

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

**IN THE MATTER OF:**

**HER MAJESTY THE QUEEN**

**- v -**

**TRINTON NIDITCHIE**

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**Transcript of the Reasons for Sentence by the Honourable Chief Justice L.A. Charbonneau, sitting in Yellowknife, in the Northwest Territories, delivered orally on the 6th day of October, 2020.**

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**APPEARANCES:**

**B. Green:**

**Counsel for the Crown**

**J. Bran:**

**Counsel for the Defence**

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**Charge under s. 271 *Criminal Code of Canada***

**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

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1 THE COURT: I am ready to give my reasons for  
2 sentence on this matter. I am ordering a transcript  
3 which is to be sent to me for review and may be edited.  
4 I want to remind everyone that there is a publication  
5 ban in effect pursuant to section 486.4 of the *Criminal*  
6 *Code* which prohibits the publication or broadcast of  
7 any information that could identify the complainant.

8 I will refer to her by name in my decision,  
9 but I direct that the initial A. be used in the transcript  
10 anytime I refer to her by either her first name, her  
11 surname, or her full name. I also direct that the  
12 publication ban be noted on the front page of the  
13 transcript.

14 And finally, I will refer to some cases in  
15 my decision. I will not read out the case references, but  
16 I direct that the references be included in the transcript.  
17 I will ask the Clerk to send the contractor a list of those  
18 cases, the list of authorities, and the Crown's book of  
19 authorities and a few others that I will refer to in my  
20 reasons.

21 **REASONS**

22 THE COURT: Today I must impose sentence on  
23 Trinton Niditchie for a sexual assault that he committed  
24 against his cousin, A. I also have to sentence him for  
25 an assault causing bodily harm he committed more  
26 recently on his brother. Obviously, the sexual assault is  
27 by far the most serious of the two offences and the

1 focus of my comments today will be on that offence.

2 Just for the record, I will refer to the facts  
3 of the assault causing bodily harm charge. They are  
4 quite straightforward. On January 24th, 2020, shortly  
5 after 1:00 a.m., there was an argument between Mr.  
6 Niditchie and his brother, Leon Cardinal. Mr. Cardinal  
7 was highly intoxicated. Mr. Niditchie was intoxicated as  
8 well, but less so.

9 Mr. Cardinal said something to Mr.  
10 Niditchie and Mr. Niditchie punched him several times.  
11 This was observed by their mother. She was not sure  
12 how many times Mr. Cardinal was punched. His  
13 injuries were swelling to his face and a nosebleed. The  
14 Crown filed photographs at the sentencing hearing  
15 yesterday that show injuries to Mr. Cardinal's face and  
16 a fair bit of blood on his pants from the nosebleed.

17 When this happened, Mr. Niditchie was  
18 awaiting trial on the sexual assault charge. He had just  
19 been released a few weeks earlier on that charge  
20 because he had failed to appear for his jury trial in the  
21 fall and a warrant had issued for his arrest. One might  
22 have expected him to be on his best behaviour,  
23 considering all of that, but evidently that was not the  
24 case.

25 With respect to the sexual assault, the  
26 facts that are admitted in support of the conviction were  
27 some, but not all, the events described by the victim

1 during her trial testimony. I will only mention today  
2 those facts that form the basis for the guilty plea.

3 A. was at her home that day in  
4 Tsiigehtchic, looking after her two-year-old brother. Her  
5 mother and another sibling had gone to spend the  
6 evening at their camp. She and Mr. Niditchie knew  
7 each other for a very long time because they are  
8 cousins, but they were not particularly close. She is  
9 roughly six months older than him.

10 Mr. Niditchie came to the house as she  
11 was doing the dishes. He sat on the couch and asked  
12 her for something to drink. She gave him orange juice.  
13 Once she was done doing the dishes she sat on the  
14 couch as well. Mr. Niditchie started to tickle her and  
15 she tickled him back. This was something that they  
16 used to do when they were younger.

17 In her testimony she explained that Mr.  
18 Niditchie then got on her. His legs were tangled in hers  
19 such that she could not move her legs. He was facing  
20 her. He put his hand down her pants under her  
21 underwear. He touched her both on the outside of her  
22 genital area and inside her vagina. She was trying to  
23 push him off by pushing his shoulders. She was also  
24 moving her head from side to side because he was  
25 trying to kiss her and she was moving her head to stop  
26 it from happening. She felt like she could not breathe.

27 She tried to get him to stop by telling him

1 she had a boyfriend, even though that was not true.  
2 She told him she did not want to do this. She used the  
3 words "Stop", "I don't want to do this", "Please". He did  
4 not respond. In her evidence she said that he looked  
5 like he did not even care.

6 This went on for about ten minutes.  
7 Eventually she was able to push him hard and get him  
8 off her. A. disclosed what happened to her soon  
9 thereafter, after her mother returned from the camp.

10 Mr. Niditchie was eventually charged in  
11 October 2017. He was ordered to stand trial in April  
12 2018. He had chosen to have his trial before a judge  
13 and a jury and that trial was scheduled to proceed in  
14 Inuvik in September 2019.

15 I pause to note that the time gap between  
16 the charge and the trial is fairly long for an  
17 uncomplicated trial, even a jury trial in this jurisdiction.  
18 The endorsements on the Territorial Court file show  
19 that the preliminary hearing had originally been  
20 scheduled to proceed in January 2018 but was  
21 adjourned to April. The April date was peremptory on  
22 defence, which suggests that the adjournment was a  
23 defence request.

24 It took awhile after the matter was  
25 transferred to this court before the trial date could get  
26 set. There were several pre-trial conferences on this  
27 matter throughout the summer and fall of 2018. For

1 several months there was no progress at all on this file  
2 because defence counsel had lost contact with Mr.  
3 Niditchie.

4 Eventually in December 2018 the  
5 instructions that he wanted a jury trial were confirmed  
6 and the trial was set to proceed in September 2018,  
7 that being the earliest date counsel were both available.  
8 At the time, Mr. Niditchie had a different lawyer and his  
9 availabilities were very limited.

10 On that date scheduled for the trial in  
11 Inuvik, Mr. Niditchie failed to appear and a warrant  
12 issued for his arrest. The warrant was executed  
13 sometime later and in December 2019 the Crown  
14 consented to Mr. Niditchie's release on conditions that  
15 he reside with his mother in Fort Good Hope. As I  
16 already noted, it was a few weeks later that he  
17 assaulted his brother.

18 Having failed to appear for his jury trial,  
19 Mr. Niditchie was presumed to have given up his right  
20 to a jury trial and he did not attempt to convince the  
21 Court that he should still have one. Because the matter  
22 was proceeding as a judge alone trial, this was one of  
23 the first cases that the court was able to schedule once  
24 it became possible to once again hold in-person  
25 hearings following the shutdown prompted by the  
26 COVID-19 crisis.

27 The trial proceeded and in the middle of

1 it, after the Crown closed its case, Mr. Niditchie  
2 changed his plea to guilty.

3 The reason I refer to all of this is that  
4 through this whole delay, A. had to live with this  
5 hanging over her head, knowing she would have to  
6 testify, not knowing how and when matters would  
7 conclude, and I have no doubt that this contributed  
8 significantly to the very negative impact that this has  
9 had on her life.

10 Mr. Niditchie is now 21 years old. He  
11 was 18 when he sexually assaulted his cousin. These  
12 are his first convictions. He is Gwich'in and his  
13 Indigenous heritage must be taken into account in  
14 deciding his sentence. I have taken judicial notice of  
15 systemic and background factors that have had an  
16 impact on Indigenous persons in Canada and  
17 contributed to their overrepresentation in Canadian  
18 jails, as I am required by law to do.

19 I also have the benefit of a thorough  
20 pre-sentence report that assists me in understanding  
21 Mr. Niditchie's specific history and background. The  
22 report does speak to both some positive aspects of Mr.  
23 Niditchie's upbringing and some struggles that he has  
24 faced.

25 Counsel have referred to some of the  
26 factors specific to Mr. Niditchie in their submissions and  
27 I do not think it is necessary for me to go over all of that



1 again in great detail, especially having heard from Mr.  
2 Niditchie's counsel that Mr. Niditchie finds it difficult to  
3 hear those things discussed.

4 I do want to make some comments about  
5 the report, though. There are some positive things that  
6 emerge from it. Mr. Niditchie was raised in a traditional  
7 household and was introduced to many traditional  
8 activities, which he enjoyed. I heard he hopes to  
9 pursue once again after he is released.

10 He has good friends who apparently  
11 seem to live a pro-social life. He has a supportive  
12 family network and he also reports that he felt loved  
13 growing up. Sadly, that is more than many offenders  
14 who come before this Court can say.

15 On the other hand, the report refers to  
16 certain negative aspects. His father was violent  
17 towards his mother, and while the report says that most  
18 of that violence did not occur in the presence of the  
19 children, it can still be expected, I think, to have had an  
20 impact on them. Ultimately, it led to the end of his  
21 parents' relationship. He formed a close bond with his  
22 mother's new partner and was affected significantly by  
23 that man's death in 2014. Mr. Niditchie would have  
24 been around 15 at the time.

25 The report also says that both his parents  
26 attended residential school, although it does not include  
27 any details about the experience that they had there.

1 That is not infrequent, as many people are reluctant to  
2 discuss some of the things that happened in residential  
3 schools. Not everyone's experience was the same,  
4 obviously, but courts, including the Supreme Court of  
5 Canada, have recognized that overall, the residential  
6 school experience was destructive for many and has  
7 led to considerable intergenerational trauma.

8 The report refers to Mr. Niditchie being  
9 bullied as a child. His mother believes that this may  
10 have been because theirs was, in her words, "One of  
11 the few families that was together in the community."  
12 There was an instance of bullying when he was 14  
13 years old when he was not in his community that he  
14 had a rather extreme response to.

15 Mr. Niditchie would, I am sure, benefit  
16 from professional help and an opportunity to explore  
17 these issues, as this may be something that would  
18 assist him staying out of trouble in the future and also  
19 something that is important for his own well-being.

20 One aspect of the report that is of  
21 concern is Mr. Niditchie's apparent contradictory  
22 answers to some questions, and also in some cases,  
23 the answers themselves. For example, and I think this  
24 is the most striking example, one would think that the  
25 answer to the question "Do you think the victim  
26 deserved what happened to her?" would be a relatively  
27 straightforward thing to answer if someone truly

1 acknowledges wrongdoing.

2 To this, Mr. Niditchie answered  
3 something along the lines of "No comments." I find that  
4 a bit disturbing. That said, it is difficult to know what to  
5 make of these comments. Mr. Niditchie's counsel  
6 offered an explanation, based on his own experience  
7 interacting with his client, which is rooted in Mr.  
8 Niditchie's thought process and how he processes  
9 questions, and that may well be part of it.

10 The contradictions in some of his  
11 answers may also reflect a certain lingering  
12 ambivalence on Mr. Niditchie's part about facing up to  
13 what he has done. I say that because Mr. Niditchie, by  
14 action and by omission, has delayed facing up to this  
15 matter for quite some time. Ultimately, he took  
16 responsibility for it only after the Crown had called its  
17 case, and I will say, for having heard the evidence, a  
18 compelling case for him to answer. So it was a very  
19 long road for him before he was able to acknowledge  
20 his wrongdoing.

21 That being said, he did plead guilty. He  
22 told the author of the report that he would like to  
23 apologize if he did not have a no-contact condition in  
24 place. And yesterday, when he was given a chance to  
25 speak in court, he did apologize. I also was able to  
26 observe when we were in Inuvik a very visible  
27 emotional reaction from him at the time his plea was

1 entered.

2 And after this week's proceedings, having  
3 heard these victim impact statements read into the  
4 record, I sincerely hope that Mr. Niditchie truly  
5 understands the magnitude of the harm he has caused  
6 and I believe that he is sorry for it.

7 The fundamental principle of sentencing  
8 is proportionality. A sentence must be proportionate to  
9 the seriousness of the offence and the level of moral  
10 blameworthiness of the offender. Sentencing requires  
11 balancing a lot of principles and weighing how much  
12 impact each should have on the ultimate decision. This  
13 is not a simple exercise.

14 The range of sentence available for a sexual  
15 assault proceeded by indictment is very broad. It goes  
16 from no jail at all to ten years' imprisonment. Here the  
17 Crown says a sentence of imprisonment of 18 months,  
18 followed by three years probation, is required, the  
19 probation period being there primarily to ensure that  
20 there is a lengthy no-contact period to offer further  
21 protection to the victim.

22 Defence argues that a jail term between  
23 12 and 14 months would be enough to achieve the  
24 goals of sentencing, given Mr. Niditchie's youth, his lack  
25 of record and his overall circumstances.

26 In my view, it is very clear that the sexual  
27 assault falls in the category of major sexual assault, as

1 described in *R. v. Arcand*, 2010 ABCA 363, and several  
2 other cases before it. *Arcand* was adopted in this  
3 jurisdiction by our Court of Appeal in *R. v. A.J.P.J.*,  
4 2011 NWTCA 2.

5 As was noted in one of the cases quoted  
6 by this Court in *R. v. Lepine*, 2013 NWTSC 19, referred  
7 to by the Crown, there was a time where it was  
8 believed that there was a significant difference in  
9 seriousness between a case involving intercourse and  
10 a case involving digital penetration. With respect, in my  
11 view, that approach was seriously misguided. Both  
12 acts constitute a serious violation of the victim's  
13 physical, personal, and sexual integrity.

14 I entirely agree in this regard with the  
15 Court's conclusion in *Lepine* and I consider it to be a  
16 well-settled point in law, at least in this jurisdiction, a  
17 sexual assault that involves digital penetration is a  
18 major sexual assault within the meaning of *Arcand* and  
19 *A.J.P.J.* And while the more prolonged any assault, the  
20 more serious it is, the fact that a sexual assault is not  
21 prolonged does not take it outside that category.

22 As a result, the starting point in  
23 sentencing is three years imprisonment. It bears  
24 repeating, so I repeat again, this is not a minimum  
25 sentence. It simply is a starting point that reflects the  
26 objective seriousness of this type of conduct. From this  
27 starting point, a Court will determine a fit sentence by

1 adjusting the sentence to reflect aggravating factors  
2 and mitigating factors that are present.

3 Here there are aggravating factors. First,  
4 Mr. Niditchie was quite persistent in his assault. The  
5 victim tried to resist him, pleaded with him, tried to get  
6 him off her, and yet he persisted in assaulting her,  
7 using some force to overpower her attempts to resist.

8 Second, it is aggravating that she was a  
9 family member. This is now specified in the *Criminal*  
10 *Code*, but it would have been an aggravating factor in  
11 any event. I agree that the evidence does not show  
12 that Mr. Niditchie was in the legal position of trust  
13 towards her, as they were roughly the same age and  
14 they were not particularly close. But he was a family  
15 member, someone she had known for a long time,  
16 probably her whole life, someone she should have  
17 been able to trust to let in her house without worrying  
18 that he may harm her. This was not a stranger she let  
19 into her house. It was someone who was well known to  
20 her and should have had no reason to fear.

21 Third, the impact that this crime had on  
22 the victim is also an aggravating factor. That too is set  
23 out in the *Criminal Code*. Here there is ample evidence  
24 of that impact. The two victim impact statements that  
25 were read yesterday are sad and eloquent.

26 This event crushed A. It has taken her  
27 sense of safety away. It has made her depressed. It

1 has made her fearful and disengaged socially. It has  
2 made her give up her plans to go to school, and it has  
3 turned her into a hermit. She describes this in a  
4 gripping way in her victim impact statement, and her  
5 mother describes it too.

6 The victim impact statements are  
7 eloquent enough, but I could also see this impact when  
8 she testified. All this time later, the very real and very  
9 raw pain that she still experiences as a result of this  
10 were very, very obvious to me.

11 Her mother testified briefly at the trial as  
12 well and one could see all the weight of the sadness on  
13 her too. She feels powerless, does not know how to  
14 help her daughter. She has seen her go from an  
15 outgoing, happy young woman to someone who is  
16 depressed, totally isolates herself and is basically in  
17 survival mode to get through each day, and  
18 unfortunately there appears to be very few resources in  
19 the community for this mother to try to help her child.

20 The Court can only hope that with the  
21 end of this case, A. will get closure and will be able to  
22 slowly hope to get back to her normal self. But this  
23 case is a very good illustration of the harm that sexual  
24 assault causes.

25 And I will add, because I must, that I find  
26 it especially sad that some family members have  
27 ostracized A. This was not her fault. She was the

1 victim in all of this. The fact that family members,  
2 instead of trying to support her through this difficult  
3 time, would shun her and pressure her to drop the  
4 charges, is profoundly disturbing and shameful.

5 It is not something that should be held  
6 against Mr. Niditchie, of course, but I feel it has to be  
7 said. I can only hope that now that Mr. Niditchie has  
8 owned up to what he has done, others will follow suit  
9 and stop making A. pay the price for his wrongdoing.  
10 All this to say the impact on her was significant and that  
11 is an aggravating factor.

12 There are also mitigating factors in this  
13 case. The guilty plea is mitigating, although less so  
14 than it would have been if it had been offered at an  
15 earlier point. The reason why guilty pleas are  
16 mitigating is that they save time and resources and,  
17 most importantly, they spare victims from having to  
18 testify. This guilty plea did not achieve any of those  
19 things.

20 The criminal justice process followed its  
21 full course. The victim had to testify at the preliminary  
22 hearing. The Court traveled to Inuvik and she got  
23 ready to testify for the jury trial, which did not proceed.  
24 And ultimately, when the trial did proceed, the Crown  
25 called its full case. These witnesses, and the victim in  
26 particular, were not spared anything. A. was not  
27 spared from recounting what happened to her, and as I



1 already said, it was obvious that it was a very hard  
2 thing for her to do.

3 But I do agree with what counsel said.  
4 The guilty plea has achieved something that even a  
5 conviction after trial would not have. Through it, Mr.  
6 Niditchie told the community, his family, the public in  
7 general, and anyone who thought this was a false  
8 complaint, that it was not a false complaint. As I said, I  
9 sure hope that those who did not believe A. or  
10 somehow blamed her for this will rethink their positions.  
11 And Mr. Niditchie himself acknowledging his  
12 wrongdoing was possibly the only thing that hopefully  
13 could achieve that.

14 In submissions, Crown counsel  
15 mentioned the lack of record as a mitigating factor, but  
16 with respect, that is not accurate. A criminal record,  
17 when there is one, is aggravating. When there is no  
18 criminal record, that merely shows the absence of what  
19 would otherwise be an aggravating factor. That point  
20 was made by our Court of Appeal in *A.J.P.J.* at  
21 paragraph 13. In that case, the Court of Appeal found  
22 that the sentencing judge erred in principle in treating  
23 the fact that the accused had a clean record for 20  
24 years as a mitigating factor.

25 That said, the fact that Mr. Niditchie is  
26 young, has no criminal history, has a lot of positive  
27 things in his background and has a supportive network

1 is relevant to his rehabilitation prospects, so it is  
2 relevant to what constitutes a fit sentence.

3 Finally, Mr. Niditchie's circumstances as  
4 an Indigenous offender are relevant to his moral  
5 blameworthiness and give the principle of restraint even  
6 more importance than would otherwise be the case.  
7 But as I said, I do not find that the impact of those  
8 factors is as significant in this case as it sometimes is,  
9 because there are, thankfully, many positive aspects to  
10 Mr. Niditchie's circumstances. I think there actually are  
11 very good prospects for his rehabilitation.

12 In the final analysis, it is clear that  
13 deterrence and denunciation are the paramount  
14 sentencing principles in a case like this. Apart from any  
15 statutory requirements that may be engaged in this  
16 regard, based on the vulnerability of the victim, the law  
17 has long been that those are the paramount sentencing  
18 principles in cases of major sexual assault. In addition,  
19 as this Court has said countless times, the sheer  
20 prevalence of serious sexual assaults in this jurisdiction  
21 requires that Courts impose denunciatory sentences.

22 Courts have very few tools in their hands  
23 to respond to crime. The long-term solutions to these  
24 problems are education, prevention, and addressing  
25 the social issues that underlie this conduct. This Court  
26 and others have imposed stern sentences for these  
27 offences for decades and we still see a depressing

1 steady flow of these cases in our courts. This  
2 demonstrates that sentencing practices alone cannot  
3 solve these issues.

4 But the Courts have a role to play in  
5 continuing to send the same consistent message and a  
6 duty to use the tools that they do have to continue  
7 express, case after case, that this type of conduct is  
8 unacceptable, harmful, and will be met with severe  
9 consequences.

10 When I consider the starting point and the  
11 aggravating factors and even when I consider the  
12 mitigating factors and the importance of attempting to  
13 support Mr. Niditchie's ultimate rehabilitation and  
14 reintegration, I cannot see how a sentence lower than  
15 what the Crown seeks could be imposed. In my view,  
16 that is the absolute minimum sentence that can be  
17 imposed to adequately address the sentencing  
18 principles and objectives.

19 Credit for the remand time has to be  
20 addressed. I heard that Mr. Niditchie has spent a total  
21 of 83 days on remand and if credited at the maximum  
22 ratio of one-and-a-half day credit for each day of  
23 remand, that would add up to a credit of 124 days and  
24 a half.

25 The Crown has sought a number of  
26 ancillary orders. The DNA order is mandatory, as this  
27 is a primary designated offence, and one will issue.

1                   An order that Mr. Niditchie comply with  
2                   the requirements of the *Sex Offender Information*  
3                   *Registration Act* for 20 years is also mandatory.

4                   A firearms prohibition order is mandatory.  
5                   Its minimum duration is that it should commence today  
6                   and expire ten years from his release. Based on what I  
7                   heard about Mr. Niditchie's activities on the land and  
8                   the fact that this is certainly a positive thing that he can  
9                   do when he is released, I will include the exemption,  
10                  pursuant to section 113 of the *Criminal Code*, that he  
11                  will be permitted to be in possession of a firearm for  
12                  sustenance and employment purposes on conditions to  
13                  be set out in due course by the Chief Firearms Officer.

14                  Mr. Niditchie, can you stand up, please?  
15                  Mr. Niditchie, for the sexual assault of A., the sentence  
16                  of this Court if you did not have any remand time would  
17                  be 18 months imprisonment. For the 83 days you have  
18                  already spent in custody, I will give you credit for four  
19                  months, so the further jail term will be 14 months  
20                  imprisonment. You can sit down.

21                  I will endorse the warrant of committal to  
22                  include a no-contact condition with A., pursuant to  
23                  section 743.21 during the custodial portion of the  
24                  sentence.

25                  This will be followed by probation for  
26                  three years, Mr. Niditchie, and there will not be a lot of  
27                  conditions. The first is that within two days of your

1 release, 48 hours, you are to report to a probation  
2 officer in whatever community you end up going to.

3 The second is that you take counselling  
4 as directed. This is not to punish you. This is to help  
5 you out. I think there are issues from your past that you  
6 could use some help with and I am sure there are a lot  
7 of things that could be achieved if you learn how to talk  
8 about some of these things and try to understand why  
9 you react the way you react sometimes. So it is to help  
10 you. That is really the objective.

11 The next condition is that you are to have  
12 no contact with A. I think you understand why. She is  
13 very upset still by all of this. There may come a time  
14 where she is able to receive an apology from you, but  
15 that is going to have to be on her time and on her  
16 terms. So for now you are to have no contact with her  
17 in custody, and for the duration of your probation period  
18 you are not to have any contact with her either. After  
19 that I cannot control it, but I would strongly suggest that  
20 unless she reaches out, you should really respect the  
21 space that she needs.

22 There will also be a condition that you are  
23 to stay 50 metres away from her residence or from her  
24 place of employment. And I am also going to add  
25 another condition, that should you find yourself in any  
26 place where she is, you are required to leave. I think it  
27 should be you that leaves, not her who has to avoid

1                   you.

2                                   Now, this probation order is also going to  
3                   apply to the assault causing bodily harm charge, so  
4                   there will be a condition that you do not have any  
5                   contact with Leon Cardinal unless he agrees to it. I do  
6                   not know what the situation is between the two of you  
7                   or what it will be when you are released. You are  
8                   brothers. If you live in the same house or if it is thought  
9                   that you might live in the same house, this condition  
10                  may become a bit of an issue.

11                                  Your lawyer can explain to you that if  
12                  there are good reasons to change that order, an  
13                  application can be made and it is a condition that could  
14                  be removed if everybody agrees, so that is something  
15                  that when the time comes you can perhaps bring up.

16                                  On the assault causing bodily harm  
17                  charge, I have taken into account your early guilty plea,  
18                  the fact that it was a short assault, the fact that you do  
19                  not have a criminal record, and the importance of  
20                  restraint, so I agree with the Crown's suggestion, and I  
21                  do not think your lawyer was in disagreement, that the  
22                  sentence will simply be one day in jail, consecutive, and  
23                  the probation order will apply to it as well, with the  
24                  no-contact order.

25                                  There will be no victim of crime surcharge  
26                  on the sexual assault. The timing of this offence was  
27                  that the legislation that governed surcharges had either

1                   been struck down or was struck down after, but I do not  
2                   intend on imposing a surcharge on that one. I am not  
3                   sure if by the time the assault causing bodily harm  
4                   occurred the new legislation was enforced. Do you  
5                   know offhand, Mr. Green?

6       B. GREEN:            I'm afraid not, Your Honour.

7       THE COURT:         Do you know, Mr. Bran?

8       J. BRAN:             Not off the top of my head.

9       THE COURT:         I did look into this relatively recently. I  
10                   think the new legislation that gives discretion may have  
11                   been in place and I would waive the surcharge in this  
12                   case in any event. If I have jurisdiction to waive it, I  
13                   waive it, and if I do not have jurisdiction to waive it, then  
14                   the law was invalid, and there will not be one either  
15                   way.

16                                I will make an order that exhibits be  
17                   returned to their rightful owner if that is appropriate, and  
18                   otherwise they are to be destroyed at the expiration of  
19                   the appeal period.

20                                Mr. Green, you were not counsel  
21                   yesterday, but can you think of anything that I may  
22                   have overlooked?

23       B. GREEN:            No, Your Honour, that's everything that  
24                   had been noted by Ms. Halliburn.

25       THE COURT:         Mr. Bran, have I overlooked anything that  
26                   you had raised and I neglected to address?

27       J. BRAN:             No, but I do have one question and I may

1           have missed it. On the no-contact with Mr. Cardinal,  
2           was that for the entirety of the probation order, or was  
3           that specified as a shorter period of time?

4       THE COURT:        I intended it to be only for the first year,  
5           and so if I did not say that, thank you for reminding me.  
6           Mr. Clerk, that was intended to be for the first year.

7       THE CLERK:        Yes, Your Honour.

8       J. BRAN:            Thank you.

9       THE COURT:        And as I say, I do not know what the  
10          situation will be when Mr. Niditchie is released, but I  
11          certainly would encourage an application to be brought  
12          forward if this condition becomes an obstacle to his  
13          reintegration instead of what I think the Crown intended  
14          it to be.

15      J. BRAN:            I'll put that in next year's calendar and  
16          look into it and if it needs to be addressed we'll take  
17          appropriate steps.

18      THE COURT:        And finally, I would add that if it were to  
19          be something that is agreed to, it could easily be done  
20          by way of a written application, I think.

21      J. BRAN:            Thank you.

22      THE COURT:        All right. Good luck, Mr. Niditchie. There  
23          are a lot of good things going for you, so I hope that  
24          you can put this behind you now and you have a long  
25          life ahead of you and I am sure you can contribute to  
26          your community. You might be able to help others that  
27          are struggling with some issues and I hope that things



1 work out for you. Thank you for your work, counsel.

2 **(PROCEEDINGS CONCLUDED)**

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5 **CERTIFICATE OF TRANSCRIPT**

6 Neesons, the undersigned, hereby certify that the foregoing  
7 pages are a complete and accurate transcript of the  
8 proceedings transcribed from the audio recording to the best  
9 of our skill and ability. Further judicial amendments have  
10 been applied to this transcript.

11

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13 Dated at the City of Toronto, in the Province of Ontario, this  
14 26<sup>th</sup> day of October, 2020.

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Kim Neeson

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Principal

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