

R. V. Lafferty, 2017 NWTC 07

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

MARGARET ANN LAFFERTY

Transcript of the Reasons for Sentence delivered by The Honourable Judge B.E. Schmaltz, sitting in Behchoko, in the Northwest Territories, on the 3rd day of September, 2015.

APPEARANCES:

Ms. K. Zimmer: Counsel for the Crown

Mr. N. Homberg: Counsel for the Accused

(Charges under s. 267(B) of the Criminal Code of Canada)

1 MR. HOMBERG: Ms. Margaret Lafferty. This
2 is the only matter left, Your Honour, and
3 Ms. Margaret Lafferty is present for the Court's
4 decision.

5 THE COURT: Thank you.
6 Anything further, counsel?

7 MS. ZIMMER: Nothing further, Your Honour.

8 MR. HOMBERG: A brief indulgence. My client
9 has indicated she has a letter. This may not be
10 appropriate, Your Honour. I would ask that --
11 that -- it's simply she's saying something which
12 has already been said on her behalf. I have made
13 those submissions.

14 THE COURT: Do you want to speak to
15 Mr. Homberg further in private about that? Or do
16 you accept what he said? I -- I have no trouble
17 if you want to speak to him for a few more
18 minutes.

19 THE ACCUSED: Yeah.

20 THE COURT: Do you want to do that?

21 THE ACCUSED: Yeah.

22 THE COURT: Okay. We'll take ten minutes.

23 If you need more time than that, let the clerk
24 know.

25 MR. HOMBERG: Thank you.

26 (ADJOURNMENT)

27 MR. HOMBERG: Thank you for the indulgence.

1 The defence is ready to proceed.

2 THE COURT: Margaret Ann Lafferty has been
3 found guilty after trial of assault causing
4 bodily harm. The victim was Martine Wedzin, who
5 I understand in the community is known as Bertha
6 Wedzin.

7 On the 4th of August last year,
8 Martine Wedzin was here in Behchoko with, I
9 understand, her partner at the time; they had a
10 tent set up in his parents' back yard, I believe,
11 or in the back of a truck.

12 Her partner was Michael Huskey, who used to
13 be Margaret Lafferty's partner, but they have
14 been separated since 2009, as I understand
15 things.

16 Ms. Lafferty came up to Bertha Wedzin. She
17 had a two-by-four and she swung the two-by-four
18 at Bertha Wedzin. Ms. Wedzin put up her hand and
19 blocked it, and in doing that, Ms. Wedzin's
20 fingers or her knuckles were crushed. Her hand
21 was broken. She had to be medevaced to Edmonton
22 where she had surgery. At the time of the trial,
23 she still could not bend her hand. She testified
24 that she was in a cast for two to three months.
25 She had to have physio for her hand for a number
26 of months.

27 After swinging at her, Ms. Lafferty then,

1 still with the two-by-four, hit Ms. Wedzin in the
2 thigh, at the time telling her that she was not
3 going to be able to walk around town anymore.
4 That caused bruising on Ms. Wedzin's thigh.
5 Ms. Lafferty also, during this assault, told
6 Ms. Wedzin, to "stay away from him". Those
7 essentially are the circumstances of the assault.

8 I believe that Miranda -- I cannot recall
9 Miranda's last name -- but Miranda came out while
10 this was happening, saw Bertha Wedzin being
11 attacked when she came out. Ms. Lafferty then
12 left. That is how it ended. But it was not just
13 one hit or spontaneous, impulsive. She went up
14 and did that to Ms. Wedzin. Those are the
15 circumstances of the offence and I have to keep
16 those in mind.

17 I also have to consider Margaret Lafferty's
18 circumstances. And certainly, from reading the
19 presentence report and what has been said on her
20 behalf, she has had some difficult circumstances
21 in her life. But there are also many positive
22 things in the presentence report about Margaret
23 Ann Lafferty.

24 She had a loving and supportive family
25 growing up. She was raised by her foster parents
26 from the age of 2; that she has no relationship
27 with her biological mother. I understand her

1 biological father has passed away. But again,
2 her foster parents were supportive, loving, and
3 have a traditional home. She was very well cared
4 for, even spoiled, as she describes it in the
5 presentence report.

6 When she was 14, she began to live with
7 Michael Huskey, and the presentence report states
8 that that relationship was an abusive
9 relationship. I am sure that that has left
10 Ms. Lafferty with, perhaps, if I can put it this
11 way, many issues to deal with and likely had
12 several, negative effects on her. But Margaret
13 Lafferty separated from Michael Huskey in 2009.

14 She had, I believe, six children with
15 Mr. Huskey, all of whom are adults now, but she
16 is now raising two of her grandchildren. And I
17 understand that three of Ms. Lafferty's adult
18 children, perhaps four -- though I am not
19 completely clear on that -- also still live with
20 her.

21 I also have to consider the harm done to the
22 victim and to the community. That is another
23 consideration on sentencing. I have spoken many
24 times, in this courtroom, about the harm that
25 violent offences have on a community. When
26 someone that is known to us, which in a small
27 community, most people know each other -- when

1 you are assaulted by someone known to you, all of
2 us end up trusting each other a little bit less,
3 live in a little bit more fear. It takes away
4 from the community. These offences hurt the
5 community.

6 Defence counsel has urged me, and
7 Ms. Lafferty as well, to consider a conditional
8 sentence in this situation. A conditional
9 sentence is a jail sentence, but it is a jail
10 sentence that is served in the community under
11 strict conditions. It is a more lenient sentence
12 than a jail term of the same duration. House
13 arrest does not have the same punitive effect
14 that a jail sentence has.

15 I have considered the criteria that I have
16 to be satisfied are present before I can impose a
17 conditional sentence. The first one is that I
18 have to be dealing with an offence that is not
19 punishable by a minimum term of imprisonment.
20 Assault causing bodily harm does not have a
21 minimum term of imprisonment, so that criteria is
22 met.

23 The sentence that I impose has to be one of
24 less than two years. On this offence, the Crown
25 proceeded summarily, so the maximum sentence is
26 18 months, so that criteria is met.

27 I also have to be satisfied that the safety

1 of the community would not be endangered by
2 Ms. Lafferty serving her sentence in the
3 community. I have concerns about that criteria,
4 and I am going to speak about that further.

5 The last criteria is I have to be satisfied
6 that a conditional sentence would be consistent
7 with the fundamental purpose and principals of
8 sentencing that are set out in the Criminal Code.
9 I also have concerns about that criteria.

10 But first, would the safety of the community
11 be endangered by Margaret Lafferty serving her
12 sentence here in the community? I have to
13 consider the risk posed by Ms. Lafferty, that is
14 the risk that she will re-offend; and, if she
15 did, what would be the gravity, the seriousness
16 of the damage, and the harm that could ensue if
17 she re-offended.

18 A consideration of the risk posed by an
19 offender includes the risk of any criminal
20 activity, not being limited solely to the risk of
21 physical or psychological harm to individuals. I
22 find it very difficult to assess the risk of
23 whether or not Margaret Lafferty will re-offend.

24 This was a very violent crime.
25 Margaret Lafferty attacked a woman who was in a
26 relationship with her ex-husband. She swung a
27 two-by-four at her and swung it hard enough to

1 break Bertha Wedzin's hand, and then she
2 continued. She told Bertha Wedzin to stay away
3 from him. She told Bertha Wedzin that she would
4 not be able to walk around town while she was
5 swinging at her legs.

6 Margaret Lafferty had been in a relationship
7 with Michael Huskey, but that relationship ended
8 in 2009. That is six years ago. I find
9 Ms. Lafferty's actions very disturbing, and I
10 would think that treatment or counselling would
11 be beneficial to Ms. Lafferty. I have not heard
12 that Ms. Lafferty has had any treatment or
13 counselling since this incident.

14 At the same time, I have nothing concrete to
15 suggest that Margaret Lafferty is a significant
16 risk to re-offend. And I recognize that I can
17 never know for sure or I can never say for sure,
18 but there is no evidence before me that
19 Ms. Lafferty presents a significant risk to
20 re-offend.

21 She has no prior criminal record, but
22 clearly, this incident shows that she is capable
23 of very violent behavior. And I do not know what
24 set her off at that time; so I do not know what
25 risk Margaret Lafferty poses to re-offend, but I
26 know, if she does re-offend and especially if she
27 commits this type of offence, the type she has

1 been convicted of today, that the gravity of the
2 damage or the harm to the victim is significant.

3 But I also have considered the fourth
4 criteria, whether or not a conditional sentence
5 would be consistent with the fundamental purpose
6 and principals of sentencing. There are some
7 offences, the circumstances of which, are such
8 that the need for denunciation and deterrence is
9 so pressing that incarceration or actual jail is
10 the only suitable way in which to express the
11 community's condemnation of an offender's conduct
12 and to deter similar conduct in the future.

13 The Supreme Court of Canada has said in
14 Proulx that there may be certain circumstances in
15 which the need for denunciation is so pressing
16 that incarceration will be the only suitable way
17 in which to express society's or the community's
18 condemnation of the offender's conduct.

19 Where the objectives of denunciation and
20 deterrence are particularly pressing,
21 incarceration will generally be the preferable
22 sanction. Harsh sentences plausibly provide
23 general deterrence.

24 I cannot minimize or downplay the
25 circumstances of this offence. I am going to
26 refer to two other cases that I have dealt with
27 in this community fairly recently, one very

1 recently, and one a couple of years ago. And I
2 will perhaps refer to these again when I refer to
3 the principal of parity. But I sentenced two
4 young women, in this community, in May of this
5 year, and that is the case of Taylor Michel and
6 Carlene Wedzin.

7 Taylor Michel and Carlene Wedzin were
8 sisters, and they, along with their younger
9 sister, who was a youth, attacked two other women
10 here in Behchoko, beating them with two-by-fours
11 and two-by-twos.

12 The injuries caused in that case were not as
13 serious as the injuries caused here, but I have
14 to say the similarity of the attacks struck me as
15 I heard this trial.

16 Both Ms. Michel and Ms. Wedzin received a
17 sentence of six months in jail. Carlene Wedzin
18 had a criminal record, but Taylor Michel did not
19 have an adult record, and that was the sentence
20 imposed in that case.

21 I also dealt with Jerek Eyakfwo, who was a
22 young man. He was 18 at the time he committed the
23 offence, 19 when I sentenced him, back in April
24 of 2012; and that was here in this community.
25 Mr. Eyakfwo swung a crow bar at the victim's face
26 causing a serious injury, breaking his jaw,
27 leaving his face permanently scarred.

1 Mr. Eyakfwo was sentenced to one year for
2 aggravated assault, and that was his first
3 conviction as an adult.

4 Everybody in the community has to realize
5 that this type of conduct is the type of conduct
6 that no community will or should tolerate or
7 should condone. And the circumstances of both
8 Margaret Lafferty and the community, in which a
9 conditional sentence is to be served, have to be
10 considered.

11 I cannot ignore the fact that we are dealing
12 with a serious offence of violence and the
13 prevalence of violent offences in the Northwest
14 Territories generally, but in this community in
15 particular. I find that a very relevant
16 consideration when deciding whether or not a
17 conditional sentence would achieve the objectives
18 of denunciation and deterrence.

19 I have to impose a sentence that is
20 meaningful and that will achieve the objectives
21 of sentencing. The sentence imposed must be one
22 that will be seen by members of the community as
23 severe enough that it will discourage, not only
24 Margaret Lafferty, but as importantly, other
25 people from resorting to this type of behavior,
26 from picking up two-by-fours and swinging them at
27 someone's head. That has to be stopped.

1 I also consider the aggravating
2 circumstances, the circumstances in which the
3 crime was committed. This was an act of
4 senseless, senseless violence. It was
5 unprovoked. Ms. Lafferty came to Ms. Wedzin. I
6 have to consider the seriousness of the injury,
7 crushing someone's knuckles, causing her hand to
8 be in a cast for two or three months, the fact
9 that she still does not have the full use of her
10 hand. When you lose the use of even one hand,
11 that has a significant impact on your life.

12 I also consider the effect that this crime
13 has had on the victim. Both Bertha Wedzin and
14 Michael Huskey have filed victim impact
15 statements. Mr. Huskey's victim impact statement
16 demonstrates that it is not only the direct
17 victim of an offense of violence that is
18 affected, but those close to them as well, those
19 that may have witnessed the violence and those,
20 as in this case, who, because of the motivation
21 of the offender, may also now live in fear as
22 Mr. Huskey says he does.

23 The Criminal Code sets out the fundamental
24 purpose of sentencing as I said earlier, and I
25 have to be satisfied that a conditional sentence,
26 in this case, would be consistent with the
27 fundamental purpose and the principals of

1 sentencing. The fundamental purpose is to
2 contribute to respect for the law and the
3 maintenance of a just, peaceful, and safe
4 community.

5 Sentences should denounce unlawful conduct.
6 They should deter offenders from committing
7 offences. If it is necessary, a sentence should
8 separate an offender from the community; if it is
9 possible a sentence should assist in
10 rehabilitating offenders, should provide
11 reparations for the harm done to the victim and
12 to the community. It should promote a sense of
13 responsibility in offenders and an
14 acknowledgement of the harm done to the victims
15 and to the community.

16 A sentence has to be proportional to the
17 gravity or the seriousness of the offence and the
18 degree of responsibility of the offender. And
19 again, this was an unprovoked attack. It was
20 malicious. It was of some duration.
21 Ms. Lafferty's degree of responsibility for this
22 offence, for the harm done, is high.

23 I have also considered that the Criminal
24 Code says that an offender should not be deprived
25 of liberty if less restrictive sanctions may be
26 appropriate in the circumstances. Section
27 718.1(e) says that all available sanctions other

1 than imprisonment that are reasonable in the
2 circumstances should be considered for all
3 offenders, with particular attention to the
4 circumstances of aboriginal offenders.

5 And I have taken that into
6 consideration, and thought a lot about that
7 consideration.

8 I recognize that there may be circumstances
9 where a conditional sentence may be appropriate
10 for crimes of violence, but I find, in the
11 circumstances of this case, that a conditional
12 sentence could not achieve the purpose and
13 principals of sentencing set out in the
14 Criminal Code.

15 When I consider all the circumstances of
16 this case, I find that, in these circumstances,
17 the need for general deterrence and denunciation
18 is so pressing, especially in this community,
19 that a conditional sentence could not meet those
20 objectives. Incarceration is necessary to send a
21 strong message to denounce Margaret Lafferty's
22 conduct and to deter her and others from engaging
23 in similar conduct.

24 A jail sentence is necessary, in this case,
25 to express the community's disapproval, its
26 condemnation, its denunciation of this behavior.
27 It is necessary to recognize the harm done to

1 Bertha Wedzin and the community, to hold
2 Ms. Lafferty accountable for that harm, and a
3 jail sentence is also necessary in consideration
4 of the principal of parity: That a sentence
5 should be similar to sentences imposed on similar
6 offenders for similar offences committed in
7 similar circumstances.

8 So, when I take all of that into
9 consideration and I exercise as much restraint as
10 possible, considering the circumstances of the
11 offence, and considering Ms. Lafferty's
12 circumstances, there will be a sentence of actual
13 jail. There will be a sentence of four months in
14 jail. That will be followed by two years'
15 probation. I find imposing a shorter jail
16 sentence than I may normally impose and a longer
17 term of probation, considering that this was
18 Ms. Lafferty's first offence, that that will
19 achieve the important goal of rehabilitation as
20 well.

21 So, Ms. Lafferty, when you are released from
22 jail, you will be placed on probation for a
23 period of two years. The conditions of your
24 probation will be that you keep the peace and be
25 of good behavior; report to the Court when you
26 are required to do so; advise either the Court of
27 your probation officer if you change your name,

1 address, or employment. You are to report to
2 your probation officer either in person or by
3 phone within four days of your release from jail
4 and thereafter as and when directed by your
5 probation officer, and you are to take and
6 complete any counselling or programs recommended
7 by your probation officer.

8 This is also a primary designated offence.
9 Ms. Lafferty, a sample of your DNA will be taken.
10 It will be taken in compliance with the
11 conditions set out in the legislation. That is
12 usually done by pricking your finger, taking a
13 drop of your blood, and that will be sent to the
14 DNA data bank.

15 I have considered whether or not to impose a
16 firearms prohibition. One was asked for by the
17 Crown. If I were to consider only the
18 circumstances of the offence, I may impose one,
19 but this is Ms. Lafferty's first offence. She is
20 an Aboriginal offender, has spent time on the
21 land. In all of the circumstances, I am not
22 satisfied that it is necessary to impose a
23 firearms prohibition, so I am not going to impose
24 one.

25 I do have to impose a victim of crime
26 surcharge in the amount of \$100. That can either
27 be paid or it can be worked off doing community

1 service work. Time to pay that?

2 MR. HOMBERG: So six months, two months
3 after release.

4 THE COURT: Six months?

5 MR. HOMBERG: Well, six months, we're asking
6 for that, Your Honour.

7 THE COURT: Okay. I will give you until
8 the end of February, February 29th, 2016.

9 Any other conditions you would suggest? I
10 did not note, in my notes, that you asked for a
11 no-contact order. Has the victim asked for that?

12 MS. ZIMMER: Yes, Your Honour. And I do
13 have it in my notes. I would suggest conditions
14 of a no-contact order with both Mr. Huskey and
15 Ms. Wedzin and also not to attend their
16 residence.

17 THE COURT: I will make that order if the
18 victims asked for it; and you may have said it,
19 Ms. Zimmer. I just did not note it down.

20 Another condition of your probation,
21 Ms. Lafferty, will be that you are to have no
22 direct contact with Bertha Wedzin, also known as
23 Martine Wedzin; and you are also to have no
24 contact directly or indirectly with
25 Michael Huskey; and you are not to go to their
26 residence, wherever that may be from time to
27 time. Do you understand that?

1 Any other conditions that would be helpful,

2 Mr. Homberg?

3 MR. HOMBERG: No, Your Honour.

4 THE COURT: Okay. Any questions,

5 Ms. Lafferty? Okay.

6 Anything further needed on Ms. Lafferty?

7 MS. ZIMMER: No, Your Honour.

8 THE COURT: Okay. Good luck,

9 Ms. Lafferty.

10 That is everything, counsel?

11 MS. ZIMMER: Yes, Your Honour. I believe

12 that is everything.

13 THE COURT: We will close court.

14 -----

15 CERTIFICATE OF TRANSCRIPT

16 I, the undersigned, hereby certify that the
17 foregoing pages are a complete and accurate
18 transcript produced from the stenographic notes of
19 Celine Hook, Court Reporter, in shorthand and
20 transcribed from audio recording to the best of my
21 skill and ability.

22 Dated at the City of Edmonton, Province of
23 Alberta, this 14th day of February, 2017.
24 Certified Pursuant to Rule 723
25 of the Rules of Court

26 _____
27 Janet Belma, CSR(A), B.Ed.
Court Reporter