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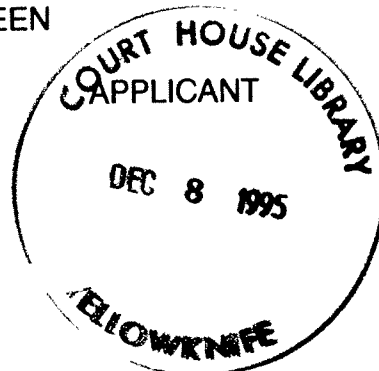
IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

HER MAJESTY THE QUEEN

- and -

B M K



RESPONDENT
(ACCUSED)

REASONS FOR JUDGMENT OF
THE HONOURABLE MADAM JUSTICE HETHERINGTON

COUNSEL:

ALAN R. REGEL
for the APPLICANT

VIRGINIA A. SCHULER, Q.C. and
R. STEVEN MELNICK
for the RESPONDENT (ACCUSED)

INDEX

		<u>Page</u>
I	SUMMARY	1
II	IDENTIFICATION OF ISSUES	4
III	EVIDENCE	6
IV	BACKGROUND	10
V	DISCUSSION OF ISSUES	11
	(1) Is the sexual assault of which Mr. K was convicted on the 17th of May, 1994, a serious personal injury offence?	12
	(2) Does the evidence establish a pattern of persistent aggressive behaviour by Mr. K , of which this sexual assault forms part?	15
	1982	16
	1983	17
	1984	18
	1985	19
	1986	21
	1987	21
	1988	23
	1989	25
	1990	25
	1992	28
	1993	29
	1994	29

	<u>Page</u>
(3) Does this pattern of persistent aggressive behaviour show a substantial degree of indifference on the part of Mr. K respecting the reasonably foreseeable consequences to other persons of his behaviour?	32
(4) On the basis of the evidence establishing the above, does Mr. constitute a threat to the life, safety or physical or mental well-being of other persons?	33
(5) Should I find Mr. K to be a dangerous offender?	35
(6) Should I impose on Mr. K a sentence of detention in a penitentiary for an indeterminate period, in lieu of any other sentence that might be imposed for the sexual assault of which he was convicted on the 17th of May, 1994?	37

APPENDIX A

APPENDIX B

APPENDIX C

**REASONS FOR JUDGMENT OF
THE HONOURABLE MADAM JUSTICE HETHERINGTON**

I SUMMARY

On the 17th of May, 1994, B M K was convicted of sexual assault. Following his conviction and before he was sentenced, counsel for the Crown gave notice that he intended to make an application to the court under Part XXIV of the *Criminal Code*. He said in this notice that he intended to ask the court to find Mr. K to be a dangerous offender, and to impose a sentence of detention in a penitentiary for an indeterminate period, in lieu of any other sentence that might be imposed for the sexual assault.

Although I did not preside at the trial at which Mr. K was convicted of this offence, I heard the application of the Crown.

Parliament has decided when an offender may be found to be dangerous. S. 753 of the *Criminal Code* sets out detailed criteria for determining this. In my view, Mr. K meets the requirements of that section, and in particular of ss. (a)(ii). The Crown has established to my satisfaction:

- (1) That the sexual assault of which he was convicted is a serious personal injury offence;
- (2) A pattern of persistent aggressive behaviour by him, of which this sexual assault forms a part;

- (3) That this pattern of behaviour shows a substantial degree of indifference on his part respecting the reasonably foreseeable consequences to other persons of his behaviour; and
- (4) That on the basis of the evidence establishing the above facts, Mr. K constitutes a threat to the life, safety and physical and mental well-being of other persons.

S. 753 says that where an offender meets these requirements, a judge may find him or her to be a dangerous offender. The judge is not obliged to make this finding. However, a judge can not refuse to do so without reason. In the case of Mr. K there is no reason to refuse to declare him a dangerous offender. There is no circumstance which would justify such a refusal.

The protection of the public is of paramount importance on an application of this kind. In the past, Mr. K has frequently behaved in an aggressive manner with other people. He has hurt some, both physically and mentally, and has put the physical and mental well-being of others at risk. Sometimes he was drunk when he did these things; sometimes he was not.

Since his most recent offence, Mr. K has not, by his conduct, shown that he has changed. In the interests of the public, I must therefore declare him to be a dangerous offender.

Again, a judge is not obliged to sentence a dangerous offender to be detained in a penitentiary for an indeterminate period. The judge may instead impose a sentence of imprisonment for a fixed term. However, the judge must have a reason for doing so. Here there is no such reason.

On the contrary, in this case the protection of the public requires a sentence of imprisonment for an indeterminate period. Mr. K has received sentences for fixed terms in the past. They have not brought about any change in his behaviour in relation to other people. He might change while in custody serving a fixed term, if he received treatment. However, there is nothing in the evidence I heard to suggest that the treatment he requires is available to him in custody, or that he is motivated to accept it.

In these circumstances, in order to protect the public, I must direct that Mr. K be imprisoned in a penitentiary for an indeterminate period.

I would like to say that I have come to this conclusion with some regret. Mr. K is an intelligent man, a good hunter and a talented carver. Unfortunately he thinks that he can do anything he likes to those who are weaker than he, or whom he can intimidate or overpower with weapons. He is wrong. I hope that he will come to realize this.

- 4 -

The effect of my judgment in this case is that Mr. K's future is in the hands of the National Parole Board. Under s. 761 of the *Criminal Code* the Board must, immediately after the 10th of September, 1996, and not later than every two years after that date, review his case to determine whether he should be granted parole.

II IDENTIFICATION OF ISSUES

In this case counsel for the Crown relies on ss. (a)(i) and (ii) and (b) of s. 753 of the *Criminal Code*. However, I need consider only ss. (a)(ii). The relevant parts of s. 753 are therefore the following:

"753. Where . . . it is established to the satisfaction of the court

(a) that the offence for which the offender has been convicted is a serious personal injury offence described in paragraph (a) of the definition of that expression in section 752 and the offender constitutes a threat to the life, safety or physical or mental well-being of other persons on the basis of evidence establishing

...

(ii) a pattern of persistent aggressive behaviour by the offender, of which the offence for which he has been convicted forms a part, showing a substantial degree of indifference on the part of the offender respecting the reasonably foreseeable consequences to other persons of his behaviour, or

...

the court may find the offender to be a dangerous offender and may thereupon impose a sentence of detention in a penitentiary for an indeterminate period, in lieu of any other sentence that might be imposed for the offence for which the offender has been convicted."

The phrase "serious personal injury offence", as it is used in s. 753, is defined in s. 752. The relevant parts of that section read as follows:

"752. In this part,

...

'serious personal injury offence' means

(a) an indictable offence . . . involving

(i) the use or attempted use of violence against another person, or

(ii) conduct endangering or likely to endanger the life or safety of another person or inflicting or likely to inflict severe psychological damage upon another person,

and for which the offender may be sentenced to imprisonment for ten years or more,"

Therefore, I must determine whether the Crown has proven beyond any reasonable doubt:

- (1) That the sexual assault of which Mr. K was convicted on the 17th of May, 1994, is a serious personal injury offence;
- (2) A pattern of persistent aggressive behaviour by Mr. K, of which this sexual assault forms part;
- (3) That this pattern of persistent aggressive behaviour shows a substantial degree of indifference on the part of Mr. K respecting the reasonably foreseeable consequences to other persons of his behaviour; and

- (4) That on the basis of the evidence establishing the above, Mr. K constitutes a threat to the life, safety or physical or mental well-being of other persons.

If I am satisfied that the Crown has established all of the above elements, I must then decide whether I should:

- (5) Find Mr. K to be a dangerous offender, and
- (6) Impose on him a sentence of detention in a penitentiary for an indeterminate period, in lieu of any other sentence that might be imposed for the sexual assault of which he was convicted on the 17th of May, 1994.

III EVIDENCE

On the 15th of February, 1995, at the beginning of the hearing of his application, counsel for the Crown tendered a book of written material, and asked that it be admitted in evidence for the truth of its contents. On behalf of Mr. K, his counsel then admitted most of the statements of fact in the material, and the book was marked as Exhibit 2. Ultimately counsel for Mr. K admitted all of the statements of fact in this book. It contains copies of :

- Mr. K's criminal record prior to his conviction on the 17th of May, 1994, of sexual assault;
- the informations relating to the convictions on this record;
- in some cases, transcripts or police reports giving particulars of these offences;
- in one case, an agreed statement of facts relating to an offence;
- in some cases, statements given by Mr. K about these offences;
- some victim impact statements;

- in some cases, pre-sentence reports;
- in some cases, appeal reports.
- medical reports on L K

At the same time counsel for the Crown also tendered five books containing copies of records relating to Mr. K . These records were kept over the years by employees of the Corrections Service of the Government of the Northwest Territories. In addition, counsel tendered two books containing copies of records relating to Mr. K kept over the years by Correctional Service Canada.

On behalf of Mr. K , his counsel admitted that the notes contained in these records were made by the persons indicated, and that they set out the observations and opinions of those persons at the time when they were made. Counsel agreed further that they could be admitted in evidence as records kept by the corrections services.

The books containing copies of the records of the Northwest Territories Corrections Service were marked as Exhibit 3. The books containing copies of the records of Correctional Services Canada were marked as Exhibit 4.

Counsel for Mr. K reserved the right to dispute any of the facts set out in these exhibits, but did not do so. Nor did they admit them. During argument they took the position that I could not rely on these facts. Counsel for the Crown insisted that I

could. I need not resolve this dispute. I have not and will not rely in any way on the statements of fact in Exhibits 3 and 4.

Some time later counsel for the Crown tendered for admission in evidence, a document relating to Mr. K [redacted] entitled Summary of Incarceration, Release, and Reoffending Dates. Counsel for Mr. K [redacted] admitted the facts set out in this document, and it was marked as Exhibit 20.

During the hearing, many witnesses gave evidence as to Mr. K [redacted]'s reputation. I received this evidence under the authority of s. 757 of the **Code**. That section reads as follows:

"757. Without prejudice to the right of the offender to tender evidence respecting his character and repute, evidence of character and repute may, if the court thinks fit, be admitted on the question whether the offender is or is not a dangerous offender."

However, I have not given any weight to this evidence.

Many of the witnesses who testified gave hearsay evidence. They told the court what others had told them. I have been careful to treat this hearsay as evidence of statements made, and not to accept it for the truth of the contents of the statements. Of course, where the witnesses testified about statements made to them by Mr. K [redacted], I have accepted those statements for the truth of their contents.

The evidence of the lay witnesses who testified before me was uncontradicted and credible. Unless I indicate to the contrary in these reasons, I have accepted their evidence without reservation.

I permitted four witnesses to give opinion evidence as experts. Two were called by the Crown and two by the defence. The witnesses and their fields of expertise are as follows:

Crown

-- Dr. Fred Shane
Psychiatry, with special expertise in the battered woman syndrome

Dr. Michael Stambrook
Psychology; clinical assessments; the use, interpretation and administration of psychological tests; diagnostic procedures; and preparation of psychological and psychiatric diagnostic reports

Defence

-- Dr. Hans J. Arndt
Psychiatry and in particular, forensic psychiatry and psychopharmacology

-- Dr. James Alan Long
Clinical and forensic psychology, with specialities in psychotherapy and alcoholism.

With the exception of Dr. Stambrook, all of these witnesses interviewed Mr. K

On the advice of counsel, Mr. K refused to see Dr. Stambrook. Again with the

exception of Dr. Stambrook, all of these witnesses were present throughout the hearing until called to give evidence. Dr. Stambrook attended only to give evidence.

After the defence closed its case, counsel for the Crown tendered for admission as rebuttal evidence, records kept by employees of the Northwest Territories Corrections Service from the 15th of February to the 21st of April, 1995,. Counsel for Mr. K did not object to the admission of these records in evidence, on the same basis as those contained in Exhibit 3. They therefore became Exhibit 26.

IV BACKGROUND

I will summarize the evidence on which I rely when I deal with the issues on which it is relevant. However, it is necessary to say something of the personal background of the subject of this application.

Mr. K was born in Tuktoyaktuk in the Northwest Territories, on the 19th of December, 1964. He has lived there all his life, except for the times when he has been in jail.

Mr. K and his mother, M, lived with her parents until he was four. At that time his mother married F. U and moved out. Mr. K continued to live with his grandparents until he was twelve, when he went to live with his mother and step-father. The latter abused alcohol, and there was violence in the home. Mr. K, in turn, has abused alcohol.

Mr. K has a grade six education. He has taken an auto body course.

M A T lived with Mr. K for a period of time in a common-law relationship. They have two daughters.

I turn now to the issues.

V DISCUSSION OF ISSUES

I will deal in turn with the questions which I must answer in determining whether the Crown has proven beyond any reasonable doubt, that Mr. K meets the criteria in s. 753(a)(ii) for a dangerous offender.

(1) Is the sexual assault of which Mr. K [redacted] was convicted on the 17th of May, 1994, a serious personal injury offence?

On the 17th of May, 1994, Mr. K [redacted] was convicted of sexually assaulting his cousin, L [redacted] K [redacted]. That assault took place on the 9th or 10th of September, 1993.

At the time of the assault Ms. K [redacted] was seventeen years old. She had been involved in a snowmobile accident less than a year before, in which she suffered a closed head injury with basal skull fractures. This left her with many problems, including loss of strength on her right side, cognitive deficits and impaired short-term memory.

Ms. K [redacted] testified that on the day in question, she was walking alone when she met Mr. K [redacted]. He asked her where the party was. She said that she did not know and did not care. She also told him that he was not supposed to drink anyway. She could smell liquor on his breath when he spoke. He said "Let's go look.", and grabbed her arm. She went with him.

They walked by some trailers, and he said that there was someone over there waving. She could not see anyone. However, again he said "Let's go look, go check around.", and she went with him.

When they got to the trailers, there was no one there. She was just going to leave, when Mr. K. stopped her and started to take his pants off. He said "Let's have sex." She said that she did not want to have sex with him, that he was her cousin. He said that did not matter.

He went to her and said "lay down and take your pants off or I'll hit you." He took her pants off and had intercourse with her. She testified that she "just had to do what he said." She said that she felt awful, and was scared that he might really hurt her if she did not listen.

Ms. K said that every time she walks by the trailers, she thinks about this assault and gets "negative". Her mother, M K, testified that whenever her daughter is reminded of the assault, she gets very angry. She said that when counsel for the Crown phoned to tell Ms. K that she would have to testify during the hearing of this application, she became very violent. She grabbed a kitchen knife and held it to her chest.

For the purpose of a dangerous offender application, the phrase "serious personal injury offence" is defined in s. 752 of the **Criminal Code**. I will repeat the relevant parts of that definition:

"serious personal injury offence' means

(a) an indictable offence . . . involving

(i) the use or attempted use of violence against another person, or

(ii) conduct endangering or likely to endanger the life or safety of another person or inflicting or likely to inflict severe psychological damage upon another person,

and for which the offender may be sentenced to imprisonment for ten years or more, or"

On the 17th of May, 1994, Mr. K was convicted of the indictable offence of sexually assaulting L K . If he were to be sentenced to imprisonment for a fixed term, he might receive a sentence of ten years for this offence (s. 271). To this extent, the offence falls within the definition of a serious personal injury offence.

Counsel for Mr. K conceded that sexual assault is an offence of violence. She argued, however, that s. 752(a)(i) requires what is usually referred to as gratuitous violence, that is, violence over and above that required for the offence. However, s. 752(a)(i) does not say this, and she cited no authority in support of this argument. I am not persuaded by it.

I am satisfied that the sexual assault of which Mr. K [redacted] was convicted on the 17th of May, 1994, is a serious personal injury offence, as that phrase is defined in s. 752(a)(i) of the *Criminal Code*.

(2) Does the evidence establish a pattern of persistent aggressive behaviour by Mr. K [redacted], of which the sexual assault for which he has been convicted forms part?

A copy of Mr. K [redacted]'s criminal record (Tab 1, Exhibit 2) is attached to these reasons as Appendix A. All of the offences shown on it were committed in Tuktoyaktuk.

The record shows two convictions for consuming alcohol while under the age of nineteen, ten for breach of probation, four for breach of an undertaking, one for being unlawfully at large, and one for failing to attend court. Mr. [redacted] pled guilty to all of these offences and received the sentences shown. I do not think that I need to enlarge upon them. Attached to these reasons as Appendix B, is a copy of Mr. K [redacted]'s criminal record from which these convictions have been removed. I prepared this document to assist me in analyzing the evidence in this case.

Mr. K [redacted] has three convictions for theft, and three convictions for break and enter and commit theft. One of the latter involved the Dome Terminal, one the Tuktoyaktuk Alcohol Center, and one the apartment of Wayne Gruben, who was away working at the

time. Mr. K. pled guilty to all of these offences and received the sentences shown. I will not discuss them further.

I will deal in more detail with the rest of Mr. K.'s criminal record, and with the evidence which I heard of other criminal activity in which he was involved. It has been suggested that most of the offences attributed to Mr. K. were committed after he had consumed alcohol. I will therefore note any offences which he committed when he was sober.

1982

On the 19th of May, and again on the 27th of May, Mr. K. carried a weapon, specifically a folding hunting knife, for a purpose dangerous to the public peace. He pled guilty to both of these offences on the 1st of June, and received a sentence of sixty days consecutive for each.

Mr. K. discussed the second of these incidents with Dr. Shane. He told Dr. Shane that he pulled the knife on his mother and step-father, and threatened to kill them. He said that his step-father wanted to fight with him.

On the 24th of October, around 8:00 in the morning, Mr. K. was at home and trying to sleep. He was prevented from doing so by the loud music which his mother

was playing. He became angry and began to throw furniture around the living room. His mother ran to call the police. By the time they arrived, Mr. K had thrown the television set and the cassette tape recorder through the front window of the house. The living room was in disarray. After he was arrested, Mr. K told the police that he had not been drinking.

On the 27th of October Mr. K pled guilty to mischief in relation to this incident, and was sentenced to be imprisoned for three months and placed on probation for two years.

1983

On the 18th of April Jim Stastny and his common-law wife were asleep, when Mr. K and another person kicked open the front door of the house and went in. Mr. Stastny put them out by raising an empty liquor bottle over his head in a threatening manner. He had no idea why they had entered his house.

Mr. K pled guilty to being unlawfully in the dwelling house of Mr. Stastny, and on the 12th of May received a sentence of two months consecutive for it.

1984

On the 26th of February Mr. K. tried to get in the door of a house in which L. T. was living. When he was not able to get in, he threw something through the front window. As a result of this incident he was charged with mischief.

On the 30th of May in the Cockney residence, Mr. K. grabbed Doreen Cockney around the throat with his arms. He then pulled away from her and demanded a kiss. Ms. Cockney attempted to run away, and Mr. K. pursued her to the porch of the house. Ms. Cockney was frightened and ran to report these events to the police. As a result, Mr. K. was charged with assaulting Ms. Cockney.

On the 3rd of June Mr. K. kicked open the locked door of the residence of Roy Kikoak. He wanted to use the phone, but there was no phone available, so he left. Mr. K. was charged with break and enter with intent to commit an indictable offence in relation to this incident. He was apparently arrested on the 4th of June, and held in custody thereafter.

On the 2nd of August Mr. K. pled guilty to these offences and was sentenced to be imprisoned for two months, one month consecutive, one month consecutive and two months consecutive respectively. He was also placed on probation for six months as a result of his conviction for mischief.

Around this time Mr. K and M A. T began living together. He was frequently violent in his treatment of her. Generally he was sober when this occurred. Mostly he hit her with his fist. On one occasion he tried to choke her, put a pillow on her face and hit her with the night table. She sometimes had black eyes and bruises as a result of these attacks. He kept saying that he was sorry and would not do it again, but he did.

1985

On the 20th of March Mr. K damaged a stereo and television belonging to F D , by throwing them off the step into the yard and beating them with a hammer. He was not drunk at the time. As a result of this incident he was charged with mischief. He pled guilty to this offence on the 15th of April, and was sentenced to be imprisoned for one month consecutive.

On the 30th of September Mr. K noticed that his sister J had a "fat lip". He believed that F D , her common-law husband, was responsible. He got a shotgun and went to Mr. D 's apartment. When he walked in, he found Mr. D lying on his mattress, watching television. He fired the gun twice, missing Mr. D by about a foot. Mr. D was afraid for his life, and begged Mr. K not to shoot him. The latter was sober when these events took place.

Corporal Gene Hann of the R.C.M.P. testified that on the 17th of October he received a complaint from M. and R. K. about Mr. K. He said that the K's were elderly and small, and that they were good people. Their demeanour led him to believe that they were scared.

When she testified, Mrs. K. confirmed that she and her husband had been scared. She said that they were at home when Mr. K., her nephew, came in. He wanted to use the phone, and Mr. K. refused to let him. Mr. K. then grabbed Mr. K. and hit him. He had a knife. When Mrs. K. tried to stop him, he hit her with his elbow. It is possible that Mrs. K. is confused about the details of this incident, since a similar incident took place in 1988.

A charge was laid against Mr. K. as a result of this altercation with the K., but it was withdrawn.

Mr. K. was charged with possession of a weapon for a purpose dangerous to the public peace as a result of his encounter with Mr. D. He was convicted of this offence, and sentenced on the 19th of December to be imprisoned for nine months.

1986

On the 29th of September the police were called to the residence where Mr. K lived with his mother, M U . They found that Mr. K had smashed the windows and door frames of the residence. He had also thrown a television set through one of the windows, and knocked over furniture, plants, kitchen utensils and food. Mrs. U advised the police that the appellant had not been drinking, but that he and his common-law wife were having problems.

As a result of this incident, Mr. K pled guilty to a charge of mischief, and was sentenced on the 27th of November to be imprisoned for four months. On the 17th of March, 1987, this sentence was reduced on appeal to time in custody.

1987

On the 5th of March Mr. K struck his common-law wife, M A T , in the face. She received a black eye. Mr. K had a pair of scissors in his hand at the time, but he did not point them at Ms. T . He said words to the effect that he could hurt her with them, but he did not do so.

On the 4th of April Mr. K became angry with his fifteen year-old half-brother, W U . He pushed him on the chest, causing him to fall against a washing machine and hurt his hands. Mr. K , also made as if to kick W in

the chest, but W blocked the kick with his hand. Mr. K was sober when these events occurred.

On the 9th of May Mr. K punched and kicked Ms. T. He was sober at the time. She received a lump on the forehead, a swollen nose and some minor marks on her throat.

Mr. K then went for live-in counselling to the batterer's centre in Inuvik. However, he did not stay long. He ran into some friends and began to drink.

Mr. K pled guilty to assault in relation to each of the incidents involving Ms. T. On the 26th of August he was sentenced to be imprisoned for two months for the first, and four months consecutive for the second.

On December 30 Mr. K's sister J found him in a bedroom by himself with a shotgun to his head. His girl-friend had just left him, and he was crying. J called the police, who found what appeared to be a suicide note in the bedroom. Mr. K later admitted to the police that the shotgun was loaded when his sister came into the bedroom.

Mr. K agreed to go with the police to the Inuvik General Hospital, so that he could get psychiatric help. He said that he wanted to get straightened out. However, the day after he arrived, he refused to stay at the hospital, and was discharged.

1988

On the 6th of January Mr. K pled guilty to assault in relation to the incident involving W U . He was sentenced on that date to pay a fine of \$50.00. If he did not pay, he was to be imprisoned for ten days.

Around the 17th of January Mr. K came into a house in which M A T was a visitor. He was no longer living with Ms. T . She left the house, and he followed her. He said he would walk her home. However, he wanted to get some cigarettes from his place, and wanted her to go with him. She did not want to go, but he begged and she went. They went to his room. He would not let her go for a while, and tried to kiss her. Finally she told him that she did not want anything to do with him, and she left. He followed and attacked her. He held her hair, threw her around and kicked her. Mr. K was sober when these events took place. Ms. T lost a lot of hair, and hurt all over the next day.

On the 26th of April Mr. K pled guilty to careless handling of a firearm and possession of a firearm while prohibited. These charges arose out of his threatened

suicide. He was sentenced to be imprisoned for six months on each count, the sentences to be consecutive. On the 20th of June these sentences were reduced to time in custody plus two years probation.

On the 16th of July at 4:30 in the morning, Mr. Gale Jacobson was awakened by a loud crash. When he got up, he found that his front window had been smashed. He saw a person running down the street. That person was Mr. K. . He had smashed the window with his fist, and cut his arm.

Mr. K. pled guilty to a charge of mischief as a result of this incident. On the 11th of August he was sentenced to be imprisoned for one month for this offence.

On the 19th of November R. K., a 66 year old man in poor health, was babysitting in his own home. Sometime after 11:00 o'clock at night, Mr. K. walked in to use the phone. He said that he wanted to call his lawyer in Yellowknife. Mr. K. persuaded him that it was too late, and Mr. K. then seemed to go to sleep sitting on the couch. Mrs. K. arrived home and asked Mr. K. to leave, but he did not reply. Mr. K. then touched him on the arm to wake him. Mr. K. jumped up, pushed Mr. K., and told him not to touch him. Mr. K. tried to move away, but he tripped and fell. Mr. K. then kicked Mr. K., once

on the body and once on the head. Mr. K sustained a cut over his right eye which required five stitches.

As a result, on the 23rd of November Mr. K pled guilty to assault causing bodily harm. He was sentenced to be imprisoned for twelve months.

1989

On the 8th of December Mr. K and Jack Noksana assaulted Carl Smith. Both had knives, although Mr. K did not touch Mr. Smith with his. Mr. Smith received three superficial scratches and one small laceration on his neck. The laceration required three stitches.

1990

On the 8th of February Mr. K was convicted of aggravated assault in that he had wounded Carl Smith. He was sentenced to be imprisoned for four months for this offence.

In June M A T was living with D K . On the 11th of June Mr. K was at home with a friend. Mr. K knocked at the door and was told to come in. When he entered the house, he grabbed a pair of scissors from the table, and held them at the side of his leg. He said that he had heard that Mr. K had

done some "funny stuff" with his children. Mr. K said that he had, and that he was arguing with Ms. T. Mr. K told him that if he ever did it again, he would cut his nuts off. Mr. K testified that he was scared, because he could tell that Mr. K meant it. He phoned the R.C.M.P.

Corporal Milton Tucker of the R.C.M.P. investigated the complaint of Mr. K. He could not recall what the "funny stuff" was, but said that there nothing to indicate that Mr. K had committed a criminal offence. He took steps to have Mr. K sign a peace bond under s. 810 of the **Criminal Code**. However, Mr. K went to jail shortly after his confrontation with Mr. K. Corporal Tucker did not think that a peace bond was ever signed.

On the 20th of June Mr. K pushed his stepfather, F U, to the ground, and beat him with a hammer and with a bar of some type. He also kicked Mr. U and threatened to kill him. Mr. K was drunk at the time. Apparently he believed Mr. U had stolen a substantial amount of money from his mother.

Mr. U suffered a bloody mouth and nose, and complained of soreness to his arms, legs and midsection, as a result of this assault. The soreness lasted for about a week. However, he did not require medical treatment. A couple of days later Mr. K apologized to Mr. U for assaulting him.

On the 1st of July Mr. K was a guest in the home of Margaret Dick. Mrs. Dick was then fifty six years of age. Mr. K was drunk. He obtained a knife, went over to Mrs. Dick and held it to her neck. Mrs. Dick managed to get the knife away from him, and threw it into the sink. Mr. K then asked for a kleenex, and Mrs. Dick went into the bathroom. Mr. K followed her and again confronted her with the knife. He grabbed her pants in an effort to pull them down. Mrs. Dick fought her way free and left the home. Corporal Tucker testified that he investigated this incident. He said that Mrs. Dick appeared very fearful when he talked to her.

G V testified that on the 4th of July she was at the T's house. She was then twelve years old. Mr. K arrived, and some time later she saw him kicking his sister J. He then went to his niece C and started choking her. C was five or six years old.

Also on July 4 Mr. K went to a house in Tuktoyaktuk. He kicked at the door, but the occupants refused to let him in. He then left and returned with some rocks, which he threw at the windows of the house. He succeeded in breaking one window. Mr. K was held in custody after this incident.

Mr. K. was charged with using a weapon in committing an assault on, and threatening to cause the death of, Mr. U ; he was charged with using a weapon in committing a sexual assault on Mrs. Dick; and he was charged with mischief in the breaking of the window. On the 6th of September he was sentenced to be imprisoned for nine months concurrent on each of the charges relating to Mr. U ; two years consecutive for the sexual assault on Mrs. Dick; and three months consecutive for breaking the window.

1992

On the 13th of October Mr. K. was living with his mother, Mrs. U . It appears that Mr. D and Mr. K 's sister J. were also living in the house. On that day Mrs. U was drunk. She was going to drink perfume. J. took the perfume away from her, and they got into an argument. Mr. K became angry, and pulled Mrs. U from the couch on which she was sitting to the floor. He picked up a knife and knelt beside her. He then started to take her to a bedroom, half lifting and half dragging her. J. passed him in the hall. He followed her, grabbed her by the hair and threw her to the floor. Mr. K was not drinking on that occasion. Later he apologized to Mrs. U .

On the 26th of November Mr. K. pled guilty to assaulting his mother, Mrs. U , and his sister, J. K . He was sentenced to be imprisoned for three

months consecutive and three months concurrent for these offences. He was also placed on probation for one year for each offence.

1993

On the 9th or 10th of September, Mr. K sexually assaulted L K. I have already described the circumstances of that assault. It appears from the appendices to these reasons that Mr. K was both on parole and on probation when he committed this offence. As I understand it, he was taken into custody on the 10th of September, 1993. From that date until the 12th of December, 1993, he was serving the balance of the sentence on which he had been on parole. Since the 12th of December, 1993, he has been in custody in relation to the sexual assault on Ms. K.

1994

On the 17th of May, Mr. K was convicted of sexually assaulting L K.

Attached to these reasons as Appendix C, is a copy of the summary of Mr. K's incarceration, release and re-offending dates, which was marked as Exhibit 20. This document shows that since 1982, every time Mr. K has been

released from custody, he has re-offended within weeks. The longest periods before he re-offended were seven weeks.

Appendix C also shows that from February 8, 1990, until he was arrested on the 10th of September, 1993, for sexually assaulting L K , a period of three years and seven months, he was out of custody for three periods totalling four months. During these brief periods he threatened Mr. K ; assaulted Mr. U with weapons and threatened to kill him; sexually assaulted Mrs. Dick using a weapon; assaulted his sister and his niece; broke a window; assaulted his sister again and his mother; and sexually assaulted L K ..

This evidence, that is, that found in the appendices and that which I have summarized, establishes beyond any doubt a pattern of persistent aggressive behaviour by Mr. K , of which the sexual assault for which he was convicted on the 17th of May, 1994, forms part.

Beyond that, Mr. K has often behaved in an aggressive manner while in custody. I heard evidence from three witnesses in this regard, Guy Le Blanc, Sylvia Hnatiw and George Williams.

Guy Le Blanc started working for the Corrections Service of the Government of the Northwest Territories in 1981. Since that time he has twice been seconded to Correctional Service Canada. He then worked with the Parole Board. Mr. Le Blanc first met Mr. K in 1982 at the Yellowknife Correctional Centre (Y.C.C.). Since that time he has dealt with Mr. K as a correctional officer, as supervisor of a community work crew, as a classification officer and as a parole officer.

Mr. Le Blanc said that Mr. K's behaviour in the correctional centre was, for the most part, not good. In particular he said (Transcript, vol. 1, p. 35):

"Most of what he did was not, I guess -- we didn't consider to be major infractions but there was always infractions of not reporting to work, getting kicked out of his work area, getting kicked out of programs. There was some more serious fights with inmates, verbally abusive towards staff, destruction of Government property, reports of stealing from other inmates. Basically that type of behaviour.

George Williams has been a correctional officer at Y.C.C. since 1982. He has known Mr. K since that time. In October of 1994 he became his classification officer. He testified that Mr. K has always been short-tempered, and quick to become verbally abusive with the staff. He said that Mr. K's attitude had improved quite a bit over the years, but that he still has flare-ups.

Sylvia Hnatiw began working as a correctional officer at Y.C.C. in June of 1990. She first encountered Mr. K around that time. She testified that in the last two years Mr. K has made inappropriate comments and gestures in her presence. Some of them had sexual overtones, some were disrespectful, and some were intimidating. She asked to be transferred within the centre so that she would not have to deal with him.

In short, a pattern of persistent aggressive behaviour can be seen in Mr. K's conduct both when he is free and when he is in custody. The sexual assault for which he was convicted on the 17th of May, 1994, forms part of this pattern.

(3) Does this pattern of persistent aggressive behaviour show a substantial degree of indifference on the part of Mr. K respecting the reasonably foreseeable consequences to other persons of his behaviour?

Counsel for Mr. K did not dispute that the behaviour which I have just described shows indifference on the part of Mr. K to its reasonably foreseeable consequences to others. She argued, however, that it does not show a substantial degree of indifference. She said first, that Mr. K appeared to "hold back" in committing these offences. Second, she said that he showed remorse.

It is possible that Mr. K held back in committing some or all of the offences described above. However, he did not hold back soon enough or to a sufficient degree to avoid hurting others or putting their physical or mental well-being at risk. Even

if he held back, his behaviour showed, if not complete indifference, a substantial degree of indifference, to the reasonably foreseeable consequences of his conduct to others.

It is true that Mr. K sometimes said that he was sorry, or otherwise indicated remorse for things that he had done. However, if he was genuinely remorseful, it was not reflected in his conduct. He did not ever make restitution for the extensive property damage he caused. And some of his family and friends were victimized more than once, his common-law wife many times.

More important, even if Mr. K was sometimes genuinely remorseful after he did things, the only reasonable inference from the fact that he did them is that at that time, he was indifferent to a substantial degree to the reasonably foreseeable consequences of his acts to others.

(4) On the basis of this evidence, that is, the evidence establishing:

- a pattern of persistent aggressive behaviour by Mr. K, of which the sexual assault of which he was convicted on the 17th of May, 1994, forms a part; and
- that this behaviour shows a substantial degree of indifference on his part respecting the reasonably foreseeable consequences to other persons of his behaviour;

does Mr. K constitute a threat to the life, safety or physical or mental well-being of other persons?

Section 753(a) of the **Criminal Code** sets out exactly what evidence is to be considered in relation to this issue. It is the evidence described above, which is the evidence I referred to in dealing with issues (1) and (2). Considering that evidence, I am satisfied that Mr. K constitutes a threat to the physical and mental well-being of other persons.

It seems to me particularly significant that from the 8th of February, 1990, until Mr. K was arrested for sexually assaulting L K on the 10th of September, 1993, a period of three years and seven months, he was out of custody for three periods totalling only four months. However, during these brief periods he threatened Mr. K ; assaulted Mr. U with weapons and threatened to kill him; sexually assaulted Mrs. Dick using a weapon; assaulted his sister and his niece; broke a window; assaulted his sister again and his mother; and sexually assaulted L K

In **R. v. Lyons** (1987), 61 C.R. (3d) 1 (S.C.C.) Mr. Justice La Forest, writing for the majority said at p. 31:

"... explicit in one form or another in each subsection of s. 687 [now s. 753] is the requirement that the court must be satisfied that the pattern of conduct is substantially or pathologically intractable."

(Square brackets added)

The many sentences for fixed terms which Mr. K. _____ has received have not caused him to deviate from the pattern of aggressive behaviour described above. I am satisfied that that pattern of conduct is substantially intractable.

The only reasonable conclusion on the basis of the evidence which is relevant to this issue, is that Mr. K. _____ constitutes a threat to the physical and mental well-being of others.

(5) Should I find Mr. K. _____ to be a dangerous offender?

In *Lyons* Mr. Justice La Forest asserted that even when the criteria of s. 753 are met, a judge is not obliged to designate an offender as dangerous. He said at p. 31:

"Finally, the court has the discretion not to designate the offender as dangerous or to impose an indeterminate sentence, even in circumstances where all of these criteria are met."

He did not say in what circumstances a judge could properly refuse to find that an offender was dangerous when that offender met the criteria of s. 753.

Counsel for Mr. K. _____ argued that I should not find him to be a dangerous offender, because he has never caused a severe injury or serious psychological harm. Even if this were so, I would not be justified in refusing to designate Mr. K. _____ as a dangerous offender. This is so for two reasons.

First, a number of Mr. K's victims have been very lucky to escape more serious injuries. This is particularly true of Mr. D, Mr. U and L K.

If Mr. D had moved unexpectedly, the shots which Mr. K fired in his direction might well have struck and killed him. Mr. K could have killed Mr. U when he hit him with a hammer and a bar, and kicked him, whether he intended to or not. While Ms. K's head injury can not be regarded as a matter of good fortune, it has affected her memory. As a result she does not dwell on the sexual assault by Mr. K, and its effect on her has not been as traumatic as it might otherwise have been.

Second, even if Mr. K has never caused a severe injury or serious psychological harm, s. 753(a)(ii) makes it clear that these are not prerequisites to finding an offender dangerous. Nor am I persuaded that their absence would be a valid reason for refusing to find Mr. K to be a dangerous offender. Such a refusal would fly in the face of s. 753(a)(ii).

In **Lyons** Mr. Justice La Forest said at p. 31, referring to the dangerous offender provisions in the **Criminal Code**:

First, a number of Mr. K's victims have been very lucky to escape more serious injuries. This is particularly true of Mr. D, Mr. U and L K.

If Mr. D had moved unexpectedly, the shots which Mr. K fired in his direction might well have struck and killed him. Mr. K could have killed Mr. U when he hit him with a hammer and a bar, and kicked him, whether he intended to or not. While Ms. K's head injury can not be regarded as a matter of good fortune, it has affected her memory. As a result she does not dwell on the sexual assault by Mr. K, and its effect on her has not been as traumatic as it might otherwise have been.

Second, even if Mr. K has never caused a severe injury or serious psychological harm, s. 753(a)(ii) makes it clear that these are not prerequisites to finding an offender dangerous. Nor am I persuaded that their absence would be a valid reason for refusing to find Mr. K to be a dangerous offender. Such a refusal would fly in the face of s. 753(a)(ii).

In **Lyons** Mr. Justice La Forest said at p. 31, referring to the dangerous offender provisions in the **Criminal Code**:

"Not only has a diligent attempt been made to carefully define a very small group of offenders whose personal characteristics and particular circumstances militate strenuously in favour of preventive incarceration, but it would be difficult to imagine a better-tailored set of criteria that could effectively accomplish the purposes sought to be attained."

(Emphasis added)

In the light of Mr. Justice La Forest's comments on the suitability of the criteria set out in s. 753 to accomplish the purposes of the dangerous offender provisions, I do not think that it would be appropriate for me to exercise any discretion given to me in a manner inconsistent with that section.

I therefore find that Mr. K is a dangerous offender.

- (6) **Should I impose on Mr. K a sentence of detention in a penitentiary for an indeterminate period, in lieu of any other sentence that might be imposed for the sexual assault of which he was convicted on the 17th of May, 1994?**

Counsel for Mr. K argued that the protection of the public did not require a sentence of detention for an indeterminate period in this case. She contended that the public could be adequately protected by a determinate sentence. It is clear from the decision of the Ontario Court of Appeal in *R. v. Poutsoungas* (1989), 49 C.C.C. (3d) 388 at p. 390, that I can only give effect to this argument if there is support for it in the evidence.

Leaving aside the present application, an appropriate sentence for the sexual assault of L K by Mr. K , would be imprisonment for six years. Mr. K has already been in custody for one year and nine months in relation to this offence. If I were to impose a determinate sentence for this sexual assault, it would therefore be a sentence of imprisonment for four years.

I must keep in mind that in the past, determinate sentences have not deterred Mr. K from aggressive behaviour. In this case, therefore, a determinate sentence would protect the public only until Mr. K was released, unless in the time that he was in custody, his attitude and behaviour in relation to other people changed. Is there any evidence to indicate that such changes have already taken place, or will occur before he would be released if he received a sentence of imprisonment for four years? The evidence of the psychiatrists and psychologists who testified before me is relevant in this regard.

Dr. Shane, the psychiatrist called to give evidence by counsel for the Crown, testified on the 21st and 22nd of February, 1995. He had not seen Mr. K since December of 1994. He said that Mr. K suffers from two disorders. The most serious is an anti-social personality disorder. The other is a narcissistic personality disorder. Mr. K also has a substance abuse problem, primarily with alcohol.

With reference to people with anti-social personalities with violent dimensions, Dr.

Shane said (Transcript, vol. 4, p. 102):

"And for those who burn out, what happens is they come to a point where the violence stops. It's not that the thoughts and feelings necessarily disappear but they don't want to go back to jail, they don't want to be punished, they don't want to go through losing their freedom in the society."

He said that this may happen at any time, but usually happens during the person's fourth decade.

Again in relation to people with anti-social personalities with violent dimensions, and speaking in particular of Mr. K , Dr. Shane said (Transcript, vol. 4, pp. 103 and 104):

"I don't think there is a cure for antisocial personality. I think it's life experience and time. Cure may be consequences, that someone recognizes consequences. There is no special therapy for antisocial behaviour with violent, you know, with violence. It may be helpful to have ongoing support in terms of group. It may be helpful, I don't see it as a cure I think it's time and B 's learning that this is bad, bad for him. Bad for B . And that there are consequences for this type of behaviour.

I don't think any therapist can really help B . I think that's a fantasy and an illusion if anyone is omnipotent enough to think that they can help this man. He has shown them. He has had the opportunity. B has shown people that he can't commit himself. You have to be motivated. You have to be committed to therapy..."

Dr. Shane did not think that Mr. K had burned out, or that he was motivated to change.

Dr. Long, the psychologist called by counsel for Mr. K, testified on the 18th, 19th and 20th of April, 1995. He said that in his opinion, Mr. K suffers from a borderline personality disorder, with mild to moderately severe anti-social traits. On the subject of change, he said (Transcript, vol. 8, p. 113):

"There is a need for treatment which goes beyond punitive measures, and I do think that his condition is reversible, at least sufficiently to make him a person who would be rehabilitated. He does require a fairly fine hand in treatment, not simply a counsellor, but one who appreciates the one he has, and who can be backed up by medical authorities since I think without some assistance with chemotherapy, there would be a problem. However, this is not essential and some treatment programs of this kind of condition would be treated without chemical agents."

Dr. Long thought that Mr. K would benefit from a coerced type of treatment. On the other hand, he seemed to concede that it was crucial that Mr. K remain committed to treatment. He thought that under the right conditions, he would.

Dr. Long was concerned that an indeterminate sentence might cause Mr. K (Transcript, vol. 9, p. 17) "to despair and give up the motivation he is showing

for growth and improvement." For this reason he thought that such a sentence would be detrimental.

Dr. Arndt, the psychiatrist called by counsel for Mr. K , testified on the 20th and 21st of April, 1995. Dr. Arndt said that Mr. K 's primary problems are alcohol abuse and impulsivity. He said that Mr. K also suffers from an organic personality disorder, caused by long-standing alcohol abuse. He viewed alcoholism as the overriding problem.

When asked to give his opinion as to the best mode of treatment for Mr. K , Dr. Arndt said (Transcript, vol. 11, p. 2):

"Well, certainly my approach would be to assist him with his impulsivity, assist him with an understanding of what alcohol has done to him, what it has done to his community, to people around him, what he could do to avoid alcohol abuse. In other words, he can direct his tensions, his problems, in a different way. Rather than trying to deal with his problems through alcohol, deal with his problems through other ways. This he could learn in group therapy such as therapy sessions with A.A. and additionally if he would continue with medications, such as he is taking now, there is a good likelihood that with time -- and I have to stress the term 'time' here -- that with time, he certainly has a fighting chance to get away from alcohol."

When Dr. Arndt asked Mr. K about his alcohol abuse, Mr. K said that he could not make any promises. Dr. Arndt thought that this was an honest

statement, because it was clearly not self-serving. I agree. However, it does not speak well for Mr. K [redacted] 's motivation or resolve.

Dr. Arndt testified that when he saw Mr. K [redacted] in February and in April of 1995, he noticed an improvement in Mr. K [redacted] 's behaviour. Mr. K [redacted] told him that he was socializing with other people and helping them. Dr. Arndt regarded this as positive. Unfortunately Dr. Arndt did not say that he had attempted, or was able, to verify Mr. K [redacted] 's statements. On the advice of counsel, Mr. K [redacted] refused to see Dr. Shane after these changes were reported by Dr. Arndt.

In relation to this change, Dr. Arndt testified as follows (Transcript, vol. 11, pp. 111 and 112):

"A . . . the change has started. The process has been started however if there is no follow-up, if there is no further treatment, if there is not considerably prolonged further treatment, whatever gains have been made right now are most likely going to be lost.

Q If those gains are lost, then he will continue like he has been, right?

A Yes."

To return to the questions which I must answer, does the evidence indicate that Mr. K [redacted] 's attitude and behaviour in relation to other people have changed during the time that he has been in custody, or will change before he would be released if he received a sentence of imprisonment for four years?

Dr. Arndt testified that Mr. K. _____'s behaviour in relation to other people has already changed. Unfortunately he based this opinion on uncorroborated statements made to him by Mr. K. _____. There is nothing in the evidence to indicate that Mr. K. _____'s fellow inmates or the staff at the Yellowknife Correctional Centre have observed this. I am not satisfied that any significant change has occurred in Mr. K. _____'s attitude and behaviour in relation to other people during the time that he has been in custody.

Is there any evidence to support the contention that Mr. K. _____'s attitude and behaviour toward other people will change before he would be released if he received a sentence of imprisonment for four years? The only evidence which might support this contention is tied to evidence of treatment which would be of benefit to him. This evidence raises as many questions as it answers.

Mr. K. _____ has been in custody continuously since the 10th of September, 1993. The notice of this application was filed on the 3rd of June, 1994. Dr. Long and Dr. Arndt first saw him on the 17th of June, 1994.

However, since the 10th of September, 1993, Mr. K. _____ has not received treatment of any kind, other than medication. And he did not start to take the drug recommended by Dr. Arndt until the 23rd of March, 1995, after this hearing started. Why

is this so? Was appropriate treatment available to Mr. K [redacted] ? If it was, why did he not take advantage of it? Will appropriate treatment be available to him in the future while he is in custody? If it is, will he commit himself to it? If he will not, there is no point in talking about him receiving treatment while he is in custody. Nor is there any point in trying to determine whether he could be rehabilitated by this treatment before he is released.

Dr. Long and Dr. Arndt testified that in their opinion Mr. K [redacted] could be rehabilitated if he received treatment. However, with the exception of the medication to which I have referred, he has not received treatment during his last period of incarceration. There is nothing in the evidence to indicate that appropriate treatment will be available to him in the future while he is in custody. There is therefore nothing in the evidence to indicate that he could be rehabilitated while in custody, even if he were willing to commit himself to treatment.

Beyond that, I am not satisfied that Mr. K [redacted] is motivated to accept treatment or to change. He may talk as if he is, but there is nothing in the evidence I heard of his conduct, to suggest that this is anything more than talk.

In brief, Mr. K [redacted] has not changed significantly during the time that he has been in custody. Without treatment, Dr. Arndt said that Mr. K [redacted] would not

change. There is nothing in the evidence to indicate that appropriate treatment will be available to him in custody. Nor does his conduct indicate that he is motivated to accept treatment. The evidence does not, therefore, support the contention that Mr. K could be rehabilitated while in custody serving a determinate sentence.

In these circumstances, a determinate sentence would offer no protection to the public after Mr. K was released. His attitude and behaviour toward other people would not have changed.

For these reasons, and in particular to protect the public, I must impose on Mr. K a sentence of detention in a penitentiary for an indeterminate period, in lieu of any other sentence that I might impose for the sexual assault of which he was convicted on the 17th of May, 1994.

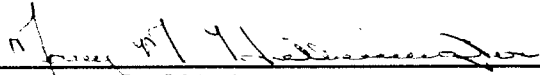
This does not mean that Mr. K will spend the rest of his life in prison. S. 761(1) of the **Criminal Code** directs the National Parole Board to review his case at fixed intervals. The relevant parts of this section read as follows:

"761.(1) . . . where a person is in custody under a sentence of detention in a penitentiary for an indeterminate period, the National Parole Board shall, forthwith after the expiration of three years from the day on which that person was taken into custody and not later than every two years thereafter, review the condition, history and circumstances of that person for the purpose of determining whether

he should be granted parole under Part II of the *Corrections and Conditional Release Act* and, if so, on what conditions."

This means that "forthwith" after the 10th of September, 1996, and not later than every two years thereafter, the National Parole Board will review Mr. K 's case to determine whether he should be granted parole.

JUDGMENT DATED at
YELLOWKNIFE, Northwest Territories,
this 28th day of September, 1995.



HETHERINGTON, J.

CRIMINAL CONVICTIONS ONLY

NAME: B M K
 DOB: 64-12-19 FPS:

DATE & PLACE	SECTION	OFFENCE DESCRIPTION	DISPOSITION
1982-02-04 Tuktoyaktuk, N.W.T.	s.306(1)(b) C.C.	B&E commit theft	6 mths prob
1982-06-01 Tuktoyaktuk, N.W.T.	1. s.67(1) L.O.	Consume liquor	\$25.00 i-d 5 days
	2. s.67(1) L.O.	Consume liquor	\$25.00 i-d 5 days
	3. s.666(1) C.C.	Breach of Probation	21 days conc.
	4. s.85 C.C.	Poss of Weapon	60 days consec
	5. s.85 C.C.	Poss of Weapon	60 days consec
	6. s.666(1) C.C.	Breach of Probation	21 days consec
1982-10-27 Tuktoyaktuk N.W.T.	s.387(4) C.C.	Commit mischief	3 months prob. 2 years
1983-05-12 Tuktoyaktuk, N.W.T.	1. s.666(1) C.C.	Breach of Probation	2 months consec
	2. s.666(1) C.C.	Breach of Probation	2 months conc
	3. s.294(a) C.C.	Theft over \$200	2 months
	4. s.306(1)(b) C.C.	Break enter & commit theft	2 months consec
	5. s.307 C.C.	Unlawfully in dwelling	2 months consec
1984-08-02 Tuktoyaktuk, N.W.T.	1. s.666(1) C.C.	Breach of Probation	1 month consec
	2. s.666(1) C.C.	Breach of Probation	1 month conc
	3. s.306(1)(b) C.C.	Break enter & commit theft	2 months
	4. s.306(1)(a) C.C.	Break enter with intent	2 months consec
	5. s.387(4) C.C.	Mischief	1 month consec prob 6 months rest. \$800
	6. s.294(b) C.C.	Theft under \$200	2 months consec
	7. s.245 C.C.	Assault	1 month consec
1985-04-15 Tuktoyaktuk, N.W.T.	1. s.294(b) C.C.	Theft under \$200	6 months
	2. s.387(4) C.C.	Mischief	1 month consec
1985-07-30 Tuktoyaktuk, N.W.T.	1. s.666(1) C.C.	Breach of Probation	Suspd Sent 1 year prob Rest. \$800
1985-12-19 Tuktoyaktuk, N.W.T.	1. s.85 C.C.	Possession of Weapon	9 months Proh of firearms 5 years
1986-05-20	1. 133(1)(b) C.C.	Unlawfully at large	3 months consec

1986-11-26 Tuktoyaktuk, N.W.T.	1. s.387(4) C.C.	Mischief	4 months App time served
1987-08-26 Tuktoyaktuk, N.W.T.	1. s.245 C.C. 2. s.245 C.C.	Assault Assault	2 months 4 months consec
1988-01-06 Tuktoyaktuk, N.W.T.	1. s.245 C.C.	Assault	Fine \$50
1988-04-26 Tuktoyaktuk, N.W.T.	1. s.84(2)(a) C.C. 2. s.98(12) C.C.	Careless use of firearm Poss of firearm while proh.	6 months consec 6 months - Proh of firearms 5 years App time served
1988-08-11 Tuktoyaktuk, N.W.T.	1. s.387(4) C.C. 2. s.666(1) C.C. 3. s.133(3) C.C.	Mischief Breach of Probation Breach of Undertaking	1 month 1 month consec 2 months consec
1988-11-23 Tuktoyaktuk, N.W.T.	1. s.245.1(1)(b) C.C. 2. s.666(1) C.C. 3. s.133(3) C.C. 4. s.133(2) C.C.	Assault causing bodily harm Breach of Probation Breach of Undertaking Fail to attend Court	12 months Proh of firearms 5 years 2 months consec 2 months consec 2 months conc
1990-02-08 Tuktoyaktuk, N.W.T.	1. s.268 C.C. 2. s.740(1) C.C.	Aggravated Assault Breach of Probation	4 months 1 month consec
1990-09-06 Tuktoyaktuk N.W.T.	1. s.267(1)(a) C.C. 2. s.264.1(a) C.C. 3. s.272(a) C.C. 4. s.430(4) C.C. 5. s.145(3) C.C. 6. s.145(3) C.C.	Assault with a weapon Uttering threats Sex Assault with a weapon Mischief Breach of Undertaking Breach of Undertaking	9 months 6 months conc Proh of firearms 5 years 2 years consec 3 months consec 3 months conc 1 month conc
1992-11-26 Tuktoyaktuk, N.W.T.	1. s.266 C.C. 2. s.266 C.C.	Assault Assault	3 months conc Prob 1 year 3 months consec

APPENDIX B

R. v. B M K

Born: December 19, 1964

Date of Sentencing	Description and Date of Offence	Sentence
<u>1982</u>		
February 4	B & E and commit theft (Dome Terminal - Jan. 20/82)	6 mos. probation
June 1	Possession of weapon (May 27/82)	60 days consec.
	Possession of weapon (May 19/82)	60 days consec.
October 27	Mischief (M U - t.v. and cassette tape recorder - Oct. 24/82)	3 mos. plus prob. 2 years
<u>1983</u>		
May 12	Theft over \$200 (shotgun - Mar. 8/83)	2 mos.
	B & E and commit theft (Tuk Alcohol Center - Mar. 25-29/83)	2 mos. consec.
	Enter with intent (Jim Stastny - April 18/83)	2 mos. consec.
<u>1984</u>		
August 2	B & E with intent (R K - June 3/84)	2 mos. consec.
	Mischief (L T - window - Feb. 26/84)	1 mo. consec. plus prob. 6 mos.
	B & E and commit theft (Dwelling house - Dec. 12/83)	2 mos.
	Theft under (Willy Carpenter - April 18/84)	2 mos. consec.

APPENDIX B

August 2
(continued)

Assault
(Doreen Cockney - May 30/84)

1 mo. consec.

1985

April 15

Theft under
(David Cockney - Feb. 21/85)
Mischief
(F D - stereo and t.v. -
Mar. 20/85)

6 mos.

1 mo. consec.

December 19

Possession of weapon
(F D - Sept. 30/85)

9 mos.

1986

November 26

Mischief
(M U - windows - Sept. 29/86)

4 mos.

Appealed - time
served (Mar 17/87)

1987

August 8

Assault
(M A T - Mar 5/87)
Assault
(M A T - May 9/87)

2 mos.

4 mos. consec.

APPENDIX B

1988

January 6	Assault (W U - April 4/87)	\$50 or 10 days
April 26	Careless use of firearm (Dec. 30/87)	6 mos. consec.
	Possession of firearm while prohibited (Dec. 30/87)	6 mos. consec. Appealed - time served - plus 2 years probation (June 20/88)
August 11	Mischief (Gale Jacobson - window - July 16/88)	1 mo.
November 23	Assault causing bodily harm (R K - Nov. 20/88)	12 mos.
	Failing to attend court (Nov. 23/88)	2 mos. consec.

1990

February 8	Aggravated assault (Carl Smith - Dec. 8/89)	4 mos.
September 6	Assault with weapon (F U - June 20/90)	9 mos.
	Death threat (F U - June 20/90)	6 mos. concur.
	Sexual asault with weapon (Margaret Dick - July 1/90)	2 yrs. consec.
	Mischief (windows - July 4/90)	3 mos. consec.

APPENDIX B

1992

November 26

Assault
(J K - Oct 13/92)
Assault with weapon
(M U - Oct/ 13/92)

3 mos. concur.
plus 1 yr. prob.
3 mos. consec.

1994

May 17

Sexual assault
(L K - Sept 10/93)

APPENDIX C

(Exhibit 20)

R. v. B M K

SUMMARY OF INCARCERATION, RELEASE, AND REOFFENDING DATES

<u>CONVICTION DATE, OFFENCES AND MAIN VICTIMS NAMES</u>	<u>SENTENCE & RELEASE DATE DATE OF NEXT OFFENCES & REMAND IF APPLICABLE</u>	<u>TIME AT LARGE BEFORE REOFFENDING (WEEKS)</u>	<u>TOTAL TIME AT LARGE (MONTHS)</u>
JUNE 1, 1982 67 L.A. x2, 666 CC x2, 85 CC x2 C K & David Carpenter	-Jail 4-1/2 month -Released Oct 19/82 -Re-offend Oct 24/82	5 days	.25
OCT. 27, 1982 387 CC M U	-Jail 3 months -Christmas 1982 released -Re-offend Feb 1, Mar 25, Apr 18/83	5 Weeks	4.5
MAY 12, 1983 666 x2, 294, 306, & 307 CC Property Offences Jim Stastney	-Jail 8 months -Released Oct 28/ 83 -Re-offend Dec 1, Feb 26, Apr 18, May 30, June 3 -Remanded June 4	5 Weeks	7.25
AUGUST 2, 1984 666 x2, 306 x2, 387, 294, 245 Doreen Cockney	-Jail 9 months -Released Jan 31/85 -Re-offend Feb 21, Mar 20	3 Weeks	2-1/2
APRIL 15, 1985 294 (b), 387 CC Theft-David Cockney Mischief-F D T.V. etc	-Jail 7 Months -Sept 17/85 released -Re-offend Sep 30/85, (Oct 16/85 M. K.)	2 Weeks	3
DEC 19, 1985 s. 85 CC F D	-Jail 9 Months -Re-offend -ULAL-May 19/86 -Released Aug 19/86 -Re-offend Sep 29/86	6 Weeks	3.25
NOV 26, 1986 s. 387 CC M U	-4 Months (reduced to time served) -Released Jan 20/87 -Re-offend Mar 5/87, Apr 4/87 May 9/87	7 Weeks	7.25

APPENDIX C

<p>AUG 26, 1987 s. 245 CC x2 Assaults on M. A. T</p>	<p>-6 Months -Released Dec 24/87 -Re-offend Dec 30/87</p>	<p>1 Week</p>	<p>4.</p>
<p>APR 26, 1988 s. 84 and s.98 CC (Threat Suicide)</p>	<p>-12 Months - Reduced to time served on appeal -Released Jun 20/88 by approval of Court -Re-offend July 16 & 18, 1988</p>	<p>4 Weeks</p>	<p>1-1/2</p>
<p>AUG 11, 1988 387, 666, and 133 CC Gayle Jacobson</p>	<p>-4 Months -Released Oct 30/88 -Re-offend Nov 20 and Nov 23/88</p>	<p>3 Weeks</p>	<p>0.75</p>
<p>NOV 23, 1988 s. 245.1, 666, and 133 (x2) CC R K</p>	<p>-16 Months Jail -Released Oct 18/89 -Re-offend Dec 8/89</p>	<p>7 Weeks</p>	<p>1.75</p>
<p>FEB 8, 1990 s.268 and 740 CC Carl Smith</p>	<p>-Remand Dec 8/89 -5 Months Jail -Released May 18/90 -(Incident K - June 10/90) -Re-offend June 20/90, July 1/90, July 4/90 -Remanded July 4/90 -(Incidents J. K. & C. K. , July 4/90)</p>	<p>4 Weeks</p>	<p>1.5</p>
<p>SEPT 6, 1990 S.267, 264.1, 272, 430 AND 145 (X2) CC F U Marg. Dick T Family</p>	<p>- 3 years -Released Sept 12/92 PAROLE -Re-offend Oct 12/92 -Arrest Oct 13/92 -Remand Oct 14/92</p>	<p>4 Weeks</p>	<p>1 Mo.</p>
<p>NOV 26, 1992 s. 266 (x2) J K M K</p>	<p>-3 Months -Released July 30.93 PAROLE -Sexual Assault Sep 10/93</p>	<p>6 Weeks</p>	<p>1-1/2</p>
<p>MAY 17, 1994 Sex. Assault L. K Sept 10, 1993</p>	<p>-Release date Dec 12/93 -Remanded Dec 12/93 To Present</p>		

APPEAL #CR 02423

A.D. 1995

IN THE SUPREME COURT OF
THE NORTHWEST TERRITORIES

BETWEEN:

HER MAJESTY THE QUEEN

APPLICANT

- and -

B M K

RESPONDEE
(ACCUSED)

REASONS FOR JUDGMENT

