

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- vs. -

CHARLIE SIMON

Transcript of the Reasons for Sentence by The Honourable
Judge R. D. Gorin, at Yellowknife in the Northwest
Territories, on 8th May A.D., 2015.

APPEARANCES:

J. Scott, Ms.: Counsel for the Crown

A. Vogt, Ms.: Counsel for the Accused

Charge under s. 273 Criminal Code of Canada

***Ban on publication pursuant to s. 486.4 of
the Criminal Code***

1 8th May, 2015

2 1:30 P.M. Session

3 Darlene Sirman, CSR(A) Court Reporter

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5 THE COURT: Please be seated.

6 Do you wish to have your client seated there
7 beside you, Ms. Vogt?

8 MS. VOGT: Yes, Your Honour.

9 THE COURT: Mr. Simon, you can go
10 ahead.

11 MS. VOGT: Thank you.

12 THE COURT: Charlie Simon is to be
13 sentenced for the offence of aggravated sexual
14 assault contrary to Section 273 of the Criminal
15 Code. The maximum penalty for such an offence is
16 imprisonment for life. Crown and Defence have
17 jointly submitted that a jail term in the range
18 of six to eight years would be appropriate under
19 all of the circumstances. I find their position
20 to be reasonable. Having considered the facts of
21 this case, the seriousness of the Victim's
22 injuries, and the overall impact of the offence
23 on her, the background of the Accused and his
24 guilty plea, I am imposing a jail term of
25 seven years. He will receive credit for his
26 pretrial detention at a rate of 1.5 days for each
27 day he has been incarcerated up to today. I

1 believe that he has spent 160 days in pretrial
2 detention so that will be 240 days' credit
3 deducted from the seven years. There will be a
4 Section 109 Firearms Prohibition Order for a
5 period beginning today and ending ten years
6 following Mr. Simon's release from imprisonment.
7 This order is mandatory. I am also ordering that
8 he comply with the provisions of the Sex Offender
9 Information Registration Act for the rest of his
10 life following his release from imprisonment.
11 This order is mandatory as well - as is a DNA
12 authorization. I must also impose a Victims of
13 Crime Surcharge payable within 60 days following
14 the expiry date noted on the Warrant of
15 Committal. Because the term of imprisonment that
16 I have imposed exceeds two years, probation
17 cannot be ordered.

18 I will now explain my reasons for imposing
19 the seven-year term of imprisonment. There is an
20 Agreed Statement of Facts that has been filed
21 with the court. Its contents have also been read
22 into the court record. I will not go through it
23 in its entirety; however, I think it useful to
24 summarize its content.

25 On June the 15, 2014, the Victim who was
26 just shy of her 24th birthday, Mr. Simon who was
27 44 at the time and another person were consuming

1 alcohol around the area of the swimming pool in
2 Yellowknife. While they were drinking Mr. Simon
3 pulled down the Victim's sports bra and looked at
4 her cleavage. The last thing that the Victim can
5 remember following that is drinking a shot of
6 vodka with Mr. Simon and the other individual
7 present. Sometime later the Victim passed out,
8 and the other person left, telling Mr. Simon to
9 take care of the Victim.

10 Following the departure of the other person,
11 Mr. Simon proceeded to have intercourse with the
12 Victim. He then inserted a cooler bottle into
13 her and stopped when he saw that she was getting
14 hurt. She was asleep throughout, and he went to
15 get a blanket for her. From some distance he saw
16 the police arriving and he left. He then hid out
17 in a tent on the Frame Lake Trail for several
18 months. More than five months later on
19 November the 26th he turned himself into the
20 police.

21 The Victim sustained the following injuries:
22 A tear from her vagina to her anus; a complete
23 tear and severe bruising of her anal sphincter;
24 extensive bruising to both buttocks and a
25 12-centimetre laceration of her lower colon. The
26 septum, in other words the wall of tissue
27 separating the Victim's vagina and rectum, was

1 completely disrupted from the perineum to the
2 posterior portion of the vaginal fornix. Dirt
3 and spruce needles were found in her pelvic
4 cavity. She underwent over four hours of
5 emergency surgery to repair her injuries.
6 Doctors had to cut through her abdominal wall to
7 gain access to and clean out her abdominal
8 cavity. They repaired the lacerations to her
9 colon, vagina, rectum and anal sphincter with a
10 total of 26 stitches. She was also given an
11 ileostomy; in other words, a surgery to divert
12 her stool to an exterior bag on her abdomen in
13 order to allow her anus to heal. The ileostomy
14 and the regime of powerful antibiotics were
15 necessary in order to prevent an abscess in the
16 Victim's pelvis. She was discharged from
17 hospital two weeks following the sexual assault,
18 but has required ongoing care.

19 At present it appears quite likely that the
20 ileostomy will be reversed; however, that has not
21 yet occurred due to concerns as to whether her
22 anal sphincter has yet healed adequately to the
23 point it can properly function on its own. If
24 after given more time to heal, its strength and
25 integrity do not sufficiently return another
26 surgery will be necessary before the ileostomy
27 can be reversed. Both surgeons who treated the

1 Victim described her injuries as the most
2 horrific they had ever seen. The Victim would
3 have died had it not been for the emergency
4 medical treatment that she received.

5 It is very likely at this point that the
6 Victim's physical function is permanently
7 affected. It is uncertain whether the
8 contamination in her pelvis has scarred her
9 fallopian tubes and compromised her fertility.
10 If she is able to become pregnant a Caesarean
11 will be necessary in order to avoid repeated
12 trauma to her weakened rectum and anal sphincter.
13 There have been occasions when the ileostomy she
14 underwent has resulted in her experiencing
15 extreme pain.

16 On the date the conviction was entered and
17 counsel provided their submissions, the Victim
18 indicated that she did not wish to have her
19 Victim Impact Statements read out loud in court.
20 I will therefore not refer to the express
21 contents of those statements in my reasons.
22 Suffice it to say that the psychological effect
23 on the Victim, including her feelings of
24 violation and trauma, have understandably been
25 profound. The extent of the assault and the
26 resulting injuries were, I think, exceptional.
27 The effect that the assault has had on her

1 day-to-day life has been exceptional.

2 Mr. Simon's crime constituted an extreme
3 violation of the Victim's bodily integrity. The
4 effects of that violation continue to this day
5 and will likely continue well into the future -
6 in all probability, for her entire life. Since
7 the offence she has been impacted by depression.
8 She takes anti-depressant medication on a daily
9 basis. The medication helps, however, there are
10 days when she doesn't get out of bed. She
11 isolates herself from others more often and
12 describes herself as being much easier to anger.

13 In short, the sexual assault was of an
14 extraordinarily serious nature. It has had
15 life-altering effects on the Victim. It is among
16 the worst of sexual assaults that I have seen
17 come before the courts in my entire legal career.
18 Further aggravating features include the
19 vulnerability of the Victim at the time of the
20 assault. She was asleep. The sexual assault
21 included both intercourse and the insertion of
22 the liquor bottle. The very serious and long
23 lasting physical and psychological harm to the
24 Victim are highly aggravating. As noted already,
25 the overall impact on the Victim has been and
26 will continue to be life altering.

27 On the other hand, Mr. Simon comes before

1 the court now at 45 years of age with no prior
2 criminal record. Although he initially hid from
3 the police, he eventually surrendered himself.
4 He has consented to his pretrial detention. He
5 fully cooperated with the police following his
6 surrender. He elected to be tried in this court
7 on February the 3rd effectively waiving his right
8 to a Preliminary Inquiry. He pleaded guilty on
9 that same date, and I'm also informed by the
10 Crown that had it not been for Mr. Simon's
11 cooperation and his guilty plea proving the
12 charge against him would have been highly
13 problematic.

14 The guilty plea is highly mitigating since
15 it has spared the Victim the anxiety and
16 anticipation of having to testify at either a
17 Preliminary Inquiry or a trial. In my view
18 notwithstanding that the Accused hid out for a
19 number of months following the offence, the
20 guilty plea should be treated as having been
21 entered at an early opportunity. I think based
22 on what I have heard and read in the Accused's
23 Presentence Report that his guilty plea was a
24 genuine expression of his deep remorse.

25 There is also Mr. Simon's background as an
26 Aboriginal offender which must be considered. He
27 is a member of the G'wichin people and was, for

1 the most part, raised in the small G'wichin
2 communities of Fort MacPherson and Aklavik here
3 in the Northwest Territories.

4 As accurately stated by his lawyer Ms. Vogt
5 in her able submissions the life he was born into
6 has been one of poverty, pain, tragedy and
7 extreme violence. Mr. Simon's mother died when
8 he was young. She had left his father due to his
9 abusive behaviour. Mr. Simon and his siblings
10 were living with his mother in Aklavik when she
11 was shot to death. Mr. Simon was then returned
12 to Fort MacPherson to be raised by his alcoholic
13 father who then abused him physically, sexually
14 and mentally. On one occasion when Mr. Simon's
15 father was sexually abusing Mr. Simon his older
16 brother caught him at it and physically assaulted
17 the father. The sexual abuse then ceased,
18 however, other forms of physical abuse continued.

19 Later when Mr. Simon was 12 years of age the
20 brother who had intervened on his behalf was
21 killed when he was hit by a stray bullet that
22 entered his home. When Mr. Simon was in his
23 early twenties he lost his sister. She was
24 stabbed to death. His father was initially
25 charged with her death but the prosecution did
26 not proceed. Understandably, Mr. Simon found it
27 very difficult losing his sister and suspecting

1 that his father had been the killer.

2 A few years later he lost his older sister.
3 He also lost another brother due to complications
4 from alcohol abuse. His father was ultimately
5 killed by Mr. Simon's nephew who the father had
6 raised. As a result his nephew ultimately
7 received a lengthy custodial sentence.

8 Mr. Simon has been an alcoholic throughout
9 his adult life. Based on what I have read in the
10 Presentence Report and been advised of by
11 Ms. Vogt, there have been periods in his life
12 when he has been able to maintain sobriety, has
13 been able to stay employed and keep a residence
14 and maintain a degree of stability. However,
15 there have also been periods in-between those
16 positive interludes when he has returned to
17 alcoholism, lost the gains he previously made.
18 In the past few years Mr. Simon has largely
19 resided at the Salvation Army in Yellowknife and
20 completed day jobs as a means of securing income.
21 It would appear that he has never had any form of
22 treatment or therapy. He does not wish to do so
23 because he doesn't want to share his issues with
24 people he doesn't know. Unfortunately, his only
25 strategy for dealing with stress and the negative
26 emotions that result from his past experiences is
27 to consume alcohol.

1 The mitigating factors in this case are
2 quite substantial: his early guilty plea; his
3 cooperation with the police, which was I think
4 essential to the Crown's case. As well, there
5 are the background factors I have referred to. I
6 must apply the provisions of Section 718.2(e) of
7 the Criminal Code as it has been interpreted by
8 the Supreme Court of Canada in such cases as
9 Gladue and Ipeelee. I must do so regardless of
10 the seriousness of the offence.

11 In the 1999 case of R. v. Gladue the Supreme
12 Court of Canada observed that,

13 "Generally, the more violent and serious the
14 offence the more likely it is as a
15 practical reality that the terms of
16 imprisonment for Aboriginals and
17 non-Aboriginals will be close to each
18 other or the same, even taking into
19 account their different concepts of
20 sentencing".

21 And I will say at this point certainly there are
22 few cases which equal the offence I am dealing
23 with in terms of their seriousness.

24 However, 13 years after Gladue in
25 R. v. Ipeelee the Supreme Court of Canada made it
26 very clear that regardless of the seriousness of
27 the offence sentencing courts have a duty to

1 apply Section 718.2(e) when dealing with
2 Aboriginal offenders. The Supreme Court further
3 stated that failure to do so will result in a
4 sentence that is not fit and not consistent with
5 the fundamental principle of proportionality.
6 That principle, the principle of proportionality,
7 is set out in Section 718.1 of the Criminal Code.
8 It states a sentence must be proportionate to the
9 gravity of the offence and the degree of
10 responsibility of the offender.

11 The degree of responsibility of Mr. Simon
12 for doing what he did is certainly very high.
13 However, his background factors as an Aboriginal
14 offender must be taken into account. In Ipeelee
15 the Supreme Court of Canada noted that while the
16 difficult background factors that present with
17 many Aboriginal offenders will rarely, if ever,
18 attain a level where one could properly say that
19 their actions were not voluntary and therefore
20 not deserving of criminal sanction, their
21 difficult circumstances may diminish their moral
22 culpability. Put very simply, if one comes from
23 a background such as that of Mr. Simon it is much
24 more difficult to stay out of trouble with the
25 law. His moral blameworthiness is therefore less
26 than would otherwise be the case.

27 In Ipeelee the Supreme Court of Canada

1 quoted from the judgment of Greckol J. of the
2 Alberta Court of Queen's Bench in the 2002 case
3 of R. v. Skani where he stated:

4 "Few mortals could withstand such a
5 childhood and youth without becoming
6 seriously troubled".

7 I think those words equally apply in the case of
8 Mr. Simon.

9 I am of the view that given the very serious
10 nature of Mr. Simon's crime any differences
11 between the Aboriginal and non-Aboriginal
12 concepts of sentencing do not, practically
13 speaking, make a difference in terms of the
14 sentence that should be imposed. However, that
15 having been said, Mr. Simon's background factors
16 certainly do make a difference. They
17 significantly lessen his moral blameworthiness as
18 they would in the case of anyone regardless of
19 their ethnic background. Were I not to take his
20 background into account in such a manner I would
21 be ignoring the unambiguous guidance provided by
22 the Supreme Court of Canada. If I were not to
23 take his background factors into account I would
24 be ignoring a factor very relevant to his moral
25 blameworthiness, his degree of responsibility,
26 and I would, therefore, be imposing an unfit
27 sentence that would fail to properly reflect the

1 overarching principle of proportionality that I
2 have referred to.

3 Under all of the circumstances, while I find
4 that Mr. Simon's moral blameworthiness remains
5 very high it is significantly diminished due to
6 his extremely difficult past. I have, therefore,
7 found that a sentence significantly less severe
8 than that which I would otherwise impose is
9 appropriate under all of the circumstances.

10 In this case Mr. Simon comes before the
11 court with no criminal record whatsoever
12 notwithstanding his very difficult past. In
13 cases where an Accused commits a crime having
14 previously been convicted and sentenced on other
15 crimes his moral blameworthiness will be higher
16 than would otherwise be the case. That certainly
17 cannot be said in this case. In assessing
18 Mr. Simon's moral blameworthiness I have had
19 regard to a complete lack of a criminal record.
20 In saying this I recognize that not having prior
21 convictions amounts to the absence of an
22 aggravating factor as opposed to a mitigating
23 factor. Nonetheless I find the absence of any
24 past convictions to be very noteworthy in this
25 case given the background factors of Mr. Simon
26 that I have referred to.

27 Although he lacks insight into why he did

1 what he did other than to say he grew up with
2 this sort of behaviour, Mr. Simon is genuinely
3 remorseful and shameful of the pain that he has
4 caused the Victim. Ms. Vogt advises that
5 Mr. Simon understands the damage he has inflicted
6 and was adamant at the outset that this case
7 would never go to trial. He wanted to take
8 responsibility for his actions and did not wish
9 to prolong any further pain.

10 As I have said, the case against him may
11 very well have not succeeded had it not been for
12 his cooperation and guilty plea. Were it not for
13 the guilty plea and were I sentencing Mr. Simon
14 following a trial, given the aggravating factors
15 and mitigating factors present in this case,
16 including the background factors I have referred
17 to, and having regard to sentences that have been
18 imposed in comparable cases I would likely have
19 imposed a prison term of 12 years duration.
20 However, due to the highly mitigating effect of
21 the Accused's cooperation with the police and his
22 guilty plea I have found a period of seven years
23 to be appropriate.

24 Mr. Simon, I anticipate that during your
25 prison term you may well have access to
26 therapeutic programs. I cannot order you to take
27 them but I encourage you to do so.

1 I thank Ms. Vogt and Ms. Scott for their
2 considerable assistance in this matter.

3 Is there anything further, Counsel?

4 MS. SCOTT: Your Honour, briefly was a
5 DNA order issued?

6 THE COURT: Yes. A DNA authorization
7 is mandatory. It will be issued.

8 MS. SCOTT: Thank you, Your Honour.

9 MS. VOGT: Nothing, Your Honour.

10 THE COURT: Thank you.

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13 **PROCEEDINGS CONCLUDED**

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2 CERTIFICATE OF TRANSCRIPT

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6 I, the undersigned, hereby certify that the
7 foregoing pages are a complete and accurate transcript
8 of the proceedings taken down by me in shorthand and
9 transcribed from my shorthand notes to the best of my
10 skill and ability.

11 Dated at the City of Edmonton, Province of
12 Alberta, this 20th, May, 2015.

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Darlene Sirman, CSR(A)

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A.C.E. Reporting Services Inc.

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