

AMENDED ORIGINAL

IN THE COURT OF APPEAL FOR THE NORTHWEST TERRITORIES

IN THE MATTER OF:

TEDDY RONALD ELIAS

- v -

HER MAJESTY THE QUEEN

ORIGINAL amended as of October 11, 2018, to:

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Transcript of the Reasons for Decision held before The Honourable Justice K.M. Shaner, sitting in Yellowknife, in the Northwest Territories, on the 25th day of September, 2018.

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**APPEARANCES:**

Mr. R. Clements: Counsel for the Appellant  
Mr. J. Major-Hansford: Counsel for the Respondent

(Application for leave to appeal and release pending appeal pursuant to ss. 675(1)(b) and 679 of the *Criminal Code*)

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(Application for leave to appeal and release pending appeal pursuant to ss. 675(1)(b) and 679 of the *Criminal Code*)

1 THE COURT: This is R. v. Teddy Ronald  
2 Elias. It is Mr. Elias's appeal. And this is a  
3 leave application to appeal from sentence, which  
4 is also a prerequisite to an application for bail  
5 pending appeal, something which the applicant has  
6 also brought.

7 The appeal is premised on the  
8 following: The appellant pled guilty to and was  
9 convicted of sexual assault and gross indecency.  
10 He received a custodial sentence of 12 months and  
11 six months respectively to be served  
12 concurrently. The appellant has, as of now,  
13 served approximately half of that custodial  
14 sentence. I should add that the custodial  
15 portion of the sentence is to be followed by a  
16 period of probation. The events leading to the  
17 convictions occurred at a time when a conditional  
18 sentence was available as a sentencing option,  
19 and the Crown concedes this point. Trial  
20 counsel, who did not act as the appellant's  
21 counsel in this application, was unaware of this  
22 and, consequently, he did not raise a possibility  
23 of a conditional sentence with the sentencing  
24 judge.

25 The appellant is an indigenous  
26 offender, thus engaging Section 718.2(e) of the  
27 *Criminal Code*. Moreover, the appellant has

1 significant *Gladue* and *Ipeelee* factors in his  
2 background. These things, along with a number of  
3 other factors, including, but not limited to, his  
4 subsequent productive life, his age, his  
5 self-reporting in the investigation, his guilty  
6 plea, and his remorse made a conditional sentence  
7 one of the possible outcomes at the sentencing  
8 hearing.

9 Crown counsel fairly  
10 conceded in this case that the threshold for  
11 leave to appeal sentence is a low one which has  
12 been met in this case, and accordingly, such  
13 leave should be granted. I agree. Having now  
14 considered the application for leave to appeal  
15 from sentence, and noting the Crown's concession,  
16 I have concluded that it must be granted.

17 The sentencing judge found  
18 that the sexual assaults were serious. This is  
19 borne out in his comment that a penitentiary  
20 length sentence, that is at least two years, was  
21 an appropriate starting point for determining  
22 what sentence should ultimately be imposed. The  
23 circumstances are set out in the transcript of  
24 the proceedings and need not be repeated in  
25 detail.

26 In summary, however, the  
27 offender sexually assaulted one of the victims,

1 who was a young adolescent at the time, by  
2 performing oral sex on him on two separate  
3 occasions. At another time the appellant  
4 attempted to have anal sex with that victim. The  
5 victim refused and the appellant put his penis  
6 between the victim's legs and ejaculated. The  
7 gross indecency conviction involved another child  
8 victim who was six or seven at the time. The  
9 appellant in that case masturbated in front of  
10 the child while that child was using the toilet.  
11 The appellant was an adult when these events  
12 occurred.

13 Sexual assaults, particularly  
14 those against children, are treated with the  
15 utmost seriousness in the Northwest Territories,  
16 and they typically attract incarceration. This  
17 recognizes the harm to victims who are vulnerable  
18 to adults and often depend on adults for their  
19 safety and security. Deterrence and denunciation  
20 are thus primary sentencing objectives. At the  
21 same time, a sentencing Court is required by  
22 Section 718.2(e) to consider all reasonable  
23 sanctions besides jail when sentencing an  
24 indigenous offender, and must take into account  
25 the *Gladue* factors to inform moral  
26 blameworthiness when determining what is a fit,  
27 just, and proportionate sentence. This has been

1 an important part of Canadian law for many years  
2 now. The findings of the Truth and  
3 Reconciliation Commission of Canada highlight the  
4 importance of taking this aspect of sentencing  
5 very seriously and giving it meaning.

6 It is true that the concept of  
7 a conditional sentence could have been put to the  
8 sentencing judge and that he would nevertheless  
9 have imposed a period of incarceration. It may  
10 also be that the Court of Appeal will decide that  
11 this sentence is fit, proper, and proportionate  
12 and ought not to be disturbed. That is, however,  
13 the very uncertainty that must be decided on  
14 appeal. What I have to decide is whether there  
15 is some merit to the appeal that falls somewhere  
16 between mere possibility and likelihood, and I am  
17 satisfied that the circumstances here, where the  
18 sentencing judge had before him an indigenous  
19 offender and was not provided with the full range  
20 of sentencing possibilities, meets this standard.

21 So that leads to the question  
22 of whether the appellant should be granted bail  
23 pending the appeal, and many of the comments I  
24 have just made respecting the leave application  
25 apply in this context as well.

26 The Crown concedes, again,  
27 that the requirements in Section 679.4(a) and (b)

1 are satisfied. That is, firstly, that the appeal  
2 has sufficient merit that in the circumstances it  
3 would cause unnecessary hardship to require the  
4 appellant to continue to serve the sentence  
5 pending the appeal.

6 Second, there are no concerns  
7 about whether the appellant will turn himself  
8 into custody in the event that the appeal is  
9 unsuccessful.

10 The Crown has concerns about  
11 the public interest, however. Public interest,  
12 as was argued, engages the dichotomy between  
13 reviewability and enforceability. And in my view  
14 in this case, the equities favour reviewability.  
15 I could go on at length, but I think it suffices  
16 to say this: those who come before our Courts  
17 certainly do not have the right to a specific  
18 result or outcome, and indeed the result or  
19 outcome is often not what an appellant or an  
20 offender has hoped for. However, everyone in  
21 Canada who is charged with and/or convicted of an  
22 offense must be confident - and has the right to  
23 be confident - that they will be judged and, if  
24 convicted, sentenced in accordance with the law.  
25 That is particularly important when freedom is at  
26 stake. We all have an interest ensuring this is  
27 so. If the appellant in this case is forced to

1 remain incarcerated, perhaps unnecessarily,  
2 while, the question before the appeal court is  
3 determined, his confidence and the public  
4 confidence in the justice system will be  
5 compromised.

6 To summarize, leave to appeal  
7 is granted and bail bending appeal is granted.

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10 **CERTIFICATE OF TRANSCRIPT**

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13 I, the undersigned, hereby certify that the  
14 foregoing pages are a complete and accurate  
15 transcript of the proceedings produced and  
16 transcribed from audio recording to  
17 the best of my skill and ability.

18 Dated at the City of Edmonton, Province of  
19 Alberta, this 2nd day of October, 2018.

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26 Allison Willard

26

27 Court Reporter

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