

**AMENDED**

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

**IN THE MATTER OF:**

**HER MAJESTY THE QUEEN**

**-v-**

**FRANK PIERROT**

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**Transcript of the Reasons for Sentence of the Honourable Justice  
S.H. Smallwood, sitting in Yellowknife, in the Northwest  
Territories, on the 13<sup>th</sup> day of March, 2020.**

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**APPEARANCES:**

D. Praught:

Counsel for the Crown

P. Harte:

Counsel for the Defence

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Charges under s. 151 and s. 271 of the *Criminal Code*

**There is a ban on the publication, broadcast or transmission of any information that**

could identify the complainants pursuant to s. 486.4 of the *Criminal Code*.

**INDEX**

**PAGE**

REASONS FOR SENTENCE

1

1 THE COURT: All right. Good afternoon.

2 P. HARTE: Good afternoon, Your Honour. May I ask  
3 that Mr. Pierrot be permitted to join me?

4 THE COURT: Any concerns?

5 MR. SHERIFF: No concerns, Your Honour.

6 THE COURT: Thank you. That is fine.

7 P. HARTE: And then, Your Honour, the last time we  
8 were here, I advised the Court that Mr. Pierrot had  
9 written a couple of letters to the complainants. And I  
10 undertook to -- they were almost illegible, so I  
11 undertook to type them up for him. And I provided  
12 copies to my friend. I have copies for the court just  
13 because I undertook to do that. I don't know if the court  
14 wants them for the file, or whether or not it's appropriate  
15 simply to leave them with the Crown. I'm in the Court's  
16 hands.

17 THE COURT: You can provide them if you like. Any  
18 concerns, Mr. Praught?

19 D. PRAUGHT: No, Your Honour.

20 P. HARTE: Thank you.

21 **(REASONS FOR SENTENCE)**

22 THE COURT: Thank you. All right. Frank Pierrot is  
23 being sentenced today for two counts of sexual assault.  
24 The first sexual assault was committed in August 2017.  
25 Mr. Pierrot was charged with two counts: touching a  
26 person under the age of 16 years for a sexual purpose  
27 contrary to section 151 of the *Criminal Code*, and

1 sexual assault contrary to section 271 of the *Criminal*  
2 *Code*. Both counts were in relation to K.M. and arose  
3 from the same incident.

4 Mr. Pierrot had a jury trial which was held the  
5 week of November 12<sup>th</sup>, 2019. Following the trial, the  
6 jury found Mr. Pierrot guilty of both offences. I entered  
7 a judicial stay of proceedings on the section 151 charge  
8 pursuant to the principles in *Kienapple*.

9 Following his conviction, the matter was  
10 adjourned for the preparation of a pre-sentence report.  
11 During this time, Mr. Pierrot indicated his intention to  
12 resolve another sexual assault charge that was  
13 outstanding. On February 20<sup>th</sup>, 2020, Mr. Pierrot  
14 entered a guilty plea to the second sexual assault  
15 which occurred in August 2019 while he was on release  
16 for the first sexual assault.

17 For the August 2017 offence, the facts of that  
18 offence were related in the evidence of K.M. and others  
19 during the trial. K.M. was 14 years old in 2017 when  
20 she was drinking at her boyfriend's house in Fort  
21 Resolution with other people, including Mr. Pierrot. At  
22 one point, K.M. went to the kitchen and she heard Mr.  
23 Pierrot say to her boyfriend, "Look at her sweet ass."  
24 This comment made K.M. feel uncomfortable.

25 Later, K.M. went to a bedroom and passed out  
26 on a bed. When she went to sleep, Mr. Pierrot was in  
27 the living room. When K.M. woke up, Mr. Pierrot was

1 on top of her. Her pants and underwear were on the  
2 floor beside the bed. Mr. Pierrot was straddling her  
3 legs. His shorts and underwear were rolled down to his  
4 knees. He was touching her vagina with his hand and  
5 jerking off with the other. His penis was hard. He was  
6 touching her clitoris and rubbing it. Her stomach was  
7 wet with semen on it. She screamed and began crying,  
8 and she kicked him off of her.

9 For the August 2019 offence, an agreed  
10 statement of facts was filed which details the facts of  
11 the offence which occurred on August 16<sup>th</sup>, 2019. On  
12 that date, Mr. Pierrot and his niece S.C. were  
13 consuming alcohol at Mr. Pierrot's residence in Fort  
14 Resolution. They were both highly intoxicated. The  
15 victim passed out on a couch. Mr. Pierrot pulled down  
16 the victim's pants and underwear. He then pulled down  
17 his pants and underwear, got on top of her, and had  
18 vaginal sexual intercourse with her.

19 The victim was unconscious while this was  
20 occurring. The sexual assault was interrupted by two  
21 people who entered the residence. The RCMP were  
22 contacted and arrived a few minutes later. They  
23 observed the victim still passed out on the couch. Mr.  
24 Pierrot was sitting on the couch beside the victim. The  
25 police had difficulty rousing the victim but were  
26 eventually able to wake her up.

27 The Crown is seeking a global sentence of six

1 years imprisonment, less credit for remand time. In  
2 coming to that recommendation, the Crown is  
3 proposing a four-year sentence for the August 2017  
4 sexual assault and three years consecutive for the  
5 August 2019 sexual assault. The Crown says that the  
6 global sentence should be reduced to six years to take  
7 into account the principles of totality and restraint.

8 The defence is seeking a sentence of time  
9 served for the August 2017 sexual assault, and two  
10 years less a day for the August 2019 sexual assault, to  
11 be followed by a period of probation.

12 Mr. Pierrot has been in custody awaiting trial for  
13 3 periods, amounting to 332 days of remand. At credit  
14 for one and a half days for every day spent in custody,  
15 that amounts to about sixteen and a half months pre-  
16 sentence credit, which will be deducted from the  
17 sentence that I impose today.

18 Mr. Pierrot is an Aboriginal male, and this  
19 requires me to consider section 718.2(e) of the *Criminal*  
20 *Code* and to give particular attention to the  
21 circumstances of Aboriginal offenders in determining an  
22 appropriate sentence. Defence counsel referred to the  
23 report into the correctional system that came out in the  
24 last few months which commented on the  
25 disproportionate representation of Aboriginal people in  
26 jails. A copy of that report was not filed, so I do not  
27 have the specific comments that were made, but I

1 expect that they are in keeping with the Supreme Court  
2 of Canada's comments in the cases of *Gladue* and  
3 *Ipeelee* which also address the overrepresentation of  
4 Aboriginal people in the correctional system. The  
5 situation is not getting any better, and I think that is  
6 fairly well known.

7 What the Supreme Court of Canada has said in  
8 the past in cases like *Gladue* and *Ipeelee* is that a  
9 sentencing court must consider the unique, systemic or  
10 background factors which may have played a part in  
11 bringing an Aboriginal offender before the courts and  
12 also to consider the types of sentencing procedures  
13 and sanctions which may be appropriate in the  
14 circumstances because of an offender's Aboriginal  
15 background.

16 Restraint is an important consideration in  
17 sentencing in these circumstances. Sentencing must  
18 take into account all of the surrounding circumstances  
19 regarding the offence, the offender, the victims, and the  
20 community, including the unique circumstances of the  
21 offender as an Aboriginal person, and that's *Gladue*,  
22 paragraph 81.

23 A pre-sentence report was prepared in this  
24 case to provide background information into Mr.  
25 Pierrot's circumstances. It is apparent that Mr. Pierrot  
26 has had a difficult upbringing and a difficult adult life. I  
27 will not repeat what it is in the pre-sentence report



1 because I do not think I could adequately convey the  
2 experiences that Mr. Pierrot has endured. But he has  
3 been affected by alcohol abuse, drug abuse, family  
4 violence, food insecurity, sexual abuse, suicide, and  
5 homelessness. Alcohol has been a constant in Mr.  
6 Pierrot's life.

7 The pre-sentence report shows that Mr. Pierrot  
8 has taken responsibility for the offence he was  
9 convicted of after trial. His words to the Court as well  
10 show that he accepts responsibility for his actions, and  
11 the letters that I have seen today also reflect that, that  
12 he is remorseful for what he has done and apologetic to  
13 the victims.

14 A fundamental principle of sentencing is that a  
15 sentence must be proportionate to the gravity of the  
16 offence and the degree of responsibility of the offender.  
17 Deterrence and denunciation are well known as the  
18 primary sentencing principles in cases of sexual  
19 assault. The prevalence of sexual assault in this  
20 jurisdiction means that the court continues to take these  
21 violations of sexual integrity seriously and continues to  
22 express society's condemnation of these offences. The  
23 sexual violation of young women who are in vulnerable  
24 situations, who are passed out or asleep, continue to  
25 be a serious problem.

26 Rehabilitation and restraint are also important  
27 factors to keep in mind in Mr. Pierrot's circumstances.

1 Mr. Pierrot's guilty plea on the August 2019 offence is  
2 deserving of significant credit. It is significant because  
3 Mr. Pierrot has come to the realization of his guilt and  
4 decided to take responsibility. This means that a trial  
5 does not have to be held, the victim does not have to  
6 testify and go through that process, and the guilty plea  
7 provides certainty. There will be no doubt regarding  
8 Mr. Pierrot's guilt.

9 Since he has been in custody, as well, I have  
10 heard that Mr. Pierrot has taken counselling with two  
11 different individuals, and letters were filed with respect  
12 to that. And I think it is to his credit that he has taken  
13 steps to address his issues while in custody. It is clear  
14 that Mr. Pierrot has significant issues to address. He  
15 has had problems dealing with them and has taken  
16 steps over time to address them, but I think it is  
17 important that he continues to do so. And it is definitely  
18 time, at 53 years old, to continue to address them, to  
19 take these issues seriously.

20 Mr. Pierrot does have a criminal record. It is  
21 lengthy, with 44 convictions between 1984 and 2012.  
22 There are many convictions against the administration  
23 of justice, as well as other offences. There are also  
24 significant convictions for offences of violence on the  
25 criminal record: Assault in 1986, 2004, 2005; assault  
26 with a weapon in 1988; manslaughter in 1989; uttering  
27 threats in 1991; robbery in 1994; and assault causing

1                   bodily harm in 2010. There was a gap in Mr. Pierrot's  
2                   record, so it shows that he has been able to stay out of  
3                   trouble for significant periods of time.

4                   Looking at the circumstances of the offence, it  
5                   is aggravating that Mr. Pierrot's victims were young  
6                   Aboriginal women who had been drinking with him.  
7                   K.M. was 14 years old at the time, so that is statutorily  
8                   aggravating. S.C. was Mr. Pierrot's niece, so there is  
9                   an element of breach of trust. They were drinking  
10                  together, and she trusted that she was safe with her  
11                  uncle.

12                 Both of the victims were in vulnerable  
13                 situations, asleep or passed out, when Mr. Pierrot  
14                 sexually assaulted them. They were unable to protect  
15                 themselves, unable to resist or say no, unable to  
16                 remove themselves from the situation. Mr. Pierrot had  
17                 been drinking and says that he does not remember  
18                 what occurred in either situation.

19                 It is also aggravating that Mr. Pierrot was on  
20                 release for the first sexual assault when he committed a  
21                 second sexual assault in very similar circumstances.  
22                 He was again drinking with a young woman and  
23                 sexually assaulted her while she was unconscious. It is  
24                 of great concern that when Mr. Pierrot drinks, young  
25                 women in his presence are not safe. And  
26                 unfortunately, alcohol appears to be a significant  
27                 problem for Mr. Pierrot.

1                   So in addition to deterrence, denunciation,  
2                   rehabilitation, totality, and restraint, consideration has to  
3                   be given to public safety. Because as it stands, I think  
4                   Mr. Pierrot poses a significant threat to young  
5                   Aboriginal women when he has been consuming  
6                   alcohol. Because of this, I cannot impose a sentence  
7                   as lenient as that requested by defence counsel.

8                   Turning first to the ancillary order sought by the  
9                   Crown. I have not heard any opposition to any of the  
10                  orders. First, there will be a SOIRA order pursuant to  
11                  section 490.012 of the *Criminal Code*. Mr. Pierrot will  
12                  be required to comply with the provisions of the *Sex*  
13                  *Offender Information Registration Act* for life. There will  
14                  also be a DNA order, as these are primary designated  
15                  offences, and there will be a firearms prohibition order  
16                  pursuant to section 109 of the *Criminal Code*. It will  
17                  begin now and end 10 years following Mr. Pierrot's  
18                  release from imprisonment. The victim of crime  
19                  surcharge will be waived in the circumstances.

20                  Please stand, Mr. Pierrot. Taking into  
21                  consideration the circumstances of the offences, your  
22                  circumstances, your background as an Aboriginal  
23                  offender, and the applicable sentencing principles, for  
24                  the August 2017 sexual assault, I impose a sentence of  
25                  three years imprisonment. For the August 2019 sexual  
26                  assault, I impose a sentence of three years to be  
27                  served consecutively for a total of six years

1 imprisonment. Taking into account the principles of  
2 totality and restraint, I will reduce the sentence on the  
3 August 2019 sexual assault to two years for a global  
4 sentence of five years imprisonment. From that will be  
5 deducted sixteen and a half months of remand credit,  
6 leaving a sentence of forty-three and a half months left  
7 to serve. You may have a seat.

8 All right. Counsel, is there anything that I have  
9 overlooked?

10 D. PRAUGHT: I don't think so, Your Honour.

11 P. HARTE: The one thing that I would ask Your Honour  
12 to consider is endorsing the warrant with -- subject of  
13 course to the Court agreeing with this, that Mr. Pierrot  
14 be permitted to serve his sentence in the Northwest  
15 Territories. Corrections Canada has the ability to offer  
16 sex-offender programming here and will frequently  
17 permit that to take place. I don't know if 45 months is  
18 outside their range, but if the Court would permit that to  
19 happen, it will make it easier for Mr. Pierrot to continue  
20 to take advantage of the counselling relationships his  
21 developed, in particular in Fort Smith.

22 THE COURT: All right. I do not know if that is possible  
23 given the length of the sentence. I am going to put a  
24 recommendation that the correctional authorities  
25 consider it.

26 P. HARTE: Thank you, Your Honour.

27 THE COURT: I think given Mr. Pierrot's issues that

1                   there may need to be more of an assessment of what  
2                   his needs are in terms of programming. So I think I will  
3                   make that recommendation, but I am also hopeful they  
4                   will give consideration to what the best programming is  
5                   for him and where that might be available.

6           P. HARTE:           Thank you, Your Honour.

7           THE COURT:        Okay. All right. Is there anything else?

8           D. PRAUGHT:         No, Your Honour.

9           P. HARTE:           Thank you, no.

10          THE COURT:        Okay. All right. Counsel, well, thank  
11                   you very much for your work on the trial and for  
12                   resolving the other matter and the submissions that you  
13                   provided. They were very helpful. Okay. We will  
14                   adjourn.

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16                   **(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. Further judicial amendments have  
6           been applied to this transcript.

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9           Dated at the City of Toronto, in the Province of Ontario, this  
10          15<sup>th</sup> day of October, 2020.

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Kim Neeson

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Principal

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