*R v Elanik*, 2018 NWTSC 74 **S-1-CR-2017-000060**

# IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

**IN THE MATTER OF:**

**HER MAJESTY THE QUEEN**

**- v -**

**FRANK 'JUNIOR' ELANIK**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** Transcript of the Reasons for Sentence delivered by The Honourable Justice S.H. Smallwood, sitting in Aklavik, in the Northwest Territories, on the 6th day of November, 2018.

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**APPEARANCES:**

Mr. D. Praught: Ms. J. Scott:

Counsel for the Crown

Mr. L Moore: Counsel for the Accused

(Charges under s. 236 of the *Criminal Code*)

1. THE COURT: Frank Junior Elanik was
2. charged with murder, that on the 11th day of
3. November, 2015, did commit second-degree murder
4. on May Elanik here in Aklavik. He has pleaded
5. guilty to the lesser and included offence of
6. manslaughter.
7. Mr. Elanik entered the guilty plea on

8 June 18th, 2018. The Crown accepted that plea,

9 and Frank Elanik was convicted of manslaughter on

10 July 20th, 2018, in Yellowknife. It was

1. adjourned for the preparation of a presentence
2. report and so that sentencing can occur here in
3. Aklavik. Frank Elanik is going to be sentenced
4. today for the offence of manslaughter, contrary
5. to Section 236 of the *Criminal Code*.
6. Frank Junior Elanik and May Elanik were
7. married. They had been together for about
8. 19 years and had been married since 2009. They
9. had five children together. May Elanik had two
10. other children from another relationship.
11. Ms. Elanik was 40 years old when she died.
12. In the early morning hours of November 11th,
13. 2015, Frank Elanik and May Elanik were at a party
14. in Aklavik. There were several other people
15. there and all were drinking. At about 1:30 a.m.
16. Ms. Elanik phoned a friend and told her that she
17. did not want to be alone with Mr. Elanik, and
18. that she was afraid that he was going to hit her.
19. They were also seen later talking alone together,
20. upset and crying.
21. They both left the party sometime after
22. 6 a.m. They were both intoxicated, and it is not
23. clear if they left separately or if they left
24. together. Mr. Elanik and Ms. Elanik were alone
25. together on J.J. Steward Street, the back road,
26. and began to argue. Frank Junior Elanik struck

10 May Elanik multiple times in the head; at least

1. once with the fist and at least once kicking her
2. while she was on or near the ground. May Elanik
3. ended up on her back, unconscious and bleeding,
4. in the middle of the street.
5. Frank Elanik dragged May Elanik by her feet
6. to and down the Ski-doo trail, about 200 feet in
7. total. He left her there lying on her back in
8. the snow in the dark with her jacket and shirt
9. pulled up above her stomach in minus-15 degree
10. weather. At 10:15 a.m. she was found, still
11. unconscious, by a passerby. She was transported
12. to Inuvik before dying of her injuries on

23 November 19th, 2015, without ever regaining

24 consciousness.

25 May Elanik died from severe blunt trauma to

1. the head caused by Frank Elanik assaulting her
2. and striking her head multiple times. The trauma
3. included cuts and abrasions to her face,
4. lacerations to her right ear and upper gums, a
5. complete fracture of her jaw, a fracture of the
6. left temporal lobe, and bleeding and bruising on
7. her brain.
8. At the time of this offence, Frank Elanik
9. was on an undertaking to a justice, which he
10. entered into on August 8th, 2015, for a charge of
11. assault on May Elanik. The conditions of the
12. undertaking prohibited contact with May Elanik.
13. The undertaking was amended on November 4th,
14. 2015, one week before May Elanik's death, to
15. permit contact so that Frank Elanik could have
16. contact with May with her consent and only if
17. completely sober.
18. Frank Elanik initially told police and
19. others that he had not seen May Elanik since he
20. had dropped her off at a friend's house the night
21. before. He later admitted to the police that he
22. had seen May at the drinking party, but that they
23. did not leave together and that he had not seen
24. her since the party. Frank Elanik admitted that
25. he was intoxicated when he assaulted May Elanik
26. and admitted that, while he remembers punching
27. and kicking her and dragging her, his memory of
28. the assault is vague and incomplete.
29. A number of victim impact statements have
    1. been filed. They have been filed by the parents
    2. of May Elanik, May Elanik's sisters, friends,
    3. cousins, Frank Elanik's mother, and May Elanik's
    4. children. Some of them speak of the loss of

5 May Elanik and the impact it has had on them,

1. some of them focus on Frank Elanik, some of them
2. focus on the financial impact this crime has had.
3. It is unfortunate that some of them do not
4. mention May, because I am sure that she is
5. missed.
6. The sentencing today is not just about
7. Frank Elanik, but it is also about the death of

13 May Elanik. May Elanik was a daughter, a sister,

1. a mother, a wife, a friend, a member of this
2. community. She was loved and she will be missed.
3. One of the things that stands out from the victim
4. impact statements is that a few of them refer to

18 May as being remembered for her laugh and her

1. love of life. No sentence that I can impose can
2. ever compare with the loss of her life, and
3. nothing that I can say or do can replace the loss
4. for those that love and miss her.
5. The victim impact statements demonstrate the
6. long-lasting impacts an offence like this has on
7. those that are affected and on the community.
8. People's lives are forever changed, tensions are
9. created, people's lives are impacted emotionally,
10. physically, financially. The community as a
11. whole suffers. The families of May Elanik and
12. Frank Elanik now face struggles because of what
13. occurred, and the effects are long lasting.
14. The children of May Elanik have lost their
15. mother and have lost, for a period of time, their
16. father, because he has been incarcerated for
17. almost two-and-a-half years and is facing a
18. further period of imprisonment, and they have to
19. live with the knowledge that their mother is not
20. here because of the actions of their father. As
21. one of the children said, she has lost the two
22. most important people in her life.
23. The maximum punishment for manslaughter is
24. life imprisonment, but unlike murder, there is no
25. automatic sentence of life imprisonment and no
26. mandatory minimum sentence of imprisonment. The
27. sentences imposed for manslaughter can vary
28. widely, and this reflects the circumstances under
29. which manslaughter can occur. Manslaughter has
30. been described as covering:
31. ...a wide range of possibilities. It encompasses conduct that could be
32. labelled as going from one extreme of near accident to the other extreme of
33. near murder. The penalties for manslaughter can, therefore, range
34. from a non-custodial sentence to life imprisonment.

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27 *R v Raddi*, [2001] N.W.T.J. 54 at paragraph 30.

1. A sentence must be proportionate to the
2. gravity of the offence and the degree of
3. responsibility of the offender. Section 718 of
4. the *Criminal Code* speaks of the objectives of
5. sentencing, which include; to denounce unlawful
6. conduct and the harm done to victims or to the
7. community, to deter the offender and others from
8. committing crimes, to separate the offender from
9. society where necessary, to assist in
10. rehabilitating offenders, to provide reparations
11. from harm done to victims or to the community,
12. and to promote a sense of responsibility in the
13. offender and an acknowledgement of the harm done
14. to victims or to the community.
15. The Crown has filed a number of cases from
16. this jurisdiction which deal with sentencing for
17. cases of manslaughter and cases that involve a
18. spousal relationship. Many of the cases speak of
19. the applicable sentencing principles in
20. sentencing an offender for manslaughter. All of
21. the factors must be considered, placing
22. additional emphasis on protection of the public,
23. deterrence, and the rehabilitation of the
24. offender.
25. The prevalence of violence in the Northwest
26. Territories, and particularly of spousal
27. violence, is something else to consider. The NWT
28. has one of the highest rates of spousal violence
29. in Canada, and this has been the case for many
30. years. Unfortunately, this situation has not
31. been getting better. In 2017 the NWT had the
32. highest rate of violence in Canada.
33. Often these cases that involve cases of
34. spousal violence also involve the abuse of
35. alcohol, and that is reflected in the cases that
36. have been submitted by the Crown counsel. This
37. will not change until people in communities start
38. to work together to demand change, to stop
39. accepting that consuming alcohol and beating your
40. spouse is just an unfortunate side effect of
41. getting drunk.
42. I do not intend to review the cases in
43. detail as the Crown reviewed them in their
44. sentencing submissions, and I have reviewed all
45. of the cases.
46. There were 11 cases that were submitted,
47. starting with the decision of *R v Brown* from
48. 1979, a case from almost 40 years ago, to
49. *R v Villeneuve* from 2017, a case from last year,
50. all cases of spousal manslaughter in the
51. Northwest Territories which involved the
52. consumption of alcohol. Eight of the cases were
53. situations where the victim was beaten to death,
54. assaulted by the offender with punches or kicks
55. that caused their death, some of the cases
56. involved extreme violence, characterized as near
57. murder, others are less severe.
58. Nine of the cases involve a guilty plea to
59. manslaughter. Some offenders had no criminal
60. records, and some had prior criminal records,
61. some with prior convictions, sometimes multiple
62. convictions, for spousal assault, and some on the
63. same victim. The sentences in those cases range
64. from five to eight-and-a-half years
65. incarceration, so many of the cases bear some
66. similarity to this case.
67. Mr. Elanik, as well, is of Inuvialuit
68. descent, and this requires me to consider
69. Section 718.2(e) of the *Criminal Code* where all
70. available sanctions, other than imprisonment,
71. that are reasonable under the circumstances
72. should be considered for all offenders, with
73. particular attention paid to the circumstances of
74. aboriginal offenders.
75. In the cases of *Gladue* and *Ipeelee*, the
76. Supreme Court of Canada set out how sentencing
77. courts are to consider this section, and I have
78. considered the principles set out in those cases
79. and the requirement to consider the unique
80. systemic or background factors which may have
81. played a part in bringing the offender before the
82. courts and the type of sentencing procedures and
83. sanctions which may be appropriate in the
84. circumstances because of their background.
85. In this case, I have the benefit of a
86. presentence report and the submissions of counsel
87. regarding Mr. Elanik's background. Frank Elanik
88. is 40 years old and has lived in Aklavik for most
89. of his life. His childhood was reportedly good.
90. Factors like violence and alcohol were not
91. significant factors while he was growing up. His
92. parents did attend residential school, as did his
93. brother, which undoubtedly had a lasting impact
94. and can affect other family members who have not
95. attended residential school.
96. He was raised participating in traditional
97. activities, learning to trap, hunt, and fish, and
98. Mr. Elanik has worked throughout his life. He
99. has provided for his family through his
100. employment and through his traditional skills on
101. the land, and he's also apparently able to return
102. to his employment once he returns to the
103. community.
104. Frank Elanik had a long-term relationship
105. with May Elanik starting when he was 18, so about
106. 19 years. They had children together, and like
107. many relationships, they had their ups and downs.

27 May Elanik taught Frank about things. There was

1. love in the relationship. Substance abuse was
2. also a factor in the relationship, as was spousal
3. violence. Frank Elanik was frustrated by

4 May Elanik's alcohol use, and that was a problem

1. in their relationship. Frank Elanik reported
2. that he does not consume alcohol frequently, but
3. when he did, it appears he consumed to excess.
4. Incidents of spousal violence occurred, which
5. Frank Elanik stated he does not remember due to
6. the consumption of alcohol and marijuana.
7. Frank Elanik has a criminal record with
8. three convictions on it, all for assaults against

13 May Elanik. In 2002 he was convicted of

1. assaulting May and received a suspended sentence.
2. The assault consisted of grabbing May Elanik by
3. the hair and banging her head against the wall
4. while their baby was between them.
5. In 2007 he was convicted of assaulting May
6. and received 21 days of imprisonment. The
7. assault occurred at a house party where
8. Frank Elanik slapped and pushed May Elanik. He
9. was observed hitting May Elanik several times in
10. the face. On January 20th, 2016, Frank Elanik
11. was convicted of assaulting May and received a
12. sentence of a 60-day conditional sentence of
13. imprisonment followed by 12 months of probation.
14. The assault in that case bears some similarity to
15. what occurred in this case.
16. The offence occurred on August 8th, 2015, a
17. little over three months before May Elanik died.
18. She and Frank Elanik were at a house party and
19. both were drinking heavily. Frank Elanik wanted

6 May to leave, and she kept putting it off.

7 Frank Elanik left, and shortly after that,

8 May Elanik left. Frank Elanik met up with

9 May Elanik as she was walking, and they began to

1. argue. Frank Elanik pulled May Elanik by the
2. hair and shook her, punched her four to five
3. times in the face, and then pushed her to the
4. ground. He then left her there. May Elanik's
5. mother came along. Frank Elanik returned, but

15 May Elanik's mother chased him away.

16 Mr. Elanik has been convicted of assaulting

17 May Elanik three times over a period of about

1. 15 years, so there is a prior history of
2. assaulting the victim, and as I said, the last
3. assault bears some similarity to this offence
4. which resulted in May Elanik's death. They were
5. at a house party. After leaving, they meet up,
6. and he assaults her, punching her, pushing her to
7. the ground, leaving her on the ground. On the
8. first occasion, May Elanik's mother is there to
9. stop any further violence. Unfortunately for
10. May, there was no one there to stop Frank Elanik
11. on November 11th of 2015.
12. Mr. Elanik received the benefit of a lenient
13. sentence for the last assault mainly because of,
14. at the time, the unsolved death of May Elanik and
15. his need to take care of the children.
16. Ultimately, it turned out that Frank Elanik was
17. the one responsible for May's death.
18. It is statutorily aggravating that this
19. offence involved the abuse of a spouse. For many
20. years, the abuse of a spouse was considered an
21. aggravating factor, and that has now been
22. codified in the *Criminal Code*. A spousal
23. relationship is one that should be based on
24. trust, trust in each another. To abuse your
25. spouse, to beat your spouse, is to violate that
26. trust. She placed her trust in you to protect
27. her, and you violated that trust in the worst
28. possible way.
29. This is an offence that involved the abuse
30. of alcohol. It is apparent from the
31. circumstances of the offence, the circumstances
32. of the previous convictions, and from the
33. presentence report that alcohol was a problem in
34. the relationship. Frank Elanik does not believe
35. that alcohol was a problem for him -- he says
36. that he would not frequently consume alcohol --
37. but it is apparent that alcohol is a problem. On
38. two occasions in just over three months,
39. Frank Elanik consumed alcohol to the point that
40. he either does not recall or cannot completely
41. recall assaulting his spouse.
42. In considering the circumstances of the
43. offence, this was a significant beating, as
44. evidenced by the injuries that May Elanik
45. suffered; contusions and abrasions, lacerations,
46. a complete fracture of her jaw, a fracture at the
47. base of her skull, and those are just the
48. injuries on her head. She also had contusions on
49. her shoulders and chest and an abrasion on her
50. back.
51. Following this beating, May Elanik was left
52. alone and unconscious in the snow on a trail
53. where her body had been dragged, and she was not
54. found for at least two hours. At the time of
55. this offence, Frank Elanik was on release from a
56. previous assault on May Elanik. He was not
57. permitted to have contact with her unless she
58. consented and only if sober, and those conditions
59. were only amended to allow contact one week
60. before her death.
61. In mitigation, Mr. Elanik has entered a
62. guilty plea, which is an acceptance of
63. responsibility for his actions. He has admitted
64. that he is responsible for May Elanik's death.
65. The guilty plea was entered following a
66. preliminary inquiry; however, I am advised by
67. counsel that the preliminary inquiry was focussed
68. on a specific issue dealing with a statement made
69. by Frank Elanik.
70. Ultimately, Mr. Elanik has entered, and the
71. Crown has accepted, a guilty plea to the lesser
72. and included offence of manslaughter and not the
73. second-degree murder charge that he was
74. originally charged with. I am prepared to give
75. Mr. Elanik substantial credit for his guilty
76. plea. And while it is not an early guilty plea,
77. I do not think it can be characterized as a late
78. guilty plea either. As well, Mr. Elanik, through
79. his words today and by entering a guilty plea,
80. has not only accepted responsibility, but
81. expressed his remorse for his actions, and I
82. believe that Mr. Elanik is truly remorseful for
83. what he has done.
84. Frank Elanik has been in custody since his
85. arrest on May 26, 2016, which I am advised is
86. 895 days. Mr. Elanik has taken a number of
87. programs while on remand, which is to his credit.
88. He has attended AA and NA meetings as well as
89. taken a number of programs dealing with parenting
90. as well as violence. It tells me that he has
91. used his time in remand productively and is
92. taking the first steps to address the issues that
93. have brought him before the court. The court can
94. give up to one-and-a-half days of credit for
95. every day of presentence custody, and I have
96. heard of no reason why Mr. Elanik should not
97. receive that credit; therefore, he will receive
98. full credit for his presentence custody.
99. Dealing first with the ancillary orders
100. which have being sought by the Crown. The
101. defence has not taken any issue with any of the
102. orders that have been sought, and some of them
103. are mandatory. So first dealing with the order
104. for the return or destruction of exhibits, there
105. will be that order upon expiry of the appeal
106. period.
107. This is a primary designated offence
108. pursuant to the DNA provisions, so there will be
109. a DNA order. As well, it is mandatory that there
110. be a Section 109 firearms prohibition order that
111. will begin today and end ten years following
112. release from custody. As well, there will be the
113. victim of crime surcharge imposed according to
114. the regulations.
115. The Crown and defence propose a joint
116. submission on sentence. They are proposing a
117. sentence of six years incarceration. A joint
118. submission is one which carries a lot of weight
119. in the case law, which has most recently been
120. emphasized by the Supreme Court of Canada in
121. *R v. Anthony Cook*, has stated quite clearly that
122. joint submissions should generally be followed.
123. In reviewing the applicable sentencing
124. principles and the relevant case law, I am
125. satisfied that the sentence proposed is one that
126. is within the middle of the range. In taking
127. into account the circumstances of the offence, of
128. the offender, and the applicable sentencing
129. principles, I am prepare to accept the joint
130. submission.
131. Please stand, Mr. Elanik. For the offence
132. of manslaughter, I sentence you to a period of
133. imprisonment of six years. You will receive
134. credit for three years and eight months for the
135. time you spent in custody prior to your sentence,
136. leaving a sentence of two years and four months
137. to serve. You may sit.
138. Thank you, Counsel. Is there anything else
139. we need to address?
140. MR. PRAUGHT: Just the judicial
141. recommendation that Mr. Moore --
142. THE COURT: Oh, yes. There will be a
143. judicial recommendation endorsed on the warrant
144. of committal that correctional authorities give
145. consideration to Mr. Elanik being allowed to
146. serve his sentence in the Northwest Territories.
147. Anything else?
148. MR. PRAUGHT: No, Your Honour.
149. MR. MOORE: Nothing further.
150. THE COURT: Okay. All right. Counsel,
151. thank you for your work in resolving this case
152. and your submissions today. They were very
153. helpful. Thank you.
154. MR. PRAUGHT: Thank you.
155. THE COURT CLERK: All rise. I declare Supreme
156. Court closed.

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# 1 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 21st day of November, 2018. 10
8. Certified Pursuant to Rule 723
9. Of the Rules of Court 13

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1. Kaylene Davidsen, CSR(A)
2. Court Reporter

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