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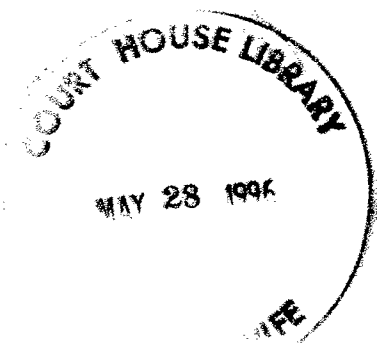
IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- and -

DAVID NAKASHOOK



Transcript of Reasons for Sentence before the Honourable
Mr. Justice J. E. Richard, sitting at Yellowknife, in the
Northwest Territories, on Monday, July 31, A.D. 1995.

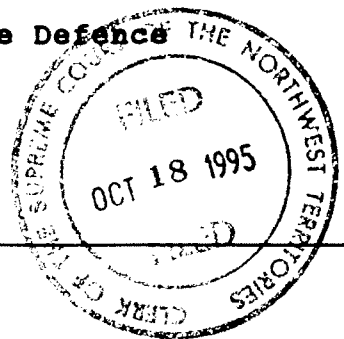
APPEARANCES:

MS. B. SCHMALTZ

On behalf of the Crown

MR. T. BOYD

On behalf of the Defence



1 THE COURT: Can I have the two indictments? David
2 Nakashook is before the Court once again to be
3 sentenced for crimes of violence committed against
4 members of his community. Mr. Nakashook is now 38
5 years of age. Throughout virtually his entire adult
6 life, he has been committing crimes of violence
7 against other people. He has a horrendous record of
8 criminal activity. I am going to ask the court
9 reporter to append a copy of the criminal record
10 Exhibit 3 to a transcript of these reasons for
11 sentencing.

12 Mr. Nakashook has, by my count, 15 prior
13 convictions for assault and numerous other convictions
14 for property offences, drinking and driving offences,
15 process violations, et cetera. He has been sent to
16 jail on 20 separate occasions. He was last sentenced
17 on May 19th, 1993, in his home community of Cambridge
18 Bay. On that date, he was convicted of three separate
19 crimes of assault, two of them with a weapon, and sent
20 to jail for a total of 21 months. I am told he
21 obtained an early release from imprisonment in July
22 1994 and returned to Cambridge Bay. On December 3rd,
23 1994, the date on which he committed the crimes for
24 which he is being sentenced today, he was still
25 technically speaking serving out the 21-month sentence
26 from May of 1993.

27 On the evening of December 2nd, December 3rd, Mr.

1 Nakashook was present at his father's home in
2 Cambridge Bay, and there was a great deal of drinking
3 taking place by a number of adult residents and guests
4 in that home. One of the women guests, 23-year-old
5 Margaret Kaomayok, became quite intoxicated and passed
6 out on a bed in one of the bedrooms. While she was
7 passed out, David Nakashook removed her pants and
8 panties and proceeded to have sexual intercourse with
9 her without her consent. At one point in time, the
10 victim briefly gained consciousness, and she tried to
11 push him off.

12 This victim was left with some minor physical
13 injuries being a small bruise on the inside of her leg
14 and also a soreness in the vaginal area. In addition,
15 she no doubt suffered serious psychological or
16 emotional trauma knowing that she had been violated in
17 this way.

18 During the same drinking party, David Nakashook
19 seriously assaulted his elderly father Mathew
20 Nakashook. Some time after 3 a.m., David Nakashook
21 began to choke his father for no apparent reason by
22 putting his arm around his father's neck. He applied
23 sufficient pressure to cause the victim to lose
24 consciousness and to cause the victim's arm to go
25 numb. All other adult occupants of the home were
26 either passed out or asleep at the time.

27 The victim was taken to the nursing station in

1 Cambridge Bay and later medivac'd to Yellowknife for
2 medical attention. The victim spent two days in
3 hospital in Yellowknife. He suffered bruises in the
4 neck area, a bruise on his tongue, and a loss of
5 sensation in his right arm.

6 David Nakashook has been in custody since the time
7 of his arrest on these charges on December 3rd, '94,
8 approximately eight months ago. Preliminary inquiries
9 were held in Cambridge Bay in April of this year. At
10 the request of Mr. Nakashook, the Court agreed to hold
11 the two jury trials in Yellowknife rather than
12 Cambridge Bay.

13 On July 17th, two weeks ago, Mr. Nakashook
14 attended in this courtroom and entered not guilty
15 pleas to these charges, and then he and the Crown
16 prosecutor selected two separate juries to hear the
17 evidence on two separate trials. The two jury trials
18 were scheduled for this week. Today, the date the
19 first of those trials was scheduled to commence, David
20 Nakashook indicated he wished to change his plea to
21 guilty with respect to these charges; so although Mr.
22 Nakashook's plea of guilty with respect to both of
23 these charges must be taken into account in mitigation
24 of sentence, the mitigative aspect of his pleas is not
25 as meritorious as a situation where the offender
26 offers a plea of guilty at the first opportunity and
27 takes full responsibility for his conduct from the

1 very outset of the criminal justice process.

2 In any event, Mr. Nakashook has, by his change of
3 plea, spared his victims from the trauma of a
4 full-blown trial before a jury in Yellowknife. I am
5 told that within a few weeks of being charged with the
6 sexual assault of Margaret Kaomayok, the offender
7 wrote a letter to her in which letter he apologized to
8 her for his behaviour. Again, although that apology
9 is to Mr. Nakashook's credit, it is followed a number
10 of months later with a plea of not guilty to that very
11 charge of sexually assaulting Margaret Kaomayok.

12 This offender is 38 years old, and I understand
13 that he is single with no dependents. I am told that
14 he has a Grade 12 equivalent education. At times
15 during his adult life, albeit only for brief periods
16 of time, he has shown that he has the intelligence,
17 aptitude, and energy to be a productive member of
18 society, a productive member of his community.
19 Examples of this were given by his counsel during his
20 submissions on sentencing. However, whether due to an
21 alcohol addiction or some other reason or reasons,
22 most of his adult life he has been committing wrongs
23 against his community and against members of his
24 community.

25 I am told that Alice Isnor, an experienced social
26 worker in Cambridge Bay, has described David Nakashook
27 as an intelligent individual who, on the one hand, has

1 a great deal of potential when he is not drinking;
2 but, on the other hand, he is a person to be fearful
3 of when he is drinking.

4 When I view David Nakashook's criminal record, I
5 conclude that he has, through the years, ignored the
6 fair and lenient treatment he has received from the
7 courts, and he has ignored all warnings given to him
8 and has continued to commit crime. Imprisonment for
9 varying periods of time in a correctional facility in
10 Yellowknife hundreds of miles from his home community
11 has not deterred David Nakashook from committing
12 crimes. Jail is not a deterrent for David Nakashook
13 now, and I therefore see no reason to consider
14 individual deterrence as a factor in the sentencing of
15 this offender.

16 The primary consideration in the sentencing of
17 David Nakashook today must simply be to give effect to
18 the overall purpose of the criminal justice system
19 which is the protection of society, the protection of
20 the members of the community. David Nakashook is a
21 danger to society. He is a danger to the members of
22 the community because he appears to be committed to a
23 life of crime. In order to protect society, it is
24 regrettably necessary to impose upon him a substantial
25 period of incarceration.

26 Each of these crimes committed by David Nakashook
27 on December 3rd, 1994, was a very serious crime. Each

1 of these crimes carries a maximum sentence of ten
2 years imprisonment in a federal penitentiary in
3 southern Canada. David Nakashook, therefore, faces a
4 possible 20 years in jail under the discretionary
5 sentencing regime prescribed by parliament.

6 The assault on his father was a terrible attack on
7 an elderly, intoxicated man and totally unprovoked.
8 His rape of a woman who was a guest in his father's
9 home was a violent, selfish act which displayed a
10 contempt for Margaret Kaomayok's status as a human
11 being.

12 Sentencing an offender like David Nakashook is a
13 serious responsibility, and it is a difficult task.
14 Because I view his crimes as being very serious ones,
15 I am unable to adopt the submissions made by counsel
16 on the appropriate length of the period of
17 incarceration to which he must be subjected. Quite
18 simply, and with the greatest of respect to counsel,
19 the suggested range of sentence is well off the mark.
20 I am taking into consideration the eight months remand
21 time already served and also the guilty pleas, late as
22 they were. Notwithstanding credit for those
23 mitigating factors and all of the circumstances, a
24 substantial period of incarceration is warranted for
25 reasons I have mentioned.

26 Please stand now, Mr. Nakashook. Mr. Nakashook,
27 for the sexual assault of Margaret Kaomayok on

1 December 3rd, 1994, contrary to Section 271 of the
2 Criminal Code, it is the sentence of this Court that
3 you serve a term of imprisonment of three years.

4 For assaulting Mathew Nakashook causing bodily
5 harm to him on December 3rd, 1994, contrary to Section
6 267(1)(b) of the Criminal Code, it is the sentence of
7 this Court that you serve a term of imprisonment of 18
8 months consecutive. That is a total sentence of four
9 and a half years.

10 In addition, as I am required by law to do so, I
11 hereby order pursuant to Section 100 of the Criminal
12 Code of Canada that you are prohibited from having in
13 your possession any firearm or ammunition or explosive
14 substance for a period of time commencing on today's
15 date and expiring on a date ten years after your
16 release from your term of imprisonment. Any such item
17 in your possession shall be surrendered to a police
18 officer or disposed of within one month of today's
19 date.

20 There will be no victim fine surcharge.

21 You may take your seat, Sir.

22 Anything further in this case, Counsel?

23 MS. SCHMALTZ: Nothing from the Crown, Sir.

24 MR. BOYD: No, Sir.

25 THE COURT: Thank you.

26 THE CLERK: All rise. Court is adjourned.

27 **AT WHICH TIME THIS SENTENCING HEARING CONCLUDED**

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

Tara McCrae
Tara McCrae, CSR(A)
Court Reporter

- 1. Stays of Proceedings
- 2. Withdrawals
- 3. Dismissals
- 4. Absolute Discharges

NAME: DAVID NAKASHOOK

D.O.B. 04 DEC 1956

F.P.S.# 685602A

PAGE: one

DATE COMPILED: 87-01-10

DATE & PLACE OF SENTENCE	SECTION NO., STATUTE & DESCRIPTION OF OFFENCE	DISPOSITION
05MAR77 Cambridge Bay, NWT	Sec 62 L.O. Open Liquor	\$15.00 I/D 7 days
23AUG77 Cambridge Bay, NWT	Sec 3(1) N.C.A. Poss of a Narcotic	\$250.00 I/D 60 days
23AUG77 Cambridge Bay, NWT	Sec 171(a)(1) C.C. Cause a Disturbance	\$100.00 I/D 30 days
06DEC77 Cambridge Bay, NWT	Sec 245(2) C.C. Assault Causing	\$40.00 I/D 5 days
06DEC77 Cambridge Bay, NWT	Sec 60(1) L.O. Supply Liquor to Minor	\$50.00 I/D 14 days
06DEC77 Cambridge Bay, NWT	Sec 60(1) L.O. Supply Liquor to Minor	\$50.00 I/D 14 days
07APR78 Cambridge Bay, NWT	Sec 245(2) C.C. Assault Causing	\$50.00 I/D 10 days
07APR78 Cambridge Bay, NWT	Sec 245(1) C.C. Common Assault	\$10.00 I/D 5 days, 1 yr probatio
14OCT78 Cambridge Bay, NWT	Sec 295 C.C. Take Auto Without Consent	3 months gaol consecutive
14OCT78 Cambridge Bay, NWT	Sec 306(1)(b) C.C. Break, Enter & Commit	1 month in gaol
14OCT78 Cambridge Bay, NWT	Sec 306(1)(b) C.C. Break, Enter & Commit	1 month in gaol
14OCT78 Cambridge Bay, NWT	Sec 666(1) C.C. Breach Probation	1 week concurrent in gaol
14OCT78 Cambridge Bay, NWT	Sec 666(1) C.C. Breach Probation	1 week concurrent in gaol
20FEB79 Cambridge Bay, NWT	Sec 666(1) C.C. Breach Probation	6 months probation
20FEB79 Cambridge Bay, NWT	Sec 666(1) C.C. Breach Probation	14 days in gaol, intermittent
20FEB79 Cambridge Bay, NWT	Sec 666(1) C.C. Breach Probation	14 days in gaol, consecutive

DO NOT SHOW:

1. Stays of Proceedings
2. Withdrawals
3. Dismissals
4. Absolute Discharges

NAME: DAVID NAKASHOOK

D.O.B. 04 DEC 1956

DATE COMPILED: 87-01-10

F.P.S.# 685602A

PAGE: two

DATE & PLACE OF SENTENCE	SECTION NO., STATUTE & DESCRIPTION OF OFFENCE	DISPOSITION
20FEB79 Cambridge Bay, NWT	Sec 666(1) C.C. Breach Probation	6 months probation
24JUL79 Cambridge Bay, NWT	Sec 118(a) Obstruct Peace Officer	1 year probation. Abstain from 1
06AUG80 Cambridge Bay, NWT	Sec 295 C.C. Take Auto Without Consent	1 month in gaol, consecutive
06AUG80 Cambridge Bay, NWT	Sec 666(1) C.C. Breach Probation	1 month in gaol, concurrent
06AUG80 Cambridge Bay, NWT	Sec 666(1) C.C. Breach Probation	1 month in gaol, consecutive
06AUG80 Cambridge Bay, NWT	Sec 295 C.C. Take Auto Without Consent	1 month in gaol, consecutive
06AUG80 Cambridge Bay, NWT	Sec 666(1) C.C. Breach Probation	1 month in gaol, concurrent
06AUG80 Cambridge Bay, NWT	Sec 387(4) C.C. Mischief	1 month in gaol, consecutive
06AUG80 Cambridge Bay, NWT	Sec 666(1) C.C. Breach Probation	1 month in gaol, consecutive
06AUG80 Cambridge Bay, NWT	Sec 666(1) C.C. Breach Probation	1 month in gaol, consecutive
06AUG80 Cambridge Bay, NWT	Sec 387(4) C.C. Mischief	1 month in gaol, consecutive
06AUG80 Cambridge Bay, NWT	Sec 666(1) C.C. Breach Probation	1 month in gaol, consecutive
06AUG80 Cambridge Bay, NWT	Sec 295 C.C. Take Auto Without Consent	1 month in gaol, concurrent
22APR81 Cambridge Bay, NWT	Sec 306(1)(b) C.C. Break, Enter & Commit	\$400.00 I/D 2 months, TTP 6 month
22APR81 Cambridge Bay, NWT	Sec 133(5)(b) C.C. Fail To Appear	2 month probation, \$200.00 rest.
16JUN81 Cambridge Bay, NWT	Sec 306(1)(b) C.C. Break, Enter & Commit	\$50.00 I/D 14 days, TTP 2 months
		6 months gaol, consecutive

AND TERRITORIAL ORDINANCES

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NAME: DAVID NAKASHOOK

D.O.B. 04 DEC 1956

F.P.S.# 685602A

PAGE: three

DATE COMPILED: 87-01-10

DATE & PLACE OF SENTENCE	SECTION NO., STATUTE & DESCRIPTION OF OFFENCE	DISPOSITION
16JUN81 Cambridge Bay, NWT	Sec 666(1) C.C. Breach Probation	6 months gaol, consecutive
21DEC82 Cambridge Bay, NWT	Sec 133(2) C.C. Fail To Appear	\$70.00 I/D 14 days. \$2.00 costs
29DEC82 Cambridge Bay, NWT	Sec 295 C.C. Take Auto Without Consent	3 months
29DEC82 Cambridge Bay, NWT	Sec 236 C.C. Drive Over .08	3 months consecutive
14SEP83 Yellowknife NWT	Sec 235(2)(a) C.C. Refuse Breathalyzer	3 months consecutive
20JUL83 Cambridge Bay, NWT	Sec 133(5) C.C. Fail To Appear	1 month consecutive
20JUL83 Cambridge Bay, NWT	Sec 387 C.C. Mischief	2 months gaol
20JUL83 Cambridge Bay, NWT	Sec 133(5) C.C. Breach Undertaking	2 months gaol consecutive
20JUL83 Cambridge Bay, NWT	Sec 133(5) C.C. Breach Undertaking	14 days consecutive
21MAR84 Yellowknife NWT	Sec 245 C.C. Assault	2 months gaol, concurrent
21MAR84 Yellowknife NWT	Sec 245.1(1)(b) C.C. Assault Causing	4 months gaol, 2 years prob.
30NOV84 Yellowknife NWT	Sec 307(1) C.C. Unlawfully in Dwelling	4 months gaol
30NOV84 Yellowknife NWT	Sec 85 C.C. Dangerous Use of Firearm	4 months gaol, consecutive
30NOV84 Yellowknife NWT	Sec 666(1) C.C. Breach Probation	2 months gaol, concurrent
14AUG86 Cambridge Bay, NWT	Sec 237(a) C.C. Impaired Driving	90 days gaol, 1 year prohib driv

- 1. Stays of Proceedings
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NAME: DAVID NAKASHOOK D.O.B. 04 DEC 1956

F.P.S.# 685602A

DATE COMPILED: _____ PAGE: four

DATE & PLACE OF SENTENCE	SECTION NO., STATUTE & DESCRIPTION OF OFFENCE	DISPOSITION
11 FEB 87 Cambridge Bay, NWT	245.1(1)(b) C.C. Assault Causing	Four months in gaol
10 Nov. 83 Yellowknife, NWT	Sec. 294(b) CC THEFT UNDER \$1000.	2 months jail
10 Nov. 88 Yellowknife, NWT	Sec. 128(c) CC Mislead Peace Office	1 month jail consecutive
10 Nov 88 Yellowknife, NWT	Sec. 245 CC ASSAULT	2 months jail consecutive
10 Nov. 88 Yellowknife, NWT	Sec. 133(3) CC BREACH OF UNDERTAKING	2 months jail concurrent
10 Nov. 88 Yellowknife, NWT	Sec. 245 CC ASSAULT	3 months jail consecutive
10 Nov. 88 Yellowknife, NWT	Sec. 245 CC ASSAULT	3 months jail consecutive
2 OCT. 89 Cambridge Bay, N.W.T.	Sec. 266 CC ASSAULT	2 Months Jail
2 OCT..89 Cambridge Bay, N.W.T.	Sec. 145(3) CC BREACH OF UNDERTAKING	1 Month Concurrent

RECORD OF CONVICTION FOR ALL FEDERAL STATUTES

AND TERRITORIAL ORDINANCES

DO NOT SHOW:

1. Stays of Proceedings
2. Withdrawals
3. Dismissals
4. Absolute Discharges

NAME: NAKASHOOK, David D.O.B. 1956 DEC 04

DATE COMPILED: 90 APR 02 F.P.S.# 685602 A PAGE: five (5)

DATE & PLACE OF SENTENCE	SECTION NO., STATUTE & DESCRIPTION OF OFFENCE	DISPOSITION
90 MAR 28 Cambridge Bay, NWT	Peace Bond s. 810 C.C.	<ol style="list-style-type: none"> 1. Keep the peace and be of good behaviour 2. Has no contact with Georgina PANAKTAK his children unless supervised by Soc. Ser 3. Abstains from the use, possession and consumption of alcohol 4. the period of t his recognizance shall for a period of twelve (12) months.
90-10-17 Cambridge Bay, NT	Assault Causing Bodily Harm s. 267(1)(b) C.C.	<ol style="list-style-type: none"> 1. Jail term for 6 months 2. Firearms Prohibition for 5 years
91-06-05 Cambridge Bay, NWT	<ol style="list-style-type: none"> (1) s. 430(1)(c) CC Mischief (2) s. 87 CC Dang. Use of Firearm (3) s. 100(12) CC Poss Firearm while Prohib. 	<ol style="list-style-type: none"> (1) one month goal..consecutive (2) two month goal..consecutive (3) four month goal five years prohib. Firearms
92-08-18 Yellowknife, NT	<ol style="list-style-type: none"> 1) s. 266 C.C. - Assault 2) s. 145(3) C.C. - Breach Undertaking 	<ol style="list-style-type: none"> 1) 4 months jail 2) 1 month consecutive
92AUG27 Yellowknife, NT	<ol style="list-style-type: none"> 1) s. 348(1)(b) CC Break, Enter & Theft 2) s. 348(1)(b) CC Break, Enter & Theft 	<ol style="list-style-type: none"> 1) 1 month jail consecutive 2) 6 months jail concurrent

RECORD OF CONVICTION FOR ALL FEDERAL STATUTES
AND TERRITORIAL ORDINANCES

DO NOT SHOW:

- 1) Stay of Proceedings
- 2) Withdrawals
- 3) Dismissals
- 4) Absolute Discharges

NAME: NAKASHOOK, David DOB: 1956-12-04

PPSI: 685602A DATE COMPILED: 93-05-24 PAGE: SIX

E & PLACE OF SENTENCE	SECTION NO, STATUTE & DESCRIPTION OF OFFENCE	DISPOSITION
93-05-19 Cambridge Bay, NT	1) s.267(-)(a) CC Assault with Weapon	1) 4 months jail
	2) s.267(-)(a) CC Assault with Weapon	2) 12 months jail consecutive 2 years probation 10 year firearm prohibition
	3) s.266 CC Assault	3) 5 months consecutive