

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

NORMA MARY MITCHELL

Transcript of the Reasons for Sentence delivered by
The Honourable Justice K. M. Shaner, sitting in
Yellowknife, in the Northwest Territories, on the 20th
day of June, 2019.

APPEARANCES:

Mr. J. Potter: Counsel for the Crown
Mr. J. S. Cowan: Counsel for the Accused

(Charges under s. 268 of the *Criminal Code*)

1 THE COURT: Good morning, Counsel. Again,
2 Ms. Mitchell.

3 I will start by saying that sentencing is an
4 individualized process. So that means that every
5 person who comes before the Court has different
6 circumstances, and those circumstances have to be
7 taken into account. It is also probably the most
8 difficult job that a judge has because it means
9 that, in most cases, we are required to take away
10 someone's liberty, something that is very dear to
11 us in Canada. It is particularly difficult when
12 it is clear that the crime before the Court
13 represents somebody hitting rock bottom, or near
14 rock bottom, and that as a result of that they
15 have taken positive steps to improve their life
16 and improve their circumstances; but,
17 unfortunately, an incarceratory sentence can
18 sometimes mean that those steps are difficult to
19 maintain or that momentum is interrupted.

20 I also feel it is necessary to acknowledge
21 that on sentencing it is very important that both
22 the Crown and defence provide meaningful,
23 justified and well-thought-out submissions on
24 sentence. This case exemplifies, in my mind,
25 what ought to be before the Court and the
26 thoughtfulness that should go into submissions
27 made to the Court when sentence is being

1 considered. I want to thank counsel for
2 providing a very thoughtful proposal, both of
3 you, with respect to what is in the best
4 interests of Ms. Mitchell and what is in the best
5 interests of society.

6 With that, I will turn to my reasons and my
7 decision.

8 We are here because Norma Mitchell was
9 convicted of aggravated assault following a jury
10 trial. In summary, the facts are that Ms.
11 Mitchell, the victim, and a third person were
12 drinking alcohol at the victim's apartment.
13 Ms. Mitchell and the victim were in an
14 intimate-partner relationship. The victim and
15 the third person were sitting on the couch.
16 Ms. Mitchell thought that the victim was touching
17 the third person in a sexual manner. She became
18 angry or "triggered". She picked up a knife, and
19 she stabbed the victim in the leg. She and the
20 other person then left the apartment. The stab
21 wound was a serious one, and the victim lost a
22 great deal of blood. Fortunately, he managed to
23 call the police for help before becoming
24 unconscious. A number of transfusions were
25 necessary to save his life.

26 Aggravated assault carries a maximum penalty
27 of 14 years, and it falls into the definition of

1 a "serious personal injury offence". Therefore,
2 a conditional sentence order is not available.
3 The only options are prison, probation or a
4 combination of those two. In this case, Crown
5 and defence counsel are recommending a period of
6 prison and probation. Where they disagree is on
7 the length of the custodial portion of the
8 sentence.

9 The *Criminal Code* sets out principles of
10 sentencing that provide a framework to guide
11 judges in imposing an appropriate sentence. The
12 fundamental purpose of sentencing is set out in
13 s. 718:

14 "...to contribute, along with crime
15 prevention initiatives, to respect
16 for the law and the maintenance of a
17 just, peaceful and safe society by
imposing just sanctions that have one
or more of the following
objectives..."

18 Those objectives are to denounce unlawful
19 conduct; to deter the offender and others from
20 committing offences; to separate offenders from
21 society only where necessary; to assist in
22 rehabilitating offenders; to provide reparations
23 for harm done to victims or to the community; and
24 to promote a sense of responsibility in offenders
25 and acknowledgement of the harm done to the
26 victims and the community. The emphasis that is
27 to be placed on any one of these objectives

1 varies with the circumstances of the offence, the
2 nature of the offence and the circumstances of
3 the offender.

4 Proportionality is the overarching principle
5 in sentencing, and that is that a sentence must
6 be proportionate to the gravity of the offence
7 and the degree of responsibility of the offender.
8 In other words, the moral blameworthiness of the
9 offender. Section 718.2 also sets out a number
10 of other principles, key among which in this case
11 is that all available sanctions other than
12 imprisonment that are reasonable in the
13 circumstances should be considered for all
14 offenders with particular attention to be paid to
15 the circumstances of Aboriginal offenders.

16 As the Crown pointed out, and I am sure as
17 defence counsel concedes, this is a very serious
18 offence. Stabbing another person, even if it is
19 done in a highly-charged emotional situation, is
20 at the higher end of the continuum of culpability
21 and blameworthiness. The results for the victim
22 in this case could have been far more serious. I
23 think it is fair to say he could have died, and
24 it is a matter of luck more than anything that he
25 did not. There had been no previous altercations
26 nor arguments between Ms. Mitchell and the victim
27 on the night this happened, and it appears that

1 the attack was completely unexpected and
2 unanticipated by the victim. Ms. Mitchell may
3 well have been very angry at what she thought she
4 saw, and it is acknowledged that she was in an
5 unhealthy, toxic and sometimes violent
6 relationship with the victim, but these are not
7 mitigating circumstances. In fact, as the Crown
8 pointed out, the fact that Ms. Mitchell was in an
9 intimate-partner relationship with the victim is,
10 by statute, an aggravating factor.

11 Ms. Mitchell has a criminal record, and that
12 is typically an aggravating factor, but in this
13 case the record is dated, and other than
14 convictions for breaching her release conditions,
15 neither of which were crimes of violence, there
16 have been no entries for over ten years. The
17 Crown quite fairly submitted, and I accept, that
18 Ms. Mitchell's criminal record is not a
19 particularly aggravating factor in this case.

20 Our law recognizes that there are systemic
21 and historical factors that have put Indigenous
22 people in Canada into circumstances that have
23 greatly increased the probability of coming into
24 conflict with the law. Consequently, there is
25 significant overrepresentation of Indigenous
26 people in our correctional facilities and in our
27 justice system in general. Through the

1 Presentence Report and defence counsel's
2 submissions I learned about Norma's personal
3 circumstances including her upbringing. She was
4 a victim of the intergenerational trauma that
5 came from the Residential School system. In
6 addition to being a survivor of that system
7 herself, her relationship with her parents lacked
8 displays of love and affection so important in
9 the development of a healthy child. She
10 struggled in school, and she had a number of
11 toxic, violent relationships with intimate
12 partners. She has struggled with drug and
13 alcohol addiction. Her life has been very hard
14 which is, I acknowledge, an understatement. I
15 have no doubt that her experiences have
16 contributed to her being here today. In my view
17 her experience in life diminishes somewhat her
18 moral blameworthiness for this crime.

19 Despite the hardships in her life, there are
20 some very, very positive things about
21 Ms. Mitchell, which I find mitigating. Since
22 this incident occurred in December of 2016, Norma
23 has taken concrete steps to change her life. She
24 has attended treatment for addiction. She has
25 actively participated in counselling. She
26 attends AA meetings. She plans to upgrade her
27 education, and through both her words and her

1 conduct it is clear she has accepted
2 responsibility for what happened here. She
3 recognizes that her actions were wrong.

4 Unfortunately, as I said earlier, this is
5 not a crime for which sanctions other than
6 imprisonment are realistically available. That
7 is just what the law is and what Parliament has
8 dictated, and I am bound to follow that. This is
9 a serious offence, and the circumstances of this
10 offence, in particular, are serious.

11 The Crown seeks a term of 34 months in
12 custody, less credit of 304 days (which is
13 approximately ten months) to be followed by
14 two years of probation. The Crown submits that
15 this would allow Ms. Mitchell to serve the
16 custodial portion of her sentence here in the
17 Northwest Territories, and that it strikes a
18 balance between the need for deterrence and the
19 need for rehabilitation. It also recognizes the
20 *Gladue* and *Ipeelee* factors at play as well as the
21 positive changes and steps that Ms. Mitchell has
22 made in her life since December of 2016.

23 Defence counsel agrees with the probation
24 but suggests that a term of 24 months in prison,
25 less the 304 days of presentence credit, is more
26 appropriate.

27 The case law is that the appropriate range

1 of sentence is 30 months to five years for this
2 offence, although there are cases where less time
3 in custody has been imposed.

4 While I am not convinced that what is
5 suggested by defence counsel is adequate for the
6 custodial portion given the objectives of
7 sentencing and the principles, I do feel that a
8 shorter period of custody than what is suggested
9 by the Crown is sufficient in the circumstances.
10 It is, among other things, incumbent on me to
11 exercise restraint in sentencing, and so the term
12 of custody that I impose must be no more than is
13 necessary to achieve the goals and objectives of
14 sentencing.

15 For that reason and in consideration of the
16 seriousness of this offence, but also the
17 mitigating factors and the activating factors, I
18 am going to impose a custodial sentence of
19 30 months. From this, credit for presentence
20 custody of 304 days, which is approximately
21 ten months, will be deducted. This will be
22 followed by a term of probation.

23 Norma, can you please stand up. Norma
24 Mitchell, this is difficult for me to do, but I
25 sentence you to a term of imprisonment of
26 30 months less ten months and one day, for a net
27 sentence of 20 months. This will be followed by

1 a term of probation of two years. Do you
2 understand?

3 THE ACCUSED: Yes.

4 THE COURT: Okay. You can sit down. I am
5 just going to go over the probation.

6 The terms of the probation order, in
7 addition to the statutory conditions, which your
8 lawyer and the clerk can explain to you, are
9 these: You will report to a probation officer
10 within seven days of being released and then
11 after that as the probation officer directs.
12 You are to have no contact with the victim,
13 Mr. Betsina, nor attend his place of work or his
14 residence without written permission from your
15 probation officer. You will attend counselling,
16 therapy or rehabilitation programs as directed by
17 your probation officer. In addition, I will
18 grant the ancillary orders, so there will be an
19 order for a DNA sample to be taken, that is
20 mandatory, and there will be a firearms
21 prohibition pursuant to Section 109 that is in
22 effect for ten years.

23 Counsel, do you have any other issues that I
24 need to address?

25 MR. POTTER: No, Your Honour, not from me.

26 MR. COWAN: Thank you, Your Honour.

27 Nothing further.

1 THE COURT: Nothing further? All right.
2 Norma, when I said earlier that I am very
3 impressed with the steps you have taken, I really
4 mean that. I think that you still have a very
5 bright future and many years ahead of you, and I
6 hope that you continue along this path, and I
7 wish you all the best.
8 THE ACCUSED: Thanks.
9 THE COURT: Thank you, Crown and defence.
10 MR. POTTER: Thank you.

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12 **CERTIFICATE OF TRANSCRIPT**

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

19 Dated at the City of Edmonton, Province of
20 Alberta, this 21st day of June, 2019.

21 Certified Pursuant to Rule 723
22 of the Rules of Court

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Darlene Sirman, CSR(A)
Court Reporter