

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

-v-

JUSTIN GERALD CLILLIE

Transcript of the Reasons for Sentence delivered by the Honourable Justice S.H. Smallwood, sitting in Yellowknife, in the Northwest Territories, on the 7th day of February, 2020

APPEARANCES:

D. Praught:	Counsel for the Crown
J. Bran:	Counsel for the Defence

Charge(s) under s. 266, 271 and 139(2) of the *Criminal Code*

There is a ban on the publication, broadcast or transmission of any information that could identify the complainant pursuant to s. 486.4 of the *Criminal Code*.

INDEX

PAGE

RULINGS, REASONS

Reasons for decision
Order re sentence

2
13

1

2 THE COURT: So Justice Gerald Clillie was convicted of
3 three counts: assault, sexual assault and attempt to
4 obstruct justice in relation to events which occurred in
5 August, September and October 2018, involving the
6 victim who was his then girlfriend.

7 Mr. Clillie had a trial by a judge and jury.
8 His trial proceeded the week of November 25, 2019, in
9 Hay River. At the outset of the trial he pled guilty to the
10 assault and the attempt to obstruct justice charges.
11 The trial on the sexual assault charge proceeded, and
12 the jury returned a verdict of guilty on the charge of
13 sexual assault. It is now my task to sentence Mr. Clillie
14 for these offences.

15 In a decision dated January 17, 2020, I
16 decided the facts of the offences and -- so I do not
17 intend to review all of the evidence again. Briefly, the
18 facts of the assault were that Justin Clillie found the
19 victim in a bedroom of a residence on August 6, 2018,
20 in Fort Providence. He had been looking for her. He
21 was angry and assaulted her. He shoved, kicked and
22 hit her over a period of approximately 20 minutes while
23 they walked from that residence to Henry Minoza's
24 residence in Fort Providence. As a result of this
25 assault, the victim suffered bruising and swelling to her
26 face and body.

27 When they got back to the residence, the

1 Minoza residence, they went into a bedroom before
2 Justin Clillie suggested that they go shower. In the
3 bathroom Justin Clillie forcibly removed the victim's
4 shirt and pants. She resisted him at first but then gave
5 up and removed her own underwear. She got in the
6 shower, and Justin Clillie got in behind her. He bent
7 her over and had sexual intercourse with her from
8 behind without her consent. While in the shower he
9 also slapped the victim twice.

10 This was interrupted by the arrival of the
11 police who had been called by a witness to the assault
12 and were able to locate the residence that they were
13 staying at. They arrived at the residence, entered the
14 bathroom and arrested Mr. Clillie.

15 Mr. Clillie was in custody at the North
16 Slave Correctional Centre following his arrest. He
17 called the victim from there several times despite there
18 being an order that he not have contact with her.
19 Seven of those calls were entered into evidence, all
20 made on September 9, 2018. In those calls Justin
21 Clillie repeatedly asked the victim to drop the charges
22 or to lie and say nothing happened.

23 The Crown is seeking a global sentence
24 of six years' imprisonment with five years being
25 imposed for the sexual assault, one year concurrent for
26 the assault and one year consecutive for the attempt to
27 obstruct justice. The defence is seeking a sentence, a

1 global sentence of 36 to 42 months' imprisonment with
2 30 to 36 months being imposed for the sexual assault,
3 six months concurrent for the assault and six months
4 consecutive for the attempt to obstruct justice.

5 The victim did not complete a victim
6 impact statement; however, from her testimony at the
7 trial and the recorded calls which were entered into
8 evidence, it was apparent that these events had a
9 significant impact on her. She was upset by them; she
10 was angry. She referred in her testimony to asking him
11 why he would handle her like that and why he would
12 humiliate her. I am not surprised that these events
13 would have an impact on the victim both physical and
14 psychological.

15 Justin Clillie has a criminal record with
16 37 convictions on it, dating from 2001 to 2018. His
17 criminal record is significant, and there are a number of
18 convictions which raise concerns. There are
19 18 offences against the administration of justice and
20 10 convictions for offences of violence.

21 The offences against the administration
22 of justice consist of convictions like failing to comply
23 with an undertaking, failing to comply with a probation
24 order, driving while disqualified, failing to attend court
25 and failing to appear.

26 Justin Clillie was also convicted of an
27 assault in 2001, uttering threats in 2004, assault in

1 2005, two counts of assault and uttering threats later in
2 2005, assault in 2008, sexual assault in 2009, sexual
3 assault in 2013 and assault in 2016. Two of the
4 assaults in 2008 and 2016 occurred in a domestic
5 context.

6 So today Mr. Clillie is being sentenced for
7 his sixth assault and his third sexual assault.

8 A pre-sentence report was prepared and
9 provides some background on Mr. Clillie, and I have
10 also heard from counsel as well about his background
11 and the *Gladue* factors that are present in his life.

12 An issue arose with respect to the pre-
13 sentence report and how it addressed Mr. Clillie's time
14 on remand. The pre-sentence report referred to 40-
15 plus incidents of violence, harassment, bullying,
16 muscling threats and other disruptive behaviour
17 towards staff and inmates by Mr. Clillie. The defence
18 took issue with this, and the Crown made inquiries and
19 contacted the author of the report. The author
20 confirmed that Mr. Clillie had not always been
21 responsible for what occurred -- is I guess what the
22 message was at the end.

23 It is of concern that allegations of
24 seriously disruptive behaviour were made in a Pre-
25 Sentence Report which cast Mr. Clillie in a very
26 negative light and then when inquiries were made, the
27 Court is told essentially, never mind. The Court relies

1 on these reports to accurately convey information about
2 the accused, and it is very, very concerning when it
3 turns out that a report is or may be inaccurate.

4 Turning now to Mr. Clillie's
5 circumstances, he is an Indigenous man who grew up
6 in Wrigley, was raised by his grandparents and later his
7 mother. Both of Mr. Clillie's parents attended
8 residential school, and his mother had problems with
9 alcohol. Mr. Clillie also experienced violence at home.
10 Mr. Clillie was placed in the foster care system and
11 suffered sexual abuse while there. He has limited
12 education but has also been employed off and on and
13 has been able to secure employment when needed.

14 Counsel, sorry, I am going to take a few
15 minutes. My throat is very sore.

16 THE CLERK: All rise. Court is adjourned briefly.

17 **(PROCEEDINGS ADJOURNED AT 10:12 AM)**

18 **(PROCEEDINGS RECONVENED AT 10:17 AM)**

19 THE CLERK: Order. All rise. Court is now reconvened.
20 Please be seated.

21 THE COURT: All right. I am sorry, counsel, Mr. Clillie.
22 My throat has been very scratchy the last couple of
23 days. I think I am coming down with a cold. All right.

24 So I think I left off where -- discussing
25 where Mr. Clillie was placed in the foster care system
26 and suffered sexual abuse while there. He has had
27 limited education but has been employed off and on

1 and has been able to secure employment when
2 needed.

3 Mr. Clillie has a daughter as well who he
4 has referred to in his remarks today. The Pre-Sentence
5 Report refers to Mr. Clillie to being sentenced to a term
6 of custody for assaulting his daughter which resulted in
7 her being placed in foster care. This assault is not
8 reflected on his criminal record, but I thought of this
9 when I read the sentencing transcript from 2016 where
10 it turns out I sentenced Mr. Clillie for another assault.
11 And I just want to read some of what I said then, which
12 is equally applicable now. I was referring to Mr. Clillie
13 having been a victim of violence himself and I stated:

14
15 The idea that people who have been victimized
16 often turn to abuse themselves is not a new one.
17 This Court often sees people who have been
18 subjected to physical and/or sexual abuse as
19 children and when they are adults become
20 abusers.

21 The impact that violence has on children is
22 significant; whether they were subjected to
23 violence or witness it on their own, it can have a
24 lasting impact. They may not only grow up to
25 abuse others, but it may make them more prone
26 to being victims. So, Mr. Clillie, you may want to
27 think about the impact that seeing or witnessing

1 violence might have on your daughter when you
2 think about whether you need to continue with
3 your counselling and to address your problems
4 because with your history, it is clear that you do
5 have problems that you need to address and if
6 you do not, then you will continue to come back
7 before the courts in the future, and I am sure you
8 would be rather raising your daughter than
9 spending more time in jail.

10
11 I think those sentiments are equally applicable today
12 and, Mr. Clillie, I am profoundly disappointed to be
13 having to sentence you again. You are running out of
14 chances, and your daughter is growing up. And I
15 sincerely hope, as you said, that this is the last time you
16 are before the courts.

17 The fundamental principle of sentencing
18 is that a sentence must be proportionate to the gravity
19 of the offence and the degree of responsibility of the
20 offender. There are a number of sentencing principles
21 to consider: deterrence, denunciation, rehabilitation
22 amongst others.

23 Denunciation and deterrence are always
24 significant sentencing principles to consider in offences
25 of sexual assault, assault, particularly domestic
26 assaults, and for the offence of the attempt to obstruct
27 justice.

1 Rehabilitation must also be considered.
2 There still is hope for Mr. Clillie. If his mother can quit
3 drinking and stay sober for 17 months, then so can
4 Mr. Clillie, and I have heard that he has been sober for
5 significant periods in the past.

6 Looking to the aggravating and mitigating
7 factors, in mitigation Mr. Clillie has entered guilty pleas
8 to the assault and the attempt to obstruct justice. The
9 guilty pleas were not early guilty pleas, as they were
10 entered at trial and the case for each offence was very
11 strong. The assault was witnessed by a person
12 walking down the street who contacted the police, and
13 the attempt to obstruct justice consisted of phone calls
14 which were recorded by the corrections facility.

15 The Pre-Sentence Report raises some
16 concerns that Mr. Clillie has attempted to minimize his
17 conduct, particularly with respect to the attempt to
18 obstruct justice charge. However, the guilty pleas are
19 an acknowledgement of responsibility and are
20 deserving of credit.

21 Mr. Clillie does not take responsibility for
22 the sexual assault and maintains his innocence.
23 Defence counsel explained that he respects the trial
24 process and the verdict of the jury and the job that they
25 had to do but maintains his view. That is his choice. It
26 is not aggravating that he does so; it means that he
27 does not receive the mitigating effect that would come

1 from an acknowledgement of his guilt or an expression
2 of remorse.

3 It is statutorily aggravating that the
4 assault and sexual assault occurred in a domestic
5 relationship. Violence within a domestic relationship is
6 considered a breach of trust. Within a domestic
7 relationship the partners should be able to trust and rely
8 upon each other and not be subjected to violence. That
9 relationship is now over because of Mr. Clillie's actions.

10 Mr. Clillie's criminal record and his history
11 of violence, domestic violence and sexual assault are
12 also aggravating. Looking to the circumstances of the
13 offences, the attempt to obstruct justice is serious.
14 Mr. Clillie called the victim multiple times in one day and
15 repeatedly asked her to drop the charges, to lie and say
16 nothing happened. While the accused did not threaten
17 violence against the victim in order to secure her
18 cooperation, his actions were persistent and pernicious.
19 The attempt to interfere with witnesses in a criminal
20 proceeding, whether it is by an accused person or
21 another person, in an attempt to evade justice is an
22 action that goes to the very heart of the criminal justice
23 system.

24 If actions like this are allowed to occur
25 and not dealt with severely, then the public's faith in the
26 administration of justice will be irretrievably broken, and
27 the justice system itself will have failed victims and

1 society in general. Justice must be done and must be
2 seen to be done.

3 The assault and sexual assault offences
4 are intertwined, occurring close in time. The assault
5 was vicious and prolonged, involving Mr. Clillie hitting,
6 shoving and kicking the victim repeatedly for
7 approximately 20 minutes and then later slapping her
8 twice in the shower. She was left with bruises on her
9 face and body and a lump on her head.

10 The sexual assault occurred shortly after
11 the assault and involved the accused bending the
12 victim over and having forced sexual intercourse with
13 her in the shower for a few minutes. The accused
14 admitted he was angry and jealous when he assaulted
15 the victim. His actions show that he wanted to punish
16 and humiliate the victim, to force his will on her and
17 ignore her wishes.

18 Instead of inquiring with her about why
19 she was at the residence, he flew into a rage and
20 began assaulting her, and his actions towards the
21 victim for the next 20 to 30 minutes reflect that same
22 anger, jealousy and dominance without regard for the
23 victim.

24 Mr. Clillie has been in custody since
25 August 6, 2018, which is 551 days, which equates to
26 18 months of remand credit. At one and a half days'
27 credit for every day spent in remand, that equates to

1 27 months' credit which will be deducted from
2 Mr. Clillie's sentence.

3 Turning first to the ancillary orders which
4 the Crown is seeking, I have not heard defence take
5 any issue with any of the orders. First a DNA is
6 mandatory, so there will be an order to obtain
7 Mr. Clillie's DNA. As well there will be a SOIRA order,
8 and it will be for life. And there will be a section 109
9 firearm prohibition order for life.

10 I have taken into account the
11 circumstances of the offences, Mr. Clillie's personal
12 circumstances, his guilty pleas and the applicable
13 sentencing principles in attempting to craft a suitable
14 sentence. I have also considered totality and restraint.
15 Please stand, Mr. Clillie.

16 For the assault I sentence you to
17 15 months imprisonment to be served concurrently with
18 the sexual assault. For the sexual assault I sentence
19 you to four years' imprisonment. For the attempt to
20 obstruct justice I sentence you to a period of
21 imprisonment of 18 months to be served consecutively.
22 You will receive remand credit of 27 months, leaving a
23 sentence of 39 months left to serve, so three years and
24 three months. You may have a seat.

25
26
27

1 **CERTIFICATE OF TRANSCRIPT**

2 Neesons, the undersigned, hereby certify that the foregoing
3 pages are a complete and accurate transcript of the
4 proceedings transcribed from the audio recording to the best
5 of our skill and ability. Judicial amendments have been
6 applied to this transcript.

7
8 Dated at the City of Toronto, in the Province of Ontario, this
9 18th day of March, 2020.

10

11

12



13

Kim Neeson

14

Principal

15

16

17

18

19

20

21

22

23

24

25