
371. there for him when he returns, whenever that is.
372. The information before me is that Mr. Kakfwi
373. has skills. He is good on the land. He has
374. learned about traditional activities and enjoys
375. those things. Those things may help him
376. reconnect with things that are important and
377. relevant for him, and they may help with his
378. healing; but as I said, the addiction has to be
379. addressed.
380. This afternoon I received one more support
381. letter from his daughter. I cannot imagine what
382. it was like for her to be the communicator
383. between the RCMP and her father in this terrible
384. two and a half hours that this incident lasted.
385. She was in an impossible situation. Her letter
386. is very moving. It talks about the level to
387. which her father's house was in disrepair and the
388. struggles he has had.
389. I just want to read from that letter, not
390. the whole letter but part of it. Ms. Kakfwi
391. writes:
392. Everyone always said they would help my dad but no one would listen or
393. even gave him a look when he walked by. The only time he would eat was
394. at a community feast but those would only occur every so often. He
395. utilized and survived the best he could. Being in the middle of
396. winter and unable to go anywhere for any help would drive a person to do
397. what he did because he was constantly being fed hopeless lies
398. of getting help. There is a crisis of homelessness and poverty in Fort
399. Good Hope that just seems to go unnoticed. Some people abuse it,
400. but others who need aren't treated very well. Not putting anything on
401. anyone but there are people who are so fortunate and lucky to live where
402. they live but laugh at the struggling people who have nowhere
403. to turn to.
404. Ms. Kakfwi supports her father, and that is
405. understandable, and I hope that her words
406. resonate with some of the people who are here
407. today and that everyone will make it their
408. personal choice to try to help those who are less
409. fortunate.
410. I have to follow the law when I impose a
411. sentence. I cannot be guided simply by my
412. sympathy or my compassion for anybody involved,
413. whether it is the victims of a crime or the
414. person who committed the crime.
415. The most important sentencing principle I
416. have to follow is that a sentence has to be
417. proportionate to the seriousness of the offence
418. and the degree of blameworthiness of the person
419. who committed it.
420. There are things that reduce Mr. Kakfwi's
421. blameworthiness. No child should grow up in the
422. kind of environment he grew up in. Children
423. should be cared for and protected by their
424. parents and by adults in general. They should
425. not be exposed to the violence and dysfunction
426. that the Presentence Report talks about. The
427. circumstances of Mr. Kakfwi sadly are shared by
428. many indigenous people in this country.
429. Yesterday Mr. Kakfwi's lawyer talked about
430. two cases of the Supreme Court of Canada that
431. have laid down principles about how courts should
432. approach sentencing of indigenous offenders, and
433. I am talking of the cases of *R v Gladue*,
434. [1999] 1 S.C.R. 688, and *R v Ipeelee*,

3 [2012] 1 S.C.R. 433.

1. I am not going to quote from these cases,
2. but all the principles that defence counsel
3. talked about yesterday are found in those cases,
4. are the principles I must follow and I have done
5. my best to follow them.
6. I have taken judicial notice of systemic and
7. background factors that have had an impact on
8. indigenous people in this country as well as
9. taken into account Mr. Kakfwi's specific
10. circumstances. This is not a case where anyone
11. is suggesting that a sanction other than
12. imprisonment is appropriate. Some of the letters
13. of support suggest that I should consider house
14. arrest or time already served as a sentencing
15. decision on this matter, but even Mr. Kakfwi's
16. lawyer is not asking the court to do that and
17. that is a realistic position to take because of
18. what has happened. Those sentence would not
19. reflect the seriousness of what Mr. Kakfwi did.
20. The aspect of the principles set out in
21. those cases that is extremely important in this
22. case is the question of restraint. The Supreme
23. Court of Canada has not said that there is an
24. automatic reduction of sentencing when dealing
25. with an indigenous offender, but it has directed
26. sentencing courts to consider, when jail has to
27. be imposed, whether a shorter sentence that the
28. one that might otherwise be justified should be
29. imposed to take into account the circumstances of
30. the offender, in particular, anything that
31. reduces the blameworthiness.
32. Mr. Kakfwi's guilty plea is mitigating. It
33. has saved the time and resources that it would
34. have taken up if this matter had gone to trial.
35. It has avoided people having to come to court and
36. talk about what happened that day. From sitting
37. through many trials I know how difficult that is
38. for witnesses.
39. The Crown's case against Mr. Kakfwi would
40. have been a very strong case and that is a factor
41. that is sometimes considered in deciding how much
42. weight to give a guilty plea, but the fact of
43. avoiding a trial is always significant. And the
44. guilty plea and the early indication that it
45. would come is also a strong indication of
46. Mr. Kakfwi's remorse and willingness to take
47. responsibility for what he did.
48. I accept that he was in a distressed,
49. depressed state when all of this happened, and
50. that his intention was not to harm anyone. These
51. are things that are mitigating on sentencing,
52. things that reduce Mr. Kakfwi's blameworthiness.
53. But there are also things, and it has to be
54. said, that make these offences very serious.
55. Parliament is responsible for making the laws and
56. the courts are there to apply the laws.
57. Parliament has said in different ways, minimum
58. sentences being one of those ways but there are
59. other ways, how seriously it treats firearm
60. offences. And there is a reason for that.
61. As I said, when I gave my decision on the
62. constitutional challenge, firearms are everywhere
63. in northern communities. They are essential
64. tools for those who spend time on the land
65. fishing, trapping, and hunting. They are very
66. accessible. They are also very dangerous objects
67. that can do a lot of damage. The criminal
68. justice system's response to the misuse of
69. firearms has to be stern.
70. I said this in a very recent case, *R v*
71. *Bernarde* 2018 NWTSC 27. People know that
72. firearms can do a lot of damage. Having a
73. firearm pointed at someone or shot near people
74. will inevitably have exactly the effect that
75. Mr. Kakfwi's actions had that day. It is
76. terrifying.
77. And while I have a lot of compassion for
78. Mr. Kakfwi's situation and his level of despair,
79. I also have compassion for the police officers
80. that were involved in responding to this and for
81. all the community members who went from being at
82. their annual meeting to being in state of siege
83. and terror because Mr. Kakfwi chose this very
84. extreme manner to call attention to his issues.
85. One of the support letters make reference to
86. the fact that Mr. Kakfwi is a very good hunter
87. and that if he had wanted to hurt someone he
88. could have easily done so. I am sure that is
89. true. But the fact remains he was drunk, he was
90. upset, and he fired a very powerful firearm
91. several times. The level of risk to others was
92. very high.
93. And aside from that, the effect of what he
94. did would have been absolutely terrifying to
95. anyone who did not know his intentions. Those
96. who want to support Mr. Kakfwi must acknowledge,
97. as he has, the seriousness of what he did.
98. The second thing that makes this case
99. extremely serious was the confrontation with
100. police, and this ties in with my comments about
101. the misuse of firearms. I agree completely with
102. the comments that were made by the Nunavut Court
103. of Justice in *R v Kolola*, 2010 NUCJ 4, which were
104. repeated in *R v Utye*, 2013 NUCJ 14, about
105. deterring conduct of this sort towards police
106. officers, and that is for many reasons.
107. Police officers are there to protect the
108. public. They are there to enforce the law on
109. behalf of others. When they show up at a scene,
110. it is usually because someone has called for
111. their help. They come across difficult
112. situations as a matter of course as part of their
113. jobs. They encounter intoxicated people,
114. distressed people, angry people, uncooperative
115. people, hysterical people, severely injured
116. people. That is part of their job. They have to
117. make split second sometimes life or death
118. decisions, just like the ones that they had to
119. make in this case.
120. In this case, they did an admirable job of
121. doing what needed to be done to protect those who
122. needed protecting and without having to resort to
123. deadly force. Engaging in any kind of a standoff
124. or confrontation with police using a firearm,
125. placing a police officer in that impossible
126. situation of not wanting to shoot, not wanting to
127. risk getting shot or risk someone else getting
128. shot is, in all cases, extremely serious.
129. Mr. Kakfwi respected and liked these
130. officers. Yet he threatened to shoot them if
131. they came close, and he did shoot to keep them
132. away. While his initial intent was to harm
133. himself and draw attention to his problems, he
134. was prepared, in doing so, to use a firearm to
135. force others, including the police officers, to
136. do as he said.
137. Thankfully in the Northwest Territories
138. events like this one are relatively rare. Much
139. more rare, for example, than they seem to be in
140. Nunavut. This court has to do what it can to
141. denounce this conduct and ensure it stays that
142. way. By this I mean that it remains an
143. exceedingly rare occurrence that this happens.
144. I do accept that specific deterrence and
145. even general deterrence may not be particularly
146. effective or relevant when dealing with people
147. who are intoxicated and distressed, but there
148. remains the other sentencing objective,
149. denunciation. Sentences are one of the ways and
150. really the main way whereby the courts can
151. express society's condemnation of certain types
152. of conduct and conduct like Mr. Kakfwi's conduct
153. that day in general, but also in relation to the
154. police officers who responded to this call, has
155. to be denounced.
156. Mr. Kakfwi has a long criminal record. It
157. includes convictions for crimes of violence and
158. convictions for offences related to firearms.
159. The longest sentence he ever received was 12
160. months for uttering threats. The things I have
161. to sentence him for today by far are the most
162. serious crimes he has ever committed.
163. I agree with defence counsel completely that
164. it is very important that Mr. Kakfwi not be
165. resentenced over and over again for his criminal
166. record. The record is as much a symptom of his
167. difficulties as anything else; but certainly he
168. has known for a long time now that his alcohol
169. consumption leads to difficulties and to criminal
170. behaviour. Although dated, the conviction for
171. careless use of a firearm shows that he has
172. misused firearms in the past. He has not always
173. complied with prohibition from being in
174. possession of firearms or ammunition, and he has
175. committed crimes of violence. The criminal
176. record is not the most significant factor on this
177. sentencing, far from it; but I cannot disregard
178. it either.
179. I have also taken into account the fact that
180. Mr. Kakfwi was suicidal at the time of these
181. events and that his primary intention was to harm
182. himself. And I refer to that aspect of things in
183. my decision on the constitutional challenge as
184. well.
185. The fact that a person who is misusing a
186. firearm is suicidal does not reduce the risk that
187. person presents. On the contrary, it often
188. enhances that risk. A suicidal desperate person
189. has nothing to lose and may act in the most
190. reckless of ways. *R v Lyta*, 2013 NUCA 10, and
191. *R v Mikijuk*, 2017 NUCJ 02, from Nunavut are good
192. examples of this.
193. Depression and suicidal intentions combined
194. with the consumption of alcohol is a dangerous
195. mix. Add a firearm to that and you have real
196. potential for disaster. Suicidal people
197. sometimes end hurting others very badly. It is
198. for sure a very sad aspect of this case, but it
199. does not necessarily render what happened any
200. less serious.
201. As was discussed during the sentencing
202. submissions, these things are on a scale. The
203. reasonable hypothetical that was presented as
204. part of the constitutional challenge supposes an
205. offender who is suicidal and who is about to pull
206. the trigger to kill himself and has a friend push
207. the barrel of the gun at the last moment, still
208. fires and then immediately drops the firearm.
209. Those facts are at one end of the spectrum of
210. what a reckless discharge of a firearm can be.
211. At the other end of the spectrum, we have
212. the behaviour of a suicidal offender like
213. Mr. Lyta and others who, in their suicidal state,
214. fire at police officers' homes or behave in such
215. a way in the hope of eventually getting shot by
216. the police officers.
217. Mr. Kakfwi's actions were not as bad perhaps
218. as the conduct of Mr. Lyta, who shot several
219. times into police officers' homes, but they are
220. certainly not at the lower end of the scale
221. either. He was suicidal and depressed, but he
222. also wanted to make a point and to make that
223. point he essentially held members of this
224. community hostage. He first fired shots outside
225. the community hall which created chaos and panic.
226. Then he went inside a nearby building and fired
227. more shorts; two to keep the police away and one
228. to force people back into this building. And he
229. made it known to police through his daughter that
230. he would shoot them or anyone who approached. He

18 may not have intended to harm anyone, but these

1. actions were directed at others and could only
2. have the effect of instilling fear and terror in
3. others.
4. Having said all of that, the fact that
5. Mr. Kakfwi was suicidal and depressed has to be
6. taken into account, of course; but any sympathy
7. that I feel, and I do for his situation, has to
8. be balanced with the seriousness of what he
9. 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.
10. Most of the offenders involved in the Nunavut
11. cases I was referred to were even younger, early
12. 20s, and many had no record.
13. In this case the offender is a mature man,
14. who, although not a hardened criminal, has been
15. convicted of many offences throughout his life.
16. Other cases, such as *R v McMillan*, 2016 MBCA
17. 12, and *R v Crockwell*, 2013 NLTD(G) 23, did not
18. occur in the context of an isolated northern
19. community.
20. Given the number of cases involving firearms
21. that are or have been before this court lately,
22. one of which is already under appeal, it may be
23. that we will get guidance from our Court of
24. Appeal in sentencing for these types of offences.
25. But for now, my own view is that the prevalence
26. of firearms in our communities and the limited
27. police resources and unavailability of immediate
28. backup are elements that are of great importance
29. in sentencing someone in any type of standoff
30. situation that involves a firearm. This is
31. particularly so when, as here, the person
32. demonstrates a willingness to fire multiple times
33. at different moments to force others to comply
34. with his will and when serious threats are
35. uttered. It is fortunate that no one was injured
36. in these events. If someone had been injured or
37. killed, then we would not be here dealing with
38. the same offence and the sentence obviously would
39. be far more severe. The very essence of the
40. offence of reckless discharge is to capture this
41. type of high risk behaviour committed with a
42. firearm. And in the context of the reality of
43. this jurisdiction, in my view, the court's
44. response to that type of offence has to be stern.
45. I am required to exercise as much restraint
46. as possible in sentencing Mr. Kakfwi, and I have
47. thought carefully about what that means. I am
48. required to take into account the things that
49. reduce his blameworthiness, and I have; but I
50. also have to balance this against the seriousness
51. of what he did and the importance of sending a
52. very clear message about seriously this court
53. views what he did. The range of sentence
54. proposed by his lawyer, in my view, would not
55. reflect the gravity of what happened here in

20 November of 2016.

1. Alcohol abuse has brought Mr. Kakfwi very
2. many difficulties. It has caused problems with
3. his work. It was a destructive factor in his
4. relationship. It has brought him frequently in
5. conflict with the law. Battling this addiction
6. will be a lifetime task for him. We hear about
7. how difficult it is to do so, but some people
8. have beat their addictions as I said already.
9. Some people in this community and others have
10. beat their addiction.
11. No matter what sentence I impose today
12. Mr. Kakfwi will be released at some point, and he
13. will have to make dealing with his addiction a
14. top priority. Otherwise it is only a matter of
15. time before the spiral starts again. I sincerely
16. hope he will be able to win his battle with his
17. addiction.
18. Based on everything I have heard I know that
19. he has strengths and qualities. He has support
20. from family members. I want to say again he has
21. spent a lot of time feeling alone, and that is
22. what happens to people who are depressed. The
23. fact is that he is not alone. There is a lot of
24. evidence in the letters that were filed, comments
25. in the Presentence Report, comments from the
26. police officers who were there that night, the
27. people that attended today, the people that went
28. to talk to him today during the break, all of
29. that shows that there are people who are willing
30. to help Mr. Kakfwi and support him.
31. I hope that as these proceedings come to an
32. end he will be able to turn the page on this and
33. look ahead and continue with his efforts to work
34. on himself, with counselling, and to get help to
35. deal with the issues from his past, and one day
36. return here and be the productive member of this
37. community that I know he can be.
38. I also hope that the conclusion of these
39. proceedings will be one more step in this
40. community moving forward. Based on everything I
41. have heard, I know that this was a very traumatic
42. event for this community. I also know that this
43. community has been through a lot of other
44. tragedies and very traumatic things over the past
45. few years. I hope that the community is able to
46. come together to heal together. And as I said
47. for this, there has to be forgiveness and there
48. has to be a kindness.
49. I hope that when Mr. Kakfwi returns, people
50. will help him so that his future can be brighter
51. than the past has been. One of the letters that
52. was filed yesterday is from Mr. Kakfwi's aunt,
53. Betty Barnaby. She speaks of a lot of things,
54. and I am not going to read her whole letter; but
55. she speaks, among other things, of the concerns
56. that was expressed for Mr. Kakfwi by the Elders
57. after his arrest. She talks about the onus under
58. Dene law for people to care and love each other.
59. She makes reference to intergenerational trauma
60. and initiatives that exists to help people
61. understand and deal with trauma.
    1. Among other things, she says:
    2. Many of our people behave in ways that self destructive and
    3. destructive to members of their own group. We can't change what
    4. we don't know. It's my hope that our communities become informed
    5. and that we stop the practices that are destroying our people.

6

1. Ms. Barnaby expresses her support for Mr. Kakfwi
2. and finishes her letter saying:
3. Some understand, believe, and will guide him.

10

1. Those are very important words. They are
2. important for the community and they are
3. important for Mr. Kakfwi to know now, remember in
4. the months to come, and to remember when he is
5. released. There are people here who will help
6. him.
7. There are certain orders that must be made
8. as part of this sentence. The first is a
9. firearms prohibition order. I always hesitate to
10. prohibit someone from having firearms when I know
11. that they are engaged in traditional activities
12. because I know that those are very worthwhile and
13. important to reconnect what is essential in life,
14. for many indigenous people. But given the nature
15. of this offence, an order not only has to be
16. made, but I think it has to be lengthy. I am
17. going to order a lifetime firearm prohibition in
18. this case. This does not mean that Mr. Kakfwi
19. cannot participate in traditional activities, but
20. it will limit certainly his ability to do so on
21. his own in most circumstances given what this
22. Territory is like. I hope that he finds people
23. that he can go out on the land with and continue
24. to pursue those activities that he is skilled at
25. and through which he can contribute to his
26. community.
27. There will also be a DNA order because this
28. is a primary designated offence.
29. I am obligated to impose a surcharge for
30. each of the three counts, $200 each, and the time
31. to pay and default time are statutorily provided
32. for.
33. Mr. Kakfwi has been in custody since his
34. arrest, and that adds up to 521 days. If he is
35. given credit for a day and a half for each day he
36. spent on Remand, which is the normal practice,
37. and no one has suggested that that should not
38. happen here, this adds up to 781.5 days which
39. works out to two years, one month, and 21 days.
40. I will give him credit for 25 months for the
41. time he has spent on remand.
42. There is a mandatory minimum that applies to
43. the third charge he has pleaded guilty to. That
44. sentence has to be consecutive. That does not
45. mean that totality does not need to be
46. considered. In this respect, I have applied the
47. principles set out in the case of *R v Stauffer*,
48. 2007 BCCA 7, as adopted in *R v C.G.J.L.*, 2013
49. ABCA 140. The principle of totality applies even
50. when a mandatory consecutive sentence must be
51. imposed. The approach that I have followed, as
52. suggested in those cases, is to decide what a fit
53. sentence would be for each of these offences and
54. adjust, if need be, to ensure that the overall
55. sentence is not crushing.
56. Mr. Kakfwi, can you stand up, please.
57. Mr. Kakfwi, I will give the details after,
58. but I have concluded that globally for these
59. terrible events the sentence would be five years
60. if you had not served any time on remand. I can
61. tell you that had this matter gone to trial given
62. what happened, the sentence would have been far
63. more significant. I am giving you 25 months
64. credit for the time you spent on remand so your
65. further jail term will be 35 months, just under
66. three years. You can sit down now.
67. For the record, the sentence will be broken
68. down as follows: On the reckless discharge, four
69. years, total remand time 521 days, credit for
70. that 25 months; a further jail term of 23 months.
71. On the uttering threats charge, 12 months
72. imprisonment concurrent. And on the use of
73. firearm while committing an indictable offence,
74. 12 months imprisonment consecutive as mandated by
75. the *Criminal Code*, the total being 35 months.
76. The Warrant of Committal will be endorsed
77. with my strongest possible recommendation that
78. Mr. Kakfwi be permitted to serve his sentence in
79. the north. This is only a recommendation. The
80. authorities are not obligated to follow it, but I
81. want to state for the record that it is obvious
82. from what has been presented in this sentencing
83. hearing that Mr. Kakfwi has made progress while
84. he was incarcerated in the north. He has made
85. connections with some of the people in the
86. facilities, and he has made progress. It would
87. be a shame if he was not permitted to continue
88. making that progress with those same people.
89. I am directing that a transcript be prepared
90. of my reasons; and once filed, I direct the Clerk
91. of the Court to send a copy of it to Corrections
92. and it is my sincere hope that it will assist
93. with the Director of Corrections making decisions
94. as to placement.
95. I also ask that the Crown ensure, after the
96. transcript has been filed, that it be sent to the
97. RCMP here in Fort Good Hope so that it can be
98. made accessible to community members if anyone
99. wants to have access to it. This can be dome
100. through the Band or through any other means
101. deemed appropriate.
102. I ask as well that, either through the Crown
103. or the officer who is present, my remarks be
104. conveyed to Constable Whynot as well as to
105. Sergeant Sparrow because I think she had to leave
106. to respond to a call just as I started giving my
107. decision. This could have ended much worse than
108. it did, and all the responding officers deserve
109. full credit for that not having happened.
110. Mr. Kakfwi, I know that you are sorry for
111. what you did. I have no doubt that you are. I
112. thought that after I read the Presentence Report,
113. but after having heard you speak, I am as
114. convinced as I could be that you are truly, truly
115. sorry. There is nothing you can do to change the
116. past. The only thing we have in life is the
117. present, and the present can help us shape the
118. future. And I hope that you find the strength to
119. do just that. And I hope you remember the people
120. that came today who gave you those hugs, who said
121. those words, and the people who wrote the
122. letters. Because those will be a part of your
123. future and your healing if you stick with your
124. plan to change your ways.
125. 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.
126. THE COURT: Have I overlooked anything
127. from the defence perspective?
128. MR. DAVISON: No, thank you.
129. THE COURT: All right, thank you. We will
130. close court.

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# 9 CERTIFICATE OF TRANSCRIPT

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1. I, the undersigned, hereby certify that the
2. foregoing pages are a complete and accurate
3. transcript of the proceedings taken down by me in
4. shorthand and transcribed from my shorthand notes
5. to the best of my skill and ability.
6. Dated at the City of Edmonton, Province of
7. Alberta, this 22nd day of May, 2018.

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1. Certified Pursuant to Rule 723
2. of the Rules of Court

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1. Linda Kimball
2. Court Reporter

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