***Elias v R*, 2018 NWTCA 6 A-1-AP-2018-000008**

# 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: Cover page *Elias v R*, 2018 NWTCA 6**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** 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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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)*

***R v Elias***, **2018 NWTSC 59 A-1-AP-2018-000008**

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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*)

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
28. significant *Gladue* and *Ipeelee* factors in his
29. background. These things, along with a number of
30. other factors, including, but not limited to, his
31. subsequent productive life, his age, his
32. self-reporting in the investigation, his guilty
33. plea, and his remorse made a conditional sentence
34. one of the possible outcomes at the sentencing
35. hearing.
36. Crown counsel fairly
37. conceded in this case that the threshold for
38. leave to appeal sentence is a low one which has
39. been met in this case, and accordingly, such
40. leave should be granted. I agree. Having now
41. considered the application for leave to appeal
42. from sentence, and noting the Crown's concession,
43. I have concluded that it must be granted.
44. The sentencing judge found
45. that the sexual assaults were serious. This is
46. borne out in his comment that a penitentiary
47. length sentence, that is at least two years, was
48. an appropriate starting point for determining
49. what sentence should ultimately be imposed. The
50. circumstances are set out in the transcript of
51. the proceedings and need not be repeated in
52. detail.
53. In summary, however, the
54. offender sexually assaulted one of the victims,
55. who was a young adolescent at the time, by
56. performing oral sex on him on two separate
57. occasions. At another time the appellant
58. attempted to have anal sex with that victim. The
59. victim refused and the appellant put his penis
60. between the victim's legs and ejaculated. The
61. gross indecency conviction involved another child
62. victim who was six or seven at the time. The
63. appellant in that case masturbated in front of
64. the child while that child was using the toilet.
65. The appellant was an adult when these events
66. occurred.
67. Sexual assaults, particularly
68. those against children, are treated with the
69. utmost seriousness in the Northwest Territories,
70. and they typically attract incarceration. This
71. recognizes the harm to victims who are vulnerable
72. to adults and often depend on adults for their
73. safety and security. Deterrence and denunciation
74. are thus primary sentencing objectives. At the
75. same time, a sentencing Court is required by
76. Section 718.2(e) to consider all reasonable
77. sanctions besides jail when sentencing an
78. indigenous offender, and must take into account
79. the *Gladue* factors to inform moral
80. blameworthiness when determining what is a fit,
81. just, and proportionate sentence. This has been
82. an important part of Canadian law for many years
83. now. The findings of the Truth and
84. Reconciliation Commission of Canada highlight the
85. importance of taking this aspect of sentencing
86. very seriously and giving it meaning.
87. It is true that the concept of
88. a conditional sentence could have been put to the
89. sentencing judge and that he would nevertheless
90. have imposed a period of incarceration. It may
91. also be that the Court of Appeal will decide that
92. this sentence is fit, proper, and proportionate
93. and ought not to be disturbed. That is, however,
94. the very uncertainty that must be decided on
95. appeal. What I have to decide is whether there
96. is some merit to the appeal that falls somewhere
97. between mere possibility and likelihood, and I am
98. satisfied that the circumstances here, where the
99. sentencing judge had before him an indigenous
100. offender and was not provided with the full range
101. of sentencing possibilities, meets this standard.
102. So that leads to the question
103. of whether the appellant should be granted bail
104. pending the appeal, and many of the comments I
105. have just made respecting the leave application
106. apply in this context as well.
107. The Crown concedes, again,
108. that the requirements in Section 679.4(a) and (b)
109. are satisfied. That is, firstly, that the appeal
110. has sufficient merit that in the circumstances it
111. would cause unnecessary hardship to require the
112. appellant to continue to serve the sentence
113. pending the appeal.
114. Second, there are no concerns
115. about whether the appellant will turn himself
116. into custody in the event that the appeal is
117. unsuccessful.
118. The Crown has concerns about
119. the public interest, however. Public interest,
120. as was argued, engages the dichotomy between
121. reviewability and enforceability. And in my view
122. in this case, the equities favour reviewability.
123. I could go on at length, but I think it suffices
124. to say this: those who come before our Courts
125. certainly do not have the right to a specific
126. result or outcome, and indeed the result or
127. outcome is often not what an appellant or an
128. offender has hoped for. However, everyone in
129. Canada who is charged with and/or convicted of an
130. offense must be confident - and has the right to
131. be confident - that they will be judged and, if
132. convicted, sentenced in accordance with the law.
133. That is particularly important when freedom is at
134. stake. We all have an interest ensuring this is
135. so. If the appellant in this case is forced to
136. remain incarcerated, perhaps unnecessarily,
137. while, the question before the appeal court is
138. determined, his confidence and the public
139. confidence in the justice system will be
140. compromised.
141. To summarize, leave to appeal
142. is granted and bail bending appeal is granted.

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# 10 CERTIFICATE OF TRANSCRIPT

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1. I, the undersigned, hereby certify that the
2. foregoing pages are a complete and accurate
3. transcript of the proceedings produced and
4. transcribed from audio recording to
5. the best of my skill and ability.
6. Dated at the City of Edmonton, Province of
7. Alberta, this 2nd day of October, 2018.

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1. Allison Willard
2. Court Reporter