

IN THE COURT OF APPEAL FOR THE NORTHWEST TERRITORIES

YELLOWKNIFE CRIMINAL SITTINGS

JANUARY 17, 1996

	<u>COUNSEL</u>	<u>TRIAL JUDGE</u>	<u>COURT</u>
HER MAJESTY THE QUEEN Appellant	A. Regel, Esq.	Davis, T.J.	Tallis, J.A. Hudson, J.A. Schuler, J.A.
- and -			
ROLAND ALBERT CODZI Respondent	A. Wright, Esq.		

APPEAL #CA 00582

MEMORANDUM OF JUDGMENT
DELIVERED ORALLY FROM THE BENCH

Tallis, J.A. (for the Court):

Following pleas of guilty in Territorial Court on July 28, 1995, the respondent was convicted of two offences of sexual assault under s.271 and sentenced to one year concurrent on the first offence and two years less one day concurrent followed by two years probation on the second offence.

The following circumstances of these offences as outlined in the Crown factum were accepted by the respondent:

17. On July 28, 1995 the Respondent plead guilty to 2 counts of sexual assault before Judge Davis of the Territorial Court sitting in Fort Good Hope NWT. He was sentenced to jail terms of 1 year and 2 years less 1 day concurrent to each other and to the sentence he was already serving. The accused was also placed on probation for 2 years following his release. The Crown applies for leave, and if leave be granted, appeals this sentence and asks that the sentences be made to run consecutive to each other and to the sentence he was already serving.

18. At the time of sentencing, the Respondent was serving a sentence for sexually assaulting a 6 or 7 year old girl in 1986 or 1987. That charge was laid on January 31, 1994 and the Respondent was committed to stand trial on March 18, 1994. The jury trial which was initially set for October 31, 1994 was adjourned due to lack of Court time to February 6, 1995. After a trial before Justice Vertes sitting with a jury, the Respondent was sentenced to a jail term of 2 years less 1 day. The Sentencing Judge, in the case under appeal was not given much information about this offence.

19. The first offence under appeal took place in Fort Good Hope on July 1, 1994. The 11 year old victim and her friend (the victim in the second offence under appeal) were baby-sitting. The Respondent was at the house and after the parents left, told the victim he really liked her. He sat close to the victim, held her hands and fondled her legs from the knee to the crotch and her buttocks. The Respondent told the victim "The first time I saw you I wanted you or had to have you." The victim told the Respondent to stop and moved his hand. The Respondent then asked the victim if she would consider "going out with him." The victim locked herself in the bathroom. The Respondent told her to open the door and was banging on it when the parents came home. The victim was scared. The Respondent then left the house.

20. The second offence under appeal arises out of an incident in Fort Good Hope on January 1, 1995. The 11 year old victim was sleeping at home. She awoke to find the Respondent trying unsuccessfully to touch her breast under her clothing. The victim pushed the Respondent's hand away. He then put his hand inside the victim's pants under her panties and was touching and rubbing her vagina. The victim's brother came into the room while the Respondent was doing this and told him to leave. The Respondent then left the house.

Although these assaults did not involve digital penetration, they must be viewed as serious sexual assaults on children. The Crown contends that the learned Territorial Court Judge failed to apply the sentencing principles articulated in *R. v. Sandercock* (1985), 40 Alta. L.R., 265 (Alta. C.A.) to the facts of this case.

In making this submission, the Crown points to a number of aggravating factors including

- (a) Both offences were committed while the respondent was awaiting trial on a serious sexual assault of a young child;
- (b) Both offences involved young female victims; and
- (c) There was an element of persistence when the victims resisted his advances.

The respondent, who is 33 years of age, has the following criminal record:

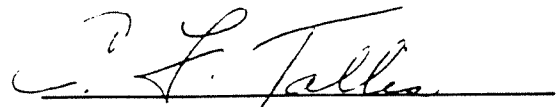
<u>Place</u>	<u>Section</u>	<u>Offence Description</u>	<u>Disposition: Gaol/Fines/</u>
Fort Good Hope, NT	306(1)(b) CC	Break and Enter	Suspended Sentence-8 mths. probation
Fort Good Hope, NT	666(1) CC	Breach of Probation	Fined \$152.00 i/d 30 days
Fort Good Hope, NT	245(b) CC	Assault	Fined \$750.00 i/d 90 days
Fort Good Hope, NT	245.1(1)(b) CC	Assault	Five months consecutive
Fort Good Hope, NT	85 CC	Possess Weapon	Fined \$1,000.00 i/d four months 5 year Firearm Prohibition (98(1)cc)
Norman Wells, NT	246.1 CC	Sexual Assault	Fined \$250.00 i/d 1 month
	666(1) CC	Breach of Probation	Fined \$250.00 i/d 1 month
Colville Lake, NT	84 CC	Point a Firearm	3 months gaol
	666(1) CC	Breach of Probation	1 month gaol consecutive
Fort Good Hope, NT	72(1) CC	Forcible Entry	Fined \$500.00 i/d 30 days 6 months Probation
Fort Good Hope, NT	430(4) CC	Mischief to Property	Fined \$150.00 i/d 30 days \$150.00 Restitution - 6 mths. probation
Fort Good Hope, NT	348(1)(b) CC	Break, Enter & Theft	Suspended Sentence - 6 mths. probation

The principal issue on this appeal is whether the sentences under review should be consecutive to the sentence imposed by Vertes J. on 7th February 1995.

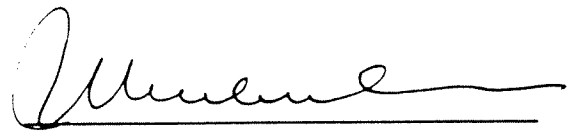
We agree with the Crown that the trial judge placed insufficient emphasis on the principles of protection of the public, deterrence in its widest sense and denunciation of such conduct.

Under the circumstances, we allow the within Crown appeal and direct that the concurrent sentence of 2 years less a day be varied to a term of 18 months imprisonment consecutive to the term imposed by Vertes J, but concurrent to the one year concurrent term imposed on the other conviction in Territorial Court. The two year probation order is vacated since it is illegal.

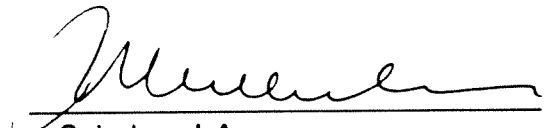
Yellowknife, NT,
this 17th day of January,
AD. 1996


Tallis, J.A.

I concur:

authorized to sign for 
Hudson, J.A.

I concur:


Schuler, J.A.

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BETWEEN:

HER MAJESTY THE QUEEN

Appellant

- and -

ROLAND ALBERT CODZI

Respondent

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