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IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

EARL AYALIK

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Transcript of the Sentencing held before The Honourable Mr.  
Justice J. Z. Vertes, sitting in Yellowknife, in the  
Northwest Territories, on the 6th day of March, A.D. 1996.

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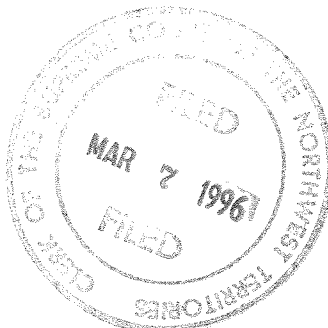
APPEARANCES:

MS. B. SCHMALTZ:

Counsel for the Crown

MR. A. MAHAR:

Counsel for the Defence



1 THE COURT:

2 In this case, the accused has  
3 entered a plea of guilty to a charge of assault. Since  
4 this was proceeded by indictment, the maximum penalty  
5 is five years imprisonment.

6 The offense occurred on May 20th, 1995, in  
7 Coppermine. The victim was the accused's  
8 three-month-old daughter. The accused, while drunk,  
9 took his daughter in his arms, began to kiss her by  
10 placing his mouth over her nose and mouth, causing his  
11 daughter to stop breathing. Fortunately, the child's  
12 mother saw this, took the baby away from him, and  
13 managed to revive her. Also, fortunately, the baby  
14 suffered no apparent lasting consequences.

15 The accused was immediately arrested, and he has  
16 been in custody since then.

17 The accused is 26 years old. It is safe to say  
18 that he has had a devastating life, devastating to him  
19 and to others. He grew up in an abusive home  
20 environment. He has minimal education and skills. He  
21 has a long-standing and severe alcohol abuse problem.  
22 He is unable to control himself. I was provided with,  
23 among other items, a copy of his criminal record. It  
24 starts in 1982 when the accused was 13 years old. It  
25 contains 36 entries. He has spent very little time out  
26 of jail. He has been convicted of assaults on his  
27 wife, his sister and his stepfather. Most  
significantly, in July of 1994, he was convicted of

1 criminal negligence causing bodily harm and sentenced  
2 to one year in jail. The victim in that case was his  
3 older daughter who was then also only three months  
4 old. In that case, he held her forcefully to him, so  
5 forcefully that she suffered fractures. That child has  
6 since been taken away from the family. The accused  
7 apparently had only been released a few days from the  
8 1994 sentence when he committed this assault in May of  
9 1995.

10 This accused has proven himself to be a danger to  
11 those around him. For that reason alone, he deserves  
12 to be removed from the community and incarcerated. But  
13 it is clear, to me in any event, that merely jailing  
14 this man is a fruitless exercise unless there is a  
15 significant effort at therapeutic intervention. He  
16 must want to change, of course. The primary  
17 responsibility is his own, but if he does, then serious  
18 efforts have to be made to provide the level of therapy  
19 and treatment that will enable him to change. This man  
20 exhibits a host of deficits and pathologies --  
21 behavioral problems, misconceived patterns of  
22 demonstrating affection, substance abuse, lack of  
23 impulse control, tendencies to violence, and all  
24 without the educational or work skills to even give a  
25 hope of success in the outside world.

26 For that reason, it is my fervent recommendation  
27 to the correctional authorities that they immediately

1 evaluate this man's suitability for any and all therapy  
2 programs that may be available. To that end, I direct  
3 the clerk to immediately forward to the warden of the  
4 Yellowknife Correctional Center, copies of a transcript  
5 of my remarks here, and the exhibits filed with me,  
6 those being the accused's record, the report of Dr.  
7 Clemmey dated March 5th, and the agreed statement of  
8 facts.

9 Having regard to what, in effect, was the joint  
10 submission of counsel, and having regard to all of the  
11 circumstances including this man's record, the guilty  
12 plea, and the time spent in pre-trial custody, I have  
13 no hesitation in saying that further incarceration is  
14 necessary in the public interest.

15 Would you please stand, Mr. Ayalik. Mr. Ayalik, I  
16 am told that you are a fairly intelligent man, and that  
17 you may be starting to become aware of some of your  
18 problems over these last 10 months that you have been  
19 in jail. Now, there has been a lot said about you and  
20 around you, and I am not sure if you followed  
21 everything that was said, but I want you to take it  
22 personally because we were talking about you, and we  
23 meant it personally. You are only 26 years old. You  
24 have been in and out of jail, mainly in jail, since you  
25 were 13, and now there have been two incidents where  
26 you seriously endangered the lives of your own  
27 daughters. Now, you are still not too old to give up

1 all hope, but there are only so many chances that a  
2 person has left in their life. Do you follow me?

3 A Yes.

4 THE COURT: So I am hoping that over the  
5 course of the next year, and over the next few years,  
6 that you will finally start coming to grips with some  
7 of your difficulties because it is still not too late  
8 for you to become a responsible family man and member  
9 of your community. But this is one of your last  
10 chances because if you end up in court again, I can  
11 guarantee you, it really does not matter what type of  
12 crime it is, you are going to be going off to jail for  
13 a very long time, and I mean a very long time. Do you  
14 understand?

15 A Yup.

16 THE COURT: I sentence you to serve a term of  
17 imprisonment of one year. In addition, there will be  
18 an order for probation for a period of three years  
19 commencing from your release. The terms of that  
20 probation are that you are to keep the peace and be of  
21 good behavior. You will report to the court if and when  
22 required to do so. You will report immediately upon  
23 your release and return to Coppermine to the probation  
24 officer there. You will be under the supervision of  
25 the probation officer, and you will continue to report  
26 to the probation officer as directed by that officer  
27 from time to time. You will abstain absolutely from

1 the consumption or possession of alcohol, or any other  
2 intoxicating spirits or any drugs other than those that  
3 may be medically prescribed to you. Do you understand  
4 that?

5 A Yes.

6 Q Now, I am including booze. I am including homebrew. I  
7 am including anything that can get you high. Do you  
8 follow me?

9 A Yes.

10 THE COURT: I am also directing that you not  
11 be in any location or in any place where alcohol is  
12 served. Do you understand that?

13 A Yes.

14 THE COURT: So if your wife has it at home  
15 then you better not be at home. It is that simple.  
16 And if over these years you have not been able to  
17 control yourself, maybe now this will help you to  
18 control yourself. I further direct as a condition that  
19 you will provide a sample of your breath for analysis  
20 to a peace officer upon demand. You will take such  
21 counselling, education, or other programs as may be  
22 directed by your probation officer. I will direct that  
23 you are not to be alone with infants under the age of  
24 three years. Do you understand that?

25 A Yes.

26 THE COURT: I will further direct that in each  
27 12-month period of your probation, you are to perform

1           100 hours of community service work at the direction of  
2           your probation officer.

3           Now, Mr. Ayalik, I have included a lot of these  
4           terms as was requested by Crown counsel, and I am sure  
5           your lawyer will go over and explain these terms with  
6           you, and I am sure you understand it. You have been on  
7           probation before. You have been through the mill in the  
8           system long enough so that I am sure you understand  
9           what all these terms mean. And if you are going along  
10          successfully, if your probation officer thinks that you  
11          are doing fine, as I hope you do, if you are going to  
12          turn out to be a big success on this probation then you  
13          can always come to court and apply to relieve some of  
14          these restrictions, some of these conditions. It is up  
15          to you. But if you do not follow these conditions, if  
16          you breach any of them, then you know perfectly well  
17          what is going to happen, don't you?

18          A    Yup.

19          THE COURT:                    You are going to get charged for  
20          it. You are going to be brought into court, and you  
21          are going to end up back in jail. I certainly hope  
22          that that doesn't happen. It's all up to you, sir, and  
23          I have confidence that maybe you understand that now.

24          Under the circumstances, there will be no victim  
25          of crime fine surcharge. Is there anything else  
26          counsel that we need to deal with?

27          MS. SCHMALTZ:                Nothing further, sir.

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THE COURT:

Again, I want to thank both of you  
in the way you were able to resolve this matter, and  
for your submissions. We will close court.

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

*Rae Gajadhar*  
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Rae Gajadhar  
Court Reporter