

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER BETWEEN:

HER MAJESTY THE QUEEN

Complainant

-and-

SAMUEL SIDNEY KAONAK

Defendant

A transcript of the proceedings of a trial held at Inuvik, N. W. T., on the 17th of May A.D., 1974 before His Lordship The Honourable Mr. Justice W. G. Morrow, sitting as a Magistrate.

Orval J. T. Troy, Esq., Q.C., appeared for the Complainant.

Malcolm McConnell, Esq., appeared for the Defendant.



MR. TROY:

There is an information before the Court, if I could have that please. My Lord, when the Magistrate's Court was here the last time there was a charge before the Court under Section 145 of the Criminal Code for attempted rape by one Samuel Sidney Kaonak, also known as Selamio, for an offence which occurred on the 26th day of April, 1974 at Inuvik, in that he did unlawfully attempt to have sexual intercourse with Linda Dina Inglangasak, also known as Joe, a female person not his wife, without her consent.

Now this man appeared before J. P. 2 MacNeil on April 26th, and was remanded after a show cause hearing in custody, to appear before the Magistrate's Court, and he did appear in Magistrate's Court last week, and on April 30th, no, not last week, it was on the last of April, and on April 30th he was represented by Mr. McConnell. The Crown was represented by Mr. Corbett. There was an election for trial by Judge and jury, and a preliminary hearing was set to be heard on May 23rd, 1974 at 2 o'clock, and I have been asked by his lawyer Mr. McConnell to have this matter brought on today. The original information is with the Clerk of the Magistrate's Court in Yellowknife, but I have here a carbon copy of the original, which is the same as an original, the only thing is, it does have the endorsement of J. P. MacNeil on it, but it does not have the further remand and the election which was done before the Magistrate on April 30th.

THE COURT:

If Mr. McConnell is prepared to proceed on the basis of this document?

MR. McCONNELL:

Yes My Lord.

THE COURT:

Are you in a position we had to refer to a Supreme



Court for the purposes of a re-election, and then go back to the Magistrate's Court?

MR. McCONNELL: Yes.

MR. TROY: The situation is this My Lord, Section 492, under Section 492, we can have a re-election, where he has elected to be tried by Judge and jury, under Section 492(1), where an accused as elected by trial by Judge and jury, and that is the case here, where the accused has elected or is deemed to have elected to be tried by a Court composed of a Judge and jury the accused may notify the Sheriff in the Territorial Division that he desires to re-elect under this Section, to be tried by a Judge without a jury, or if he has the consent of the Attorney-General, he can be tried by a Magistrate without a jury. Once that notice has been given to the Sheriff he shall forthwith inform the Judge or Magistrate having jurisdiction, and the Judge or Magistrate as the case may be shall set a time and place to re-elect.

THE COURT: I take it then I am here as a Magistrate?

MR. TROY: Yes My Lord. Now the accused is here, and under that Section it is required that the words be read to him.

THE COURT: This is in subsection (3) Mr. Troy?

MR. TROY: Yes MyLord.

THE COURT: Do you agree Mr. McConnell that we are proceeding in the proper fashion?

MR. McCONNELL: Yes My Lord.

THE COURT: All right, will you stand up Mr. Selamio. Mr. Selamio, you have elected or chosen to be tried by a Court composed of a Judge and jury. Do you now elect to be tried by a Magistrate?



A. Yes.

THE COURT: To be tried by a Magistrate. Now are you ready for the plea?

MR. TROY: I have the information here.

THE CLERK: You are Samuel Sidney Kaonak alias Samuel Sidney Selamio?

THE ACCUSED: Yes.

THE CLERK: You Samuel Sidney Kaonak alias Samuel Sidney Selamio stand charged that you did on or about the 26th day of April 1974 at Inuvik in the Northwest Territories unlawfully attempt to have sexual intercourse with Linda Dina Inglangasak, also known as Joe, a female person, who is not your wife, without her consent, contrary to Section 145 of the Criminal Code.

Do you understand the charge?

A. Yes.

THE CLERK: And how do you plead?

A. Not guilty.

THE COURT: The plea is not guilty.

THE ACCUSED: Not guilty.

THE COURT: All right.

MR. McCONNELL: My Lord, pursuant to Section 534(6) of the Criminal Code, the accused will elect to plead to the lesser included offence and elects to plead guilty to an offence of indecent assault.

THE COURT: Which is the section, 149 isn't it?

MR. TROY: I am just checking Sir, yes, 149(1).

THE COURT: Is that correct Mr. McConnell?

MR. McConnell: That is correct.



THE COURT: Mr. Troy, what position does the Crown take?

MR. TROY: My Lord, I have reviewed the facts, and in the circumstances here the Crown will consent to this plea.

THE COURT: Well, I am satisfied to accept the recommendation of the Crown. Would you stand up Mr. Kaonak, or Mr. Selamio. Accordingly, you stand not guilty of attempted rape under Section 145 as charged, and you now stand guilty of the offence of indecent assault under Section 149(1). Sit down.

Mr. Troy?

MR. TROY: My Lord, the circumstances are as follows. Approximately 3:10 A.M. on the 26th day of April 1974, Donald Amos, who is about 35 to 37 years old, phoned the R.C.M.P. and reported that Samuel Sidney Kanonak, or Samuel Selamio, had barged into his house with a girl about an hour previously. Mr. Amos went on to say when he left his home Selamio was fighting with the girl, and he suspected that there was going to be trouble. Amos was calling from the Inuvik Senior Citizens Home where he had gone to use the telephone, and was advised to wait there for the arrival of the R.C.M.P. An immediate patrol was made by Constable Grindlay of the Inuvik Detachment to the scene, to the Senior Citizens Home, where Mr. Amos was met. Constable Grindlay was directed to a small wooden one room building situated approximately one-quarter of a mile west of the Senior Citizens Home. This house was about twenty-five to thirty feet off the road on the south side, and a short driveway leads from the roadway to the front door of the house, and Constable Grindlay drove the police vehicle to within ten feet of the front door and on stepping out of the car he



could hear a female voice coming from inside the house. At this point Constable Grindlay could not determine exactly what this female voice was saying. However, she was screaming and crying quite loudly. It became evident to Constable Grindlay that this woman, whoever she was, was experiencing a great deal of trouble. Both Mr. Amos and Constable Grindlay approached the front and only door to the building, and Mr. Amos pushed the door open. This was a one room building. There is, however, an enclosed porch immediately inside the outer door. A second opening leads from the porch into the one room. However, there is no door on the frame, and Constable Grindlay had an unobstructed view of the entire room. Along the right or north wall inside the main room is a table, a kitchen table, and next to the table also against the north wall was a couch. Lying face down on the couch, and naked from the waist down was the accused, Selamio, and lying face up on the couch was a female. It was the girl who Constable Grindlay had earlier heard crying and screaming. There was no one else in the building. Once the outer door was opened, Constable Grindlay could distinctly hear the girl yelling and screaming at Selamio "Get off, get off, get out of here". She was also seen striking Selamio repeatedly on the shoulders, trying to push him off. Neither Selamio nor the girl at that time were aware of the presence of Mr. Amos or Constable Grindlay. It was obvious to Constable Grindlay that this girl was not agreeing to whatever Selamio was doing at the time. It was obvious to him that the girl didn't want Selamio there, and he yelled at Selamio to get off. Selamio turned his head, and upon



seeing who it was that yelled at him did in fact get up off the couch. At this point Constable Grindlay observed that the girl was dressed similar to Selamio, in that she was also naked from the waist down. She had a very badly bruised face, and her left eye was swollen shut. It was obvious to Constable Grindlay that this woman had been bleeding from the nose, and that this bleeding had stopped. There was also a short, deep cut on the left side of her chin. The girl was identified as Dina Linda Inglangasak, also known as Joe, and that is a female person mentioned in the charge, born November 30th, 1953, which makes her 20, 21 in November this year My Lord.

As Selamio got up from the couch it was noted that he had a partial erection. He was placed under arrest and ordered to dress, and then escorted to the police vehicle. Constable Grindlay then returned to the Amos residence, where he escorted both Amos and the girl to the police car. Mr. Amos was in the house during this whole period and observed and can confirm the observations of the Constable.

THE COURT: Do you agree with that version of the facts Mr. McConnell?

MR. McCONNELL: Yes My Lord.

MR. TROY: Mr. Selamio was lodged in cells, and asked to provide a breath sample on the breathalyzer. Constable Lillie took a breath sample, which Selamio had agreed to. Originally this was around 3:15 p.m. or 3:30 when he was arrested. The breathalyzer sample was taken around 4:55 or 5 o'clock, and Constable Lille obtained two readings, one point one six, and one point one five, and that would mean that two hours earlier that



reading would be about point one eight, because you lose about point zero one five per hour My Lord. It was point one eight, point one eight. It was point one six and point one five but if you add to it like I said you come to say point one eight two hours earlier.

THE COURT:

All right.

MR. TROY:

The girl was taken to the hospital where Dr. Skinner looked at her.

THE COURT:

Well, I take it in view of the plea that has been taken we don't have to go into what happened here at the hospital do we?

MR. TROY:

No My Lord. I am just checking to see if there is anything else. There were no other injuries, there was no other damage to the woman, and there was no physical injury to Selamio.

This woman was hospitalized, but was released at one p.m. on April 27th. Now it would appear that how this incident took place My Lord, was that the girl had been drinking in the Mackenzie Hotel, and in a room at the hotel. She worked there. She met the accused in the lobby of the Mackenzie Hotel some time after one a.m. on the 26th of April. Selamio invited her to a small party at Mr. Amos's residence. The girl only agreed to go after Selamio assured her that his sister Agnes Selamio would be there. They arrived at the Amos residence and Selamio gave Amos a drink from the bottle of rye, Selamio having gotten Amos out of bed. There was no party, and Amos was afraid that something would happen between Selamio and the girl, so he had only one small drink. At one point while they were at the house the girl attempted to leave, but was pre-



vented from doing so by Selamio. Amos stated that Selamio was getting rough, and she asked him to call the police but Amos felt that if he were to try to leave at that point that Selamio would prevent him from doing so. Amos waited two or three minutes and left the house, explaining that his stove was low on fuel, and that he would have to fill it from supplies that he had outside the house. He also stated that the girl had no marks on her face when she came in to his house, and he did not observe Selamio strike her while in the house. Once outside on the pretext of obtaining more fuel for the stove, Amos went immediately to his father's apartment at the Senior Citizens Home and called the police. What took place between Selamio and the girl while Amos was gone it not known but the damage and injuries to her face occurred before Amos and the policeman arrived back shortly after he left the house to call the police. The girl states that she can recall trying to leave the house, and was forced to stay by Selamio, but due either to her consumption of alcohol, or the beating she received from Selamio, she cannot recall what happened after that point. She said she did not agree to having her clothing removed, and she tried to get away from him and was trying to get away from him when the policeman came into the room.

THE COURT: All right, is there anything on that recital you object to Mr. McConnell?

MR. McCONNELL: No My Lord.

THE COURT: Thank you; what do you say as to record Mr. Troy?

MR. TROY: My Lord, earlier today in Aklavik Mr. Selamio appeared before the Supreme Court, and was (pause), actually



it was this Court sitting as a Supreme Court, rather than a Magistrate, and Mr. Selamio received a conviction for having illicit intercourse with a female person of previous chaste character under the age of 21, who was in his employment. Now the Court saw fit to give Mr. Selamio eight months imprisonment with certain recommendations and conditions while he was incarcerated, particularly if possible in alcohol rehabilitation.

Mr. Selamio has been in jail since April 26th.

THE COURT: All right.

MR. TROY: On this offence. Now there was also a presentence report presented to the Court this morning in Aklavik on this original matter and the Court read that.

THE COURT: Yes, you have that have you Mr. McConnell?

MR. McCONNELL: Yes Sir.

MR. TROY: And I don't propose to go into detail on that, since the Court has read it and is familiar with it.

THE COURT: I think for the record, perhaps the previous record that was before me in the other trial should be related briefly for the benefit of Mr. McConnell, because he wasn't counsel on the other one.

MR. TROY: Briefly Mr. Selamio has a record of theft and breaking and entering offences, going back to 1961 when he would be around sixteen years of age and these have progressively resulted in starting out with ten dollars of fines. These convictions have grown from one month to one year, back to five weeks, five months, to four months, sixteen months, eighteen months and twenty months. His last conviction for break and enter was January 1971 when he received twenty months on two



convictions of break, enter and theft, and one year concurrent on an attempted break and enter, and he was also at that time on a probation order for 18 months, which has now expired, and is mentioned in the presentence report.

Now on the conviction in Aklavik, which occurred in February, he was released on bail on that under certain conditions, and on March 3rd in respect to the offence in Aklavik, and while on recognizance, this man appeared before the Court and received a conviction under Section 133 of the Criminal Code, which is failing to appear in Court as required for a preliminary hearing under Section 133(2), and he received one month in jail for that. Now he served that time, and then was released on recognizance pending the new date for the preliminary inquiry, and on April 23rd he again was convicted on summary conviction, on failing to live up to a condition of his recognizance while on bail pending trial, and that was in relation to not abstaining from the consumption of liquor, or excessive use of liquor, I am not sure which, for which he received a thirty dollar fine, and he would have been imprisoned by the Court but the reason he was not was that he advised the Court he was going back to work on the Delta for an oil company. He also had received a month for mischief, for which he served (pause), I am just not sure what the date of that one was, whether it was March 3rd or April, it was April 23rd, and he received a month on that. Now the date of this offence was the 26th of April, and that month for mischief must have been March the 3rd My Lord. Three days after the fine of thirty dollars Mr. Selamio did not return to his job, and he got into this affair



and was charged, and has been in custody since the 26th of April on this charge. If he had done what he indicated to the Court, he would not be here today, and it is quite obvious that this offence is a liquor initiated offence.

THE COURT: What has he done under this one, about six weeks?

MR. TROY: Well no, he has been in only since April 26th. That would be five days in April, and well, what's today?

THE COURT: The 17th.

MR. TROY: Seventeen days; so on his record My Lord, on July 22nd, 1966, at Inuvik, Northwest Territories, Mr. Selamio was convicted of assault causing bodily harm under Section 231 (2) for which he received five weeks in jail, and although the fact, and B & E's are offences against property, I submit that breaking and entering although they are not related offences, involve force and violence of some type, because of the breaking and entering aspect of the charges.

Now this was certainly an unprovoked attack on this girl. She had associated earlier in the day with her mother and father, she had had a few drinks with them, because (interruption)

THE COURT: Well, does this really matter?

MR. TROY: No My Lord, but it was a family affair, and she was living in the hotel, and she was intoxicated, but not severely intoxicated, and she was taken to this house under subterfuge, or a trick, and then tried to get away and couldn't. Mr. Amos himself didn't expect him, and he wasn't expecting him, so the girl was taken advantage of in her condition My Lord

THE COURT: Thank you; you were going to show that list of offences



to Mr. McConnell, so we can ask him if he accepts the record.

MR. McCONNELL: Yes My Lord.

THE COURT: Thank you; what do you say Mr. McConnell?

MR. McCONNELL: Before speaking to sentence I would ask if Mrs. Noble has anything further to say with respect to the pre-sentence report.

THE COURT: Could she come forward please; have you anything further to say?

MRS. NOBLE: I am not a lawyer.

THE COURT: The lawyer has spoken his part. You say what you have.

MRS. NOBLE: As a social worker, and in terms of rehabilitation I would not recommend further incarceration in the Yellowknife Correctional Institute at this time, but would recommend a suspended sentence possibly with probation, in order that the original sentence might have its desired effect.

THE COURT: Anything further?

MRS. NOBLE: Only that comment.

THE COURT: Thank you; do you have anything further Mr. McConnell?

MR. McCONNELL: Yes Your Worship, I would submit from my experience here in the Delta these offences are not related in time, and it appears to be the type of thing often that an accused in this area will do, after having committed one offence, and it is often the case that another offence occurs shortly thereafter. This accused, as has been noted in the record, was out 18 months on probation. He served it. My Lord, you have heard the argument of the accused this morning, having been sitting in the Supreme Court, and I will



not go over that, except to state that recently the accused had taken over the Aklavik bakery. This was a great opportunity for the accused. Had things gone along properly, he would have undoubtedly have made a success of it. This episode of course has caused the accused a great deal of frustration, with the accused having taken over what would have likely been a great opportunity, and while it yet hasn't been making money, it was expected to in the future. The accused is known as a good worker, a hard worker, and he has a very close family relationship with his people. This was also mentioned in the presentence report.

Having all these things in mind, I would ask your Lordship to consider when taking into account the sentencing at the present time, in view of the sentence which was handed down this morning, and the cumulative effect of any further sentence.

THE COURT:

Thank you. Mr. Troy, have you anything further?

MR. TROY:

My Lord, I must take with great respect exception to my learned friend's last remark. In regard to the sentence this morning, and the conviction this morning, and that was a separate and distinct conviction and offence in another community, related to an entirely unrelated situation. This man was on recognizance for this after a judicial review, after he was turned down by the Magistrate's Court, and he had failed to appear at his preliminary. He was sentenced for that, and after serving time, and after review on application by his counsel there was a condition that he abstain from the excessive use of alcohol. The actual term of his order was that he abstain from the ex-



cessive consumption of alcohol, and if he had done that he wouldn't have been in this trouble, and then he did appear before the Court on that charge and indicated to the Court he was going back to the bush, and three days later he got into this trouble which doesn't show an indication of good faith, and there is a principal<sup>ly</sup> of law that a person who commits an offence while out on bail awaiting trial on another serious offence should not receive a concurrent sentence, because contrary to what my learned friend has put forward on his defence, the principal<sup>ly</sup> of law that is applied in these cases is that an accused while awaiting trial on a serious offence if he isn't punished and sentenced more severely on other serious offences which have been committed while on bail, it would be very unfair in respect of the imposition of sentence if that principal<sup>ly</sup> is not applied, and the Crown takes exception to any representations made that the sentence this morning would be adequate to cover this offence, and the Crown also takes the position that the request by the Probation Service to consider the rehabilitative factors are no longer a consideration in respect to imposing of punishment on this man and that the only consideration which should be emphasized at this time is the one in respect to the protection of society and deterrent to this accused to resist any future offences of this nature.

THE COURT:

You agree do you Mr. Troy that the Court can give both a jail term under this section, under the present circumstances, as well as a probation period?

MR. TROY:

Yes My Lord, I agree that a term can be coupled with probation, this can be imposed, imprisonment with or



without probation.

THE COURT: Thank you.

MR. TROY: Imprisonment, fine, probation, but not all three.

THE COURT: Thank you.

MR. TROY: I do wish to point out that the similarity in the case in Aklavik this morning (pause), there was a sixteen year old girl involved in that, who had been fed liquor, to break down her defences in respect to a sexual matter, and in this case which is before the Court now My Lord, liquor was fed to a girl in an intoxicated condition, at a place where she had been taken on a trick, and the modus operandi was the same, and for the protection of women from this man I would ask the Court to impose a substantial term of imprisonment. The Parliament has laid down a maximum term of imprisonment for five years for this offence of indecent assault, and this is not only an indecent assault, in this case, but an assault involving force, but violation to the female concerned as well.

THE COURT: Thank you Mr. Troy; anything further Mr. McConnell?

MR. McCONNELL: No My Lord.

THE COURT: Stand up Mr. Selamio. Taking into consideration your record and also the Probation Report, and what your lawyer has had to say, I am afraid that I cannot but consider that the circumstances merit further incarceration. I am going to compromise it, or should I say temper it a bit by adding probation as well. In this case I am sentencing you to six months in the Yellowknife Correctional Institute consecutive to the previous sentence, together with a further period of twelve months probation, the conditions of which shall



be that you shall keep the peace and be of good behaviour, and two, you are to report on your being released to the Probation Officer or the police as the case may be; and three, that you refrain from the excessive consumption of alcohol of any type, so do you think you can live up to that when you get out?

THE ACCUSED: Yes Sir.

THE COURT: If there are any exhibits they will be left with the R.C.M.P., to be returned or disposed of as the case shall merit.

(The proceedings concluded).

*Sentence confirmed on  
appeal - October 21/74*