

**IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES**

**IN THE MATTER OF:**

**HER MAJESTY THE QUEEN**

**-v-**

**PETER BERTRAND**

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**Transcript of the Reasons for Sentence of the Honourable Justice  
L.A. Charbonneau, sitting in Yellowknife, in the Northwest  
Territories, on the 9<sup>th</sup> day of March, 2020.**

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**APPEARANCES:**

M. Fane:	Counsel for the Crown
L. Moore:	Counsel for the Defence

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Charge under s. 271 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*

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1 THE COURT: I am going to give my decision now. My  
2 more usual practice is to take some time to write and  
3 try to explain my decisions in a bit more detail. But I  
4 think in this case it probably is more important that this  
5 matter be completed today so that there is no more  
6 waiting for the outcome of this case.

7 I said it just last week how sad it is how  
8 often this Court has to impose sentence on people for  
9 the crime of sexual assault.

10 In this particular case, the victim of the  
11 offence was a young person. I am going to direct that  
12 a copy of the Agreed Statement of Facts be appended  
13 to the transcript, and I am ordering a transcript,  
14 because I do not want to repeat those facts now, but  
15 that way it will be clear to anyone reading my decision  
16 what the admitted facts were.

17 Adults are responsible for making sure  
18 that they take all reasonable steps to determine  
19 someone's age if there is any possibility that the person  
20 may not be of age to give lawful consent to sexual  
21 contact.

22 The facts here are, as far as I understood  
23 from the submissions of counsel, somewhat  
24 deliberately vague in the sense that there is no detail  
25 about how the sexual contact really came to be. There  
26 is some equivocation on Mr. Bertrand's part in the pre-  
27 sentence report that suggests to me that he at the time

1 viewed this as something consensual. The problem, of  
2 course, is if a person does not have the legal capacity  
3 to consent, the fact that they may have ostensibly  
4 consented is not a mitigating factor.

5 I am not going to repeat what I said in *R v*  
6 *Lafferty*, 2019 NWTSC 38 a few months ago, but in that  
7 case I did talk about the principles that govern sexual  
8 assault of young persons when the facts are that there  
9 was ostensible consent. In other words, the young  
10 person appeared to be going along with what was  
11 taking place. In that decision, I followed *R v Hajar*,  
12 2016 ABCA 222, a decision from the Alberta Court of  
13 Appeal.

14 For today's purposes, I adopt what I said  
15 in my decision on *Lafferty*. The main point is that it is  
16 not a mitigating factor because at the end of the day,  
17 the adults are the ones who bear the responsibility in  
18 these matters.

19 That case also stood for the proposition  
20 that the starting point in these kinds of cases should be  
21 three years. I should say that the debate in *Hajar* was  
22 whether ostensible consent was a mitigating factor. I  
23 am saying all of this despite the fact that in this case it  
24 is not actually alleged that there was ostensible  
25 consent; the facts are just silent on that point. But even  
26 if there was, it is not a mitigating factor.

27 Another important principle in this matter

1 is that counsel have presented a joint submission. It is  
2 said frequently in our courts because joint submissions  
3 are presented on a fairly regular basis. The law that  
4 governs joint submissions is that the courts are  
5 required to follow them unless a judge thinks that the  
6 joint submission is completely unreasonable.

7 This joint submission, in my view, is not  
8 unreasonable because although the starting point is  
9 three years and although this is a very serious offence,  
10 there are also mitigating factors. The guilty plea is  
11 extremely mitigating. Guilty pleas are more mitigating  
12 when they happen sooner because that means that the  
13 victims do not live for months and months thinking they  
14 will have to testify in front of a jury, as was the case  
15 here.

16  
17 In this case, the victim actually testified by  
18 videoconferencing at the preliminary hearing, but  
19 I heard from the Crown that the cross-examination at  
20 the preliminary hearing was mostly on peripheral  
21 matters. She did not have to answer questions about  
22 the details of what actually happened, the sexual act  
23 between her and Mr. Bertrand. So it sounds as though  
24 it was a cross-examination that would have been  
25 perhaps less difficult than what we sometimes see in  
26 preliminary hearings. It is never an easy thing to testify  
27 about these things, but as with everything else, there

1 are degrees.

2 She also lived with the belief that she  
3 would have to testify in front of a jury, which must have  
4 caused her a lot of anxiety. But as I said last week in  
5 another sentencing hearing, for having seen many  
6 witnesses of all ages testify in sexual assault trials in  
7 front of juries and sometimes in front of the judge,  
8 sitting alone, I know very well that sparing someone  
9 from having to do that is sparing them a lot because it  
10 is an exceedingly difficult thing for most people to have  
11 to talk about these kinds of matters in a public  
12 courtroom.

13 And by pleading guilty, despite perhaps  
14 his initial equivocation about who was responsible, Mr.  
15 Bertrand has spared this young woman that ordeal, and  
16 that is mitigating, I agree.

17 The other factor that has to be  
18 considered by this Court is that Mr. Bertrand is  
19 Indigenous. I will not try to summarize or paraphrase  
20 the pre-sentence report because it is a very thorough  
21 report and it would not do it justice for me to try to  
22 summarize it, but I will say only that it is a very sad read  
23 inasmuch as it relates to Mr. Bertrand's circumstances  
24 growing up. The account of his being taken away to  
25 residential school and seeing, as the plane flew away,  
26 his grandmother crying on the riverbank is  
27 heartbreaking. The description of the effect that this

1 had on him is also very sad.

2 This is something we hear about in the  
3 courts from time to time, and it is part of why the  
4 Supreme Court of Canada has said that this and other  
5 systemic factors that have affected Indigenous people  
6 in this country must be taken into account when  
7 imposing sentence. It does not excuse criminal  
8 behaviour, but it is something that is relevant to  
9 people's blameworthiness, and when someone's moral  
10 blameworthiness is reduced, that has an impact on  
11 what sentence should be imposed because a sentence  
12 should be proportionate to the seriousness of an  
13 offence and the blameworthiness of the person who  
14 committed it.

15 The guilty plea and Mr. Bertrand's  
16 personal circumstances are reasons why I find that the  
17 joint submission is reasonable in this case.

18 A two year less a day sentence,  
19 especially for a man who spends a lot of time out on the  
20 land and probably feeling more free than many others  
21 do when he is doing that, is not an insignificant  
22 sentence. I expect for someone who is used to  
23 spending a lot of time on the land, two years less a day,  
24 or whatever time it ends up being in jail, is going to be  
25 very difficult. And it does not make me happy to have  
26 to impose that type of a sentence to anyone and  
27 certainly does not make me happy to have to impose it

1 to you, Mr. Bertrand.

2 But what you did was very serious.

3 Young people need the protection of adults, and the  
4 adults are the ones who have to know better and who  
5 have to be extremely cautious, alcohol or no alcohol.  
6 And so that is why the sentences for these types of  
7 crimes are fairly severe.

8 I am going to also impose the various  
9 orders that the Crown has sought because they are  
10 mandatory. There will be a 20-year requirement to  
11 comply with the *Sex Offender Information Registration*  
12 *Act*, and a DNA order. A firearms prohibition order is  
13 mandatory as well, but it is obvious to me that the  
14 exemption should be included in it so that when you do  
15 regain your freedom, Mr. Bertrand, you are able to  
16 apply to have that firearm prohibition lifted so that you  
17 can go back to your camp and you can lead what  
18 sounds to me is a very healthy lifestyle for you. I hope  
19 that you are able to find someone to close up your  
20 camp and look after things until you can return.

21 I will also impose a three-year probation  
22 order. It will be supervised probation. Mr. Bertrand,  
23 you will have to report to a probation officer within 48  
24 hours of your release and thereafter as directed. I hope  
25 and expect that that probation officer will take into  
26 account where you are living and what your  
27 circumstances are to not make this reporting a burden



1 but more something to help you.

2 I will include a condition that you take  
3 counselling as recommended because that may assist  
4 you. You do not sound like you have had a major  
5 problem with alcohol, but it certainly sounds like it has  
6 the potential of taking all your judgment away, if I can  
7 put it that way. So that condition is there in the hopes  
8 that it will help you.

9 There will be a condition that you have no  
10 contact with this young woman for the duration of the  
11 probation order.

12 I am not going to make an alcohol  
13 abstention condition. I think it is better to leave that up  
14 to you. It does not sound like alcohol is necessarily a  
15 frequent problem, but it also sounds like it is not a great  
16 thing for you. But I will not include that specific  
17 condition because at your age, I think you can make  
18 those choices. In light of what has happened, I think  
19 you know better than anyone that it is not a good idea.

20 I will include a condition that you not be  
21 alone with a person under 16 unless there is another  
22 sober adult present. Based on everything I heard, it  
23 does not sound like that is going to be a problem. If it  
24 becomes a problem, there are ways to get probation  
25 orders amended, and Mr. Moore can tell you how to do  
26 that, but if there is ever a need to change this condition  
27 because it has become too difficult with family

1 members or things of that nature, you can contact  
2 Legal Aid and arrangements can be made to bring it  
3 back before a judge to decide. But the condition will be  
4 included for now.

5 I will also make an order that exhibits be  
6 returned to their rightful owner if that is appropriate, and  
7 if not, they can be destroyed. But this should be at the  
8 expiration of the appeal period if no appeal is brought.

9 Mr. Bertrand, I wanted you to know that I  
10 would accept the joint submission, but I should have  
11 asked you, before I started giving this decision, if there  
12 was anything that you want to say. You get the last  
13 word or almost the last word in these proceedings. Mr.  
14 Moore has spoken on your behalf very well. If there is  
15 something you want to say, this is your chance. If you  
16 do not want to say anything, you do not have to.

17 Is there anything you would like to tell  
18 me?

19 THE ACCUSED: It's hard for me to express myself,  
20 express my regrets.

21 THE COURT: Okay. Thank you.

22 THE ACCUSED: This is going to have a big impact on  
23 my family, especially my mom. She's an elderly lady,  
24 and she is living alone. And once in a while when I  
25 come into the Fort Liard area I stay at her place and I  
26 help her, keeping the house warm, washing the dishes,  
27 and just doing whatever I can for her and I usually

1 supply, like fish and --

2 THE COURT: Food.

3 THE ACCUSED: -- you know, rabbits and -- it's going to  
4 have a big impact on her.

5 THE COURT: I understand. And I have a feeling that  
6 for you, that is the worst punishment. I hope that others  
7 can chip in in the community of Fort Liard to help her  
8 and help you get your camp closed up.

9 It was mentioned in the pre-sentence  
10 report, and Mr. Moore said it again this afternoon, that  
11 one of the things that you struggle with is the  
12 perception that people have of you now, that that  
13 perception may have changed. And that is probably  
14 true, that people's perceptions have changed. But you  
15 will be back in your community at the end of your  
16 sentence, and I hope that you are able to gain that  
17 respect back. You have done a lot of things in your life  
18 that commanded the respect you had of people before.  
19 I believe that most people understand that we make  
20 mistakes. This was a very bad one, but I hope that  
21 when you return to your community you are able to  
22 build on everything you have done in your life up to that  
23 day and regain that respect and be a role model for  
24 people.

25 There are not that many people who lead  
26 a traditional lifestyle and have the skills that you have. I  
27 am sure you can help teach others, and there are a lot

1 of positive things you can do in your community after  
2 you return. So this does not have to be the end of that  
3 contribution you have been able to make to your  
4 community.

5 This is a long sentence for you, I know.  
6 But I hope that you will be able to pick up where you left  
7 off when you return and that you will succeed.

8 Is there anything, Madam Clerk, that I  
9 have omitted?

10 THE CLERK: The pre-sentence report, do you want  
11 that marked as an exhibit?

12 THE COURT: Yes, we will mark the pre-sentence  
13 report as exhibit S-2. Thank you for reminding me.

14 **EXHIBIT S-2: PRE-SENTENCE REPORT**

15 THE COURT: Is there anything I have overlooked,  
16 counsel?

17 M. FANE: No, Your Honour, not on this matter.

18 **(OTHER MATTERS SPOKEN TO)**

19 THE COURT: Anything more, Mr. Moore? Anything  
20 else --

21 L. MOORE: Nothing further.

22 THE COURT: Okay. So just to confirm, I am ordering a  
23 transcript. Initials should be used for the complainant's  
24 name. The publication ban should be noted on the  
25 cover sheet, and it should be brought to me for review.  
26 This will not be my most organized sentencing decision,  
27 but I felt it important to give it now so that we can

1 complete this matter today.

2 So I wish you luck, sir, and I hope that  
3 things work out all right for you.

4

5

6 **(PROCEEDINGS CONCLUDED)**

7

8 **CERTIFICATE OF TRANSCRIPT**

9 Neesons, the undersigned, hereby certify that the foregoing  
10 pages are a complete and accurate transcript of the  
11 proceedings transcribed from the audio recording to the best  
12 of our skill and ability. Judicial amendments have been  
13 applied to this transcript.

14

15

16 Dated at the City of Toronto, in the Province of Ontario, this  
17 2<sup>nd</sup> day of April, 2020.

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19

20 

21 Kim Neeson

22 Principal

23

24

25

26

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**IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES**

**BETWEEN:**

**HER MAJESTY THE QUEEN**

**- and -**

**PETER BERTRAND**

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**AGREED STATEMENT OF FACTS**


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The following facts are admitted by the parties for the purposes of sentencing:

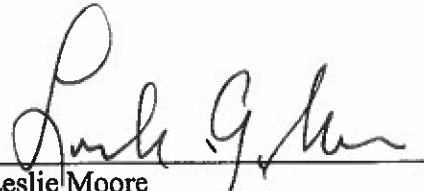
1. On January 31, 2018, at the Hamlet of Fort Liard, Peter Bertrand, the accused, was drinking alcohol at his residence with Brian Ekotla, Shaunna Didzena, and [REDACTED].
2. Mr. Bertrand invited Ms. Didzena, Mr. Ekotla and [REDACTED] to stay overnight at his residence as they had a flat tire. At one point during the evening, Ms. Didzena and Mr. Ekotla left Mr. Bertrand's residence.
3. Mr. Bertrand had vaginal sexual intercourse with [REDACTED]. They had not met prior to January 31, 2018.
4. Mr. Bertrand gave a statement to Cpl Nicolas Brodeur on January 31, 2018 in which he said that at the time of the assault he believed [REDACTED] was 'too young' for him and that he believed she was 17 or 18 years old.

5. At the time of the sexual assault, [REDACTED] was 15 years old and Mr. Bertrand was 59 years old.
6. Mr. Bertrand did not take all reasonable steps to ascertain [REDACTED]'s age prior to the assault.


**Dated** at Yellowknife, Northwest Territories, January 20, 2020



Morgan Fife  
Counsel for the Director of  
Public Prosecutions



Leslie Moore  
Defence Counsel

  
Peter Bertrand  
Accused



**EXHIBIT TAG**

NUMBER  
NOMBRE  
51

CASE NAME DOSSIER Rv Bertrand	
COURT COUR Supreme	CASE NUMBER DOSSIER NO. S1CR2018000143
EXHIBIT NUMER - NUMÉRO DE LA PIÈCE <input type="checkbox"/> MARKED # 51 <input type="checkbox"/> ENTERED	
Submitted by <input checked="" type="checkbox"/> Crown/Plaintiff <input type="checkbox"/> Defence/Respondent Couronne/Plaignant Défense/Répondant	
CLERK ACKNOWLEDGEMENT PARAPHE DU GREFFIER C/bh	DATE March 9, 2020