

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

-v-

RANDY ALLEN

Transcript of the Reasons for Sentence delivered by the Honourable Justice S.H. Smallwood, sitting in Yellowknife, in the Northwest Territories, on the 2nd day of March, 2020.

APPEARANCES:

A. Paquin:	Counsel for the Crown
R. Clements:	Counsel for the Defence

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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Reasons for sentence

1

1 **MONDAY, MARCH 2, 2020**

2 THE COURT: Randy Allen has pled guilty to a sexual
3 assault and it is now my responsibility to sentence him
4 for that offence. Mr. Allen entered his guilty plea on
5 February 24th, 2020, one week before his jury trial was
6 to commence before me today.

7 The Crown and defence have jointly submitted
8 that an appropriate sentence for this offence would be
9 two-and-a-half years' imprisonment less credit for pre-
10 trial custody, followed by 18 months of probation. Mr.
11 Allen has been in custody since June 28, 2019.

12 I have considered the submissions of counsel
13 and I am prepared to implement the joint submission. It
14 is within the range of appropriate sentences, and I think
15 that it is an appropriate sentence for Mr. Allen in the
16 circumstances. Because I am going along with the joint
17 submission, I am not going to say as much as I might in
18 other cases and this allows me also to conclude this
19 sentencing today so that Mr. Allen can begin serving
20 his sentence.

21 There was an Agreed Statement of Facts filed
22 which detailed the sexual assault. The victim was in
23 Yellowknife for a medical appointment and she was
24 here from Nunavut. While here, she visited a friend at
25 Mr. Allen's residence. She saw Mr. Allen that day and
26 she had met him before.

27 On the evening of November 17th, 2018, the

1 victim was out drinking, and when she returned to the
2 medical boarding home she was denied entry because
3 she had been drinking. The victim was then walking on
4 the street and encountered Mr. Allen. He offered to
5 take her to his residence as she did not have a place to
6 stay. The victim accepted and expected that Mr.
7 Allen's family would be at the residence, as they were
8 on the previous occasion.

9 When they got to the residence, Mr. Allen took
10 the victim to a bedroom, closed the door and removed
11 his clothes. They then struggled before Mr. Allen
12 punched the victim on her right eye. At this point, the
13 victim ceased struggling. Mr. Allen then removed her
14 clothes and had sexual intercourse with her without her
15 consent.

16 The sexual assault ended when the victim hit
17 Mr. Allen in the face, causing a nosebleed. She then
18 grabbed her clothes and fled the apartment, leaving
19 behind her coat, clothing, cellphone and other items.

20 As a result of this offence, the victim suffered
21 bruising. A Victim Impact Statement was provided this
22 morning and it is clear that the offence had an impact
23 on the victim, and I think that that is not unexpected.

24 The cases filed by the Crown on the sentencing
25 and past experience demonstrate that serious sexual
26 assaults like this inevitably have an impact on the victim
27 and they leave a lasting mark on the victims. The

1 victim wrote of being sad and hurt and scared, and I
2 think those are common reactions and not surprising
3 that she feels this way even after the passage of time.

4 The Crown has filed three cases: *Kiktorak*,
5 *Romie* and *Michel*, all sentencing decisions of this
6 court. I will not review them in detail as counsel did this
7 morning, but they establish that the proposed joint
8 submission is within the range of sentence for similar
9 cases.

10 Mr. Allen has a criminal record which consisted
11 of eight convictions prior to this offence. He has since
12 accumulated more convictions in 2019. There are a
13 couple of offences of violence on his criminal record
14 but, overall, Mr. Allen's criminal record is not significant
15 and he has never received a significant period of
16 incarceration.

17 Mr. Allen is an aboriginal male, which requires
18 me to consider the *Gladue* and *Ipeelee* factors and
19 section 718.2(e) of the *Criminal Code*, and I have heard
20 from counsel about Mr. Allen's background and some
21 of the background factors which played a part in
22 bringing him before the Court today. I do not think it will
23 add anything for me to repeat what counsel has said
24 about Mr. Allen and his background, and I probably
25 cannot do it justice to try, but Mr. Allen has endured
26 loss in his family over the years which has had a
27 significant impact on him emotionally. He has abused

1 alcohol to cope with his problems, which has also had
2 an impact, a negative impact, on his life.

3 He has had mental health issues over the years.
4 All of this tells me that Mr. Allen has issues to deal with,
5 ones that are longstanding, and his attendance at
6 counselling while incarcerated and the steps he has
7 taken while awaiting trial give me hope that he has
8 begun the process to heal himself and address his
9 issues.

10 Deterrence and denunciation are primary
11 sentencing principles in cases of sexual assault. The
12 prevalence of sexual assault in this jurisdiction means
13 that the Court must continue to take these violations of
14 sexual integrity seriously and express society's
15 condemnation of these offences and these activities.

16 Rehabilitation and restraint are also important
17 factors in Mr. Allen's circumstances. His limited
18 criminal record and the strides he has made in
19 counselling and accepting responsibility for his actions
20 make it even more important that Mr. Allen's
21 rehabilitation be encouraged.

22 I have heard that Mr. Allen decided to plead
23 guilty after he took counselling while in custody.
24 Through counselling, he came to a realization about his
25 actions and decided to change his plea. That
26 realization and acknowledgment of responsibility by
27 pleading guilty are deserving of significant credit.

1 While the plea is a late one, it is still significant
2 because Mr. Allen came to this point on his own, and
3 his actions in taking responsibility have had a significant
4 impact. A trial does not need to be held. The victim
5 and others do not have to travel to Yellowknife for the
6 trial. The victim does not have to testify. There is
7 certainty in this resolution, in this guilty plea. All of
8 these factors highlight the importance of a guilty plea
9 whenever it comes.

10 Mr. Allen's apology today also has meaning. It
11 is an expression of his remorse, and it is clear that he
12 takes responsibility for his actions.

13 There are also aggravating factors. This was a
14 sexual assault on a vulnerable woman who had
15 accepted Mr. Allen's offer of hospitality because she
16 had nowhere else to stay that night. The sexual assault
17 is a serious one. I consider it a major sexual assault
18 according to the decision in *Arcand*, and the sexual
19 assault itself involved violence by Mr. Allen to
20 overcome the victim's resistance.

21 The sexual assault itself only ended when the
22 victim began to fight back and hit Mr. Allen in the nose.
23 There are serious aggravating factors in this sexual
24 assault that need to be considered as well.

25 Dealing first with the ancillary orders sought by
26 the Crown, they are mandatory. So first there will be a
27 DNA order as this is a primary designated offence.

1 There will also be a SOIRA order for a term of 20 years,
2 and there will be a firearms prohibition order pursuant
3 to section 109 for a period of ten years following Mr.
4 Allen's release from imprisonment.

5 Mr. Allen has sought an exemption pursuant to
6 section 113 of the *Criminal Code* to allow him to apply
7 for a licence for hunting or sustenance purposes. The
8 Crown is opposed to this request, citing concerns about
9 his history of violence and his conviction for possession
10 of a weapon contrary to section 88 in 2008.

11 I have considered Mr. Allen's criminal record and
12 the other factors referred to in section 113. Mr. Allen's
13 criminal record does have offences of violence on it and
14 a weapons conviction, but overall his criminal record is
15 not significant. His criminal convictions for the offences
16 of violence did not result in significant periods of
17 incarceration and some of the convictions are quite
18 dated.

19 I have also heard that he engages in hunting
20 and other activities on the land. He was raised and
21 learned those traditions from relatives and he had
22 engaged in those activities as an adult prior to moving
23 to Yellowknife in 2016. I have heard that Mr. Allen
24 hopes to resume those activities when he returns to
25 Kugluktuk where he is from, following his release from
26 imprisonment.

27 Overall, while there are some concerns

1 regarding Mr. Allen, I am satisfied that an exemption is
2 appropriate in his circumstances.

3 Therefore, taking into account Mr. Allen's
4 personal circumstances, the circumstances of the
5 offence and the joint submission that has been
6 proposed by counsel, and the applicable sentencing
7 principles, I am prepared to impose the joint
8 submission. So please stand up, Mr. Allen.

9 For the offence of sexual assault, I sentence you
10 to a period of imprisonment of 30 months, so the two-
11 and-a-half years proposed by counsel. You will receive
12 credit of 12 months and one week for the period of time
13 that you have been in custody so far, leaving a
14 sentence of 17 months and three weeks to be served.

15 There will also be a probation order that will be
16 imposed following your period of imprisonment, and
17 that will be a period of 18 months, and you will have the
18 statutory conditions plus additional conditions that you
19 have no contact with the victim directly or indirectly, that
20 you take counselling as directed and report to the
21 probation officer within three days of your release from
22 custody and thereafter as directed. Do you understand
23 those conditions?

24 THE ACCUSED: Yes, Your Honour.

25 THE COURT: Okay. Well, Mr. Allen, you can have a
26 seat. Like I say, I have heard some very good things
27 that you have made significant progress while in

1 custody, and I hope that you continue to take programs
2 and continue to take counselling and that you continue
3 as well when you are on probation once you are
4 released from custody. Thank you.

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9 **(PROCEEDINGS CONCLUDED)**

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13 **CERTIFICATE OF TRANSCRIPT**

14 Neesons, the undersigned, hereby certify that the foregoing
15 pages are a complete and accurate transcript of the
16 proceedings transcribed from the audio recording to the best
17 of our skill and ability.

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19 Dated at the City of Toronto, in the Province of Ontario, this
20 23rd day of March, 2020.

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Kim Neeson

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Principal

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