

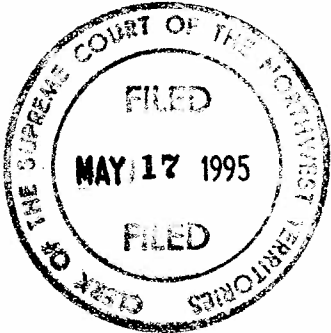
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IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES  
IN THE MATTER OF:

HER MAJESTY THE QUEEN

- and -

ROLAND ALBERT CODZI



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Transcript of the Proceedings of The Reasons for Sentence  
of the Honourable Mr. Justice J. Z. Vertes, sitting in Fort  
Good Hope in the Northwest Territories, on February 7,  
A.D., 1995.

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**APPEARANCES:**

MR. P. LAMONT: Counsel for the Crown  
MR. G. WALLBRIDGE: Counsel for the Accused

(Charged under s. 246.1 of the Criminal Code.)

1 THE COURT: The accused has been convicted by a jury  
2 on a charge of sexual assault. The assault consists of one  
3 incident that occurred here in Fort Good Hope in 1986 or  
4 1987.

5 The victim, who is now 14 years of age, testified  
6 about this event which occurred when she was six or seven.  
7 She was at home trying to sleep. The accused came to her.  
8 She said that he touched her all over her body and kissed  
9 around her body including between her legs, and he removed  
10 her underwear and tried to get on top of her. Fortunately,  
11 his actions stopped there and he left.

12 The victim was visibly distraught when testifying  
13 even though these events occurred some eight years ago.  
14 She testified with the benefit of a screen, but she was  
15 still very nervous and reticent in describing these  
16 events.

17 The accused was a friend of the victim's family. He  
18 was a drummer with her stepfather and that is how she knew  
19 him. Both her mother and stepfather had known the accused  
20 for many years.

21 There was some suggestion in the evidence that the  
22 accused was intoxicated when this assault took place.  
23 Intoxication, of course, is not a defence to this charge  
24 and certainly it is not a mitigating factor on sentencing.

25 No explanation has been given to me as to why this  
26 matter is only now prosecuted. The evidence revealed that  
27 the victim told her mother right away about the assault and

1 that the victim's stepfather confronted the accused about  
2 it the very night it happened.

3 Be that as it may, my responsibility is to sentence  
4 him for this crime regardless of the passage of time.  
5 Indeed, I should approach it on the basis of what I would  
6 have imposed had this matter been prosecuted after the  
7 crime had occurred. But, for what I will say shortly,  
8 there is a small part that the passage of time does play in  
9 my estimation.

10 Crown counsel suggests that I treat this case as one  
11 of a major sexual assault. The Courts both in Alberta and  
12 here in the Northwest Territories have stated that there  
13 should be a starting point of four years' imprisonment when  
14 there is a major sexual assault upon a child by a person in  
15 a position of trust. This is not limited to any specific  
16 type of act nor to repeated acts. Indeed, it applies to a  
17 single major sexual assault upon a child. The key is the  
18 violation of the child's personal integrity, and the abuse  
19 of the position of trust.

20 The acts in this case are extremely serious. I am  
21 not, however, convinced that categorization of the  
22 circumstances in this particular case as between a "major"  
23 or a "less than major" sexual assault helps me very much in  
24 determining the appropriate sentence.

25 Furthermore, the accused cannot be considered to be  
26 in a position of trust.

27 There are, however, a number of aggravating factors

1 in this case. First of all, there is the young age of the  
2 child in question. It seems to me that any adult should  
3 consider a young child to be someone to be cared for and  
4 guided and protected, not to be taken advantage of.

5 There is also the fact that the evidence reveals  
6 that the accused was present in the child's family's home  
7 in the middle of the night when there were no adults  
8 there.

9 I also consider it extremely aggravating the fact  
10 that the accused was a friend of the parents. It seems to  
11 me only logical to conclude that the accused also knew who  
12 this young child was, and yet he took advantage of her when  
13 she was trying to sleep and when her parents, his friends,  
14 were not in the house. Perhaps in that type of a  
15 situation, because he knew the family, he had a greater  
16 responsibility to protect and care for this child rather  
17 than taking advantage of her.

18 An additional aggravating factor is the record of  
19 criminal convictions. Between 1980 and 1990, the accused  
20 was convicted of 12 criminal offences. Nine of these  
21 occurred prior to 1987. One of those convictions was for a  
22 sexual assault in 1985 for which he was fined. It was  
23 obviously considered to be relatively minor. And I am told  
24 that it involved an adult victim. The longest this accused  
25 has served in jail was a sentence of five months for  
26 assault in 1984.

27 Now, I recognize that we do not punish people over

2 again for their past conduct. He has been punished for  
3 those previous crimes. But they indicate a pattern of  
4 behavior at least between 1980 and 1990 that shows that the  
5 accused for one reason or another was unable to exert  
6 control over his actions.

7 The accused is 32 years old. He lives in Colville  
8 Lake. I am told that the community resides enough faith in  
9 him to elect him to the band council, the community  
10 education council and the local housing authority. I take  
11 this into account.

12 The object of our criminal law is to protect the  
13 public, that includes especially children who are usually  
14 the most helpless members of society. The sexual abuse of  
15 a child is a serious problem that leads to very damaging  
16 problems for the child, in many cases for the rest of their  
17 life. I do not need expert evidence for that assumption.

18 In this case, however, I note especially the fact  
19 that the accused has had only three criminal convictions  
20 after 1986, the last one being in 1990. I can only hope  
21 that that is a sign that he has already become aware of the  
22 damaging nature of his previous behavior. I must take into  
23 account these past four years that the accused has gone  
24 without at least a record of criminal behavior. And that  
25 is the difficulty that confronts me with the fact that I am  
26 sentencing him now for an offence that occurred some seven  
27 or eight years ago.

I had given serious consideration to sending this

1 man to the penitentiary. As I said, the acts that he  
2 committed on this child, even though it was one incident,  
3 are very serious. But I must temper my sentence in the  
4 hope that this man will see that his conduct, his past  
5 behavior, must be changed permanently. And I must be aware  
6 of the fact that by imposing a lengthy penitentiary term on  
7 him now may, indeed, be counterproductive.

8 Will you please stand?

9 Mr. Codzi, the fact that this crime was committed  
10 seven years ago or eight years ago or whether it was  
11 committed seven or eight days ago, makes no difference in  
12 one very important respect: It's a shameful and terrible  
13 act when any adult takes advantage of a young child. It's  
14 a disgraceful act that causes serious harm to that child  
15 for many years to come and maybe for the rest of their  
16 lives.

17 We in the North see everyday the problems in our  
18 communities caused by family and child abuse, caused by  
19 violence. And I know that many people in every community  
20 in the North are trying to work very hard to eradicate it.  
21 It doesn't set a good example when an adult, someone who,  
22 I'm told, has the trust of their community so that they are  
23 elected to responsible positions, engages in this conduct  
24 even if it was only on one night.

25 So for that reason, I have no alternative but to  
26 send you to jail and to send you to jail for what I think  
27 will be for you a lengthy period of time. But I just hope

1 that when you come out of jail that, first of all, you will  
2 never engage in this type of behavior or certainly in any  
3 other criminal behavior. And that if the people of your  
4 community have enough trust in you to elect you to the band  
5 council and the community education council, then when you  
6 get out of jail, you will go back to your community and you  
7 will go to other communities, and you will tell them about  
8 how bad it is to do these types of things and about what  
9 damage it causes to people. Because you saw this young  
10 child, how nervous and upset she was here in court. And I  
11 hope you will tell other people in other communities that  
12 this is the type of conduct has to be stopped and everybody  
13 has to realize how dangerous it is.

14 It is the sentence of this Court that you serve a  
15 term of imprisonment of two years less one day. There will  
16 be no fine surcharge under the circumstances.

17 Mr. Lamont, is this one that calls for a mandatory  
18 prohibition order?

19 MR. LAMONT: Yes, it does, sir.

20 THE COURT: Mr. Wallbridge, do you have any comments?


21 It seems to me I must give the benefit of the more recent  
22 amendments in the firearm prohibition sections in  
23 sentencing this man.

24 MR. WALLBRIDGE: Yes, sir. On that point, as my client has  
25 informed me and I have passed along to the Court, he makes  
26 some portion of his income on the land and, indeed, has a  
27 couple dozen traps out right now. A firearms prohibition

1 will, as a consequence, cause him a hardship. And I would  
2 ask that the Court consider that as this young man -- as  
3 this man does live in a traditional community and follows  
4 at least a partial traditional way of life that a Section  
5 100 order is going to have serious consequence for him.  
6 THE COURT: Is there any police facility in Colville  
7 Lake? I'm assuming not.  
8 CONSTABLE O'MALLEY: No, there is not, My Lord. It's a  
9 community that we fly into on an once-a-month basis.  
10 THE COURT: Well, my concern, Mr. Wallbridge, is the  
11 fact that this man has some firearms related offences on  
12 his record. What was he doing after 1985, between 1985 and  
13 1990 when he was under the firearm prohibition order?  
14 MR. WALLBRIDGE: Sir, I don't see any firearm prohibition  
15 order.  
16 MR. LAMONT: 1985, February. The page is very long and  
17 it didn't photocopy very well, sir.  
18 MR. WALLBRIDGE: Sir, he tells me that he did do some  
19 trapping through that time.  
20 THE COURT: Without it?  
21 MR. WALLBRIDGE: Yes, sir.  
22 THE COURT: So does he require firearms once he is  
23 released for trapping?  
24 MR. WALLBRIDGE: Sir, he tells me that at the time when he  
25 will have served his time in jail that it would be his  
26 intention to spend as much time in that part of his  
27 combined life-style.

1 THE COURT: Do you have any comment on this?  
2 MR. LAMONT: No. 98(1) would have been the old rule  
3 and virtually automatic. I'm a bit concerned that there is  
4 the pointing a firearm conviction in March of '86. Now, I  
5 don't know whether that refers to an offence date prior to  
6 the imposition of a weapons prohibition. And, certainly,  
7 there wasn't a charge arising out of that.  
8 THE COURT: Well, it seems to me I have to give him  
9 the benefit of the current sections, subsection 1.2 of  
10 Section 100. I can alleviate the harshness of the  
11 prohibition. And I'm just wondering what the Crown's  
12 position is on that, if any.  
13 MR. LAMONT: I really don't have a position.  
14 THE COURT: All right.  
15 Well, considering the community in which this man  
16 lives and what I have been told about his way of life, I  
17 decline to make an order under Section 100 by virtue of  
18 Subsection 1.2 of that section.  
19 (AT WHICH TIME THIS MATTER WAS CONCLUDED)

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21  
22  
23 Certified pursuant to Practice Direction #20  
dated December 28, 1987.

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26  
27   
Paula Sorochan,  
Court Reporter