SC CR 77 024

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

HER MAJESTY THE QUEEN

- and -

SAMUEL SIDNEY SELAMIO
alias KAONAK

Trial by Jury held at Inuvik, Northwest Territories
May 30 and 31, 1977

Found Guilty and remanded to Yellowknife for sentence

Sentence: Eighteen Months

Judgment delivered orally June 27, 1977

Counsel on the Hearing:

Mr. B. Fontaine, for the Crown

Mr. C. Dalton, for the Accused
Samuel Sidney Selamio

Reasons for Judgment of:

The Honourable Mr. Justice C. F. Tallis

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ORAL REASONS FOR JUDGMENT OF THE
HONOURABLE MR. JUSTICE C. F. TALLIS

In this particular case I have given careful consideration to the question of the sentence to be imposed on the accused who was found guilty by a jury in Inuvik in the Northwest Territories on the offence of indecently assaulting M F , a female person, contrary to Section 149 of the Criminal Code.

This is a serious offence under our Criminal Code which carries with it the possibility of a sentence of five years' imprisonment. It does, however, place a great discretion with the Court because there is no minimum sentence imposed. In this particular case both counsel have recognized the seriousness of the offence, and the one aggravating feature of the case is that

it involves an indecent assault on a girl of very tender years.

There is no doubt that the accused was, at the time of the offence, under the influence of liquor. I have said on a number of occasions, and I repeat, that drunkenness or partial intoxication may be an explanation but it is not an excuse.

In this particular case the Jury found the accused guilty as charged, and I respect the verdict of the Jury in this particular case. From observing the mother of the little girl, I did not detect any tendency to exaggerate her distraught state over what happened on the night in question. Unfortunately, liquor precipitated the whole incident, and to some extent I would gather that the father of the little girl should have to bear some responsibility for tolerating drinking of this kind.

In this particular case I have the benefit of a comprehensive pre-sentence report prepared by an experienced probation officer at Inuvik in the Northwest Territories, and I also have the added benefit of a psychiatric report that has been prepared for the Court and placed before me as Exhibit S-2. The pre-sentence report has been marked as S-1. These documents are now matters of public record and are available to the penal authorities who might find them of some use in determining the course of action that should be taken for the benefit of society and for the benefit of the accused.

In dealing with cases of this nature I have taken into account the principles of sentencing that have been outlined in

the case of *Regina v. Morrissette et al*, 12 C.R.N.S. at page 392, the case of *Regina v. Hinch and Salanski*, 62 W.W.R. at page 205. The *Morrissette* case is a Judgment of the Saskatchewan Court of Appeal, and the *Hinch and Salanski* case is a Judgment of the British Columbia Court of Appeal. I have also taken into account the general principles of sentencing that are dealt with in the Ontario Court of Appeal in the case of *The Queen v. Wilmott*, (1967) 1 C.C.C. at page 171, particularly at pages 177 to 179. I have also found a Manitoba Court of Appeal case, *R. v. Iwaniw*, (1959) 127 C.C.C. page 40, to be helpful in that it refers to the specific factors that can properly be considered in determining an appropriate sentence.

The general principles of sentencing as outlined in the *Morrissette* case, to state them in brief, involve the following factors: (1) punishment, (2) deterrence, and in using the term deterrence that refers not only to deterring the accused but also deterring other people who might be so minded to commit the same or a similar offence, (3) protection of the public. This is an obvious factor that must be taken into account in cases of this nature, and, (4) the reformation and rehabilitation of the offender which is also an obvious factor that must be taken into account, and in this particular case the report of the probation officer marked as S-1 and the report of Doctor MacKay marked as Exhibit S-2 really pinpoint the problem. In my view, the material filed indicates that it is imperative not only for the accused but also for society that steps be taken to cope with a problem

of alcoholism that has led him into this difficulty.

The public, in my view, can best be protected by the imposition of a sentence that takes into account all of the above factors that I mentioned. I must say, as I have said on other occasions, that I place the factor of punishment for punishment sake at the lower end of the scale. Indeed, I have done so. That is one factor that is basically given very little if any consideration.

In this particular case I do, however, have to consider the other three factors and try to strike a balance between them. In striking the balance between these three factors I tend to emphasize the factor of protection of the public and the reformation and rehabilitation of the offender. I realize that the sentence that I impose must be one which does not crush or destroy the future hopes and possibilities of reformation and rehabilitation for this accused, but at the same time it must be one which vindicates the law when you bear in mind the seriousness of this particular assault and the fact that the little girl involved was young indeed.

In this particular case the accused does have a previous record which was dealt with quite candidly by his counsel. From the record I glean that liquor has been a factor in causing him to get into trouble. The report of Doctor MacKay which is filed indicates that at one time alcohol rehabilitation was offered to

him in 1974 at Henwood, but declined. This may have been an unfortunate decision for the accused, but I have to take that into account because it seems to me that steps must be taken in this direction in order to protect not only society but the accused. On the other hand, there is no future for the accused or society in having him maintained at a penal institution for many years at public expense unless some steps are taken to deal with his problem. In this particular case I feel that the sentence imposed must be of sufficient length to enable medical people and the penal authorities to embark on a course of treatment which hopefully will solve some or all of his problems. If the accused responds to treatment then, of course, the Parole Board may very well grant parole under appropriate circumstances. However, I must impose a sentence which I feel is just and proper under all of the circumstances, and in this particular case I feel that an appropriate sentence would be 18 months imprisonment. In imposing that sentence I want to make it quite clear that I am going to have a transcript of my oral reasons for judgment prepared for transmission to the appropriate penal authorities, and I am also going to make available to those authorities a copy of the probation report S-1 and a copy of the medical and psychiatric report which is marked as S-2. In other words, it is a wish of this Court that every effort be made to see that this person receives the proper treatment under a controlled environment since he chose not to accept the treatment which was offered to him in previous years. If he responds to that treatment and

cooperates fully with the authorities in a genuine way I have no doubt that the Parole Board will take into account the various factors that they do in granting parole. I use the term "parole" in a very broad context in this connection. In imposing this sentence I have elected not to impose a penitentiary term on this accused. I think that the sentence that has been imposed is necessary to enable that proper steps be taken to have the accused treated in an appropriate fashion. I was initially inclined to look at this offence particularly in the light of the circumstances as they unfolded in front of the Jury as calling for a much more severe sentence. However, in the light of the presentence report, the psychiatric report, and the submissions of counsel that have added to the background of information, I have concluded that the ends of Justice will be served by the sentence that I have now imposed, i.e., 18 months imprisonment.

Is there any request with respect to the exhibits or anything like that?

MR. FONTAINE: No Sir.

THE COURT: Are there any exhibits that are involved as far as you are concerned?

MR. DALTON: No Sir.

Dated at Yellowknife, Northwest Territories this 27th day of June, 1977.

C. F. Tallis, J.S.C.