*R v Pierrot*, 2020 NWTSC 39 S-1-CR-2018-000121

S-1-CR-2020-000010

**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 13th 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*.**

**I N D E X**

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REASONS FOR SENTENCE 1

THE COURT: All right. Good afternoon.

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

THE COURT: Any concerns?

MR. SHERIFF: No concerns, Your Honour.

THE COURT: Thank you. That is fine.

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

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

D. PRAUGHT: No, Your Honour.

P. HARTE: Thank you.

**(REASONS FOR SENTENCE)**

 THE COURT: Thank you. All right. Frank Pierrot is being sentenced today for two counts of sexual assault. The first sexual assault was committed in August 2017. Mr. Pierrot was charged with two counts: touching a person under the age of 16 years for a sexual purpose contrary to section 151 of the *Criminal Code*, and sexual assault contrary to section 271 of the *Criminal Code*. Both counts were in relation to K.M. and arose from the same incident.

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

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

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

 Later, K.M. went to a bedroom and passed out on a bed. When she went to sleep, Mr. Pierrot was in the living room. When K.M. woke up, Mr. Pierrot was on top of her. Her pants and underwear were on the floor beside the bed. Mr. Pierrot was straddling her legs. His shorts and underwear were rolled down to his knees. He was touching her vagina with his hand and jerking off with the other. His penis was hard. He was touching her clitoris and rubbing it. Her stomach was wet with semen on it. She screamed and began crying, and she kicked him off of her.

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

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

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

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

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

 Mr. Pierrot is an Aboriginal male, and this requires me to consider section 718.2(e) of the *Criminal Code* and to give particular attention to the circumstances of Aboriginal offenders in determining an appropriate sentence. Defence counsel referred to the report into the correctional system that came out in the last few months which commented on the disproportionate representation of Aboriginal people in jails. A copy of that report was not filed, so I do not have the specific comments that were made, but I expect that they are in keeping with the Supreme Court of Canada’s comments in the cases of *Gladue* and *Ipeelee* which also address the overrepresentation of Aboriginal people in the correctional system. The situation is not getting any better, and I think that is fairly well known.

 What the Supreme Court of Canada has said in the past in cases liked *Gladue* and *Ipeelee* is that a sentencing court must consider the unique, systemic or background factors which may have played a part in bringing an Aboriginal offender before the courts and also to consider the types of sentencing procedures and sanctions which may be appropriate in the circumstances because of an offender’s Aboriginal background.

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

 A pre-sentence report was prepared in this case to provide background information into Mr. Pierrot’s circumstances. It is apparent that Mr. Pierrot has had a difficult upbringing and a difficult adult life. I will not repeat what it is in the pre-sentence report because I do not think I could adequately convey the experiences that Mr. Pierrot has endured. But he has been affected by alcohol abuse, drug abuse, family violence, food insecurity, sexual abuse, suicide, and homelessness. Alcohol has been a constant in Mr. Pierrot’s life.

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

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

 Rehabilitation and restraint are also important factors to keep in mind in Mr. Pierrot’s circumstances. Mr. Pierrot’s guilty plea on the August 2019 offence is deserving of significant credit. It is significant because Mr. Pierrot has come to the realization of his guilt and decided to take responsibility. This means that a trial does not have to be held, the victim does not have to testify and go through that process, and the guilty plea provides certainty. There will be no doubt regarding Mr. Pierrot’s guilt.

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

 Mr. Pierrot does have a criminal record. It is lengthy, with 44 convictions between 1984 and 2012. There are many convictions against the administration of justice, as well as other offences. There are also significant convictions for offences of violence on the criminal record: Assault in 1986, 2004, 2005; assault with a weapon in 1988; manslaughter in 1989; uttering threats in 1991; robbery in 1994; and assault causing bodily harm in 2010. There was a gap in Mr. Pierrot’s record, so it shows that he has been able to stay out of trouble for significant periods of time.

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

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

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

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

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

 Please stand, Mr. Pierrot. Taking into consideration the circumstances of the offences, your circumstances, your background as an Aboriginal offender, and the applicable sentencing principles, for the August 2017 sexual assault, I impose a sentence of three years imprisonment. For the August 2019 sexual assault, I impose a sentence of three years to be served consecutively for a total of six years imprisonment. Taking into account the principles of totality and restraint, I will reduce the sentence on the August 2019 sexual assault to two years for a global sentence of five years imprisonment. From that will be deducted sixteen and a half months of remand credit, leaving a sentence of forty-three and a half months left to serve. You may have a seat.

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

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

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

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

P. HARTE: Thank you, Your Honour.

THE COURT: I think given Mr. Pierrot’s issues that there may need to be more of an assessment of what his needs are in terms of programming. So I think I will make that recommendation, but I am also hopeful they will give consideration to what the best programming is for him and where that might be available.

P. HARTE: Thank you, Your Honour.

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

D. PRAUGHT: No, Your Honour.

P. HARTE: Thank you, no.

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

**(PROCEEDINGS CONCLUDED)**

**CERTIFICATE OF TRANSCRIPT**

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

Dated at the City of Toronto, in the Province of Ontario, this 15th day of October, 2020.



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Kim Neeson

Principal