*R v Mitchell*, 2019 NWTSC 26 **S-1-CR-2017-000046**

# IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

**IN THE MATTER OF:**

**HER MAJESTY THE QUEEN**

**- v -**

**NORMA MARY MITCHELL**

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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.

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**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
28. considered. I want to thank counsel for
29. providing a very thoughtful proposal, both of
30. you, with respect to what is in the best
31. interests of Ms. Mitchell and what is in the best
32. interests of society.
33. With that, I will turn to my reasons and my
34. decision.
35. We are here because Norma Mitchell was
36. convicted of aggravated assault following a jury
37. trial. In summary, the facts are that Ms.
38. Mitchell, the victim, and a third person were
39. drinking alcohol at the victim's apartment.
40. Ms. Mitchell and the victim were in an
41. intimate-partner relationship. The victim and
42. the third person were sitting on the couch.
43. Ms. Mitchell thought that the victim was touching
44. the third person in a sexual manner. She became
45. angry or "triggered". She picked up a knife, and
46. she stabbed the victim in the leg. She and the
47. other person then left the apartment. The stab
48. wound was a serious one, and the victim lost a
49. great deal of blood. Fortunately, he managed to
50. call the police for help before becoming
51. unconscious. A number of transfusions were
52. necessary to save his life.
53. Aggravated assault carries a maximum penalty
54. of 14 years, and it falls into the definition of
55. a "serious personal injury offence". Therefore,
56. a conditional sentence order is not available.
57. The only options are prison, probation or a
58. combination of those two. In this case, Crown
59. and defence counsel are recommending a period of
60. prison and probation. Where they disagree is on
61. the length of the custodial portion of the
62. sentence.
63. The *Criminal Code* sets out principles of
64. sentencing that provide a framework to guide
65. judges in imposing an appropriate sentence. The
66. fundamental purpose of sentencing is set out in

13 s. 718:

1. "...to contribute, along with crime prevention initiatives, to respect
2. for the law and the maintenance of a just, peaceful and safe society by
3. imposing just sanctions that have one or more of the following
4. objectives...".
5. Those objectives are to denounce unlawful
6. conduct; to deter the offender and others from
7. committing offences; to separate offenders from
8. society only where necessary; to assist in
9. rehabilitating offenders; to provide reparations
10. for harm done to victims or to the community; and
11. to promote a sense of responsibility in offenders
12. and acknowledgement of the harm done to the
13. victims and the community. The emphasis that is
14. to be placed on any one of these objectives
15. varies with the circumstances of the offence, the
16. nature of the offence and the circumstances of
17. the offender.
18. Proportionality is the overarching principle
19. in sentencing, and that is that a sentence must
20. be proportionate to the gravity of the offence
21. and the degree of responsibility of the offender.
22. In other words, the moral blameworthiness of the
23. offender. Section 718.2 also sets out a number
24. of other principles, key among which in this case
25. is that all available sanctions other than
26. imprisonment that are reasonable in the
27. circumstances should be considered for all
28. offenders with particular attention to be paid to
29. the circumstances of Aboriginal offenders.
30. As the Crown pointed out, and I am sure as
31. defence counsel concedes, this is a very serious
32. offence. Stabbing another person, even if it is
33. done in a highly-charged emotional situation, is
34. at the higher end of the continuum of culpability
35. and blameworthiness. The results for the victim
36. in this case could have been far more serious. I
37. think it is fair to say he could have died, and
38. it is a matter of luck more than anything that he
39. did not. There had been no previous altercations
40. nor arguments between Ms. Mitchell and the victim
41. on the night this happened, and it appears that
42. the attack was completely unexpected and
43. unanticipated by the victim. Ms. Mitchell may
44. well have been very angry at what she thought she
45. saw, and it is acknowledged that she was in an
46. unhealthy, toxic and sometimes violent
47. relationship with the victim, but these are not
48. mitigating circumstances. In fact, as the Crown
49. pointed out, the fact that Ms. Mitchell was in an
50. intimate-partner relationship with the victim is,
51. by statute, an aggravating factor.
52. Ms. Mitchell has a criminal record, and that
53. is typically an aggravating factor, but in this
54. case the record is dated, and other than
55. convictions for breaching her release conditions,
56. neither of which were crimes of violence, there
57. have been no entries for over ten years. The
58. Crown quite fairly submitted, and I accept, that
59. Ms. Mitchell's criminal record is not a
60. particularly aggravating factor in this case.
61. Our law recognizes that there are systemic
62. and historical factors that have put Indigenous
63. people in Canada into circumstances that have
64. greatly increased the probability of coming into
65. conflict with the law. Consequently, there is
66. significant overrepresentation of Indigenous
67. people in our correctional facilities and in our
68. justice system in general. Through the
69. Presentence Report and defence counsel's
70. submissions I learned about Norma's personal
71. circumstances including her upbringing. She was
72. a victim of the intergenerational trauma that
73. came from the Residential School system. In
74. addition to being a survivor of that system
75. herself, her relationship with her parents lacked
76. displays of love and affection so important in
77. the development of a healthy child. She
78. struggled in school, and she had a number of
79. toxic, violent relationships with intimate
80. partners. She has struggled with drug and
81. alcohol addiction. Her life has been very hard
82. which is, I acknowledge, an understatement. I
83. have no doubt that her experiences have
84. contributed to her being here today. In my view
85. her experience in life diminishes somewhat her
86. moral blameworthiness for this crime.
87. Despite the hardships in her life, there are
88. some very, very positive things about
89. Ms. Mitchell, which I find mitigating. Since
90. this incident occurred in December of 2016, Norma
91. has taken concrete steps to change her life. She
92. has attended treatment for addiction. She has
93. actively participated in counselling. She
94. attends AA meetings. She plans to upgrade her
95. education, and through both her words and her
96. conduct it is clear she has accepted
97. responsibility for what happened here. She
98. recognizes that her actions were wrong.
99. Unfortunately, as I said earlier, this is
100. not a crime for which sanctions other than
101. imprisonment are realistically available. That
102. is just what the law is and what Parliament has
103. dictated, and I am bound to follow that. This is
104. a serious offence, and the circumstances of this
105. offence, in particular, are serious.
106. The Crown seeks a term of 34 months in
107. custody, less credit of 304 days (which is
108. approximately ten months) to be followed by
109. two years of probation. The Crown submits that
110. this would allow Ms. Mitchell to serve the
111. custodial portion of her sentence here in the
112. Northwest Territories, and that it strikes a
113. balance between the need for deterrence and the
114. need for rehabilitation. It also recognizes the
115. *Gladue* and *Ipeelee* factors at play as well as the
116. positive changes and steps that Ms. Mitchell has
117. made in her life since December of 2016.
118. Defence counsel agrees with the probation
119. but suggests that a term of 24 months in prison,
120. less the 304 days of presentence credit, is more
121. appropriate.
122. 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

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| 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 |

1. addition to the statutory conditions, which your
2. lawyer and the clerk can explain to you, are
3. these: You will report to a probation officer
4. within seven days of being released and then
5. after that as the probation officer directs.
6. You are to have no contact with the victim,
7. Mr. Betsina, nor attend his place of work or his
8. residence without written permission from your
9. probation officer. You will attend counselling,
10. therapy or rehabilitation programs as directed by
11. your probation officer. In addition, I will
12. grant the ancillary orders, so there will be an
13. order for a DNA sample to be taken, that is
14. mandatory, and there will be a firearms
15. prohibition pursuant to Section 109 that is in
16. effect for ten years.
17. Counsel, do you have any other issues that I
18. need to address?
19. MR. POTTER: No, Your Honour, not from me.
20. MR. COWAN: Thank you, Your Honour.
21. 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**

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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 June, 2019.
8. Certified Pursuant to Rule 723
9. of the Rules of Court

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1. Darlene Sirman, CSR(A)
2. Court Reporter