

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

MICHAEL WILLIAH

Transcript of the Decision held before The
Honourable Justice A.M. Mahar, sitting in Yellowknife, in
the Northwest Territories, on the 30th day of July, 2018.

APPEARANCES:

Mr. A. P. Godfrey: Counsel for the Crown
Mr. L. A. Moore: Counsel for the Accused

(Charges under s. 271 of the *Criminal Code*)

**No information shall be published in any document or
broadcast or transmitted in any way which could identify
the victim or a witness in these proceedings pursuant to
s. 486.4 of the *Criminal Code***

**Ban on publication of the evidence taken at preliminary
inquiry pursuant to s. 539 of the *Criminal Code***

1 THE COURT: Michael Williah was arrested
2 for sexual assault on the same day as the
3 incident, December the 10th, 2016, and he has
4 been in custody since that time. In March of
5 2017 he was convicted and sentenced for another
6 sexual assault that happened before December the
7 10th, 2017. He received a sentence of 18 months,
8 which he served while waiting for trial on this
9 charge.

10 When we were in court last, May the 7th, the
11 issue of remand time was addressed. At that
12 point, Michael Williah had served 172 days of
13 actual time which could be credited to this
14 charge. On a 1.5 to 1 basis, his credit was 258
15 days. Today is the 30th, he has served another
16 84 days, and at 1.5 to 1, that should give him
17 credit for another 126 days. 384 days is the
18 total credit.

19 If my math is wrong, my intention is to give
20 him a full 1.5 credit for all the time he has
21 been in remand on this charge, and any error
22 would be in calculation, not in intent. It
23 should not require a formal review, just bring it
24 to my attention, and I will adjust the matter
25 accordingly.

26 In this matter there has been a publication
27 ban with respect to anything that could identify

1 the complainant. I will refer to her as "P.M."
2 and her common law spouse at "E.J." I believe I
3 can continue to refer to Mr. Williah by name as
4 the relationship could cover a number of
5 individuals, and I do not believe that his name
6 could then identify her.

7 After a preliminary inquiry, the matter was
8 set down for trial, and Mr. Williah was found
9 guilty on March the 9th, 2018. Briefly, the
10 facts behind the conviction are that in the early
11 morning hours of December the 10th, 2016,
12 Michael Williah, P.M., and E.J. had all been
13 drinking very heavily. They all ended up falling
14 asleep at Michael Williah's house. P.M. woke up
15 to find Michael Williah, her cousin, having sex
16 with her. She yelled out for help, E.J. woke
17 up -- he was sleeping close by -- pulled
18 Mr. Williah off of P.M., and then proceeded to
19 help her get dressed.

20 It is not exactly clear what happened next,
21 but Michael Williah ended up being badly beaten.
22 His leg was broken requiring a number of screws
23 to keep it together. His house, which was a very
24 modest little home, ended up being partially
25 burned, and he was medivaced for his injuries.

26 Michael Williah testified on his own behalf.
27 He denied the assault; admitting that his semen

1 had been inside the victim but denying that he
2 had sexual assaulted her. I found his testimony
3 more a function of a deep wish that something had
4 not happened than a heartless denial of the
5 terrible harm done to the victim. The victim is
6 his cousin, who he had a good relationship with.
7 E.J. was one of his oldest friends, who thought
8 of him as a brother.

9 This was, in all directions, a heartbreaking
10 incident, and I have no doubt that without the
11 gross overconsumption of alcohol, it would never
12 have happened. When Mr. Williah spoke to me
13 during sentencing submissions, I asked him what
14 he was going to do about this, and he told me he
15 was going to stop drinking. I hope he does.

16 Michael Williah has a long criminal record
17 containing about 25 criminal convictions. Of
18 those criminal convictions there are three prior
19 convictions for sexual assault: In 1996 he
20 received 30 days; in 1998, six months; in 2007,
21 he received a 18-month sentence after serving
22 roughly eight and a half months in custody.
23 This will be his first penitentiary term.

24 One of the principles of sentencing that was
25 not substantially addressed in submissions is
26 totality. Michael Williah has already served an
27 18-month sentence while waiting for trial on this

1 charge. Any sentence that I give him today is
2 essentially consecutive to that sentence.

3 THE INTERPRETER: Sorry?

4 THE COURT: Any sentence that I give him
5 today is in addition to that 18 months. One of
6 the principles that judges have to keep in mind
7 is that the entire length of the sentence should
8 not be so great as to crush someone.

9 Michael Williah is 45 years old. He is of
10 indigenous ancestry. He grew up in a small
11 community, and it has always been his home. One
12 of the sadder things I noticed in the presentence
13 report is that he no longer feels that he can
14 return to Whati. He does not feel safe. He does
15 not really feel like he has a place there any
16 more. I also hope that changes, because it is
17 his only home, it is where the people that love
18 him are, and rehabilitation is much more
19 difficult without positive connections.

20 The Crown attorney asks me to consider a
21 sentence of six to seven years. Defence counsel
22 asks me to consider a sentence of three to
23 five years.

24 Michael Williah has had a hard life. He has
25 suffered a lot of loss and a lot of hurt. He
26 lost a baby sister in front of him when he was
27 just a small child. He had to rescue his brother

1 from a suicide attempt. A close friend that he
2 felt responsible for drowned. He has a history
3 of chronic substance abuse. He abused solvents
4 for a five-year period of time between 15 and
5 20 years old. He started drinking at 22 years
6 old, and he regularly drinks until he blacks out.

7 I have to balance Michael Williah and who he
8 is against the damage that was done to his
9 victim. Sexual assault is a crime of profound
10 intimacy. It causes damage that goes well beyond
11 any physical damage. People are hurt in the most
12 personal way, deeply, and recovery is difficult.

13 P.M. has specifically suffered as a result
14 of this offence. She gave up her job. She
15 stopped going out. She has struggled in her
16 relationship with E.J. She continues to look for
17 help. She is looking into a more intensive
18 counselling program to help her with this.
19 Michael Williah was also sexually abused when he
20 was only 9 years old.

21 I have thought long and hard about what a
22 fair sentence would be in this case.
23 Michael Williah has not had an easy life. He has
24 been bullied most of his life, and he will have a
25 hard road to rehabilitation. The fact that he
26 was highly intoxicated at the time of the offence
27 is not a mitigating factor, it does not make what

1 happened less serious. It does make it sadder.
2 The fact that Michael Williah was badly beaten
3 after the offence, his house burned, does not
4 make it less serious, either. It does not have
5 an impact on sentence. It just makes the
6 situation sadder, when you consider that these
7 were people who all cared about each other before
8 this happened.

9 In my view, the way to take into account
10 Mr. Williah's circumstances, the seriousness of
11 the offence, and a very troubling criminal record
12 is a sentence of four and a half years in jail.
13 I am always mindful of the direction given by the
14 Supreme Court of Canada and the legislature and
15 always intend to impose a sentence that is no
16 harsher than it has to be.

17 I do note that four and a half years, taking
18 into account the one-and-a-half year sentence
19 that he already served during his time in remand
20 is the equivalent of a six-year sentence for two
21 sexual assaults. I am of the view, taking into
22 account the significant *Gladue* factors in this
23 case, and taking into account that Mr. Williah
24 presents as someone who will be a vulnerable and
25 fragile inmate --

26 THE INTERPRETER: Just wait.

27 THE COURT: -- that this sentence is

1 sufficiently severe to answer for what occurred.

2 He will get credit on a 1.5 to 1 basis for
3 all the custody attributable to this charge. By
4 my calculation, it should equal 384 days. I am
5 not going to reduce the 4.5 years to days. It is
6 a very simple calculation, 4.5 plus 365 plus 1
7 for a leap year. I am assuming Corrections can
8 do that.

9 THE INTERPRETER: I'm sorry?

10 THE COURT: The calculation is fairly
11 straightforward for Corrections Canada. They
12 will multiply 4.5 times 365, the number of days
13 in a year, they will add one because every
14 four years is a leap year, and they will subtract
15 384, which should leave you with about
16 three years and five months left to serve.

17 During the time that you are incarcerated,
18 you will have no contact with the victim in this
19 matter. There will be a DNA order. There will
20 be a Section 109 firearms order. There will be a
21 Section 113 exemption, which allows you to apply
22 for a permit so you can keep hunting and keep
23 living the way you want to live.

24 Counsel, am I missing any ancillary orders?

25 MR. GODFREY: SOIRA.

26 THE COURT: A SOIRA for 20 years.

27 MR. GODFREY: Actually, we're asking for a

1 lifetime.

2 THE COURT: Sorry, a lifetime SOIRA order.

3 THE COURT CLERK: Length of the firearms?

4 THE COURT: Ten years.

5 THE COURT CLERK: Thank you.

6 THE COURT: Thank you.

7 Mr. Williah, you now have five criminal
8 convictions for sexual assault. You will
9 hopefully take care of your problems while you
10 are in custody. Come out sober and stay sober.
11 If you get into this kind of trouble again, I
12 have no doubt that the Crown attorney will at
13 least consider asking the Court to keep you in
14 jail for the rest of your life, and that would be
15 a tragedy for everybody.

16 I will make a recommendation as well that
17 Corrections Canada at least consider keeping
18 Mr. Williah in the territory as he serves his
19 sentence. Michael Williah's level of education
20 and language will make it difficult for him to
21 access appropriate programming in the south. As
22 well, his family contacts, which are incredibly
23 important, will be made much more difficult if he
24 is not kept in the territory. I cannot order
25 Corrections Canada to keep him here, and I
26 understand that they have their own parameters to
27 work with. It is simply an encouragement that

1 they consider that.

2 Is there anything further, Counsel?

3 MR. GODFREY: Nothing from the Crown, thank
4 you.

5 MR. MOORE: Nothing further.

6 THE COURT: Mr. Williah. We will close
7 court.

8 THE COURT CLERK: Thank you, Your Honour. All
9 rise. Court is now closed.

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11 **CERTIFICATE OF TRANSCRIPT**

12

13 I, the undersigned, hereby certify that the
14 foregoing pages are a complete and accurate
15 transcript of the proceedings taken down by me in
16 shorthand and transcribed from my shorthand notes
17 to the best of my skill and ability.

18 Dated at the City of Edmonton, Province of
19 Alberta, this 7th day of September, 2018.

20

21 Certified Pursuant to Rule 723
22 Of the Rules of Court

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Kaylene Davidsen, CSR(A)

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Court Reporter