Date Corrigendum Filed: 2025 11 20
Date: 2025 11 19
Docket: S-1-CR-2022-000077

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

HIS MAJESTY THE KING

-and-

NICOLAS BLACK

Corrected judgment: A corrigendum was issued on November 20, 2025 the corrections have been made to the text and the corrigendum is appended to this judgment.

Ruling on Application

Heard at Yellowknife: June 12, 13 and August 8, 2025

Written Reasons filed: November 19, 2025

REASONS FOR DECISION OF THE HONOURABLE JUSTICE M. K. McKELVEY

Counsel for the Crown/Respondent: Stephen Straub

Counsel for the Accused/Applicant: John Hale

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REASONS FOR DECISION

INTRODUCTION

[1] The accused is charged with sexual interference and sexual assault contrary to sections 151 and 271 of the *Criminal Code*[1]. He pleaded guilty to sexual interference on January 29, 2024. He has now brought an application to set aside his guilty plea. At the time of the alleged offences the complainant was 14 years old and the accused was 21. The accused was a resident of Behchoko at the time of his arrest on November 27, 2019. This is a small community about an hour drive away from Yellowknife. Following his arrest on November 27, 2019 he was taken to the local police station and was interviewed by Constable Thompson of the RCMP. Initially he did not admit to any sexual relationship with the complainant and on several occasions requested assistance from legal counsel.

[1] (RSC, 1985, c. C-46)

[2] At the end of the initial interview Const. Thompson advised him that he could also face a charge of harassing communications. He told the accused as follows:

> Q. And then the harassing communications portion is from um last week, okay. So um right now you have the right to obtain and instruct counsel in private without delay. You may call any lawyer you want, there's a 24-hour legal aid number available. This advice is given without charge and a lawyer can explain the legal aid plan to you. If you wish to contact a legal aid duty lawyer, I can provide you with the telephone number. If you wish to contact any other lawyer a telephone and a telephone book will be provided to you. Do you understand?
>
> A. Yeah.
>
> Q. Do you want to call a lawyer now?
>
> A. Yeah, sure I guess.

[3] During the course of the initial interview the accused did not admit to having sexual relations with the complainant. A typical portion of the discussion in the first interview was as follows:

> Q. So?
>
> A. As I said before I want to talk to a lawyer about this (inaudible) and
>
> Q. Well with what you're telling me here
>
> A. (Inaudible)
>
> Q. With what you're telling me ah like, you guys have had sex
>
> A. I guess I have to talk to a lawyer about that
>
> Q. You've told, you've told me that you've had sex
>
> A. I didn't say anything about that
>
> Q. You did though. You said she wanted it, and you would always ask for permission, before you would have sex.
>
> A. But I didn't say anything about that though, like, I always asked for (inaudible)
>
> Q. You gave your honest answer. So it is a yes or no question. Did you have sex with (the complainant)
>
> A. No
>
> Q. No was that so hard?

A. (Inaudible)

Q. Was that so hard? I've literally been asking that question for the last twenty minutes. Was that so hard?

A. Yeah

Q. Why was it hard?

A. I don't know

Q. Cause you guys have had sex, and you're lying to me

A. No

[4] Following the initial interview and the opportunity for the accused to speak with a lawyer again on the issue of harassing communications Constable Thompson had a second interview with the accused. On the evidence of Constable Thompson he testified that the second interview took place on the floor of the accused's cell where he had been placed following the initial interview. According to Constable Thompson he was asked to come back and speak to the accused who had requested a further meeting with the Constable. The questions asked by the Constable during the second interview, did not focus on the charge of harassing communication but rather continued to focus on the question as to whether the accused had sex with the complainant. During this interview the accused admitted to having sex with the complainant five to seven times.

[5] The accused is a young Indigenous person. In a supporting affidavit to the application the accused states at paragraphs 3 and 4 of his affidavit as follows:

> 3) I'm not guilty of these charges, or of any offences sexual or otherwise relating to [the complainant]. I made a terrible mistake by pleading guilty. I did so because I felt pressure from my lawyer and because I was afraid that [the complainant] would harm herself if I did not plead guilty.
>
> 4) My birthdate is February 28, 1998. I recently turned 27 years old. When I was arrested at the sportsplex at 8:25 p.m. on November 27, 2019 I was 21 years old and did not have a criminal record or outstanding charges. I was new to the criminal justice system, did not understand it, and found the process overwhelming. I felt intimidated at the time of my arrest and throughout my police interrogation by Const. Sean Thompson, and said things to Const. Thompson that are not true. I just wanted the interview to be over, so I thought if I told the officer what he obviously wanted to hear he would let me go home. I felt in fear of my life because of what I've heard is done to people in custody. I've a general distrust of the police and I was extremely uncomfortable being interrogated, and I just wanted to get out of there. I figured that the more I gave the police what they wanted the quicker I would get out.

[6] For the reasons which follow I have concluded that the accused's application to strike the guilty plea should be allowed.

JURISDICTION

[7] Mr. Black's guilty plea took place in court on January 29, 2024 before a Justice of the Northwest Territories. The plea was given over the phone by Mr. Black in Behchoko to the court which was sitting in Yellowknife. Mr. Black pleaded guilty to the charge of touching for a sexual purpose a person under the age of 16 years with a part of his body, to wit, his penis, contrary to s. 151 of the *Criminal Code*. Normally an application to set aside a guilty plea would be brought before the judge who received the guilty plea. The Crown in this case noted that no judge has been seized with this matter and that the matter is properly before me. The defence confirmed that no issue is being raised by the defence on this jurisdictional issue.

[8] The fact that no judge has been seized with this matter is supported by comments of the Chief Justice. On July 29, 2024 she was dealing with the issue of sentencing in this case. The question of jurisdiction was raised by the Crown. The transcript from that attendance included the following:

> J. Bran: So, Your Honour, this is a matter that was – was on the – the Supreme Court schedule early this month for a sentencing hearing. Mr. Black did not attend, and a warrant was issued for his arrest. I understand that at about 10:30, 10:35 on Friday evening he was arrested at his home in Behchoko.
>
> I spoke with him on Saturday. I was expecting him to be here this morning. Obviously, he's not. I think the next step in this matter is to speak to his custodial status. I'm not in a position to presenting arguments for his release at this point.
>
> And the Crown and I have spoken about a further date to schedule the sentencing, or for – for the sentencing hearing to take place. I'm not sure if my friend's had more of a chance to look into this, but the earliest date that I could be available would be August the ninth.
>
> The court: Okay. Mr. MacPherson?
>
> B. MacPherson: The – the Crown can accommodate that date. I guess one question that's unclear, based on the notes I have on this file is whether Justice MacPherson has been seized because I –
>
> The court: No, she has not
>
> B. MacPherson: Okay

CHRONOLOGY

[9] In order to better understand the sequence of events which occurred here I prepared the following chronology:

a. November 27, 2019 – This is the date of the accused's arrest and his two interviews with the police.

b. January 29, 2024 – On this date Mr. Black entered a plea of guilty to the s. 151 charge. It is significant to note that no plea inquiry was entered into on this date or any subsequent date. The following is the transcript from the plea which, as noted previously, was taken by phone on January 29, 2024.

> The clerk: Having re-elected to be tried by a judge without a jury, how do you plead to the charge, guilty or not guilty
>
> The accused: Guilty
>
> The court: Thank you. You were asking for a pre-sentence report?
>
> J. Bran: I am
>
> The court: Okay. A pre-sentence report will be ordered. What kind of turnaround time are we looking at now these days?
>
> J. Bran: My understanding is the probation office is still seeking 6-8 weeks.
>
> J. Major-Hansford: that's my understanding as well.
>
> The court: Why don't we bring it back into criminal chambers in let us say, six weeks just to get a progress report at a time when you are available, Mr. Bran. So that will take us to the beginning of March March the fourth or March eleventh.
>
> J. Bran: March 4th, please. Mr. Major Hanford, no problem with the Crown?
>
> J. Major-Hansford: No problem
>
> The court: March 4, 10 to confirm. We will call it a status update on the PSR. Alright, Mr. Black. Your lawyer will likely be appearing for you on that day if he wishes to. It is just to set up the following date, so nothing much is going to be happening on March the fourth. Obviously, Mr. Bran has already told you to cooperate fully with whoever is writing the pre-sentence report. And you take care and we will see you soon.

c. March 4, 2024 – On that date the accused called in by phone. The pre-sentence report was not ready. Mr. Bran, Mr. Black's lawyer advised that the

pre-sentence report was not yet completed. The matter was adjourned to March 8, 2024 to schedule a sentencing date.

d. March 8, 2024 – A date for sentencing was set for April 22, 2024 in Behchoko.

e. April 22, 2024 – On this date Mr. Bran advised the pre-sentence report had been filed but that Mr. Black had missed a number of reporting dates or appointments with the writer of the report. He further advised that Mr. Black had a difficult relationship with the probation officer. It was noted that Mr. Black had been dealing with some personal issues in the community which caused him to miss several appointments. The defence sought an adjournment of the sentencing hearing. Mr. Bran advised the court that Mr. Black was prepared to cooperate with the preparation of a pre-sentence report regardless of who was preparing it. He also advised that Mr. Black would talk to his family to let them know that it was okay for them to talk about his background.

f. The court agreed to the adjournment of the sentencing and adjourned the sentencing to June 10. The court also granted a short break to finalize an agreed statement of facts. This is reflected in the transcripts where it states:

> The court: …and in the interim, do counsel need a few minutes to finalize the agreed statement of facts so that can be filed today?
>
> J. Bran (defence counsel): We would be able to speak to this after a short break
>
> The court: Alright. Then what we will do is we will have a short break for the purposes of confirming the chambers date and to finalize the agreed statement of facts.

g. June 10, 2024 – On this date the accused attended by telephone at the court sitting in Yellowknife. The court noted that the subsequent pre-sentence report had not yet been filed. The matter was adjourned to July 2, 2024 for receipt of the pre-sentence report and sentencing.

h. July 2, 2024 – The accused did not show up for court on this date and a warrant was issued for his arrest.

i. July 29, 2024 – The accused attended by telephone at the court which was sitting in Yellowknife. It was noted that the accused had been arrested in Behchoko. The matter was adjourned to August 9, 2024 for sentencing and to August 2, 2024 to Justice of the Peace court regarding the issue of any interim release.

j. August 9, 2024 – At this date Mr. Black advised Mr. Bran, his counsel, that he was no longer able to acknowledge or agree with the signed agreed statement of facts. Mr. Bran's statement on the record at that time was as follows:

> Good morning, Your Honour. I'm here with Mr. Black who's present before the court for what is scheduled to be a sentencing hearing today pleas-plea has been entered. There is an agreed statement of facts. There is also a pre-sentence report that has been completed after the initial sentencing was scheduled where it wasn't completed.
>
> In speaking with Mr. Black over the last few occasions in preparation for today's appearance, Mr. Black has advised me that he is no longer able to acknowledge or agree with the signed agreed statement of facts. Mr. Black has advised me of a new version of what transpired and he is not admitting these facts that he once agreed to. He is not acknowledging what he said in the pre-sentence report about his guilt. He's telling that that was not the truth. Given his – this new information that he's provided to me. I'm in a situation where with what Mr. Black has said, I'm not going to be able to proceed with this sentencing, and he's going to need to get a new lawyer in place to make a formal application to change his plea from guilty on the s. 151 matter to not guilty. And he's going to likely need a new lawyer to do that given what has transpired between himself and me. So that's where we are today. I'm going to be making an application, as well as to be removed as counsel of record on this matter given what he's told me in confidence. So I'm making that application now, and I've advised Mr. Black of this and confirmed again this morning when he arrived.

[10] The court granted Mr. Bran's application to get off the record.

[11] Mr. Black subsequently retained new counsel who brought this application before the court.

ANALYSIS

[12] Section 606 of the *Criminal Code* reads as follows

> (1.1) A court may accept a plea of guilty only if it is satisfied that
>
> (a) the accused is making the plea voluntarily;
>
> (b) the accused understands
>
> ``(i) that the plea is an admission of the essential elements of the offence,
>
> (ii) the nature and consequences of the plea, and

> ``(iii) that the court is not bound by any agreement made between the accused and the `` prosecutor; and
>
> (c) the facts support the charge.
>
> (1.2) The failure of the court to fully inquire whether the conditions set out in subsection (1.1) are met does not affect the validity of the plea.

[13] The provisions of s. 606 make a plea inquiry mandatory whenever an accused person gives up their right to a trial and pleads guilty. In conducting the plea inquiry, the trial judge must be satisfied that all elements in subsections (a) to (c) have been satisfied.

[14] Section 606 (1.2) provides that the failure of the court to make a plea inquiry does not affect the validity of the plea. However, in my view, the failure to conduct a plea inquiry at the time of the plea is a factor that needs to be taken into account in considering an application to strike the plea. This is reflected in the case of *R v Beaulieu*, [2017] NYTJ No. 22. In that decision Justice Charbonneau comments as follows at paragraph 25:

> Noncompliance with subsection 606 (1.1) does not automatically render the plea invalid: Subsection 606 (1.2) makes that very clear. At the same time, the things that the court is required to satisfy itself of are essential characteristics of a valid guilty plea (that the plea is voluntary and informed). Practically speaking, it may be easier for an accused to rebut the presumption of validity of the plea if, for whatever reason, subsection 606 (1.1) was not complied with at the time the plea was offered.

[15] Caselaw has established the requirements for a valid guilty plea. They are that the plea was voluntary, informed and unequivocal. In addition, an accused is required to establish that the plea would have been different, had the circumstances been known at the relevant time. In her decision of *R v McIlbride-Lister* [2019] OJ No. 1489 Justice Pomerance (as she then was) notes that it is not a simple matter to strike a plea of guilty:

> The onus rests upon the accused to establish that it should done. Where the issue concerns information about the consequences of the plea, the accused must also establish that the plea would have been different, had the circumstances been known at the relevant time: see Wong, at para. 25

[16] A trial judge has the discretion to accept or not to accept a guilty plea. Up until the time of sentencing, a trial judge also has the discretion to permit an accused person to withdraw a guilty plea and to enter a new one. Provided that the trial judge has exercised his or her discretion judicially, an appellate court will not lightly interfere. See *R v Adgey*, [1975] 2 SCR 426

[17] As noted in the *Beaulieu* decision a voluntary plea is a conscious volitional decision of the accused to plead guilty for reasons that the accused considers appropriate. In other words, it is a choice, a decision that an accused makes, of his or her own free will.

[18] As noted in *Beaulieu* not every type of pressure renders a plea involuntary. The court stated in that case:

> What is unacceptable is if the plea is the result of circumstances that unfairly deprive the accused of making a free choice about whether or not to go to trial. This could include pressure from the court; pressure from defence counsel; incompetence of defence counsel; cognitive impairment of the accused; emotional disintegration of the accused; the accused's faculties being impaired by drugs or medication at the time the plea is entered.

[19] As also noted in the *Beaulieu* decision a guilty plea must also be unequivocal. To be unequivocal the plea must not be made in circumstances that suggest that the plea was confusing, unintended or that the accused did not intend to admit the essential elements of the offence.

[20] Finally, the plea must be informed. For the plea to be informed the accused must understand the nature of the charges, the legal effects of the plea and its consequences. Where an accused is represented by counsel at the time the plea is entered the advice given by counsel will be an important consideration in determining whether the plea is informed. The fact that an accused has prior experience with the criminal justice system is also a factor to consider.

[21] In addition to the factors noted above there is also authority to set aside a guilty plea where the evidence establishes a miscarriage of justice, even if the plea was valid in the sense of being voluntary, informed, and unequivocal. I will deal with this residual discretion in the court later in these reasons.

[22] In dealing with the case before me it is apparent that the accused's plea was unequivocal. That is, there was no equivocation at the time of his plea. There is no evidence before me that the plea was confusing or unintended. This leaves the two other issues as to whether Mr. Black's plea was informed and voluntary.

Was Mr. Black's Plea of Guilty Voluntary and Informed

[23] Jay Bran was Mr. Black's lawyer at the time the plea of guilty was entered. He gave evidence on the hearing in this case. In his evidence he agreed that initially Mr. Black did not want to plead guilty until he was aware as to what the Crown

would want in terms of sentence. Mr. Bran told Mr. Black that he would make appropriate inquiries with the Crown office.

[24] Mr. Bran acknowledged that he did not have any notes or records of any discussions that he had with Mr. Black. He also agreed that he was double booked for the two days that were scheduled for a *voir dire* on the admissibility of Mr. Black's statement to the police. On January 25 Mr. Bran notified the Crown office that the accused would plead guilty to the offence. His discussion with the plaintiff about pleading guilty would have taken 20 to 30 minutes. Mr. Bran stated that he felt the accused knew what the consequences would be of a plea of guilty and that the Crown would be seeking a sentence of two years less a day in jail.

[25] Mr. Bran stated that he was confident that Mr. Black's plea of guilty met the statutory requirements of s. 606 of the Criminal Code. There is, however, some basis to question this assertion. As noted previously Mr. Bran had no record of his discussions with Mr. Black about his plea. In addition, in terms of giving his evidence it appeared that most of his evidence was based not on direct recollection of any discussion with Mr. Black but rather on what his usual practice would have been. Mr. Bran did not have any information from Mr. Black questioning the accuracy of his statement to police that he had a sexual relationship with the complainant. In light of this I am concerned that his discussion with Mr. Black may have been relatively brief as based on the statement by Mr. Black to police there was no reasonable expectation that the charge could be successfully defended. There is no evidence that Mr. Bran made inquiries of Mr. Black about the truthfulness of his statement to police.

[26] At para. 12 of Mr. Black's affidavit he confirms that Mr. Bran talked to him about pleading guilty. He states that he believes he told him he did not want to but didn't push back because he had already told him (falsely) that he had had sex with the complainant and did not feel he had a defence. He states, "So I agreed to cancel the trial dates and plead guilty".

[27] In his oral evidence on the application Mr. Black confirmed that he had a phone call with Mr. Bran prior to his pleading guilty. He did not recall any discussion about the result being his incarceration. Mr. Black testified that he didn't know what to expect after pleading guilty. He thought the case would go to another court.

[28] It should be noted that Mr. Black at the relevant time was a young Indigenous person. At 21 he was still in high school. His oral evidence on the application was at times difficult to follow and confusing. While he appeared sincere in terms of giving his evidence, I am concerned that the accused's ability to understand what

was happening and his ability to communicate effectively was significantly less than optimal.

[29] All of these factors lead me to conclude that at the time he pleaded guilty to the charge Mr. Black did not have a full appreciation of the significance of his plea. I accept that Mr. Black felt pressured by the circumstances of his statement to police when he pleaded guilty. This affected the voluntariness of his decision to plead guilty. In addition, I am satisfied that he did not fully understand the consequences of his plea of guilty. I attribute the problems at the time of Mr. Black's plea to gaps in communication between he and his counsel. There is no evidence that Mr. Black was ever questioned about the truthfulness of his confession to police. In addition, Mr. Black never had any prior experience with the criminal justice system. He clearly demonstrated communication issues in giving his evidence on this application and has had challenges in his life with respect to educational achievement. All of this raises genuine issues about whether Mr. Black properly understood the consequences of his plea.

[30] In summary, I am concerned that Mr. Black may well have had some subtle pressure applied to plead guilty to the charge. In light of Mr. Black's lack of sophistication in criminal matters and his difficulties in communication, which would only have been exacerbated by his Indigenous status, I have concluded that these circumstances caused him to plead guilty when that was not his true intent. The failure to have any plea inquiry at the time of his plea reinforces my belief that Mr. Black's plea may not have been voluntary.

Mr. Black's Signing of the Agreed Statement of Fact

[31] On April 22, 2024, Mr. Black signed an Agreed Statement of Fact which admitted that he had sexual relations with the complainant. Mr. Black asserts in his affidavit that he was essentially forced to sign the Statement by his lawyer, Mr. Bran and that Mr. Bran told him some changes could be made to the document at a later time.

[32] Mr. Bran's evidence on this issue is that he would never force someone to sign a document like this against their will. Instead, he stated that he would have asked him what the problem was and he denied that he would have told Mr. Black that the facts could be changed later. According to Mr. Bran there was nothing that he discussed with Mr. Black suggesting that Mr. Black didn't want to go through with the signing of the document.

[33] Mr. Bran testified that he thought the Agreed Statement of Facts was reviewed and signed by Mr. Black prior to the commencement of the court of April 22. He

believes that the Agreed Statement of Fact was filed with the court before the court proceeded in the morning. He agreed that his discussion with Mr. Black took place at a table in the facility where court was held in Behchoko.

[34] There would appear to be a reasonable basis to question the accuracy of Mr. Bran's evidence as to when the Agreed Statement of Fact was signed by Mr. Black. In reviewing the transcript from the attendance in court on April 22 it appears that the court recessed in order to allow Mr. Bran to have the Agreed Statement of Fact reviewed and signed by his client. Following is the exchange which took place between the court and Mr. Bran prior to the recess:

> The court: Absolutely. Why do we not do that? I just know we have a few dates which have been canceled because, as counsel probably knows we will be short a resident judge in a matter of a week, so while we have tried to maintain all the criminal chambers dates there are a few dates that have been canceled, so we will take in a few moments a brief break to confirm a return date.
>
> And in the interim, do counsel need a few minutes to finalize the agreed statement of facts so that can be filed today?
>
> J. Bran: We should be able to speak to this after the short break.
>
> The court: Alright. Then what we will do is we will have a short break for the purposes of confirming the chambers date and to finalize the agreed statement of facts.

[35] In the circumstances I have concluded that Mr. Bran was not correct in his recollection that his discussion with Mr. Black took place prior to court. Instead, it seems likely that his discussion with Mr. Black took place at a brief recess in court. There would have been some time constraints in presenting the Agreed Statement of Facts to Mr. Black and in discussing the proposed Agreed Statement of Facts with him. As pointed out by the Crown there was evidence in Mr. Black's cross-examination on the Application that he was aware of the contents of the Agreed Statement of Facts before his attendance in court on April 22. The relevant passage from his evidence is as follows:

> Q. Okay. And I'm just going to suggest to you that it's possible – in fact, I'm going to suggest to you that he did review a draft of the Agreed Statement of Facts with you over the phone. So he read you a copy of the document you ultimately signed and filed with the court of April 22. Do you agree with that?
>
> A. The Agreed Statement of Facts, I wanted to dispute, I wanted to, like, change. I don't want – actually, I don't know. I didn't want to sign it.
>
> Q. Yeah. I know that but my question was when you met with them on one of those – either over the phone or in person – I'm not drawing a distinction between those two things – when you spoke with Mr. Bran about the charges you were facing on one of

> the five occasions in January 2024, he read you a copy of the Agreed Statement of Facts, right?
>
> A. The word yes is popping up so I will say yes.

[36] The above evidence contradicted Mr. Black's earlier evidence in his examination in chief when he was asked the following questions:

> Q. Had you ever seen that document before, that Agreed Statement of Facts?
>
> A. Yes. On April 22
>
> Q. Yes. But before April 22 had you seen it?
>
> A. I don't believe so, no
>
> Q. Or had it ever been read out to you?
>
> A. No

[37] Later in his cross-examination Mr. Black retreated to his earlier evidence that he had not seen the Agreed Statement of Facts before April 22. He gave the following evidence:

> Q. Okay. So when you told your lawyer earlier today that you never saw an Agreed Statement of Facts before or had one read to you before April 22, that wasn't true, right?
>
> A. I was never knowing – I never knew anything about the Agreed Statement of Facts until, like, when we appearing on April 22 during the 10 or 15 minute break recess.
>
> Q. Okay
>
> A. That was the first time I seen it. Prior to that I was never read or even notified about that.
>
> Q. Okay your evidence now is that Mr. Bran never read you this Agreement of Facts before April 22?
>
> A. No
>
> Q. That's not your evidence or –
>
> A. Like, he never showed me that, I was never notified about that, but 20 – April 22 when there was, like, court for me only that time. That's when he came to me with that Agreed Statement of Facts. I'm not talking about –
>
> Q. That was the first time you were ever made aware of the contents of the document, either by having it read to you or by reading it yourself?

> A. I – when he handed me the paper, I was looking at it. That was the – it was during the 10 minute break recess or 15 minute break recess on April 22
>
> Q. I appreciate that. Prior to that date had you ever been made aware of the contents of that document?
>
> A. No

[38] It is simply unclear on the evidence as to what extent Mr. Black was aware of the contents of the Agreed Statement of Facts prior to April 22. The number of inconsistencies in his evidence do raise significant issues relating to the reliability of his evidence on this point.

[39] Having said that I understand the difficult situation Mr. Black was in. He had made statements to the police essentially admitting to the essential elements of the offence. He had pleaded guilty to the offence. It seems likely that he was having second thoughts about the difficult position he had put himself in. This would appear to be reflected in some of Mr. Black's actions. It was noted on his attendance on April 22, 2024, that while the Presentence Report had been filed Mr. Black had missed a number of reporting dates or appointment dates with the writer of the report. Mr. Bran further advised the court that Mr. Black had a difficult relationship with the probation officer and that some personal issues had caused him to miss several appointments. All of this suggests to me that Mr. Black may well have had second thoughts about his plea but felt that there was little option other than to sign the Agreed Statement of Facts.

Mr. Black's Statement to Police on November 27, 2019

[40] The admissibility of Mr. Black's statement to police on November 27th is not an issue before me. It is an issue best left for trial. As noted previously Mr. Black in his supporting affidavit refers to the fact that he was new to the criminal justice system, did not understand it and found the process overwhelming. He felt intimidated at the time of his arrest and throughout his police interrogation. In his evidence on the Application Mr. Black made reference to a bad experience he had experienced previously with police. He was placed in handcuffs and injured his back. He was generally afraid of the police. This evidence was supported by the evidence of Mr. Bran who reported that Mr. Black did have a serious issue with police. Mr. Black called Mr. Bran on at least one occasion when he was concerned there was a police officer near his house.

[41] The possibility that Mr. Black made a false confession to police raises an additional issue for this court to consider. In the *McIlbride-Lister* case Justice Pomerance notes that the Court of Appeal for Ontario has, in various cases,

recognized its discretion to receive fresh evidence which explains the circumstances of a guilty plea, and which demonstrates a miscarriage of justice. Where evidence establishes a miscarriage of justice the plea will be set aside, even if it was valid in the sense of being voluntary, informed and unequivocal.

[42] Justice Pomerance notes that people who are factually innocent may be motivated or induced to plead guilty for reasons unrelated to culpability. An erroneous plea may flow from incompetent advice, inappropriate pressure, or failure of the court to make the necessary inquiries of the accused person. The accused may have their own reasons for pleading guilty, independent of any negligence or wrongdoing. The decision of an innocent person to plead guilty may flow from impossible dilemmas posed by coercive circumstances. Moreover, to accept a false plea would be to undermine the integrity of our justice system. A guilty plea offered by an innocent person is a wrongful conviction which in turn is an intolerable prospect.

[43] Justice Pomerance notes in her decision that she is not suggesting pleas should be struck whenever an accused person asserts post-plea innocence. It is not enough to find that an accused wishes, in retrospect, that he or she had not pleaded guilty. However, where a miscarriage of justice is alleged the court must consider the whole of the evidence in assessing whether the plea was based on something other than a genuine acknowledgment of guilt. A plea should only be disturbed in the face of credible and cogent evidence. The determination is, by necessity, case and fact specific. It engages an element of judicial discretion but sets a high bar for judicial intervention. In an article entitled "The Lost Art of the Plea Inquiry: Learning from the Past to Prevent Wrongful Convictions in the Future" by David Cote published in the Alberta Law Review, (2023) 60:4 at p. 1028, Mr. Cote identifies two groups who are at particular risk of false guilty pleas. These include those individuals with intellectual disabilities or mental health challenges and Indigenous persons.

[44] For Indigenous persons, Mr. Cote identifies four factors in particular that can lead to false guilty pleas: "The over representation of Indigenous people among those denied bail; a distrust of the criminal legal system leading to a belief that they will not get a fair trial; a lack of adequate translation services for many Indigenous dialects; intercultural communications barriers". He concludes that, "alone or in combination, these factors may lead to wrongful conviction guilty pleas by Indigenous people".

[45] I am satisfied that Mr. Black's lack of sophistication in addition to his lack of experience about the criminal justice system together with his Indigenous status may have created circumstances which led him to make a statement to the police which in turn led Mr. Black to plead guilty despite his true intent of wanting to have a trial

on the charges he faced. In light of his statement to the police I am concerned that Mr. Black faced subtle pressure to plead guilty against his true intent. In light of these concerns, I have concluded that it would be dangerous to allow Mr. Black's plea of guilty to stand in the face of circumstances where it is reasonable to believe that there were factors which impaired his ability to make a conscious volitional choice.

CONCLUSION

[46] The application to strike Mr. Black's plea is allowed. His plea of guilty is set aside and a trial is ordered on the indictment.

"M.K. McKELVEY"

M.K. McKelvey
J.S.C.

Dated in Yellowknife, NT this
19th day of November, 2025

Counsel for the Crown/Respondent: Stephen Straub

Counsel for the Accused/Applicant: John Hale

Corrigendum of the Reasons for Decision

of

The Honourable Justice M. K. McKelvey

1. An error occurred in Paragraph 44.

It reads:

[44] (…) "The over representation of Indigenous people among those denied bail; a distrust of the criminal legal system leading to a belief that they will not get a fair trial; a lack of adequate translation services for many **Ingenious** dialects; intercultural communications barriers". He concludes that, "alone or in combination, these factors may lead to wrongful conviction guilty pleas by **Ingenious** people".

Paragraph 44 has been corrected to read:

[44] (…) "The over representation of Indigenous people among those denied bail; a distrust of the criminal legal system leading to a belief that they will not get a fair trial; a lack of adequate translation services for many **Indigenous** dialects; intercultural communications barriers". He concludes that, "alone or in combination, these factors may lead to wrongful conviction guilty pleas by **Indigenous** people".

2. The citation has been amended to read:

R v Black 2025 NWTSC 80.cor1

(The changes to the text of the document are highlighted and underlined).

S-1-CR-2022-000077

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

HIS MJESTY THE KING

And

NICOLAS BLACK

Corrected judgment: A corrigendum was issued on November 20, 2025 the corrections have been made to the text and the corrigendum is appended to this judgment.

REASONS FOR DECISION OF THE HONOURABLE JUSTICE M.K. McKELVEY
