

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

B E T W E E N:

HER MAJESTY THE QUEEN



- and -

STEVEN KOOTOO

S E N T E N C I N G

BEFORE HIS LORDSHIP Mr. Justice T. Richard
at IQALUIT, NORTHWEST TERRITORIES, on Friday,
September 23, 1994.

*Filed
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COUNSEL:

S. COUPER, Esq.,

Counsel for the Crown

S. COOPER, Ms.,

Counsel for the accused

THE COURT: This morning it is my serious
responsibility to impose an appropriate sentence on
two young men who have committed the crime of sexual
assault. In each case the victim was asleep in bed
and awoke in the middle of the night to find the
offender having unwanted sexual intercourse with her.

This kind of crime is today, unfortunately,
all too common in this jurisdiction. There is hardly
a community in the Northwest Territories which has not
experienced this very type of crime in recent years.
There is hardly a week that goes by that the Court is
not dealing with this type of crime somewhere in the
Northwest Territories. It is a sad situation indeed.
Women and young girls are being victimized and
traumatized simply so that the offenders can satisfy
their own selfish sexual appetites. The offenders
treat their victims with little or no respect as human
beings.

The Parliament of Canada, which makes the
laws regarding crime in this country, has said that
sexual assault is a serious crime. And for this crime
Parliament has directed that a judge can impose a
heavy sentence up to a maximum of ten years
imprisonment in a federal penitentiary in Southern
Canada.

The Courts in this jurisdiction have also

5 said that sexual assault is a serious crime and have
in recent years imposed heavy sentences for this type
of crime, yet the assaults continue. There are those
who point to this continuing high incidence of sexual
assault and who argue that heavy sentences or lengthy
jail terms do not act as a deterrent or are not
working as a deterrent against this kind of crime.
These people may indeed have a point in terms of
general deterrence. It is the type of proposition
10 that is difficult to prove or disprove with empirical
data.

15 Individual deterrence, however, is a
different matter. In my experience, the number of
offenders who commit another crime of sexual assault
after serving a sentence of three years or more are
few and far between. Although I am unaware of any
particular study in that regard, I'm certain that
there is data available to support that assertion.

20 Counsel have spoken of general deterrence
and individual deterrence as being specific principles
of the sentencing process which the Court must be
mindful of in determining the appropriate sentence in
each case and there are other sentencing principles
25 that must be considered as well. Here, given the
young age of these two offenders, the Court must be
mindful of the important aspect of rehabilitation,
that is, the hope that the sentence will be one which
30 will allow the offender to rehabilitate himself, to

turn his life around so that he does not want -- so
that he does not want to re-offend again and so that
he does not in fact re-offend again. As was stated by
Ms. Cooper in court here this morning, there are
5 programs available to inmates within these
institutions, but these young men must decide
themselves that they want to take advantage of these
opportunities and become better persons, and I would
hope that both of these young men when they start
10 serving their sentences will think about the day that
they're going to be released and think about the kind
of persons that they want to be after they're
released.

15 There is one other principle that is
important when sentencing an offender for this
particular kind of crime and that is sometimes
referred to as denunciation. The Court's sentence on
behalf of society generally ought to be one which will
20 adequately reflect our society's condemnation of this
particular crime as abhorrent or unacceptable in our
society generally and in this community of Iqaluit in
particular.

25 Now, these principles then must be kept in
mind by me as the sentencing judge with the serious
responsibility of determining the appropriate sentence
for each of these young men. I must also take into
account the particular personal or individual
30 background of each offender and also the circumstances

of the specific crime of sexual assault committed by that offender, and I will refer to those details in a moment. Apart from these circumstances and these sentencing principles, though, one must ever be mindful of the overall objective or goal of the entire criminal justice system, and that is simply the protection of the public.

I do not enjoy this part of my job, sending healthy, young men to jail for a lengthy period of time, but regrettably it is necessary in order to achieve or to strive for that objective of protecting the public. In particular, it is necessary to send these two young men to jail for a substantial period of time in order to protect women and young girls in this community from them and from offenders or would be offenders like them.

I will now deal with the particular circumstances of Jerry Papatsie and the crime that he has committed. Mr. Papatsie is 22 years of age and originally comes from Pangnirtung. At the time of the offence in February 1993, he was 21 years of age and living in the home of relatives here in Iqaluit. One of the other people living in that household was his 14 year old cousin Ahme Papatsie. One of Ahme's young friends, A K , stayed at the Papatsie household for a sleep over from time to time. One night A woke in her bed in Ahme's room to find the offender, Jerry Papatsie, on top of her having

sexual intercourse with her. She was 12 years old at the time.

5 Mr. Papatsie has had an unfortunate
childhood and adolescence. He was a ward of the
superintendent of Child Welfare for many years and was
placed in a number of foster homes both in Pangnirtung
and here in Iqaluit. There is evidence that he was
10 subjected to serious physical abuse in at least one of
those homes. He exhibited behavioural problems
throughout his childhood and adolescence in school and
elsewhere in the community.

15 He has an extensive criminal record for a
young man, as follows: As a young offender he
committed a number of property offences and was
sentenced to custodial time on three occasions. In
June 1991, he was convicted of possession of a weapon
for a dangerous purpose and placed on probation for
20 two years. August '91, common assault, 14 days in
jail. August '91, assault with a weapon, 45 days in
jail. October '91, assault and in addition property
offences, two and a half months imprisonment. April
'92, unlawful confinement, 12 months imprisonment.
25 May '92, possession of narcotics, 15 days
imprisonment. April '93, mischief, \$100.00 fine. May
'93, trafficking in narcotics, three months
imprisonment.

30 There are aggravating circumstances of the

5 crime that Mr. Papatsie is being sentenced for today.
In particular, I refer to the young age of his victim
and the fact that he was an adult who was a resident
in the household where this 12 year old girl visited
on a regular basis. She and her family and the other
residents of that Papatsie household were entitled to
assume that it was safe for her to go to sleep in that
house. She trusted Jerry Papatsie as any child trusts
an adult friend or acquaintance, to let her be in that
10 house without being molested. And Jerry Papatsie
breached that trust.

15 It is also an aggravating circumstance that
at the time of committing this offence, Jerry Papatsie
had not yet finished a sentence of 12 months
imprisonment for an offence of unlawful confinement
and was on probation at the time.

20 The Court has not been provided with any
particular information about the impact that this
assault has had on the young victim, but one can
reasonably assume that she has suffered and will
continue to suffer emotional and psychological harm.

25 I turn now to the offender Steven Kootoo and
the circumstances of his crime. Mr. Kootoo is 23
years of age and was born and raised here in Iqaluit.
He is single and has been living with his relatives.
In recent times, he has been caring for his invalid
30 grandfather until his grandfather's death one month

ago. I'm told that he has a grade eight education. Mr. Kootoo has a limited criminal record as a youth and as an adult, but none of his convictions involve violence against the person as does his present offence.

At the time of his offence in October 1993, he was living in his grandfather's home here in Iqaluit. On the night in question, he and some other occupants of that house, Sinigak Kootoo and Sinigak's girl friend M S , were drinking at that house. The victim, M S , became intoxicated and eventually went to sleep in her own bed. In her testimony at trial, she stated that she woke in the middle of the night to find Steven Kootoo on top of her having sexual intercourse with her. She told him to get off and he did. She called the police and reported the assault right away.

Mr. Kootoo's crime was a serious sexual assault and I find that there are no particular aggravating or mitigating factors which seriously impact on the appropriate sentence. There is no evidence provided to the Court on the effect that this assault has had on the victim.

I am told that Mr. Kootoo has already spent three and a half months in pretrial custody and he is entitled to credit for that period when his freedom was taken from him. But regrettably, for the reasons

that I have mentioned, my conscience and my responsibilities require me to order that he be incarcerated for a further substantial period of time.

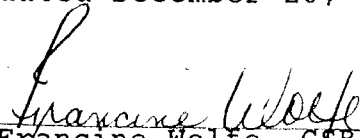
5 Please stand now, Mr. Kootoo. Steven
Kootoo, for the crime that you have committed, the
sexual assault of M S , it's the sentence of
this Court that you serve a term of imprisonment of
two and a half years. And in addition, as I'm
10 required by law to do so, I hereby order pursuant to
Section 100 of the Criminal Code that you are
prohibited from having in your possession any firearm
or ammunition or explosive substance for a period of
time commencing on today's date and expiring on a date
15 ten years after your release from your term of
imprisonment. Any such item in your possession at
this time shall be surrendered to a police officer or
otherwise disposed of within one month of today's
date. And in view of the fact that you will be
20 incarcerated for the next period of time, I decline to
impose any victim fine surcharge. Now, Mr. Kootoo,
I'm going to have the clerk of the court endorse the
warrant of committal with this Court's strong
recommendation that you be permitted to serve your
25 term of imprisonment at a facility within the
Northwest Territories. You may sit down now.

 Mr. Papatsie. Jerry Papatsie, for the crime
that you have committed for the sexual assault of
30 A K , it is the sentence of this Court that

5 you serve a term of imprisonment of four years. And
in addition I hereby order pursuant to Section 100 of
the Criminal Code of Canada, that you are prohibited
from having in your possession any firearm or
10 ammunition or explosive substance for a period of time
commencing on today's date and expiring on a date ten
years after you are released from your term of
imprisonment. Any such item in your possession at
this time shall be surrendered to a police officer or
15 otherwise disposed of within one month of today's
date. And in your case as well, I decline to impose
any victim fine surcharge. I would also have the
clerk endorse the warrant of committal with this
Court's recommendation that you be permitted to serve
your term of imprisonment at an institution within the
Northwest Territories. You may sit down now, sir.

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25 Certified Pursuant to Practice Direction #20
dated December 28, 1987.


Francine Wolfe, CSR