

R v Abdullahi,
2023 NWTSC 12

S-1-CR-2022-000040

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HIS MAJESTY THE KING

-v-

YAHYA MUSA ABDULLAHI

**Transcript of the Sentencing Reason of the Honourable Deputy
Justice L.A. Charbonneau, sitting in Yellowknife, in the Northwest
Territories, on the 16th day of May, 2023**

APPEARANCES:

C. Brackley:	Counsel for the Crown
L. McClean:	Counsel for the Defence

Charges under s. 344, 346(1.1)(b), and 346(1.1)(a.1) of the *Criminal Code*

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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1 **(TELECONFERENCE COMMENCES)**

2 THE COURT: Today I have to impose a sentence on
3 Mr. Abdullahi for the two charges that he pleaded guilty
4 to earlier this month on May 1. The first charge is for
5 having used a restricted firearm to rob T.D-E. on
6 November 1, 2021. The second charge is for having
7 been in possession of cocaine for the purposes of
8 trafficking on November 4, 2021. Both of these
9 charges are very serious, but the facts on the robbery
10 charge are particularly egregious.

11 The victim of the robbery had been
12 renting a room in a home in Yellowknife. On October
13 31, 2021, she came home to find three men waiting for
14 her in the living room. The accused was one of them.

15 These men believed that she had stolen
16 some crack cocaine from them. They demanded that
17 she pay them \$6,000 or that she return the cocaine.
18 She told them that she had not taken it, but they did not
19 believe her. The men told her to go to her room. One
20 of them had a pistol that he pressed against her head
21 as he ordered her to the room.

22 The three then proceeded to assault her.
23 She was hit on the back of her hands and on the head
24 with the gun. She was hit with a bat. Chunks of her
25 hair were cut with a machete and some scissors. They
26 threatened to kill her if she did not give them the money
27 for the crack that they believed she had stolen. They

1 also threatened to kill her if she told police about what
2 happened. They stole some of her identification
3 documents and her cell phone.

4 An unusual feature of this case is that the
5 accused filmed parts of this attack using cellphones.
6 This footage was eventually retrieved by police during
7 the investigation, and the videos were discovered.
8 They were played at the sentencing hearing in this
9 matter, and they were made exhibits. They were very
10 disturbing to watch.

11 This was a cruel, callous attack. These
12 three men ganged up on her in her own home. Aside
13 from striking her with a firearm, they put it to her head,
14 they dragged her around the floor. Her mouth and her
15 wrists were taped at some point while she was being
16 attacked. They assaulted her physically but
17 psychologically as well. The videos show that as they
18 are assaulting her, they call her a “stupid bitch” a
19 number of times. As they are chopping chunks of her
20 hair with a machete, they comment on how beautiful
21 her hair is and they all laugh.

22 The objective was clearly to terrorize,
23 humiliate and dominate someone who was at their total
24 mercy. Did they film this to show others as a means of
25 further intimidation, carrying out their illicit activities?
26 Were they going to publish it somehow? Or did they
27 just want to look at it after for another good laugh? The

1 story does not tell.

2 But this attack that Mr. Abdullahi admits
3 being a part of and the behaviour described in the facts
4 and shown in the videos is simply put, disgusting.

5 The victim was injured as a result of the
6 assault. She had a superficial cut to one of her toes,
7 bruising on her legs, arms and face, and cuts, bruising
8 and swelling to her knuckles.

9 Aside from the physical injuries, one can
10 only imagine the terror that she experienced. She has
11 not prepared a victim impact statement, but it does not
12 take a lot of imagination to figure out that the emotional
13 scars that this left her with will be long lasting.

14 The victim did not report this right away,
15 but she did report it shortly thereafter on November 4.
16 Police began an investigation, including surveillance on
17 the house in question. And eventually, this led to the
18 arrest of all three men. One of them, not the accused
19 before me, was at the time of the arrest carrying a
20 Smith & Wesson 38 Special revolver that was loaded.
21 As for the accused, he was found in possession of 63
22 grams of cocaine.

23 Other items were found during the
24 execution of the search of the bedroom where he and
25 one of the other men were staying. This included
26 money, cell phones, scales, more cocaine and a
27 machete. Mr. Abdullahi acknowledges that the cocaine

1 found in his possession was for the purposes of
2 trafficking.

3 Crown and defence have presented a
4 joint submission on this case for a sentence of six years
5 for the robbery and two years concurrent on the
6 possession for the purposes of trafficking. The law that
7 governs the responsibility of the sentencing judge when
8 a joint submission is presented was laid out by the
9 Supreme Court of Canada in the case of *R. v. Anthony-*
10 *Cook*, 2016 SCC 43. The threshold that must be met
11 for a judge to reject a joint submission is incredibly high.
12 The Supreme Court said that rejection is open to the
13 sentencing judge only if the joint position is:

14 ... so unhinged from the circumstances of the
15 offence and of the offender that imposing that
16 sentence would lead reasonable persons who
17 are aware of all the circumstances and of all the
18 benefits of resolving cases without trial to
19 believe that the proper functioning of the justice
20 system has broken down.

21 It follows that while in general the sentencing powers of
22 a judge are broad and highly discretionary, that
23 discretion is considerably curtailed when a joint
24 submission is presented. And it goes without saying
25 that what the Supreme Court of Canada says is binding
26 on me.

27 Counsel acknowledged at the sentencing

1 hearing that the joint position was quite lenient. I could
2 not agree more. I do recognize that the guilty pleas are
3 significant, especially on the robbery charge, because it
4 has spared the victim from having to testify about what
5 happened to her. Presumably as part of her testimony,
6 she would have had to be shown the videos of the
7 assault. Given how sickening I found watching those
8 videos, I can barely imagine what the experience would
9 have been for her.

10 At the same time -- and as I said during
11 submissions -- there is something profoundly ironic that
12 a person who subjects another person to cruel and
13 traumatic treatment later gets to benefit from sparing
14 that person the trauma of having to talk about it in court.
15 And I can understand why members of the informed
16 public might struggle understanding that concept. That
17 being said, in the day-to-day life in courtrooms the
18 reality is that victims of serious crimes are often
19 revictimized by the harshness of the trial process, and
20 sparing them that is in fact sparing them a lot.

21 Another element to consider is totality,
22 and I think that is another concept that members of the
23 public might have difficulty understanding at times. The
24 principle of totality says that if a person is sentenced for
25 more than one crime, the sentencing Court has to be
26 mindful of the global effect of the sentence on the
27 offender to make sure that that global effect is not

1 crushing.

2 So it is not just about adding up what
3 would otherwise constitute appropriate sentences. The
4 duty is to adjust -- practically, this means "reduce" --
5 each individual sentence to ensure that the overall
6 effect is not crushing on the person being sentenced.
7 And that is particularly important when dealing with an
8 offender who is as youthful as Mr. Abdullahi is. Here,
9 totality is the reason why a concurrent sentence is
10 being suggested on the drug charge.

11 Standing alone, the possession of
12 cocaine for the purposes of trafficking engages a
13 starting point of three years in sentencing, which must
14 then be adjusted to reflect the aggravating and
15 mitigating factors of the case. So the two years being
16 proposed on a guilty plea is certainly not out of order,
17 but making it concurrent in effect means that this very
18 serious offence will not give rise to any additional
19 punishment for Mr. Abdullahi.

20 I also have to consider parity. That
21 principle says that people in similar situations convicted
22 for similar crimes should receive similar sentences.
23 Here one of the other men involved in this has been
24 sentenced to a total of nine years, but the
25 circumstances were different as he was sentenced on a
26 third and very serious charge for conspiracy to traffic in
27 cocaine. Mr. Abdullahi is not being sentenced for that

1 conspiracy, so his sentence necessarily has to be less
2 than that imposed on the other man. And as for the
3 third person involved in this, I was advised he has not
4 yet been dealt with.

5 The guilty plea has avoided the trial and
6 the victim of the robbery having to testify. It has saved,
7 I am told, three weeks of court time. Counsel advised
8 that despite the videos, there were defences available
9 that the accused has given up by pleading guilty.
10 Counsel know their cases, and this is one of the
11 reasons why joint submissions that are the product of
12 resolution discussions between counsel have to carry
13 such a great weight.

14 Mr. Abdullahi was born and raised in
15 Edmonton, I was told. He is still in his early 20s. He
16 has a criminal record with a number of entries, but
17 nothing nearly as serious as what I have to sentence
18 him for today. He grew up in a large family. I was told
19 he has 10 siblings. I was also told he grew up in
20 extreme poverty. But according to what he told his
21 counsel, it was also a loving home and he speaks very
22 highly of his parents.

23 I was very struck by the fact that when I
24 asked him if there was anything that he wanted to say
25 at the conclusion of counsel's submissions, aside from
26 apologizing, he made a point of telling me that these
27 offences are not a reflection of how his parents raised

1 him and that they did their best. If Mr. Abdullahi's
2 parents are aware of what he is being sentenced for
3 today, they must be appalled and they must be
4 heartbroken.

5 I understand how growing up with
6 difficulties can lead to mixing up with the wrong circles
7 and to criminality, but, Mr. Abdullahi, what you did to
8 that woman, it is beyond getting involved with the
9 wrong crowd, well, well beyond that. It is beyond
10 stealing, it is beyond getting into fights and it is even
11 beyond getting into trafficking drugs. It is in another
12 category all together. It is cruel and sick.

13 And I hope that these very sad
14 circumstances have shaken you up. I hope you felt
15 shock when you watched those videos. I have no way
16 of knowing what goes on in your head, or what is going
17 on in your head right now as I say these things to you,
18 but I really hope that you are sincere in your apology
19 and I really hope you are sincere in what you say you
20 want to do with your future so that you can make your
21 parents proud and not ashamed.

22 You say that they did their best, and I
23 believe that so they deserve better and they deserve for
24 you to be your best.

25 I have taken into account the cases that
26 counsel referred me to, in particular *R. v. McIntyre*,
27 2016 ONSC 7498 and *R. v. Treleaven*, 2018 ONSC

1 1707 in considering the range of sentences that are
2 imposed when firearms are used in the context of
3 robberies.

4 But the distinguishing feature of
5 Mr. Abdullahi's case is that I do not think the heart of
6 this event was about stealing the victim's papers or her
7 phone. The goal evidently was to terrorize her. They
8 also robbed her, and that is the charge that the Crown
9 pursued. But this is factually different, for example,
10 from the *McIntyre* case where the objective was to steal
11 the victim's luxury car.

12 I am not of course saying that using
13 firearms to rob people is not serious; obviously it is. But
14 fundamentally, this event was not about stealing things
15 from the victim. Fundamentally, this was about
16 intimidation, humiliation and inflicting terror presumably
17 to send a message over this perceived theft of drugs.
18 And that, in my view, cries out for the highest form of
19 denunciation.

20 The sentence being proposed, as
21 counsel have pointed out, is not an insignificant
22 sentence, especially not for someone of Mr. Abdullahi's
23 age. Still, I have to say I had to think very carefully
24 about whether I could go along with it, and I want to
25 make it clear that I do not say this in a way that is
26 critical at all of counsel. The Crown explained its
27 reasons, and I understand them. Defence counsel

1 pointed out that Mr. Abdullahi gave up defences and
2 saved court resources by avoiding what would have
3 been a complex trial, and I understand that too.

4 The concern I am left with and struggled
5 with is the public interest, the protection of the public
6 and the message that courts need to send to those who
7 choose to involve themselves in this type of activity, the
8 drug trafficking but also all the collateral damage it
9 causes. This case is a very good example of that
10 collateral damage, and there has been more and more
11 of that in recent years.

12 Those who have lived in the city of
13 Yellowknife for a while have seen changes in the
14 criminality in the city. Some of the things we see in the
15 courts, hear about in the news and I am sure many that
16 we never hear about are things that we would not have
17 fathomed happening in this town 30 years ago. This
18 Court has talked in several cases about the impact of
19 drug trafficking, how it tears the fabric of the
20 community, how it makes vulnerable people even more
21 vulnerable and the immense problems it leads to.

22 And there may come a point where the
23 Courts have to put denouncing that, and taking a much
24 harsher stand on those things than it has up to now, the
25 priority.

26 All that being said and after careful
27 consideration, I have concluded that the joint

1 submission is not so lenient as to justify my not
2 following it, based on the principles of law that I talked
3 about previously. So I will follow it.

4 I do so understanding and respecting the
5 fact that counsel know their case, have put a lot of
6 thought into this and have given me the reasons why
7 they arrived at that position, which are all, as I said,
8 valid considerations. But I must say, to me it is very
9 close to the line and the sentence that I am about to
10 impose should not be taken as having any precedential
11 value whatsoever for this type of crime because it is not
12 the sentence that I would have imposed had it not been
13 for the joint submission.

14 On the robbery charge, the sentence
15 imposed will be six years. For the 544 days spent in
16 pretrial custody, I will give Mr. Abdullahi 816 days
17 credit, again, in line with the principles laid out in *R. v.*
18 *Summers*. And that credit will be applied to the count
19 of robbery, which by my count would leave a further jail
20 term of 1,374 days, which is three years and 279 days.

21 On the other count, the sentence will be
22 two years concurrent. I will make a DNA order. It is
23 mandatory because robbery is a primary designated
24 offence. I will issue a firearms prohibition order
25 commencing today expiring 10 years from release. I
26 will waive the victim of crime surcharge given the
27 duration of the jail term that I am imposing and also Mr.

1 Abdullahi's overall circumstances.

2 And finally, I will grant the publication ban
3 and sealing orders with respect to the photos of the
4 victim's injuries and the videos seized from the two cell
5 phones, those being Exhibits A, C and D included in the
6 agreed statement of facts, Exhibit S-1.

7 I am granting these orders applying the
8 same principles that I did and articulated in *R. v.*
9 *St. Croix*, 2021 NWTSC 13 because I find that the
10 usual open court principle in this case must take
11 second place to the protection of the complainant's
12 dignity and personal integrity. And on balance, the
13 public should not have access to these images.

14 I want to express my thanks to counsel
15 for their work on this case and for their submissions.
16 Ms. Brackley, I know you were not counsel at the
17 sentencing hearing, but can you see anything that I
18 might have overlooked?

19 C. BRACKLEY: The only other order I wanted to
20 address, Your Honour, is if there can be a -- I'm
21 seeking a non-communication order with the named
22 complainant T.D-E. under 743.21 of the *Criminal Code*.

23 THE COURT: Okay. I am just going to look that up
24 because I do not think it was mentioned when the
25 terms of the joint submission were presented to me at
26 the sentencing hearing.

27 C. BRACKLEY: 4 -- 743.21.

1 THE COURT: 743.21 ... 743.21?
2 C. BRACKLEY: Yes.
3 THE COURT: This was not mentioned as part of the
4 joint submission. Mr. McClean, do you have any
5 objection to that request that is being made now?
6 L. MCCLEAN: No, Your Honour. Just perhaps for
7 Mr. Abdullahi's benefit because it hadn't been
8 discussed previously, we're discussing an order that
9 you can't contact the complainant in this matter for the
10 period of time that you are in custody. Do you
11 understand that, Yahya?
12 THE ACCUSED: Yeah.
13 THE COURT: All right. I will issue that order. I do not
14 think I have issued an order like that before and if I
15 have, it has been a while. Is it recorded on the warrant
16 of committal ordinarily, or does the Crown prepare a
17 separate order?
18 C. BRACKLEY: I believe it's -- goes with the warrant of
19 committal, Your Honour.
20 THE COURT: On the warrant of committal?
21 C. BRACKLEY: Yes. I believe so.
22 THE COURT: All right.
23 C. BRACKLEY: And my apologies that this wasn't part
24 of the joint recommendation. I just thought based on
25 the facts it made sense to have the non-communication
26 order in place.
27 THE COURT: Oh, it certainly does. All right. So,

1 Madam Clerk, the warrant of committal should be
2 endorsed to reflect that -- did you want to add anything,
3 Mr. McClean? I may have cut you off.

4 L. MCCLEAN: No, Your Honour.

5 THE COURT: Okay. So the warrant of committal will
6 be endorsed to reflect that I am making an order
7 pursuant to section 743.21 prohibiting Mr. Abdullahi
8 from communicating directly or indirectly with the
9 complainant on the robbery charge. She should be
10 identified by name on the warrant of committal, Madam
11 Clerk.

12 THE CLERK: Yes, Your Honour.

13 THE COURT: For the duration of the custodial period.
14 Anything else you want to raise, Ms. Brackley?

15 C. BRACKLEY: No, that's all. And just to confirm, Your
16 Honour, it's -- the publication ban under 486.5 is with
17 respect to the identity of the complainant; is that
18 correct? Yes?

19 THE COURT: Yes. That was issued on the other
20 occasion.

21 C. BRACKLEY: Yes. Thank you. Okay. And then the
22 sealing orders with respect to Exhibits A, C and D is
23 also granted?

24 THE COURT: Yes.

25 C. BRACKLEY: Yes.

26 THE COURT: And so your office should submit a draft
27 order for that. A temporary sealing order was made, but

1 you should submit a draft order for the permanent
2 publication ban and sealing order so that it can be
3 attached to the agreed statement of facts. The
4 envelopes that were included in the agreed statement
5 of facts that contain the DVDs are already sealed.

6 C. BRACKLEY: Okay.

7 THE COURT: But there should be a written order just
8 for future reference that it is -- makes it very clear what
9 it is. This is what we normally do.

10 C. BRACKLEY: Okay. Just to clarify that it's not a
11 temporary order any longer as well --

12 THE COURT: No, it is --

13 C. BRACKLEY: It's a permanent order?

14 THE COURT: No, no, it is a -- yes. Permanent order.

15 C. BRACKLEY: Yes. Thank you. That's just what I
16 wanted to clarify.

17 THE COURT: it was made temporary last time because
18 the Crown advised the media outlets had been served
19 but did not yet have the documents establishing proof
20 of service.

21 C. BRACKLEY: Okay.

22 THE COURT: So I wanted to wait until those were filed
23 before issuing permanent orders.

24 C. BRACKLEY: That was the only issue I wanted to
25 confirm. Thank you.

26 THE COURT: Okay. Mr. McClean, do you have
27 anything else or anything that I might have overlooked?

1 L. McCLEAN: No, Your Honour.

2 THE COURT: Thank you. Mr. Abdullahi, as I said, I
3 hope you pursue the things that your lawyer told me in
4 submissions that you wanted to do, continuing your
5 education. It sounded like you had a few options for
6 work, and I really hope you are sincere and that you
7 realize the magnitude of what you did. And I guess
8 time will tell.

9 And I hope you succeed in making this
10 really a turning point, a permanent turning point in your
11 life. Because you have a lot of life ahead of you. So
12 there is still ample time to make something good of it
13 and make your parents proud.

14 **(TELECONFERENCE CONCLUDES)**

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16 **(PROCEEDINGS CONCLUDED)**

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CERTIFICATE OF TRANSCRIPT

Veritext Legal Solutions, Canada, 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. Judicial amendments have been applied to this transcript.

Dated at the City of Toronto, in the Province of Ontario, this 5th day of June, 2023.

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