

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HIS MAJESTY THE KING

- v -

WESLEY MANTLA

Transcript of the Reasons for Decision held before the Honourable Deputy Justice D.J. Gates, sitting in Yellowknife, in the Northwest Territories, on the 17th day of November, 2023

APPEARANCES:

B. Green:	Counsel for the Crown appearing via teleconference
T. Pham:	Counsel for the Defence
C. Nitsiza:	Tłıchq Interpreter

Charge under s. 271 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 CLERK: Order. All rise. This sitting of the
3 Supreme Court of the Northwest Territories is now in
4 session, the Honourable Justice Gates presiding.

5 THE COURT: Good afternoon. Please be seated.
6 Mr. Mantla, why do you not come and sit with your
7 lawyer. Mr. Green, are you there?

8 B. GREEN: I'm here, Your Honour. Yes.

9 THE COURT: Great. Thank you. This is an oral
10 decision, and as such, I reserve the right to edit any
11 transcript that may be ordered of my reasons. Any
12 such editing would be for grammar and spelling
13 purposes only. It certainly would not change the
14 content of what I am about to say.

15 Madam Interpreter, I will do my very best
16 not to speak for too long without giving you a chance,
17 okay?

18 THE INTERPRETER: Yes.

19 THE COURT: Okay. The accused, Wesley Mantla,
20 was convicted of sexual assault contrary to section 271
21 of the *Criminal Code* by a jury on May 12, 2023. He is
22 here to be sentenced today. The offence of sexual
23 assault carries the maximum sentence of 10 years; no
24 minimum sentence is prescribed. A conditional
25 sentence is a possible sentencing option in this case.
26 However, the defence concedes that this would not be
27 a fit and proper sentence in this instance. I agree.

1 Pursuant to section 724(2) of the *Criminal*
2 *Code*, I made the following findings of fact following the
3 jury's guilty verdict. On March 10, 2019, the
4 complainant C.M. was visiting and drinking with friends
5 and neighbours in her home community of Behchokò,
6 Northwest Territories. She initially visited and drank
7 with her friend, A., arriving sometime after midnight on
8 March 10, 2019.

9 They were up all night visiting and
10 drinking. She then briefly returned home before going
11 to visit her cousin, B. C.M. sat outside with B. and B.'s
12 spouse and continued drinking. She did not stay very
13 long as B. and her spouse were arguing. S.M., the
14 accused's sister, who lived next door to B., saw C.M.
15 sitting outside and invited her over to the residence she
16 shared with her spouse, G.S.

17 The accused was present at the
18 residence of his sister when C.M. arrived. C.M.
19 continued drinking after she arrived at S.M.'s house. At
20 some point, C.M. passed out and fell asleep on a
21 mattress on the living room floor of S.M.'s residence.
22 At one point the accused was observed by G.S. to be
23 standing in the living room while C.M. was asleep or
24 passed out on the mattress.

25 While C.M. was asleep or passed out, the
26 accused engaged in nonconsensual sexual activity with
27 her. The accused ejaculated on C.M.'s panties and

1 penetrated both her vagina and her anus with some
2 part of his body as confirmed by the presence of DNA
3 on the vaginal and anal swabs obtained during the
4 sexual assault examination.

5 Following the sexual activity, the accused
6 replaced C.M.'s clothing that he had previously
7 removed. The accused had been drinking for a period
8 prior to the assault. C.M. woke at 9:37 p.m. as
9 observed on a nearby clock. She noticed that
10 something was not right. After speaking to S.M. and
11 going to the bathroom, she noticed that her pants were
12 not on the way she usually wore them.

13 The leg of her panties was not on the
14 right way, and her pants were not done up the normal
15 way. She also noticed that her belt was tighter than
16 normal. C.M. knew that something was not right and
17 that she needed to get herself checked. She drove
18 herself home, called the RCMP, and then proceeded to
19 the Behchokò Health Centre, all within an hour of
20 waking up.

21 THE INTERPRETER: Yeah.

22 THE COURT: She met Constable Emily Brady at the
23 health centre and underwent a sexual assault
24 examination. Constable Brady observed C.M. to be
25 crying, shaking and sitting with her head in a blanket
26 when Constable Brady arrived at the health centre.

27 On account of the combined effect of a

1 lack of sleep and her excessive consumption of alcohol
2 over an extended period of time, C.M. has no memory
3 of what took place at S.M.'s residence. Specifically,
4 C.M. has no recollection of any sexual interactions with
5 the accused at the residence of the accused's sister
6 prior to passing out or falling asleep.

7 THE INTERPRETER: Can I just --

8 THE COURT: Yes?

9 THE INTERPRETER: When you say "S.M.," is that the
10 older sister or another sister?

11 THE COURT: S.M. is the --

12 THE INTERPRETER: The sister of C.M., but --

13 THE COURT: I am not sure. I did not know there
14 were -- was more than one sister. S.M. was the sister
15 that C.M. was visiting.

16 THE INTERPRETER: Okay.

17 THE COURT: But I am afraid that is all I know.

18 THE INTERPRETER: 'Cause we don't have words for
19 "sisters"; I have to say either older or younger. So
20 that's ... I can't say both.

21 THE COURT: I am afraid I do not know.

22 THE INTERPRETER: Okay.

23 THE COURT: Yes?

24 T. PHAM: Perhaps the accused -- if I can speak with
25 him --

26 THE COURT: Yes. Go ahead, Mr. Pham. Thank you.

27 T. PHAM: S.M. is S.?

1 THE ACCUSED: Yes.

2 T. PHAM: Is she an older or younger sister?

3 THE ACCUSED: Older sister.

4 THE INTERPRETER: Okay. Thank you.

5 THE COURT: Older. Thank you, Mr. Pham. Is -- there
6 is no word for "sister" in Tłıchq?

7 THE INTERPRETER: No. It is either "older sister" or
8 "younger sister."

9 THE COURT: Oh. Thank you. I did not know that.
10 She did not consent to any sexual activity with the
11 accused. She maintained that it was not possible that
12 she consented to any sexual activity with the accused
13 since he is the father of her grandchild and the
14 common-law partner of her daughter.

15 Following his arrest, the accused
16 provided a sample of his DNA. The accused's DNA
17 was found on a vaginal swab and anal swab obtained
18 from C.M. when she attended the Behchokò Medical
19 Centre on March 11, 2019. The accused's DNA was
20 also found in seminal fluid found on three different
21 locations of the underwear of C.M. that was seized by
22 the RCMP at the time of her attendance at the
23 Behchokò Medical Centre that day.

24 The principles of sentencing are set out in
25 some detail in section 718 of the *Criminal Code*. The
26 section reads as follows -- and I quote:
27 The fundamental purpose of sentencing

1 is to contribute, along with crime
2 prevention initiatives, to respect for the
3 law and the maintenance of a just,
4 peaceful and safe society by imposing
5 just sanctions that have one or more of
6 the following objectives:
7 To denounce unlawful conduct;
8 To deter the offender and other persons
9 from committing offences;
10 To separate offenders from society when
11 necessary;
12 To assist in rehabilitating offenders;
13 To provide reparations for harm done to
14 victims or to the community, and
15 To promote a sense of responsibility in
16 offenders and an acknowledgment of the
17 harm done to victims and the community.

18 I would also note that section 718.2 is applicable in this
19 instance.

20 A Court that imposes this sentence shall
21 also taken into consideration the following
22 principles:

23 A sentence should be increased or
24 reduced to account for any relevant
25 aggravating or mitigating circumstances
26 relating to the offence or the offender.

27 Evidence that an offender in committing

1 the offence abused the offender's
2 intimate partner or a member of the victim
3 or offender's family shall be deemed to
4 be an aggravating circumstance.
5 A sentence should be similar to
6 sentences imposed on similar offenders
7 for similar offences committed in similar
8 circumstances.
9 An offender should not be deprived of
10 liberty if less restrictive sanctions may be
11 appropriate in the circumstances.
12 All available sanctions other than
13 imprisonment that are reasonable in the
14 circumstances and consistent with the
15 harm done to the victims or to the
16 community should be considered for all
17 offenders, with particular attention to the
18 circumstances of Aboriginal offenders.

19 Do I need -- do you want me to say that again?

20 THE INTERPRETER: Yeah.

21 THE COURT: I will break it up:
22 All available sanctions other than
23 imprisonment that are reasonable in the
24 circumstances and consistent with the
25 harm done to the victims or to the
26 community should be considered for all
27 offenders, with particular attention to the

1 circumstances of Aboriginal offenders.
2 These principles guide and direct courts in what is for
3 most judges one of the most difficult judicial tasks,
4 crafting a fit and proper sentence for an offence and an
5 offender.

6 In this instance the defence concedes
7 that the circumstances surrounding the commission of
8 this offence constitute a major sexual assault as that
9 term has been defined and interpreted by various
10 decisions of the Court of Appeal, including *R v Arcand*,
11 2010 ABCA 363 and *R v A.J.P.J.*, 2011 NWTCA 47.

12 The starting point for a major sexual
13 assault is three years. From this three-year starting
14 point, the sentence can be adjusted up or down to
15 account for aggravating and mitigating circumstances.

16 A victim impact statement prepared by
17 the victim C.M. was presented to the Court and marked
18 as Exhibit S-2. I extend my thanks to C.M. for sharing
19 with us the impact this crime has had on her life. It is
20 very clear to me that notwithstanding the passage of
21 nearly five years since this event, she continues to
22 suffer from emotional strain and anxiety and is having
23 difficulty moving past the trauma flowing from this
24 event. In her victim impact statement C.M. also
25 expresses her fear for the safety of her daughter and
26 granddaughter, considering their close family
27 connection to the accused.

1 The victim impact statement is an
2 important part of this sentencing hearing. It provides
3 you, Mr. Mantla, with a clear expression of the impact
4 of your crime on C.M. I hope that this will serve as a
5 powerful and enduring message to you regarding the
6 consequences of your actions. You will have to live
7 with this knowledge for the rest of your life.

8 The accused has a criminal record dating
9 back to 2001 when he was convicted of sexual assault
10 and placed on probation for a period of nine months.
11 Further convictions were entered in 2005, 2010 and
12 2012 for drinking/driving-related offences and offences
13 relating to the administration of justice.

14 While I note the prior conviction for
15 sexual assault, I would observe that it took place many
16 years ago and was resolved by suspending the passing
17 of sentence and placing the accused on probation. The
18 rest of Mr. Mantla's criminal convictions are dated and
19 largely unrelated to the offence now before the Court.
20 The common denominator in all these convictions is the
21 abuse of alcohol. I am satisfied that Mr. Mantla has a
22 good understanding that alcohol has been an issue for
23 him for a significant part of his adult life.

24 The accused has been in custody since
25 June 30, 2023, a period of 148 days as of today,
26 November 17, 2023. I accept the defence submission
27 that he should be accorded credit for pretrial custody at

1 the rate of 1.5 days for every day served. As such, I
2 set his pretrial custody at 222 days or almost
3 7.5 months. The sentence to be served will,
4 accordingly, be reduced by 7.5 months.

5 At the direction of this Court, Jackson
6 Mirasty prepared a *Gladue* report in advance of the
7 continuation of this sentencing hearing. This report,
8 together with the pre-sentence report prepared by Kim
9 Mills, and a psychological assessment report prepared
10 by Merril Dean, provide a great deal of information
11 regarding the accused's family of origin and his history
12 and background.

13 In addition, an update to the pre-sentence
14 report was prepared at the request of the Court. In
15 meeting with the author of the pre-sentence report, the
16 accused maintained his innocence with respect to the
17 matter now before the Court.

18 The accused is a member of the Tłı̨chų or
19 Dogrib people, a Dene First Nation and a resident of
20 Behchokò. Behchokò is located on the northern tip of
21 Great Slave Lake and is the largest Tłı̨chų community
22 in the Northwest Territories. The accused was born in
23 Edzo, one of the neighbouring settlements of
24 Behchokò, but has spent virtually his entire life living in
25 Behchokò when not living on the land.

26 His first language is Tłı̨chų, and his
27 knowledge of English is limited. The accused

1 completed grade 10 at the Chief Jimmy Bruneau
2 Regional High School but missed a great deal of school
3 time on account of the time that he spent on the land
4 with members of his family. While he struggled with
5 school, he reported that his overall school experience
6 was positive.

7 The author of the *Gladue* report does,
8 however, reference the fact that he was bullied at
9 school, and that a speech impediment left him
10 essentially nonverbal until the age of 11 or 12 years.
11 The accused's mother reported that the accused also
12 suffered from hearing issues as a child.

13 The accused did not attend residential
14 school though his mother and an aunt who was
15 interviewed in conjunction with the *Gladue* report
16 attended St. Joseph's School in Fort Resolution and
17 then Breynat Hall in Fort Smith, an institution operated
18 by the Roman Catholic Church. The *Gladue* report
19 also refers to Lapointe Hall in Fort Simpson, but there is
20 no indication of attendance at this school by any of the
21 accused's family members.

22 I accept without question the adverse
23 impact that residential school attendance continues to
24 have on the many residents of Behchokò and
25 surrounding communities who were forced to attend
26 these schools. The author of the *Gladue* report offers
27 the following comments at page 11:

1 Wesley's parents and almost all of his
2 extended family members attended
3 residential school in their youth.
4 Collateral contacts indicated that many
5 residents of Behchokò and the
6 surrounding communities struggle with
7 residential school trauma. These
8 traumas include cultural dislocation, the
9 loss of language, deleterious conditions
10 and abuse. Residential school trauma
11 and the intergenerational nature of the
12 dysfunction that follows are clear
13 consequences of Canada's colonial
14 history.
15 Wesley recalls witnessing his parents
16 using alcohol from a young age. They
17 drank in the presence of their children
18 and would bring alcohol with them when
19 out on the land. Collateral contacts do
20 not paint a picture of a family ravaged by
21 alcohol abuse, but the intergenerational
22 transfer of alcohol dependency remained
23 relevant.
24 Moreover, there is a relationship between
25 alcohol dependency and residential
26 school trauma. Collateral contacts
27 explained that many of the people who

1 struggle with trauma turn to alcohol to
2 escape their memories of abuse.

3 It is clear from both the pre-sentence report and the
4 *Gladue* report that the accused has lived a very
5 traditional lifestyle on the land engaged in hunting,
6 fishing and trapping with members of his family. He is
7 very skilled in terms of these outdoor activities.

8 There was significant alcohol abuse by
9 his parents while living on the land as well as domestic
10 violence, including violence directed towards the
11 children. The accused reports that he attempted to
12 intervene to protect his sisters when violence was
13 directed towards the children. He also reported
14 contacting the RCMP on occasion to seek their
15 assistance.

16 It is noteworthy, however, that there is no
17 history of Social Services involvement with this family.
18 Despite the impact of alcohol abuse and domestic
19 violence, the accused has many good memories of his
20 youth. He always felt loved by his parents, and there is
21 no suggestion that the accused and his siblings were
22 otherwise neglected by their parents.

23 The accused is currently 43 years of age.
24 He has effectively never left home other than for
25 employment purposes. Up until he was remanded in
26 custody, he was the primary caregiver for his elderly
27 parents. Three of his sisters currently reside in

1 Yellowknife while a fourth sister lives in Behchokò,
2 leaving the accused to provide the day-to-day care
3 required by his ailing parents.

4 Following his conviction, the accused has
5 repeatedly expressed concern that there would be no
6 one to care for his parents while he was in custody.
7 Recently, the accused's father has been moved to an
8 extended care facility. The accused claims to have
9 regular contact with his sisters and their respective
10 families, but no explanation was ever provided as to
11 why the accused's four sisters were not able to share in
12 the care of their parents.

13 The accused's mother gave evidence
14 before me during the Crown's application to revoke the
15 accused's judicial interim release following his
16 conviction. Some of his sisters also attended the trial of
17 this matter. In preparing the update to the
18 pre-sentence report, the writer was specifically asked
19 by the Court to reach out to the accused's parents and
20 his sisters. Fortunately, the author of the PSR was able
21 to meet with the accused's mother. Unfortunately,
22 despite significant efforts on the part of the writer, none
23 of the accused's sisters participated in this process.

24 The accused has never married but has
25 one daughter aged nine years who lives with her
26 mother in Yellowknife. The accused was involved in a
27 relationship with the child's mother, the daughter of the

1 complainant, for approximately 12 years.

2 He described the relationship with his
3 daughter as “good,” but also indicated that the child
4 was temporarily apprehended by Child and Family
5 Services at one point though subsequently returned to
6 the mother. The accused acknowledges he has never
7 paid any child support.

8 He reported to both the author of the
9 *Gladue* report and the pre-sentence report the
10 importance that he attaches to maintaining a
11 relationship with his daughter and exposing her to the
12 Tłıchq̓ culture. While he has no structured access, he
13 maintains that he speaks to his daughter on the
14 telephone every day and visits with her when he is in
15 Yellowknife. This is an important relationship in the
16 lives of both you, Mr. Mantla, and also your daughter. I
17 urge you to continue to have close contact with your
18 child. She needs your love and support; you need her
19 love and support.

20 Mr. Mantla has a solid record of
21 employment though was unemployed at the time this
22 matter proceeded to trial. Historically, he worked in the
23 mining field for approximately 17 years. More recently,
24 he worked as a janitor, firefighter, labourer, and a guide
25 for hunters and tourists. In the *Gladue* report it is noted
26 that he has been a Tłıchq̓ instructor for students at
27 schools in the Behchok̓ area.

1 He has also taught traditional practices to
2 students. He is concerned that he will no longer be
3 able to work at the local schools on account of his
4 criminal record, including his recent conviction for
5 sexual assault. He is also concerned that a firearms
6 prohibition order would have a serious negative impact
7 on his ability to pursue a traditional lifestyle on the land.

8 In the future he hopes to complete
9 grade 12 and to continue to find employment outside or
10 on the land. The knowledge and experience that you
11 have, Mr. Mantla, about Tłıchq̓ culture and traditional
12 practices is critical to preserving the Tłıchq̓ culture
13 amongst your fellow residents of Behchok̓ and the
14 surrounding area. It is clear to me that you have some
15 exceptional skills, and I hope that you will see it as part
16 of your responsibility as a member of your community
17 to share that knowledge with others.

18 Mr. Mantla told the author of the *Gladue*
19 report that all his past difficulties with the law had been
20 the result of alcohol abuse. He acknowledged that the
21 current offence of which he has no memory was the
22 result of intoxication. He started drinking at the age of
23 about 17 years. He also started using marijuana at
24 around the same time but reported no ongoing issues
25 with drugs.

26 Over the years his drinking got
27 progressively worse such that he would drink for one to

1 two days while on his time off work. He is currently
2 attending AA meetings at the South Slave Correctional
3 Centre and hopes to participate in addictions treatment
4 in the future. Mr. Mantla, I very much hope that you will
5 do that. Mr. Mantla reported that he does not suffer
6 from depression or any other mental health disorder.
7 According to the author of the *Gladue* report:

8 He is motivated to fill his days with as
9 much activity as he can.

10 Mr. Mantla, that is a very good start to turning your life
11 around.

12 At the request of the Court, Merril Dean
13 of Dean Educational and Psychological Counselling,
14 Yellowknife, conducted a psychological assessment of
15 Mr. Mantla. Based on the results of various tests
16 administered to Mr. Mantla, Ms. Dean concluded that
17 he does not have a cognitive or intellectual disability.
18 She noted that his cognitive performance on the tests
19 administered was unbalanced. While his score on the
20 verbal comprehension index was extremely low, he
21 scored within the average range with respect to the
22 perceptual reasoning index and the comprehensive test
23 for nonverbal intelligence.

24 THE INTERPRETER: I need a break.

25 THE COURT: Do you want me to break that down?

26 THE INTERPRETER: No, no. I need a break.

27 THE COURT: Okay. Then let's have a break. Madam

1 Interpreter, why do you not let us know when you are
2 ready to continue, okay? We are nearly finished, okay?

3 THE CLERK: All rise. Supreme Court is adjourned
4 briefly.

5 **(PROCEEDINGS ADJOURNED AT 1:26 PM)**

6 **(PROCEEDINGS RECONVENED AT 1:41 PM)**

7 THE CLERK: Order. All rise. Court is reconvened.

8 THE COURT: Thank you. Please be seated. At
9 the request of the Court, Merril Dean of Dean
10 Educational and Psychological Counselling,
11 Yellowknife, conducted a psychological assessment of
12 the accused. Based on the results of various tests,
13 Ms. Dean concluded that he does not have a cognitive
14 or intellectual disability.

15 She noted that his cognitive performance
16 on the tests administered was unbalanced. While his
17 score on the verbal comprehension index was
18 extremely low, he scored within the average range with
19 respect to the perceptual reasoning index and the
20 comprehension test for nonverbal intelligence.

21 His ability to use the English language to
22 communicate was found to be like an average seven-
23 year-old child. Similarly, Ms. Dean concluded that his
24 difficulties completing cognitive tasks were likely
25 language based rather than the result of cognitive
26 disability.

27 The Crown relied on a series of

1 authorities in support of its initial submission that an
2 appropriate sentence in this instance was one of four
3 years. The defence, on the other hand, initially urged
4 the Court to impose a sentence of 2.5 years. Following
5 the completion of a *Gladue* report, a psychological
6 assessment and a supplementary pre-sentence report,
7 both the Crown and defence revised their respective
8 sentencing positions.

9 Specifically, the Crown suggested a
10 sentence of three to four years would be appropriate,
11 while the defence advocated for a sentence of two
12 years less a day followed by a period of probation of
13 two years.

14 I have carefully considered the various
15 cases cited by counsel. While sentencing authorities
16 are helpful, I would observe that no two cases are alike,
17 and the role of the Court is not to dissect sentencing
18 authorities to find a perfect fit. The sentencing process
19 is not a mechanical one but, rather, the delicate
20 balancing of sentencing principles, the unique
21 circumstances of both the case and the offender and
22 the application of relevant aggravating and mitigating
23 circumstances.

24 Case authorities do, however, help to
25 establish touchstones or benchmarks in terms of
26 sentencing in similar cases. As such, I have reviewed
27 the three cases cited by the Crown, *R v Kakfwj*, 2018

1 NWTSC 82, in which the Court sentenced a 28-year-
2 old man to four years' imprisonment following his
3 conviction for sexual assault.

4 *R v Gargan*, 2018 NWTSC 70. Gargan,
5 age 54 years, entered a guilty plea to a charge of
6 sexual assault and was sentenced to 18 months
7 imprisonment followed by two years probation. And
8 finally, *R v K.(M.J.)*, 2019 NWTSC 53, in which the 45-
9 year-old accused was sentenced to three years and 10
10 months following his trial conviction for a major sexual
11 assault on a 23-year-old victim.

12 The defence relies on *R v Lepine*, 2013
13 NWTSC 19, where the accused was sentenced to three
14 years' imprisonment following his conviction by a jury of
15 sexual assault.

16 I find the following aggravating
17 circumstances to exist in this case. 1) The victim was
18 passed out or unconscious at the time of the sexual
19 assault. She was in the home of a fellow community
20 member, the sister of the accused, and was in a highly
21 vulnerable state on account of her physical condition.
22 Women and girls are entitled to feel safe in their
23 communities. In my view, this is a highly aggravating
24 circumstance.

25 Second, the prevalence of sexual assault
26 in the Northwest Territories in circumstances involving
27 passed-out, sleeping or unconscious highly vulnerable

1 victims. In *K. (M.J.)*, Justice Shaner made mention of
2 the incidence of sexual assault on sleeping or
3 passed-out victims. She stated:

4 It is worth repeating what my colleagues
5 and I have said in other cases. Sexual
6 assault is shockingly common throughout
7 the Northwest Territories. It is particularly
8 common for sexual assault to happen to
9 a vulnerable victim who is sleeping or
10 who is intoxicated.

11 3) While the Crown does not suggest that the
12 circumstances involved a breach of trust, the fact that
13 the accused is the father of the victim's grandchild and
14 a former partner of the victim's daughter is an
15 aggravating circumstance. As a result of the offence,
16 the relationship between the victim and her daughter
17 has been strained.

18 4) The accused had unprotected sexual
19 contact with the victim as evidenced by the semen
20 found on the victim's panties and the presence of the
21 accused's DNA on the vaginal and anal swabs
22 obtained during the sexual assault examination. I am
23 going to pause for a moment. Mr. Pham, what is
24 happening with your trial in Territorial Court?

25 T. PHAM: The Court has agreed to stand that matter
26 down 'til 2:30.

27 THE COURT: Okay. Because I am quite happy to pass

1 a message on to TC if you need me to do so.

2 T. PHAM: I don't believe so as long as we're done by
3 2:30. I've already obtained that --

4 THE COURT: We will certainly be done by 2:30. I
5 promise.

6 T. PHAM: Thank you, Sir.

7 THE COURT: Thank you. Mitigating circumstances. I
8 find the following mitigating circumstances are present
9 in this instance. One, the accused's apology to the
10 victim during the course of the sentencing continuation
11 hearing on November 15, 2023.

12 THE INTERPRETER: Could you say that again?

13 THE COURT: Yes. November 15, 2023, the victim --
14 sorry, the accused's apology to the victim during the
15 course of the sentencing hearing.

16 THE INTERPRETER: That's two days ago?

17 THE COURT: Yes.

18 THE INTERPRETER: Okay. Sorry.

19 THE COURT: Though the pre-sentence reports noted
20 that the accused did not accept responsibility for his
21 behaviour and continued to maintain his innocence
22 after his conviction, I found his apology to the victim to
23 be genuine and sincere. Second, while dated, it would
24 appear that the accused did well while subject to a
25 probation order flowing from his previous conviction for
26 sexual assault. Similarly, he was on judicial interim
27 release without incident for a period of four years

1 relative to this offence.

2 It is a fundamental principle of sentencing
3 that a sentence must be proportionate to the gravity of
4 the offence and the degree of responsibility of the
5 offender. Sexual assault is a serious offence in which
6 the primary sentencing objectives are denunciation and
7 specific and general deterrence given the generally
8 very high moral blameworthiness associated with the
9 offence. Blameworthiness -- is that -- can you translate
10 that or --

11 THE INTERPRETER: Yeah -- can you say that again?

12 THE COURT: Yes. Given the generally very high moral
13 blameworthiness associated with the offence. It is clear
14 from my review of the authorities, that this is particularly
15 the case in situations involving sleeping or unconscious
16 victims.

17 All of the circumstances relating to this
18 offender, including the impact of *Gladue* factors as well
19 as the circumstances relating to this offence, must be
20 considered in the sentencing process in assessing this
21 offender's degree of responsibility or moral
22 blameworthiness.

23 THE INTERPRETER: What --

24 THE COURT: Do you want me to do that again?

25 THE INTERPRETER: Yes.

26 THE COURT: Okay. The last part?

27 THE INTERPRETER: Yeah.

1 THE COURT: Must be considered in the sentencing
2 process in assessing this offender's degree of
3 responsibility or moral blameworthiness. Do you need
4 a break, Madam Interpreter?

5 THE INTERPRETER: No.

6 THE COURT: Okay.

7 THE INTERPRETER: I'm okay.

8 THE COURT: The Supreme Court recognized in
9 *Gladue* and subsequently in *Ipeelee* that Aboriginal
10 people face racism and systemic discrimination inside
11 and outside the criminal justice system. Do you need
12 me to do that again? Will I break it down?

13 THE INTERPRETER: Yeah, it's too long.

14 THE COURT: Too long? The Supreme Court
15 recognized in *Gladue* and *Ipeelee* that Aboriginal
16 people face racism and systemic discrimination inside
17 and outside the criminal justice system. *Ipeelee*
18 identifies two ways in which specific *Gladue* factors
19 properly inform the sentencing process. First, systemic
20 and background factors associated with an individual
21 offender may assist in assessing moral
22 blameworthiness of that offender.

23 Second, the same inquiry --

24 THE INTERPRETER: Sorry?

25 THE COURT: The same inquiry -- the same process.

26 THE INTERPRETER: Okay.

27 THE COURT: May assist in assessing the overall

1 effectiveness of the sentence itself. The Supreme
2 Court in *Ipeelee* instructed trial courts at paragraph 60
3 that they:

4 Must take judicial notice of such matters
5 as the history of colonialism,
6 displacement in residential schools, and
7 how that history continues to translate
8 into lower educational attainment, lower
9 incomes, higher unemployment, higher
10 rates of substance abuse and suicide,
11 and of course, higher levels of
12 incarceration for Aboriginal people.
13 These matters on their own do not
14 necessarily justify a different sentence for
15 Aboriginal offenders. Rather, they
16 provide the necessary context for
17 understanding and evaluating the case-
18 specific information presented by
19 counsel.

20 In this case while Mr. Mantla did not attend a residential
21 school, both of his parents and a high proportion of
22 community members from Behchokò are residential
23 school survivors. The evidence before me points
24 overwhelmingly to the fact that the accused's parents
25 and other community members turned to alcohol as a
26 way to blunt the trauma flowing from the multipronged
27 impact. Flowing from the multiple ways ...

1 THE INTERPRETER: You should have got a second
2 interpreter.

3 THE COURT: I am --

4 THE INTERPRETER: This is too much. It's just too
5 much.

6 THE COURT: I have one more page. That is all.

7 THE INTERPRETER: No.

8 THE COURT: Would you like a break, ma'am?

9 THE INTERPRETER: Yeah.

10 THE COURT: Oh, okay. We will take another break.
11 Madam Clerk, when the interpreter is ready to continue,
12 we -- just let me know.

13 THE CLERK: Yes, Your Honour.

14 THE COURT: Thank you very much.

15 THE CLERK: All rise. Court is adjourned briefly.

16 **(PROCEEDINGS ADJOURNED AT 2:07 PM)**

17 **(PROCEEDINGS RECONVENED AT 2:18 PM)**

18 THE CLERK: Order. All rise. Court is reconvened.

19 THE COURT: Thank you. Please be seated. It is well
20 recognized that this type of trauma infects successive
21 generations. There is a growing body of knowledge
22 and understanding of the characteristics and impact of
23 intergenerational trauma.

24 In this instance it seems clear that the
25 accused's abuse of alcohol flows from intergenerational
26 trauma. The abuse of alcohol by the parents of the
27 accused was doubtless a factor in the incidences of

1 domestic violence within the family, including violence
2 directed towards the accused and his sisters.

3 It seems reasonable to conclude that the
4 accused's delayed mastery of verbal skills was at least
5 partly related to the emotional trauma created by
6 alcohol-fuelled domestic violence within the family.
7 Likewise, incidences of school bullying and English
8 language comprehension challenges can reasonably
9 be linked to the delayed development of English
10 language communication skills.

11 Factoring in the circumstance of frequent
12 absences from school to support his family in the
13 pursuit of a traditional lifestyle spent on the land, the
14 accused struggled with school and left after finishing
15 grade 10. In my view this combination of
16 circumstances was the result of his Indigenous heritage
17 and intergenerational trauma and, as such, properly
18 characterized as *Gladue* factors.

19 I am satisfied that the accused's
20 background together with the systemic and other
21 background factors and circumstance has the effect of
22 reducing moral culpability. Reduced moral culpability is
23 in my view one aspect of the proportionality analysis.
24 The Supreme Court's decision in *Gladue* does not
25 support an automatic reduction in sentence on account
26 of the fact that the offender is Indigenous or that certain
27 so-called *Gladue* factors may apply. The sentencing

1 judge still has a duty to find a sentence that is fit
2 considering all of the circumstances. The application of
3 the *Gladue* analysis together with the consideration of
4 all the other relevant circumstances achieves an
5 appropriate sentence.

6 In this instance I take the three-year
7 starting point and then examine the aggravating and
8 mitigating circumstances that exist in this instance,
9 including the accused's moral culpability previously
10 described. Weighing all of these factors, I am satisfied
11 that a fit and proper sentence in this instance is three
12 years' imprisonment.

13 Please stand up, Mr. Mantla. On the
14 charge of sexual assault of C.M., I sentence you to
15 three years' imprisonment. I give you credit for
16 7.5 months of pretrial custody and reduce the time to
17 be served accordingly. I would make the following
18 ancillary orders: a mandatory firearm prohibitions order
19 pursuant section 109 of the *Criminal Code*.

20 In addition, at the request of the defence,
21 I make an order under section 113(1) of the *Criminal*
22 *Code* suspending the operation of the firearms
23 prohibition order so as to permit the accused to pursue
24 his traditional lifestyle through sustenance hunting and
25 trapping. I am sure that Mr. Pham will explain that to
26 you in a bit more detail. Second, a DNA order requiring
27 the accused to provide a sample of his DNA within the

1 next 72 hours. A 20-year *SOIRA* order pursuant to
2 section 490 --

3 THE INTERPRETER: Pardon me?

4 THE COURT: A 20-year *SOIRA* order pursuant to
5 section 490.013(2)(b) of the *Criminal Code*. Again,
6 Mr. Mantla, I am sure that Mr. Pham will explain that to
7 you in greater detail. An order pursuant to
8 section 743.21 of the *Criminal Code* prohibiting you
9 from communicating directly or indirectly with C.M.
10 during the custodial period of the sentence.

11 What that means, Mr. Mantla, is that you
12 cannot contact C.M. while you are serving your
13 sentence in prison. You cannot send her messages
14 through other people, and you cannot contact her
15 directly on the telephone, for example. Mr. Mantla, you
16 can have a seat.

17 Mr. Mantla, this is a very serious offence,
18 but I am very moved by your personal circumstances.
19 In my long time working in the Northwest Territories
20 and Yukon, I am not sure I have ever encountered
21 someone like you. You are caught in a very difficult
22 situation. You are forced to live in a modern world, but
23 your whole life has been about living a traditional life on
24 the land. It seems to me that you have one foot in one
25 world and another foot in a very different world. This
26 makes your life very complicated. I wish you the very
27 best, Mr. Mantla. Anything further, counsel?

1 Mr. Green?

2 B. GREEN: No, Your Honour. Thank you. Nothing
3 further from Crown.

4 THE COURT: Thank you very much, Mr. Green.
5 Mr. Pham, anything further?

6 T. PHAM: No, thank you, Sir.

7 THE COURT: Thank you both very much.

8 THE CLERK: All rise.

9 **(TELECONFERENCE CONCLUDES)**

10 **(PROCEEDINGS CONCLUDED)**

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1 **CERTIFICATE OF TRANSCRIPT**

2 Veritext Legal Solutions, Canada, the undersigned, hereby
3 certify that the foregoing pages are a complete and accurate
4 transcript of the proceedings transcribed from the audio
5 recording to the best of our skill and ability. Judicial
6 amendments have been applied to this transcript.

7

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9 Dated at the City of Toronto, in the Province of Ontario, this
10 15th day of December, 2023.

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13 *Veritext Legal Solutions, Canada*

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16 Veritext Legal Solutions, Canada

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