

AMENDED ORIGINAL
IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

-v-

M.N.

Transcript of the Reasons for Sentence of the Honourable Chief Justice L.A. Charbonneau, sitting in Yellowknife, in the Northwest Territories, on the 4th day of March, 2020.

APPEARANCES:

M. Fane:	Counsel for the Crown
T. Bock:	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*.

ORIGINAL amended as of May 29th, 2020:
Cover page changed from B. MacPherson to M. Fane as Counsel
for Crown

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RULINGS, REASONS

Reasons for sentence

1

1 MONDAY, MARCH 4, 2020

2 THE COURT: This morning, it is my responsibility to
3 sentence M.N. for having sexually assaulted C.O. back
4 in January 2018. Earlier this week, M.N.'s lawyer said
5 a few times during his submissions that this was a very
6 difficult case and that is very true.

7 Sentencing is never an easy thing. It is never
8 pleasant for a judge to impose a sentence, especially a
9 long jail term. It feels like a waste and yet sometimes it
10 cannot be avoided.

11 In cases like this, and like so many others that
12 come before this court, unfortunately, it cannot be
13 avoided. But it is especially difficult and especially sad
14 when, as here, a relatively young man with no past
15 criminal history, a good background, with a family and
16 much going his way, has to be sentenced for such a
17 serious crime.

18 M.N. was engaged with C.O.'s sister when this
19 happened. This sister was like a second mother to the
20 complainant. At the time, they all lived together. She
21 trusted M.N. and considered him like a big brother.

22 I understand that they both work at the same
23 place and that on the night of these events there had
24 been an office party. Both of them had consumed
25 alcohol. C.O. went home, went to bed in her room and
26 fell asleep. She woke up to someone having sexual
27 intercourse with her. It was M.N..

1 When she realized what was happening, she
2 pushed him off. She confronted him and he left the
3 house. He sent her a series of Facebook messages
4 that night shortly after the events and again the
5 following afternoon. He said various things in these
6 messages, including that he was very drunk, that he did
7 not remember, and he also asked her not to tell her
8 sister, his fiancé.

9 C.O. did not tell anyone about this initially. She
10 simply packed her bags and left the house. It was only
11 a few months later in April when her mother suggested
12 that she move back in that she told her what happened,
13 and this was also when she reported this to police.
14 M.N. was arrested. He gave a statement claiming not
15 to have a memory of the events, but he did admit that
16 he sent the Facebook messages.

17 This assault had a profound impact on C.O. I
18 hope M.N. fully realizes that. He probably cannot fully
19 understand what she has gone through and is still
20 going through. Her Victim Impact Statement is very
21 compelling. It explains better than any judge could the
22 effect that this type of crime, which is sadly so prevalent
23 in the Northwest Territories, has on victims. This is
24 important. It is important that people understand the
25 impact that these crimes have. For that reason, I will
26 refer to that Victim Impact Statement this morning.

27 C.O. says these events put a strain on her own

1 relationship and ultimately caused its end due to
2 emotional instability. She feels alone. She does not
3 trust anyone. Because she and M.N. worked together,
4 these events have affected her work schedule.

5 She does not feel safe at work. She felt
6 disgusted with herself because she felt it was her fault.
7 She does not feel safe going out anymore. She is
8 afraid of running into him. When she found he pleaded
9 not guilty in earlier stages of these proceedings, she
10 struggled with panic attacks about court. She talks
11 about what she lost. She writes:

12 I have lost my safe place. I had to move out.
13 My dad thought I left him. I left so much more
14 than my dad. I left my sister who was like a
15 second mom. I left my nephews and niece. I
16 left my shelter, my appetite, my peace and my
17 sanity after what you did. A year-and-a-half
18 later, I am still trying to gain those back.

19 This Victim Impact Statement was filed last July.
20 One can only hope that as time continues to pass C.O.
21 will be able to recover emotionally from all of this.

22 Unfortunately, these things C.O. is going
23 through are consequences we hear about very often in
24 sexual assault cases. M.N. has taken a lot away from
25 her when he made this drunken and selfish choice to
26 use her for his own sexual gratification. It was a terrible
27 breach of the trust that existed between them. She

1 should have been able to count on him for protection.

2 M.N. does not have a criminal record. What he
3 did that night appears to have been completely out of
4 character for him. As his counsel has said, this is
5 probably someone we will not see back in the
6 courtroom, and I certainly hope we will not.

7 I have the benefit of a Presentence Report. I
8 have reviewed it and it is a very thorough report. I will
9 not try to summarize it. That would not do it justice. It
10 is a largely positive report.

11 M.N. is more fortunate than most people that I
12 have had to sentence. He has faced some struggles
13 but, according to this report, he grew up feeling loved in
14 a safe environment. He learned important traditional
15 land skills. He has a lot of skills himself, a good work
16 record, a supportive family, lots of friends.

17 He has a wife who has continued to support him
18 despite what has happened. That speaks to her
19 strength of character. He has children. He has had
20 some struggles and suffered some losses, and I do not
21 mean to minimize those, but he does have a lot going
22 for him and this bodes very well for his rehabilitation.

23 I must say that when I read the Presentence
24 Report the first time, some of the things in it caused me
25 some concern. There were things in there that made
26 me wonder whether M.N. was truly taking full
27 responsibility for his actions.

1 For example, on page 3 of the report, the author
2 writes that M.N. did not seem to have any insight into
3 the impact that this had on C.O. He said that C.O. is
4 not a bad person but that she makes poor choices.
5 The author further states that M.N. said he feels bad
6 and sorry about what happened and would like to
7 apologize, but also he said no one person is
8 responsible for the assault and that he considered
9 himself pretty un-responsible, given the amount of
10 alcohol he had consumed.

11 Maybe some of those comments come from the
12 fact that I imagine there is a part of M.N. that finds it
13 hard to accept he could have done this. Maybe it is
14 natural to look elsewhere to share the responsibility or
15 put the blame on alcohol. And to be fair, there are also
16 many other references in the report to things that
17 suggest that M.N. is very sorry, that he exhibited
18 remorse, that he was visibly upset when the police
19 dealt with him, that he said he is ashamed and that he
20 is sorry, and I heard similar things from his lawyer
21 during submissions, and I heard similar things from
22 M.N. himself when he had the opportunity to address
23 me directly.

24 On the whole, I do accept that M.N. is sorry and
25 that he now takes full responsibility for what happened.
26 And he should, and it is worth repeating it here today:
27 the responsibility for what happened was M.N.'s and

1 M.N.'s alone. No one deserves to be treated the way
2 C.O. was. Sober or drunk or even passed out, it does
3 not matter. A person, sleeping or awake, sober or
4 intoxicated, has the right to have their physical and
5 sexual integrity respected.

6 This is a very basic thing. It is not difficult to
7 understand. There is no excuse for behaving this way.
8 Alcohol is no excuse. A lot of people get intoxicated,
9 very drunk sometimes, and do not go around sexually
10 assaulting others.

11 This type of crime happens often, far too often,
12 in this jurisdiction, but the fact that it is so prevalent
13 does not make it any less serious or any more normal.
14 People should continue to be shocked that this
15 happens and should continue to be shocked that it
16 happens as often as it does.

17 The law is clear that for a sexual assault of this
18 type, a significant jail term must be imposed. This is
19 simply because the case is not just about M.N.. In
20 imposing sentence, I cannot think only about what
21 would be best for him and his family. I have to think
22 about the message that my sentence sends to the
23 public, to society.

24 A sentence has to strike the right balance
25 between the various sentencing objectives and
26 principles. Between the need to support M.N. in his
27 rehabilitation and reintegration so he can continue after

1 his sentence to work, support his family, raise his
2 children, and be a productive member of society, and
3 the need for courts to continue to send a clear message
4 about the seriousness of a crime that is so depressingly
5 prevalent in our communities.

6 As a sentencing judge, I am bound by the
7 directions of the Court of Appeal, and that direction is
8 that the starting point for an offence like this one is
9 three years imprisonment. That is not a minimum
10 sentence. It simply signals where the court should start
11 from in its analysis. The court must then adjust the
12 sentence to reflect the aggravating and mitigating
13 factors of each case to arrive at a sentence that is
14 proportionate to the gravity of the offence and the
15 degree of responsibility of the offender.

16 In this case, the aggravating factors are the
17 breach of trust and the fact that C.O. was particularly
18 vulnerable because she was sleeping in her own bed in
19 her own home. Our home is the place where we
20 should all feel and be the safest.

21 There are also mitigating factors. The guilty plea
22 is the most significant one. This plea did not come
23 early in these proceedings and, because of that, C.O.
24 experienced considerable anxiety.

25 She struggled with panic attacks after she
26 learned M.N. was pleading not guilty. She expected to
27 testify at a preliminary hearing that, in the end, was

1 waived at the eleventh hour. She spent months
2 expecting to have to testify at a jury trial and learned
3 only a short time before that trial that this would not be
4 needed.

5 So she went through a lot more anxiety and this
6 dragged on a lot longer than it would have, had the
7 guilty plea been entered earlier on. However, in the
8 end, she did not have to testify in a public courtroom
9 and describe what happened to her, and for having
10 seen a lot of witnesses testify in cases like this, I know
11 that sparing someone that is sparing them a lot.

12 So I agree with counsel that the guilty plea is a
13 significant mitigating factor. If he had been convicted
14 after trial, M.N. would be facing a much longer
15 sentence.

16 M.N. is still relatively young. He has a good
17 background, a supportive family, and a lot going for
18 him. He is an indigenous person which engages the
19 well-known principles articulated by the Supreme Court
20 of Canada about how his sentencing must be
21 approached and the particular importance of the
22 principle of restraint.

23 The Crown seeks a jail term of two years less a
24 day followed by three years probation to give C.O. the
25 added protection of a no contact order for that period.
26 The defence recognizes that a jail term has to be
27 imposed, but asks me to make it shorter, in the range of

1 15 to 18 months. I commend counsel for their
2 submissions and for the positions they have taken.

3 The positions are different, but they are both
4 reasonable and defensible positions. The Crown's
5 position reflects restraint. The defence's position
6 reflects what I would call realism in that the defence
7 does recognize that a jail term of some significance
8 cannot be avoided on a case like this, no matter how
9 many positive things can be said about M.N..

10 This is a difficult decision because, as I say, it
11 gives me no joy to send anyone to jail, and even less
12 so someone like M.N. who can contribute to his
13 community. His family I know will be punished by his
14 absence, even though they have no responsibility in all
15 of this. That is very sad and very unfair, and I imagine
16 for M.N. knowing the impact that this has had and will
17 have on his family is painful and may be the most
18 painful part of his sentence.

19 As the Crown correctly noted, the sentence I
20 impose could easily be over two years, but that would
21 prevent including a period of probation as part of it, and
22 I am quite convinced that overall it is preferable to have
23 probation be part of this sentence, not just to have the
24 no contact order to give C.O. some added protection
25 and the distance she needs for the time being, but also
26 because I think it would be helpful for M.N. to access
27 services and counselling to try to perhaps explore his

1 relationship with alcohol, maybe try to better
2 understand what happened to him that night to make
3 him act in such a callous, profoundly disrespectful and
4 appalling way.

5 Considering everything else I have read about
6 him, it is very surprising that he would act this way, but
7 it was not some other person who did this; it was him.
8 So I think for his own good it would worthwhile trying to
9 understand what happened better.

10 The Crown has sought a number of ancillary
11 orders, and I will deal with those first. First, there will
12 be a DNA order, as this is a primary designated
13 offence. Second, there will be an order that M.N.
14 comply with the requirements of the *Sex Offender*
15 *Registration Act* for a period of 20 years. That order is
16 also mandatory.

17 There will be a firearms prohibition. The order
18 will commence today and expire ten years after M.N.'s
19 release. I will include the exemption referred to in
20 section 113 of the *Criminal Code* which will allow M.N.
21 to apply to have the order lifted for employment or
22 sustenance purposes and hopefully allow him to
23 continue some of the traditional activities that he has
24 been engaged in during his life.

25 I will also make an order that exhibits are to be
26 returned to their rightful owner if appropriate or
27 otherwise are to be destroyed at the expiration of the

1 appeal period if no appeal is filed.

2 Stand up, please, M.N.

3 M.N., for the sexual assault of C.O., I sentence
4 you to a term of imprisonment of 20 months. That will
5 be followed by three years probation with only a few
6 conditions.

7 It will be supervised probation. So you will
8 report to a probation officer within 48 hours of your
9 release and then as directed. You will take counselling
10 as recommended by your probation officer. This is to
11 assist you. It is not to punish you. And you will have no
12 contact with C.O. for that period of time. Maybe in time
13 she will be able to accept your apology, but it has to be
14 on her terms and when she is ready.

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18 **(PROCEEDINGS CONCLUDED)**

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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.

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9 Dated at the City of Toronto, in the Province of Ontario, this
10 24th day of May, 2020.

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Kim Neeson

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Principal

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