

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

**IN THE MATTER OF:**

**HER MAJESTY THE QUEEN**

**- v -**

**WILFRED JAMES ABRAHAM**

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**Transcript of the Reasons for Sentence by the Honourable Justice  
A.M. Mahar, sitting in Yellowknife, in the Northwest Territories,  
delivered orally on the 9th day of February, 2021.**

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**APPEARANCES:**

**M. Fane:**

**Counsel for the Crown**

**B. Green**

**Counsel for the Crown**

**A. Corbett:**

**Counsel for the Defence**

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**Charge under s. 235(1) of the *Criminal Code***

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Reasons for Decision

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1           **REASONS**

2           THE COURT:           The comments that we just heard frame  
3                                    one of the more tragic aspects of this case. Too often  
4                                    the people we see as street people are seen as  
5                                    interchangeable and almost invisible. These are real  
6                                    people with histories and lives and loved ones.

7                                    A society -- not my words -- is judged on the  
8                                    way that it treats its weakest members. As Canadians  
9                                    and certainly as citizens of the Northwest Territories,  
10                                   we can take a certain amount of comfort in the fact that  
11                                   there are a lot of outreach programs and there are a lot  
12                                   of supports put in place, but they are still not sufficient  
13                                   to deal with what are typically both substance abuse  
14                                   and mental illness issues on the part of the homeless  
15                                   population.

16                                   Both Wilfred Abraham and Ralph Sifton lived at  
17                                   the homeless shelter in Fort Smith. They were  
18                                   well-known around town. Mr. Sifton appears to have  
19                                   been well-liked. Mr. Abraham is up and down on that  
20                                   count, because Mr. Abraham unfortunately is a very  
21                                   aggressive and angry drunk. It is an extra curse that he  
22                                   has to deal with along with his alcoholism. As he said  
23                                   in his pre-sentence report, on a number of occasions it  
24                                   has driven people away from him and it has cost him  
25                                   friendships.

26                                   On the night in question, both men were heavily  
27                                   intoxicated. At some point Wilfred Abraham ended up

1 falling asleep in the backyard of a friend that allowed  
2 him to sleep on a couch that he had set out in the  
3 backyard. At some point Mr. Sifton came along and  
4 kicked him in the face with a pair of steel-toed boots. It  
5 was not a particularly hard blow, but Mr. Abraham did  
6 suffer some injuries as a result. He had a black eye.

7 He got up, went to the homeless shelter, got his  
8 shoes and went back to where he had been sleeping.  
9 When he got back, Ralph Sifton was there. This seems  
10 to have been a surprise to him because witnesses  
11 heard him say "What the F are you doing here?" and  
12 they got into either an argument or a fight.

13 During that argument or fight, Mr.  
14 Abraham picked up a five-pound hand weight, one of  
15 the small rubber-coated weights that all of us are fairly  
16 familiar with, and struck Mr. Sifton in the head at least  
17 four times. We know this from the injuries.

18 It was my view, and I found as a fact, that Mr.  
19 Sifton and Mr. Abraham were both on their feet when  
20 this happened. I do not know if I need to characterize it  
21 as a fight. We are not talking about a situation where  
22 this was reasonable force used in self-defence or  
23 anything like that, but they were certainly either arguing  
24 or fighting. Mr. Sifton was not unconscious, not  
25 immobile, and one of the blows was hard enough to kill  
26 him.

27 He did not die right away, but he became

1 unconscious. For the next ten minutes or so he was  
2 lying on his back in the shadows in front of the shed;  
3 over behind the other houses. Neighbours came out to  
4 see what was happening, and during those ten minutes  
5 Wilfred Abraham was enraged.

6 He continued hitting Mr. Sifton in the face, in  
7 the neck, in the upper chest with his hands. None of  
8 those blows contributed to the death, but they were a  
9 pattern of continuing violence that continued while Mr.  
10 Sifton was unconscious.

11 It was an important part of my deliberations at  
12 trial that approximately a hundred times Mr. Abraham  
13 told Mr. Sifton to get up, screamed at him to get up, and  
14 I found that despite making horrible remarks about  
15 wanting to kill him and using an axe and all kinds of  
16 threats that were directed at the neighbours and  
17 anybody who happened to come into earshot, there  
18 was no indication that Mr. Abraham was actually trying  
19 to kill Mr. Sifton at all.

20 It would have been no difficult thing to inflict  
21 life-ending injuries on Mr. Sifton for ten minutes while  
22 he lay insensate and Mr. Abraham did not do that. Mr.  
23 Sifton died shortly after the police arrived, somewhere  
24 between there and an attempt to resuscitate him at the  
25 hospital.

26 The time of death was called at the hospital,  
27 but it appears that he was already well on his way to

1 being gone at that point. The nurse does recall him  
2 holding her hand, but during the course of resuscitation  
3 he passed.

4 Mr. Abraham, still highly intoxicated, made a  
5 number of comments about having wanted to kill Mr.  
6 Sifton and being glad that he was dead and other ugly  
7 comments, many of which were nonsensical. One of  
8 the key areas of disagreement between the defence  
9 and the Crown in this case is what I am to make of  
10 those comments.

11 The Crown encourages me to find that, despite  
12 my findings that Mr. Abraham did not intend to cause  
13 an injury that was likely to cause death, that at some  
14 point his intentions shifted and he became homicidal,  
15 and the Crown asks me to take this into account when I  
16 assess the gravity of the mental element that he  
17 brought to this crime.

18 I have great difficulty doing that. Wilfred  
19 Abraham, when he drinks, is a loud, aggressive,  
20 shouting nonsense drunk. The things that he said that  
21 night and the things that he did were at odds with each  
22 other and I have to give him the benefit of the doubt  
23 when I assess that. As he sobered, his remorse  
24 became clear. I watched him in cells during the course  
25 of the trial, at least the videotape of the cells.

26 I watched him being interviewed by the police  
27 when he could barely keep his head up. He says a lot

1 of things when he's drunk. Sometimes the things that  
2 people say when they are drunk should not be taken as  
3 a clear indication of what their thought processes are at  
4 that point in time.

5 I would need to see something more concrete  
6 in terms of Mr. Abraham's actual behaviour to draw the  
7 conclusion that the Crown asks me to with respect to a  
8 homicidal intention. I struggled with this both on the  
9 sentencing and at the trial, because the things that  
10 were said were horrendous, and I certainly do not  
11 ascribe any fault to the Crown for making these  
12 suggestions.

13 It is a common sense inference that when  
14 somebody says they wanted to kill someone, you would  
15 assume that they wanted to kill them. I just have a  
16 difficult time finding beyond a reasonable doubt that  
17 that was the case, given Mr. Abraham's actual  
18 behaviour.

19 We talked about where this case fits in what is  
20 called the *LaBerge* analysis. Crown is urging me to find  
21 that this case falls into the third or highest category.  
22 Defence is asking me to find that it is in the second  
23 category.

24 In order to find that it is in the highest category I  
25 would have to find that the act of striking someone in  
26 the head with a small hand weight during a scuffle was  
27 something that carried with it an obvious risk of death.

1 Not that death was likely, but that an obvious risk such  
2 as a stabbing or a shooting or a striking with, for  
3 instance, a baseball bat to the head would warrant.

4 I am not prepared to go quite that far. This is  
5 certainly an extremely serious use of a weapon, and  
6 the force that was required to cause the fatal blow was  
7 significant. If Mr. Sifton had been lying down when that  
8 blow was struck, had been unconscious, had simply  
9 been not moving, or if I was able to come to the  
10 conclusion that he was not moving, I think my  
11 assessment of the objective foreseeability or the  
12 objective component of *mens rea* would be made out in  
13 terms of the third category, but I am unable to do that.

14 In terms of the subjective component, it is clear  
15 that Mr. Abraham intended to cause serious bodily  
16 harm. The defence has conceded that, and regardless  
17 of that concession, it is obvious from the use of the  
18 weapon. This was far in excess of what needed to be  
19 used in the course of a scuffle at that point in time, and  
20 Mr. Abraham has acknowledged this by his guilty plea,  
21 which I will get to in a moment. So I do find that this  
22 offence falls at the upper end of the second category in  
23 *LaBerge*.

24 That said, the four years suggested by the  
25 defence is simply not sufficient. There are some  
26 mitigating circumstances. As suggested by the  
27 defence, Mr. Abraham entered a guilty plea essentially

1 at the first opportunity. He is certainly not faulted for  
2 not entering a guilty plea to murder when he was  
3 eventually found guilty of manslaughter, and he did  
4 offer up the guilty plea to manslaughter at the beginning  
5 of the trial. I give him credit for doing that.

6 As the Crown has pointed out, this was not a  
7 circumstantial case in terms of establishing  
8 responsibility, and the level of violence was such that a  
9 conviction for manslaughter was, in all likelihood, a  
10 foregone conclusion, but I still give him credit for the  
11 guilty plea; and, as the Crown has acknowledged,  
12 credit is warranted in this case for that.

13 There are some factors to be considered under  
14 section 718.2(e) of the *Criminal Code*. Mr. Abraham is  
15 a member of the Salt River First Nation. His upbringing  
16 did not include some of the more troubling things that  
17 we often hear about in court, but the so-called *Gladue*  
18 considerations take into account not only the personal  
19 circumstances of an accused person, but the social  
20 construct that has been damaged by generational  
21 trauma as a result of the colonial experience.

22 Mr. Abraham has a weakness for alcohol. It  
23 has been cracked open by a number of serious losses  
24 in his life. Of five siblings, he only has one alive. He  
25 lost his relationship with the mother of his child and he  
26 appears to have struggled with alcohol addiction.

27 To struggle with a potential for alcohol addiction

1 in a community that itself is struggling with addictions  
2 issues as a result of trauma calls into play the *Gladue*  
3 factors beyond the factors that are simply apparent in  
4 the pre-sentence report and his own personal history. I  
5 take that into account in sentencing Mr. Abraham.

6 Mr. Abraham has also made significant strides  
7 while he has been incarcerated for the last two and-a-  
8 half years. He has taken a significant amount of  
9 counselling. I will note as well that on nine prior  
10 occasions before this incident, Mr. Abraham had tried  
11 to get a handle on his drinking. He had attended at  
12 residential treatment facilities nine times, as was laid  
13 out in the pre-sentence report. I do not think I have  
14 ever seen a history like that, and I have been doing this  
15 in the North for a very long time. Mr. Abraham is  
16 clearly someone who is not content to be a drunk and  
17 angry member of the community and wants to get his  
18 life on track. He simply has not had the tools to do that.

19 This is the longest he has been sober since he  
20 was in his 20s. There have been some gaps in the  
21 record when he was responsible for his child, but he  
22 has always been drinking, apart from short breaks after  
23 his attendance at treatment.

24 Mr. Abraham is now 56 years old. He was 54  
25 at the time of the incident. It is too easy to say that his  
26 35-year criminal record encompassing four pages is an  
27 indication of somebody who is beyond rehabilitation.

1 This case does call out for denunciation. The use of  
2 this level of violence in already traumatized  
3 communities is something that we see too often. It is  
4 something that cannot be countenanced and I think we  
5 are all in agreement on that.

6 I am unconvinced that general deterrence really  
7 comes into play all that much, although I hope that it  
8 does. If there were no serious consequences for  
9 violence when drinking we would be dealing with a  
10 worse situation, so there is always a balance to be  
11 struck when we look at these things. I typically get into  
12 conversations with lawyers when they bring up this  
13 notion that what we do here has no deterrent effect.  
14 Perhaps so, but if we did nothing here then things  
15 would be worse. So it is hard to say that this is  
16 meaningless. I do not believe it is meaningless. It  
17 simply is not all that is required. This is a very small  
18 part of a bigger puzzle, and I can only do what I can do.  
19 I cannot undo what happened. I cannot fix Mr.  
20 Abraham.

21 I can simply apply the law as best I can and try  
22 to be as fair as I can, recognizing both the awful loss  
23 that has occurred in this case and that I have a human  
24 being that I have to deal with, with a view to his  
25 circumstances as well. This is always the balance that  
26 a Court has to strike.

27 The degree of violence in and of itself in the

1 course of a struggle, and I am talking now about the  
2 four blows with the weight, may have been -- I am not  
3 going to say minor enough, but may have been brief  
4 enough to warrant a four-year sentence, but the  
5 continuing violence after Mr. Sifton was insensate, even  
6 though it did not cause the fatal injury, is an  
7 aggravating factor of some consequence.

8 I believe simply on the basis of that aggravating  
9 factor -- I am not going to put a lot of weight on the ugly  
10 comments that were made, but the continuing violence  
11 is troubling, aggravating, and in my view, calls for at  
12 least an additional year, gets us to the five-year mark.

13 This was not a brief encounter that resulted in a  
14 fatal injury. This was a ten-minute spree of violence  
15 with the greatest violence at the beginning, and that  
16 has to be acknowledged and recognized.

17 We also then have to look at Mr. Abraham's  
18 history. A Court never sentences somebody for their  
19 prior criminal behaviour, and as was discussed  
20 between the lawyers and myself yesterday, it is a clear  
21 principle that being intoxicated is not an excuse.  
22 Voluntary intoxication is not an excuse. Those are both  
23 factors that are true, but somebody who has been  
24 consistently aggressive and occasionally violent when  
25 drinking carries the burden of that behaviour with him  
26 when he makes the decision to drink.

27 As I said at the beginning of this part of my

1 decision about his criminal record, I am not  
2 re-sentencing Wilfred Abraham for his criminal record,  
3 but he is a serious recidivist when it comes to drinking  
4 and acting out in violence. This is by far the most  
5 violent that he has ever been, but this was not  
6 unpredictable. This was not out of character for Mr.  
7 Abraham. Losing his temper in a rage when drinking is  
8 entirely in character for Mr. Abraham.

9 I am sympathetic about his struggles, but the  
10 Court has to be mindful of the protection of the public  
11 when dealing with a violent criminal, and Mr. Abraham,  
12 I am sorry to say, is a violent criminal.

13 When I was initially considering where all of this  
14 took me in terms of sentence, I was thinking of six  
15 years. But Mr. Abraham has made a plan and it is a  
16 good plan. I do not have a lot of faith that he is going to  
17 be able to follow through on that. He has tried so many  
18 times and he has failed so many times. I am not going  
19 to allow that plan to significantly reduce what I think is  
20 an appropriate sentence in this case.

21 But if I give Mr. Abraham five years and nine  
22 months, as opposed to six years, it would open the  
23 door to a three-year period of probation that would  
24 otherwise be unavailable to me, and I think that the  
25 protection of the public is better served by the longer  
26 period of control than by simply giving Mr. Abraham a  
27 longer period of custody after which he is simply free.

1                   So the conclusion I have come to is that the  
2 sentence, as of today, taking full account of the time in  
3 remand, it is three years and nine months' credit at this  
4 point in time, the sentence of the Court today is two  
5 years in a penitentiary.

6                   I debated whether that should be two years  
7 less a day or two years. I think for a couple of reasons I  
8 want it to be a penitentiary term. One, maybe  
9 technically an exercise, but saying it is still a  
10 penitentiary term I think further strikes home just how  
11 serious and awful this is. So it is two years in the  
12 penitentiary.

13                  The other thing that that does is allow for  
14 continuing control by parole Canada, Corrections  
15 Canada, even if Mr. Abraham is released somewhat  
16 early. Typically what would happen in a territorial  
17 sentence, if I gave him two years less a day, he would  
18 go to full remission, which is two-thirds of his sentence,  
19 he would be simply set free to go on probation.

20                  By making this a penitentiary term, he will be  
21 on parole until the end of his penitentiary term of two  
22 years, which will then be followed by three years  
23 probation. Two years is the only penitentiary term that I  
24 can give him that will allow me to attach probation.

25                  So this is a five year and nine-month sentence,  
26 subtracting the time that he has already been in  
27 custody, adding two years of custody. The three years

1 of probation will have the following terms, and again, I  
2 am open to further discussion about this, but first I will  
3 let everybody know what I am thinking.

4 I recognize that Mr. Abraham is a chronic  
5 alcoholic. That said, it is dangerous to allow him to  
6 drink and if he does not do what he needs to do, I  
7 would rather see him arrested for drinking than arrested  
8 for violence. So he is not to possess or consume any  
9 alcohol.

10 I would like the probation order to then follow  
11 by indicating that the Court understands that Mr.  
12 Abraham is an alcoholic and would urge Probation  
13 Services to exercise some discretion. So that will be  
14 part of the first term.

15 That discretion will become obvious with the  
16 second term, which is that if Mr. Abraham does  
17 consume alcohol, he is to report that consumption  
18 immediately to his probation officer and he is to report  
19 thereafter daily until otherwise directed by his probation  
20 supervisor.

21 I want just to be clear, he is to report within five  
22 days of his release and afterwards throughout his three  
23 years as directed by his probation supervisor.

24 Next condition, he is to take whatever treatment  
25 is recommended for him, and I am assuming, Mr.  
26 Abraham, that that would include in-house treatment.  
27 You are willing to do that? If they find you another

1 program, you are willing to go? Okay. And that will  
2 include in-house treatment.

3 Are there any terms in the probation order,  
4 Crown, that you would like to see or that I have  
5 omitted?

6 M. FANE: Yes, Sir. I would suggest residing as directed.  
7 That will allow probation to have access. Perhaps their  
8 resources they wouldn't have otherwise to assist with  
9 Mr. Abraham's residency.

10 THE COURT: Thank you. He is to reside as directed.

11 M. FANE: And as well, Sir, I think an initial reporting term  
12 within seven --

13 THE COURT: I think I said three days or five days. I am  
14 not sure. If it was not clear, yeah, within five days he is  
15 to report.

16 M. FANE: Thank you, Sir.

17 THE COURT: Anything from you on that?

18 A. CORBETT: No, Sir, I'm not seeking any further terms.

19 THE COURT: Okay. On the warrant of committal, what  
20 it noted -- and again, I will make a comment about this.  
21 One of the reasons that I have some hope for Mr.  
22 Abraham is that his son has spoken of being willing to  
23 take Mr. Abraham in, provided he is not drinking. His  
24 son lives in Edmonton. His son also suggested that he  
25 spend some more time in jail until he has solidified his  
26 resolve to lead a better life. So his son shows some  
27 insight into the depth of Mr. Abraham's problems.

1                                    On the warrant of committal I would urge  
2                                    Corrections Canada to look into the possibility of  
3                                    perhaps a halfway house or some form of parole in the  
4                                    city of Edmonton to see what they can do in assisting  
5                                    Mr. Abraham in following through on these plans.

6                                    Ancillary orders. There will be a DNA order.  
7                                    There will be a section 109 firearms order for a period  
8                                    of ten years. I am going to make a section 113  
9                                    exemption allowing him to apply for a limited permit for  
10                                    the purposes of sustenance or work. With Mr.  
11                                    Abraham's record he is going to have an uphill battle  
12                                    applying to firearms in order to get that permit, but if he  
13                                    is able to remain sober for a number of years and show  
14                                    that he is not someone who is a risk, perhaps he will be  
15                                    able to do that, and I do not want to stand in the way of  
16                                    him being able to get back on the land and embrace  
17                                    some of the very positive earlier experiences that he  
18                                    had growing up.

19                                    Mr. Abraham, there is no undoing this. You  
20                                    know that. I think the most important thing that you can  
21                                    do to honour Ralph is to never put yourself in a position  
22                                    where you are able to act out like this again. You owe  
23                                    him that much, and I hope you are able to do that. All  
24                                    right.

25

26                                    **(REASONS CONCLUDED)**

27

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. Judicial amendments have been  
6           applied to this transcript.

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9           Dated at the City of Toronto, in the Province of Ontario, this  
10          24<sup>th</sup> day of March, 2021.

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Kim Neeson

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Principal

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