R v Avadluk, 2025 NWTSC 37 S-1-CR-2012-000093

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HIS MAJESTY THE KING

-v-

NOEL AVADLUK

Transcript of the Decision of the Honourable Deputy Justice L.A. Charbonneau, sitting in Yellowknife, in the Northwest Territories, on the 16th day of May, 2025.

APPEARANCES:

B. MacPherson:	Counsel for the Crown
K. Oja:	Counsel for the Defence appearing via videoconference

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Charges under s. 271(a) and 246(a) 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*.

INTRODUCTION

In 2017, Mr. Avadluk was designated a dangerous offender and was sentenced to an indeterminate term of imprisonment. He successfully appealed the indeterminate sentence, and the matter was remitted for a new sentencing hearing in this court. This re-hearing proceeded on April 2nd. At that hearing, Crown and defence were in agreement as to what the Court should do on sentencing.

They suggested that a determinate sentence of imprisonment of 10 years followed by a 10-year long-term supervision order be imposed. The jail term would be reduced to give Mr. Avadluk credit for the time that has spent in custody

First, I think it is important to recount briefly the circumstances of the offence that gave rise to these proceedings.

On the evening of that offence, Mr. Avadluk and another man had been visiting the victim in her home. When it was time for them to leave, she escorted the two men to the door. The other man left.

Mr. Avadluk stayed and suggested that he and the victim have sex. She refused. He dragged her into the bathroom, threw her on the floor and had forced sexual intercourse with her. She resisted and he

put his hand over her nose and mouth.

He took her to the bedroom, put her on the bed and sexually assaulted her a second time. He once again covered her nose and mouth with his hand. She passed out. Mr. Avadluk went to another room and fell asleep. When the victim woke up, she chased him out of her apartment and sought help from the police.

At the original sentencing hearing the sentencing judge described the assault as sudden, brutal and sustained. This description in my opinion is fully supported by the trial's evidentiary record.

In the victim impact statement that was filed as part of the 2017 sentencing hearing, the victim describes the traumatic impact that these events had on her. She described herself as, “too depressed to do anything.” She said this event caused her to drink more, to get into more fights with her boyfriends and close friends. She wrote that she suffered a loss of appetite and lost a lot of weight. She reported difficulty sleeping, waking up from nightmares several times a night.

There is no updated information on the record before me about how she is doing now. We can hope she is doing better, but we do know that victims of sexual assault often experience long-term impacts from

this type of crime.

CRIMINAL HISTORY

Mr. Avadluk's criminal history was discussed in detail in the original sentencing decision. *R v Avadluk,* 2017 NWTSC 51. Aside from this offence, he has 43 convictions, between 1985 and 2012. There are a variety of convictions on this record, but the most relevant ones are the convictions for crimes of violence.

There are a number of convictions for assault and assault causing bodily harm committed against women who were in a relationship with him at the time of the offences. For these offences he received jail sentences countable in months but getting progressively longer. The longest sentence he received for violence towards a spouse was one year imposed in 2000 for an assault causing bodily harm.

In 2009, he was convicted of a sexual assault. It was a very serious offence as is apparent from the reasons for sentence in that decision, *R v Avadluk*, 2009 NWTSC 28.

Mr. Avadluk and the victim did not know each other. He encountered her in a building and followed her to where she was going. He forced his way in and sexually assaulted her for a number of

hours. She screamed, tried to resist but was unable to stop him. While this was happening, she feared for her life. The assault left her with bruising all over her body.

Mr. Avadluk had spent 18 months on remand by the time he decided to plead guilty to that charge. At that sentencing hearing the Crown sought a term of imprisonment of three years minus credit for the 18 months he had already spent on remand. The defence argued that the time already served was sufficient.

The Court found that under those circumstances a sentence of three years was at the low end of what could be imposed. Having given Mr. Avadluk credit for his remand time, the Court sentenced him to an additional year in custody followed by two years' probation.

Mr. Avadluk was released from custody on that sentence in December 2009. He was still on probation when he committed the offence that he is to be sentenced for today.

Mr. Avadluk's criminal history is obviously a concern, particularly since his offences have gotten more and more serious over time.

PROCEDURAL HISTORY

On this matter, after he was charged, Mr. Avadluk exercised his right to be tried before a judge and jury. That trial proceeded in August 2014, and the jury found him guilty.

The Crown gave notice that it would seek to have him declared a dangerous offender. Psychiatric assessments were ordered, and other materials were gathered in preparation for that hearing. The hearing proceeded over different dates in February, March and April of 2017, Mr. Avadluk was sentenced on August 2, 2017.

The sentencing judge designated Mr. Avadluk a dangerous offender and sentenced him to an indeterminate term of imprisonment. Mr. Avadluk filed appeals of both his conviction and sentence. For a variety of reasons that I do not need to get into here, it took a long time before these appeals were ready to be heard.

Ultimately, the conviction appeal was dismissed in April 2023. *R v Avadluk*, 2023 NWTCA 3. The sentence appeal proceeded in January 2024. In that appeal Mr. Avadluk did not challenge the dangerous offender designation. He challenged only the indeterminate sentence. As he had been in custody for several years at that point, updated correctional records were adduced as fresh evidence

on the appeal.

The Court of Appeal allowed his appeal and set aside the indeterminate sentence. *R v Avadluk*, 2024 NWTCA 2. Mr. Avadluk asked the Court of Appeal to resentence him then and there, but the Court of Appeal declined to do so because it considered that more information was needed, including updated expert evidence and risk assessments. The Court of Appeal remitted the matter back for sentencing.

EVIDENCE ADDUCED AT THIS HEARING

At this hearing, counsel have filed extensive materials. Exhibit S-1 contains seven volumes of materials. They include the documents that were filed at the original sentencing hearing, and a transcript of that hearing. The materials also include the fresh evidence that was adduced at the sentence appeal and essentially consists of updated correctional records. Finally, they include a psychiatric assessment dated November 11, 2024, authored by Dr. Shabehram Lohrasbe.

All these materials were filed in advance of the hearing. I had an opportunity to review them before hearing the submissions on April 2nd.

At the hearing, counsel filed additional materials that they advised had actually been part of

the fresh evidence presented to the Court of Appeal but were inadvertently not included in the other materials. Those documents were marked as Exhibit S-2. I have reviewed them as well.

ANALYSIS

1. Legal Framework

As I have already noted, Mr. Avadluk's designation as a dangerous offender is not in question in this sentencing; the only thing to be decided by me is what his sentence should be.

Section 753 (4), of the *Criminal Code* sets out three sentencing options when a person has been designated a dangerous offender: The first is the imposition of an indeterminate sentence of imprisonment; the second is the imposition of a determinate sentence of imprisonment of at least two years followed by a long-term supervision order that can be for a maximum of 10 years; and the third is simply to impose a determinate sentence as we do in ordinary sentencing proceedings when jail is imposed.

The key principles that govern the determination of what the sentence should be and how the dangerous offender sentencing framework operates were explained by the Supreme Court of Canada in *R v*

Boutilier, 2017 SCC 64. That case was released in December 2017. The sentencing judge did not have the benefit of that decision when she sentenced Mr. Avadluk.

Boutilier recognized that the paramount sentencing objective in dangerous offender proceedings is the protection of the public. However, it found that this is not at the exclusion of the other general sentencing principles that are set out in the *Criminal Code*. All those principles still apply.

Consideration must be given to an offender's degree of blameworthiness. The principle of restraint and, its particular effect when sentencing Indigenous offenders remains applicable. As a result, in considering the three sentencing options the Court must impose the least intrusive sentence required to achieve the objective of protecting the public.

Section 753, (4.1) of the *Code* states that:

> An indeterminate sentence shall be imposed unless the Court is satisfied that there is a reasonable expectation that one of the other two lesser measures will adequately protect the public.

Before *Boutilier*, this has been interpreted by some courts as meaning that once someone is designated a dangerous offender, there is a presumption that an indeterminate sentence will be

appropriate. This interpretation was rejected by the Supreme Court. There is no such presumption.

As already noted, the Court sentencing a dangerous offender has to resort to the least intrusive measure possible.

One of the consequences of that is that in considering whether a determinate sentence, either on its own or with a long-term supervision order, is an appropriate sentence, the Court is not limited to the length of determinate sentence that would be considered fit under the regular sentencing regime.

Because the least intrusive measure that will protect the public must be favoured, it is open to this Court to impose a jail term that would be considered unfit, too long under general sentencing principles. This is because a determinate sentence, even a very lengthy one, is always less intrusive than an indeterminate sentence. If the Court finds that there is a reasonable expectation that such a sentence is enough to protect the public from further violent reoffending, this is what the Court must do.

2. The Principles of Restraint and its Application to Indigenous Offenders

As I said, the paramountcy of public protection in dangerous offender proceedings does not

eliminate the need to consider other sentencing principles, including those that govern the sentencing of Indigenous offenders developed in cases like R v *Gladue*, [1999] 1 S.C.R. 688*, R v Ipeelee,* 2012 SCC 13 and many, many others.

These principles apply here because Mr. Avadluk is an Inuk man.

Mr. Avadluk's background is set out in detail in the pre-sentence report which, Exhibit S-1-5, at pages 963 to 974. It was referred to in some detail at the initial sentencing decision, as well as by the Court of Appeal in its decision.

There is no question that Mr. Avadluk has suffered significant impacts from systemic and background factors that have tragically affected many Indigenous people in this country. His mother went to residential school, and that experience had devastating impacts on her. This in turn has very negative effects on her children.

Mr. Avadluk's childhood was marked by poverty, neglect as well as physical and sexual abuse. As many others whose childhood was plagued by these kinds of things, he began using alcohol at a young age and had developed a serious abuse problem by age 15. He also developed a significant solvent abuse problem.

These factors must be taken into account in these proceedings as they decrease his moral blameworthiness.

Mr. Avadluk's background is also referred to at some length in Dr. Lohrasbe's report, both in relation to his diagnoses and in explaining some of Mr. Avadluk's attitude and posture regarding his offending, more specifically his lack of insight and his unwillingness to take responsibility for the harm he has caused.

I now turn to that report because it provides evidence that is crucial in my assessment.

2. Dr. Lohrasbe's Report

I found Dr. Lohrasbe's report quite compelling, for a number of reasons. Despite the technical nature of some of the topics covered, the language he uses is accessible. The report is thorough, fair and nuanced.

It is also informed by more recent interviews with Mr. Avadluk. In my view, it should be given more weight than the more dated assessments that are before me. Where there is an area of disagreement between Dr. Lohrasbe's conclusions and those reached by psychiatrists who prepared earlier assessments in 2017, I attach greater weight to and

accept Dr. Lohrasbe's conclusions.

a) Diagnoses

Dr. Lohrasbe concluded that Mr. Avadluk is a mentally disordered man with significant cognitive limitations. In his view he manifests symptoms of mental disorder that are more significant than what emerged and was referenced in the earlier assessments. In particular, Dr. Lohrasbe noted, both in the records he reviewed and during his own interviews, the presence of paranoia which he notes is at times "of delusional intensity." He views these dysfunctions as the product of the combination of Mr. Avadluk's childhood adversity and trauma coupled with the impact of substance abuse, including prenatal exposure, acute misuse and chronic impact of this use on Mr. Avadluk's brain function.

Dr. Lohrasbe diagnosed Mr. Avadluk with the following: fetal alcohol spectrum disorder, post-traumatic stress disorder, substance abuse disorder and antisocial personality disorder.

Of note, the earlier reports had discussed the issue of psychopathy and of Mr. Avadluk's results when he was tested with the instrument used to assist with that diagnosis.

Dr. Lohrasbe is of the view that psychopathy should not be the focus of risk management and treatment plans. He also disagrees with earlier diagnoses that Mr. Avadluk suffers from a sexual disorder or deviancy. In his view his sexually aggressive behaviour is more likely the result of other issues, including what the doctor calls "maldeveloped personality." He writes at page 23 of his report:

> Many antisocial men are aggressive and violent across situations. Their psychosexual and social maturity was impeded, and they are stuck at immature levels of personality functioning. His sexual violence was part of a broader pattern of interpersonal aggression, not a particular sexual deviancy.

b) Risk Assessment and Risk Reduction

As far as risk assessment and risk reduction measures, Dr. Lohrasbe's conclusion is that Mr. Avadluk presents a high risk to reoffend in a violent manner in the foreseeable future.

That conclusion is hardly surprising when considering Mr. Avadluk's past conduct, his substance abuse problem, his lack of insight, his stance of minimization and victim blaming and some of the mental disorders that are play. These things are all

very concerning.

However, Dr. Lohrasbe does not exclude the possibility that this risk could be managed in the community. Two things in particular warrant comment.

The first is the impact of age. It is generally accepted as a result of group data stemming from research that generally speaking there comes a point where the risk of violent offending decreases with age.

Dr. Woodside, one of the two psychiatrists who assessed Mr. Avadluk in 2017, had expressed the view that this may not apply to Mr. Avadluk because his trend of offending was unusual. His more recent offences leading up to 2012 were much more serious than the offences he committed when he was younger. In addition, those offenses progressed to sexual offending.

Based on this, Dr. Woodside had evoked the possibility that the effect of, "burnout" or aging may not be as relevant as it otherwise might be in Mr. Avadluk's future risk management. Dr. Lohrasbe, while agreeing that Mr. Avadluk's offending pattern is atypical, does not agree that any assumption should be drawn from this on the effect that “burnout” and aging can be expected to have in Mr. Avadluk’s case.

He writes:

> Mr. Avadluk was 39 years old at the time of the

predicate offence in 2012. At age 51 years he is in a significantly different age bracket among violent offenders. To dismiss the expectation based on group data that his risk of violence will decline with age is to make a counter expectation that the arc of his offending in his 30s will extend into his 50s, even after lengthy incarceration. In my view that is in an unwarranted assumption.

In other words, Dr. Lohrasbe does consider that age is a risk reduction factor for Mr. Avadluk, as it is considered to be the case with offenders generally. I accept his assessment.

The other significant factor is the explicit fears Mr. Avadluk expressed in his interviews with Dr. Lohrasbe about dying in jail. Mr. Avadluk may not take responsibility for his offence and may be entrenched in a world view where he is the victim, but he does understand the potential consequences if he is convicted of another serious offence in the future.

Therefore, although he has been cavalier with his compliance with court orders in the past, Dr. Lohrasbe anticipates better compliance in the future because Mr. Avadluk does understand what is now at stake for him.

Ordinarily, we hope that offenders will eventually gain insight, empathy for their victims and

come to understand the harm they have caused.

We hope that this insight will eventually provide an offender a powerful motivation to effect meaningful behavioural change and follow risk reduction strategies. This does not appear to be something that can be expected here, at least not at this point.

That said, even if Mr. Avadluk's motivation is only to benefit himself, that is, keeping himself out of custody, as opposed to avoid harming others, it may nonetheless still be a powerful motivation. It might, in this case, be an even more powerful one. That is how I understand Dr. Lohrasbe's comments.

c) Treatability

Dr. Lohrasbe addresses the issue of treatability at pages 29 to 33 of his report. Given Mr. Avadluk's diagnoses, his treatment presents definite challenges. Dr. Lohrasbe explains why he thinks that classic in-custody high-intensity programming for Mr. Avadluk may not be effective. In his view individualized counselling, therapy and psychiatric treatment that is customized to his specific needs will be more effective and should be preferred. He writes at page 30:

During the interviews he spoke positively of his

experience with therapists doing individual counselling where he has been able to express his grief over lost childhood, his sexual traumas and has found some degree of peace through that sharing. He has stated that he has learned to walk away by discussing confrontational situations with his therapists.

Dr. Lohrasbe views abstinence from substance use as another key. In that respect the records suggest that Mr. Avadluk's use of substances has been very limited during his lengthy incarceration. The evidence shows that he has participated in AA and has reached the point of chairing meetings, all of which is very positive and encouraging.

If this can be maintained in a non-custodial setting, it would likely go some way in reducing Mr. Avadluk's risk.

In addition, Mr. Avadluk has taken satisfaction and pride in his ability to have been employed, albeit intermittently. He has persisted in his attempts to upgrade his education, and Dr. Lohrasbe thinks that this should be encouraged.

Mr. Avadluk has responded positively in settings and situations that help him connect with his Indigenous heritage. Dr. Lohrasbe notes that it is encouraging that he has experienced interest in carving and is of the view that counselling ideally with an

Indigenous elder would be beneficial to Mr. Avadluk.

Dr. Lohrasbe concludes his report with a summary of findings that includes several points. Those points need to be considered together.

While there are obvious grounds for concern and some uncertainty, overall the doctor expresses cautious optimism that provided the right level of support and supervision are in place, risk management in the community is a realistic possibility. This, however, is on the assumption that Mr. Avadluk "demonstrates a commitment to openness, honesty and cooperation with a comprehensive risk management plan".

It is also subject to the caveat that abstinence from substance use is crucial to risk management. The doctor also says that a slow and step-wise reintegration plan during a prolonged period of time or follow-up is critical for ongoing risk reduction and risk management.

3. Effect of a Long-Term Supervision Order

The evidence adduced at the first sentencing hearing, which is also before me, sets out how the long-term supervision order regime operates.

Breaches of a long-term supervision order may have an immediate impact. The correctional authorities have very concrete measures available to them if an offender bound by a long-term supervision order does not comply with the conditions that have been put in place to manage the risk.

Breaches can lead to further charges, engage the bail process and, depending on the circumstances, result in detention until trial. If the offender is ultimately convicted, it may give rise to the imposition of a further custodial sentence.

For example, in *Ipeelee*, a case usually referred to describe the principles that govern sentencing of Indigenous offenders, the fact is that at the end of the day, the Supreme Court of Canada found that a sentence of one year imprisonment was appropriate for the breach of an alcohol abstention condition of a long-term supervision order, in a context where no separate offence had been committed.

It is important for everyone to understand, especially Mr. Avadluk, that proceeded by indictment, a charge for breaching a long-term supervision order is punishable by a jail term of up to 10 years. This is the same maximum penalty as the offence that Mr. Avadluk is being sentenced for now.

So to make the point clear, it is a very serious offence. Mr. Avadluk needs to understand that

if his goal is to remain out of custody.

Issues in compliance may also result in the suspension of the long-term supervision order.

What this means in concrete terms is that the long-term supervision order can be suspended for a time and come back into effect later. This means that that a 10-year order can, in the end, span over a longer period of time if there are breaches or suspensions along the way.

CONCLUSION

The task of a sentencing court always involves some level of risk assessment. In dangerous offender proceedings it is a huge part of the analysis. And it is a very challenging task because no expert, test or actuarial instrument can predict the future with any certainty.

When an offender is sentenced through this regime, it is often the case that at the time of sentencing that offender continues to present a risk to commit another violent offence in the future. The real issue is whether that risk can eventually be managed in the community. And that is not an easy question to answer. It is also a very daunting question to answer

because no one wants to see another person harmed.

The sentence jointly proposed by counsel will result in Mr. Avadluk remaining in custody until August 2027. He will then be subject to the long-term supervision order until at least August of 2037. By then Mr. Avadluk will be in his 60s. For the duration of that time the parole authorities will have the power to supervise and support him through conditions that they impose.

I said "the sentence jointly proposed by counsel", but this is not a joint submission in the classic sense of the word in sentencing law. As was noted during submissions, the principles that underlie the law of joint submissions are not really transferable to the area of dangerous offender proceedings. In these types of proceedings, key evidence, including the psychiatric assessments, are only obtained after the dangerous offender proceedings are initiated, after conviction. Counsel cannot reasonably be expected to have meaningful discussions about their respective positions before that evidence is available.

Still, when Crown and defence present sentencing positions that are aligned, that position needs to be given very serious consideration by the Court.

As I said already, there are never

guarantees or certainty in such matters. There are many things in Dr. Lohrasbe's report that are quite concerning from a public safety point of view.

But this is also not a case where in light of the evidence before me at this point, I could fairly say that there is no reasonable expectation that Mr. Avadluk's risk can be managed other than by the imposition of an indeterminate sentence.

That being so, reminding myself of the importance of restraint, that an indeterminate sentence can only be imposed as a last resort, and taking into account the positions of counsel and their submissions in support of those positions, I have concluded that the sentence should be the one counsel have both suggested.

THE MECHANICS TO IMPLEMENT THE SENTENCE

At the hearing, there was a discussion about mechanics of imposing this sentence at this point in time, to factor in the many years after Mr. Avadluk has already spent in custody.

One possibility that was raised was that I could impose a 10-year sentence today or endorse the warrant of committal to direct that for sentence calculation purposes, the sentence is deemed to have commenced in August 2017.

This would require either issuing a warrant of committal that is backdated to 2017, or, possibly, amending the one that was issued at the time of the original sentencing.

I have thought about all this, and in my view, these courses of action are not available to me. Section 719 of the *Criminal Code* is very clear: a sentence of incarceration commences on the day it is imposed unless an enactment says differently.

I am not aware of any enactment that gives me the authority to stipulate that a sentence that I impose today commenced several years ago. So in my view, backdating a Warrant of Committal is problematic for a number of reasons, primarily because it flies in the face of the clear language of section 719.

The only proper way of proceeding that I can think of is, having concluded that a 10-year determinate sentence is appropriate, is to reduce that jail term to account for the time that Mr. Avadluk has already served on the indeterminate sentence originally imposed.

That is in line with how the Ontario Court of Appeal proceeded in *R v Roks,* 2011 ONCA 618, paras 22-28, in a slightly different context.

Ancillary orders were made at the first sentencing hearing. These were not challenged on

appeal and; they remain in place. I do not think they need to be re-issued. They included a firearms prohibition order, a *SOIRA* order and an DNA order.

The warrant of committal that I issue today will include a condition that Mr. Avadluk not communicate with the victim while in custody pursuant to section 743.21 of the *Criminal Code*. I urge the parole authorities to include such a term when the time comes, in the long-term supervision order. As was noted during the hearing, the Court does not set the conditions for a long-term supervision order. That is the role of the National Parole Board.

Mr. Avadluk commenced serving his indeterminate sentence on August 2, 2017. As of today, he has served seven years, nine months and two weeks. Giving him credit for that and taking that time off of the 10 years, I sentence him today to a further 808 days of imprisonment. This amounts to roughly two years and two months, but the Warrant of Committal will indicate the number of days, for clarity's sale. This will be followed by a long-term supervision order for a period of 10 years.

When the time comes to set the conditions of that long-term supervision order, in addition to the no-contact condition that, I have already talked about, I urge the National Parole Board to

carefully consider Dr. Lohrasbe's report and his recommendations as to things that should be put in place to maximize support to Mr. Avadluk and assist him in successful reinsertion in the community.

That is what is in Mr. Avadluk's best interests, but equally importantly, it is also what is in the best interests of the public in terms of ensuring the safety of the public and avoiding any further offending by Mr. Avadluk.

To this end, I direct that Dr. Lohrasbe's report and the transcript of what I have said today, once it has been filed, be forwarded to the correctional authorities in the hopes that it will assist them in the decisions that they will have to make and what they will have to put in place to assist Mr. Avadluk. I trust the materials will be shared when the time comes, with the parole authorities.

I thank counsel for their work on this case, and for their assistance.

Mr. MacPherson, is there anything I have overlooked or missed?

B. MACPHERSON: No, thank you,

THE COURT: Ms. Oja, is there anything that you want to add?

K. OJA: Not from here, thank you.

THE COURT: Alright. Thank you, Ms. Oja.

We can close court.

Thank you, counsel.

THE CLERK: All rise.

(PROCEEDINGS CONCLUDED)

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.

Dated at the City of Toronto, in the Province of Ontario, this 10th day of June, 2025.

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