*R v Williah*, 2018 NWTSC 49 **S-1-CR-2017-000033**

# 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.

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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*)

**N o i n f o r m a t i o n s h a l l b e p u b l i s h e d i n a n y d o c u m e n t o r**

**b r o a d c a s t o r t r a n s m i t t e d i n a n y w a y w h i c h c o u l d i d e n t i f y t h e v i c t i m o r a w i t n e s s i n t h e s e p r o c e e d i n g s p u r s u a n t t o**

**s . 4 8 6 . 4 o f t h e *C r i m i n a l C o d e***

***B a n o n p u b l i c a t i o n o f t h e e v i d e n c e t a k e n a t p r e l i m i n a r y i n q u i r y p u r s u a n t t o s . 5 3 9 o f t h e C r i m i n a l C o d e***

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
28. the complainant. I will refer to her as "P.M."
29. and her common law spouse at "E.J." I believe I
30. can continue to refer to Mr. Williah by name as
31. the relationship could cover a number of
32. individuals, and I do not believe that his name
33. could then identify her.
34. After a preliminary inquiry, the matter was
35. set down for trial, and Mr. Williah was found
36. guilty on March the 9th, 2018. Briefly, the
37. facts behind the conviction are that in the early
38. morning hours of December the 10th, 2016,
39. Michael Williah, P.M., and E.J. had all been
40. drinking very heavily. They all ended up falling
41. asleep at Michael Williah's house. P.M. woke up
42. to find Michael Williah, her cousin, having sex
43. with her. She yelled out for help, E.J. woke
44. up -- he was sleeping close by -- pulled
45. Mr. Williah off of P.M., and then proceeded to
46. help her get dressed.
47. It is not exactly clear what happened next,
48. but Michael Williah ended up being badly beaten.
49. His leg was broken requiring a number of screws
50. to keep it together. His house, which was a very
51. modest little home, ended up being partially
52. burned, and he was medivaced for his injuries.
53. Michael Williah testified on his own behalf.
54. He denied the assault; admitting that his semen
55. had been inside the victim but denying that he
56. had sexual assaulted her. I found his testimony
57. more a function of a deep wish that something had
58. not happened than a heartless denial of the
59. terrible harm done to the victim. The victim is
60. his cousin, who he had a good relationship with.
61. E.J. was one of his oldest friends, who thought
62. of him as a brother.
63. This was, in all directions, a heartbreaking
64. incident, and I have no doubt that without the
65. gross overconsumption of alcohol, it would never
66. have happened. When Mr. Williah spoke to me
67. during sentencing submissions, I asked him what
68. he was going to do about this, and he told me he
69. was going to stop drinking. I hope he does.
70. Michael Williah has a long criminal record
71. containing about 25 criminal convictions. Of
72. those criminal convictions there are three prior
73. convictions for sexual assault: In 1996 he
74. received 30 days; in 1998, six months; in 2007,
75. he received a 18-month sentence after serving
76. roughing eight and a half months in custody.
77. This will be his first penitentiary term.
78. One of the principles of sentencing that was
79. not substantially addressed in submissions is
80. totality. Michael Williah has already served an
81. 18-month sentence while waiting for trial on this
82. charge. Any sentence that I give him today is
83. essentially consecutive to that sentence.
84. THE INTERPRETER: Sorry?
85. THE COURT: Any sentence that I give him
86. today is in addition to that 18 months. One of
87. the principles that judges have to keep in mind
88. is that the entire length of the sentence should
89. not be so great as to crush someone.
90. Michael Williah is 45 years old. He is of
91. indigenous ancestry. He grew up in a small
92. community, and it has always been his home. One
93. of the sadder things I noticed in the presentence
94. report is that he no longer feels that he can
95. return to Whati. He does not feel safe. He does
96. not really feel like he has a place there any
97. more. I also hope that changes, because it is
98. his only home, it is where the people that love
99. him are, and rehabilitation is much more
100. difficult without positive connections.
101. The Crown attorney asks me to consider a
102. sentence of six to seven years. Defence counsel
103. asks me to consider a sentence of three to
104. five years.
105. Michael Williah has had a hard life. He has
106. suffered a lot of loss and a lot of hurt. He
107. lost a baby sister in front of him when he was
108. just a small child. He had to rescue his brother
109. from a suicide attempt. A close friend that he
110. felt responsible for drowned. He has a history
111. of chronic substance abuse. He abused solvents
112. for a five-year period of time between 15 and
113. 20 years old. He started drinking at 22 years
114. old, and he regularly drinks until he blacks out.
115. I have to balance Michael Williah and who he
116. is against the damage that was done to his
117. victim. Sexual assault is a crime of profound
118. intimacy. It causes damage that goes well beyond
119. any physical damage. People are hurt in the most
120. personal way, deeply, and recovery is difficult.
121. P.M. has specifically suffered as a result
122. of this offence. She gave up her job. She
123. stopped going out. She has struggled in her
124. relationship with E.J. She continues to look for
125. help. She is looking into a more intensive
126. counselling program to help her with this.
127. Michael Williah was also sexually abused when he
128. was only 9 years old.
129. I have thought long and hard about what a
130. fair sentence would be in this case.
131. Michael Williah has not had an easy life. He has
132. been bullied most of his life, and he will have a
133. hard road to rehabilitation. The fact that he
134. was highly intoxicated at the time of the offence
135. is not a mitigating factor, it does not make what
136. happened less serious. It does make it sadder.
137. The fact that Michael Williah was badly beaten
138. after the offence, his house burned, does not
139. make it less serious, either. It does not have
140. an impact on sentence. It just makes the
141. situation sadder, when you consider that these
142. were people who all cared about each other before
143. this happened.
144. In my view, the way to take into account
145. Mr. Williah's circumstances, the seriousness of
146. the offence, and a very troubling criminal record
147. is a sentence of four and a half years in jail.
148. I am always mindful of the direction given by the
149. Supreme Court of Canada and the legislature and
150. always intend to impose a sentence that is no
151. harsher than it has to be.
152. I do note that four and a half years, taking
153. into account the one-and-a-half year sentence
154. that he already served during his time in remand
155. is the equivalent of a six-year sentence for two
156. sexual assaults. I am of the view, taking into
157. account the significant *Gladue* factors in this
158. case, and taking into account that Mr. Williah
159. presents as someone who will be a vulnerable and
160. fragile inmate --
161. THE INTERPRETER: Just wait.
162. 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
163. they consider that.
164. Is there anything further, Counsel?
165. MR. GODFREY: Nothing from the Crown, thank
166. you.
167. MR. MOORE: Nothing further.
168. THE COURT: Mr. Williah. We will close
169. court.
170. THE COURT CLERK: Thank you, Your Honour. All
171. rise. Court is now closed.

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11 **CERTIFICATE OF TRANSCRIPT**

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1. I, the undersigned, hereby certify that the
2. foregoing pages are a complete and accurate
3. transcript of the proceedings taken down by me in
4. shorthand and transcribed from my shorthand notes
5. to the best of my skill and ability.
6. Dated at the City of Edmonton, Province of
7. Alberta, this 7th day of September, 2018. 20
8. Certified Pursuant to Rule 723
9. Of the Rules of Court 23

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1. Kaylene Davidsen, CSR(A)
2. Court Reporter