

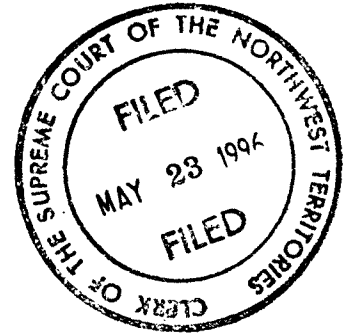
IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

MITUSALIE ATAGOOTAK



Transcript of the sentencing portion of the jury trial held before The Honourable Mr. Justice J. E. Richard and jury, sitting in Pond Inlet, in the Northwest Territories, on the 30th day of April - 2nd of May, A.D. 1996.

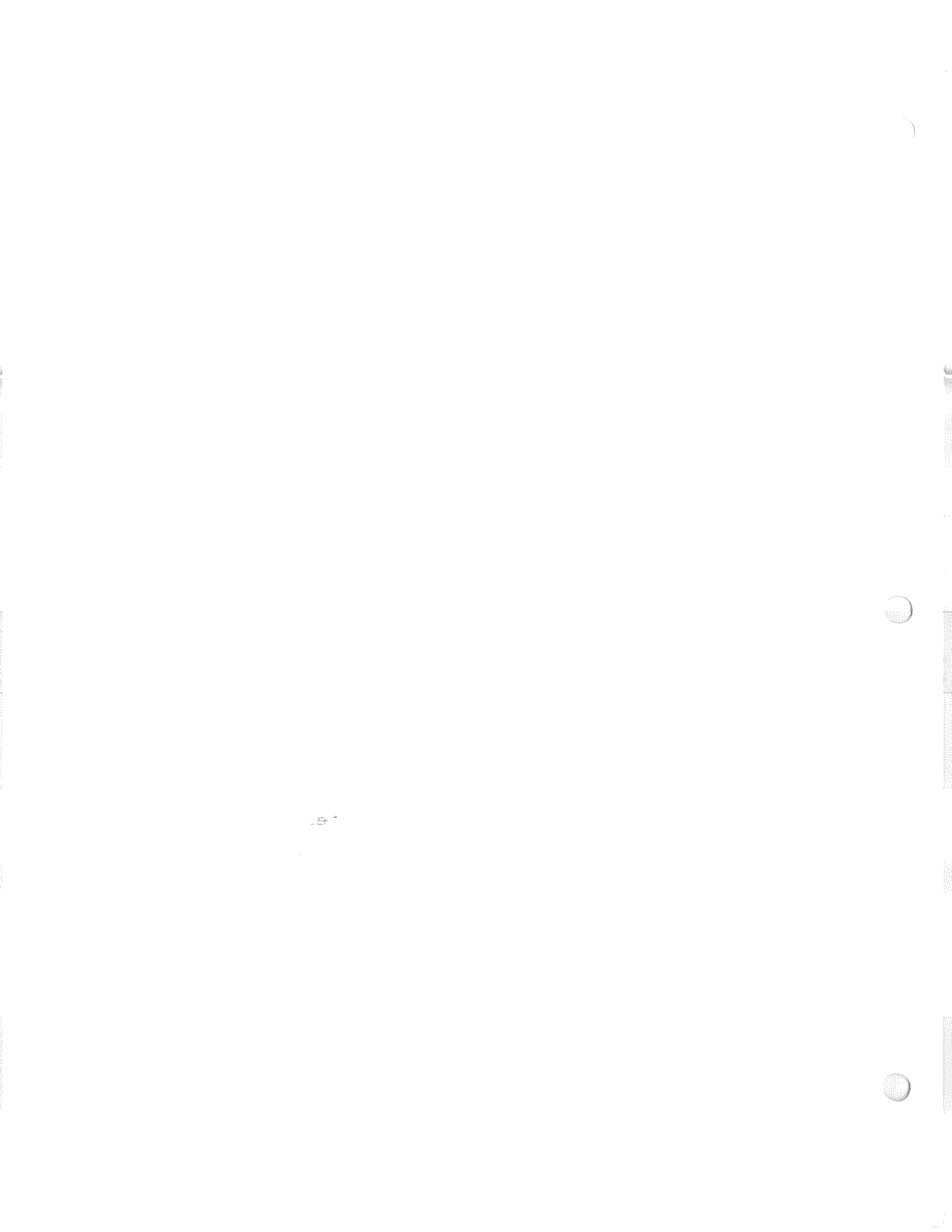
APPEARANCES:

MR. D. GARSON:

Counsel for the Crown

MS. S. COOPER:

Counsel for the Defence



1 THE COURT: Do either counsel wish to present
2 any evidence on the sentencing?

3 MR. GARSON: No, My Lord.

4 THE COURT: Is there any record being
5 alleged?

6 MR. GARSON: Yes. The Crown alleges a criminal
7 record.

8 MS. COOPER: Record is admitted, My Lord.

9 THE COURT: Exhibit S-1.

10 **EXHIBIT S-1: CRIMINAL RECORD**

11 THE COURT: Does the accused wish to present
12 any evidence on the sentencing?

13 MS. COOPER: No, My Lord.

14 THE COURT: Then I will hear the Crown's
15 submissions.

16 MR. GARSON: Yes, My Lord. Firstly, I would
17 submit that, in this case, we have a major sexual
18 assault within the definition that we set out in the R.
19 v. Sandercock case, and a three-year starting point is
20 appropriate. However, in my submission, the Court
21 should impose a sentence far greater than three years
22 imprisonment in this case because firstly, My Lord, we
23 are dealing with a sexual assault with a weapon, which
24 is an offense that is more serious than a simple sexual
25 assault that was in the Sandercock case, and
26 furthermore, because of the other aggravating factors
27 which exist in this case, and I will deal now with some

1 of the aggravating or some of the factors which I
2 believe are aggravating that the Court should take note
3 of.

4 Firstly, My Lord, in my submission, the facts of
5 this case show that the accused had intercourse with
6 the complainant three times without her consent, and,
7 in my submission, that makes this offense very
8 serious.

9 Secondly, the facts in this case, I submit, show
10 that the accused uttered threats during the commission
11 of this offense. More specifically the Court will
12 recall that when -- the facts show that when Anna
13 Koonark had left the house or was in the process of
14 leaving the house, the accused, I believe, told her
15 something to the effect that if she told anyone about
16 this, he would kill her or her son. Now, it's
17 conceived that these threats -- they weren't uttered to
18 the victim in this case, however, I submit that
19 nonetheless, they were threats that were uttered to
20 people -- threats to kill -- and, in my submission,
21 even though they weren't perhaps uttered to the victim,
22 it is nonetheless an aggravating factor that the Court
23 should take into account.

24 Thirdly, My Lord, and this is an important factor,
25 in my submission, the accused, as the Court sees for
26 it, the accused has a fairly lengthy criminal record
27 with a number of convictions for serious crimes of

1 violence. In particular, the Court will note the
2 conviction for aggravated assault where the accused
3 received a federal period of incarceration and as well,
4 there's a conviction for assault with a weapon.
5 There's also convictions for assault, and, in my
6 submission, this is aggravating in that there is a past
7 history here of violent behavior on the part of the
8 accused.

9 My Lord, I have some case law, which actually
10 defense counsel was kind enough to photocopy, and I
11 will submit it to the Court. Before I go any
12 further -- in terms of mitigating factors, My Lord, the
13 accused has spent four months in remand in relation to
14 this offense, and he should get -- he should get full
15 credit for that. With respect to the --

16 THE COURT: He was in custody from the date of
17 the offense but waiting trial on this charge?

18 MR. GARSON: Yes, that's correct, and it was a
19 period of approximately four months. Now, I believe
20 that he was released after a statutory review in
21 Supreme Court, and my understanding is that there was a
22 period of approximately four months that he was in
23 custody in relation to this charge and that he was
24 released on conditions, one being that he was in Clyde
25 River until this case was brought to an end.

26 Now, I've had the opportunity to review these
27 cases which I have submitted to the Court, and, in my

1 submission, these cases are of assistance to the Court
2 in terms of arriving at a broad range of sentence in
3 this case, however, it should be noted -- when I was
4 reading these cases, I noted that some of the fact
5 situations are a little bit more serious than the case
6 that we have and, as well, in some of these cases the
7 sentences were imposed after a guilty plea which isn't
8 the case in this case that is before us, and some of
9 these offenders in these cases have different criminal
10 records. However, having said all of that, I submit
11 that the collection of cases which are before the Court
12 now, again, can be of assistance in terms of coming up
13 with a broad range of what an appropriate sentence
14 would be.

15 In my submission, My Lord, the criminal record
16 taken together with the facts of this case, the
17 aggravating circumstances that have come out in the
18 course of this trial -- again, My Lord, these things
19 taken together show the profile of a dangerous
20 individual, and, in my submission, the public needs to
21 be protected from this person, and this should be done
22 through the Court imposing a substantial period of
23 imprisonment today.

24 In terms of a range of sentence, My Lord, I submit
25 that a period of imprisonment in the range of six to
26 nine years would be appropriate in this case, and, in
27 my submission, that range is not out of line with the

1 case that is here before the Court, that it's a range
2 that comes out of the case law which I have filed with
3 the Court. As well, in my submission, the Court should
4 impose the mandatory 10-year firearms prohibition and,
5 as well -- a housekeeping matter if you will -- if the
6 Court can make an order that the exhibit that was
7 seized be destroyed.

8 Subject to any questions that the Court wishes --
9 THE COURT: Do you have any information for
10 the Court with respect to the victim of this crime --
11 the impact on her?

12 MR. GARSON: My Lord, I don't have anything
13 specific. I can inform the Court as to my own
14 observations, and I spoke to the complainant briefly
15 yesterday. I can -- it appears to me, My Lord, that
16 she is getting over this incident, and she is moving on
17 with her life, but through my own experiences with her,
18 both in preparation for this trial and subsequent to,
19 and as well from meeting her yesterday, that it is
20 clear that this incident has had a profound impact on
21 her, but, again, it appears that she is recovering well
22 and is moving on with her life.

23 THE COURT: Is she still living in this
24 community?

25 MR. GARSON: Yes, she is, My Lord. I can advise
26 the Court that she works at the Co-op in one of the
27 stores there, and it appears she is succeeding quite

1 well at that.

2 THE COURT: Thank you. Ms. Cooper?

3 MS. COOPER: Thank you, My Lord. My Lord, with
4 respect to his personal circumstances, Mitusalie
5 Atagootak is 27 years of age. He has lived in Pond
6 Inlet all of his life, and he comes from a large family
7 of three younger brothers and four sisters, two of whom
8 are older than him. I understand that Mitusalie's
9 relationship with his father, in particular, has been a
10 very difficult one. He has indicated to me that when
11 he was growing up, he was singled out by his father and
12 that he suffered abuse and beatings quite regularly,
13 and this continued until he turned about 16 or 17 years
14 of age at which time he was able to challenge his
15 father and stand up to him physically. I would suggest
16 that the nature of the relationship with his father is
17 reflected in a recent telephone conversation Mitusalie
18 had with his dad a few weeks ago when Mitusalie called
19 his dad from Clyde River and told him he wished to ask
20 him a question that he wanted to ask him for some time,
21 and that question was, Was it okay if he died? Would
22 it be okay if he just took his own life? And his
23 father responded by saying that he simply didn't care,
24 and Mitusalie could do whatever he wanted to do. Now,
25 although the conversation was quite recent, the
26 attitude, to my understanding, has been present for as
27 long as Mitusalie can remember.

1 Mitusalie did have a relatively good relationship
2 with his mother. He tells me he was quite close to
3 her, and she past away from cancer about three years
4 ago. Mitusalie had been living in the family home
5 until that time but because of the relationship with
6 his father, he simply had to leave the home, and it was
7 at that time that he was able to get a house in Pond
8 Inlet.

9 After his mother's death, his father remarried and
10 Mitusalie now has a stepmother and five step siblings,
11 although, I understand that they are not close and do
12 not have a good relationship.

13 Mitusalie did not grow up on the land or spend
14 much time in camps. He grew up pretty much in the
15 communities of Pond Inlet. He has about a Grade 8
16 level of education, and his most recent employment is
17 as the radio announcer in town where he worked for
18 about one year. He has also worked as a cleaner for
19 NTPC, and I understand from his employer at NTPC that
20 he was a good worker and that he was quite pleasant and
21 easy to deal with on the job. That employer was
22 certainly aware of his history and his criminal record
23 when he advised me of those comments. He also
24 completed some training for the shrimp boats and worked
25 for a brief period for (inaudible) on the shrimp
26 boats.

27 He tells me that he started seeing Anna

1 approximately in 1993, and their son Sheldon is now one
2 year and three months old. Mitusalie actually has six
3 children, all of whom live either with their mothers or
4 have been adopted out.

5 As the Court is aware, he was on judicial interim
6 release from November 7th until the date of his trial,
7 and during that time, he was living in Clyde River with
8 his brother Andrew. He started a relationship there
9 with one of the women who adopted one of his daughters,
10 and she has a second child of her own, and I understand
11 that Mitusalie and her are expecting a baby in August.
12 With respect to that relationship, Mitusalie tells me
13 that he feels they have a good relationship. She has a
14 good life in Clyde River and being associated with her
15 has benefitted him. He says they are able to talk, and
16 I think it's fair to say that he felt he saw a better
17 life for himself with this woman in Clyde River. It
18 certainly was his intention to return to Clyde River
19 and live with her.

20 With respect to the cases in this matter, I would
21 like to review them in a little bit more detail than
22 the Crown has starting perhaps chronologically in time
23 starting with R. v. Ashoona, a decision of the NWT
24 Supreme Court in May of 1986.

25 The Ashoona case involved an accused who had
26 broken into the home of the complainant. The accused
27 in that case was hooded so that he could not be

1 identified, and he had with him a large knife. The
2 knife was held at the throat of the victim and her
3 clothing was ripped off, and the accused had sexual
4 intercourse with her. In that case, there were three
5 acts of intercourse and one of fellatio and before
6 leaving the house, the accused told the complainant
7 that he would be returning again at the same time the
8 next day.

9 The accused pled guilty to the offense. The use
10 of the mask was considered a serious aggravating factor
11 in that case.

12 I would submit that it has been considered in
13 subsequent cases where there has been a mask or some
14 way -- some means of hiding identity used, and I
15 suggest that the reason for that is because firstly, it
16 suggests an element of premeditation which may not be
17 present in other cases, and I think the Court
18 recognizes as well that someone wearing a mask being
19 unable to identify the attacker is in some way perhaps
20 more terrorizing and traumatic for the complainant --
21 the victim.

22 In the Ashoona case, there was violence over and
23 above the sexual act itself. The break-in to the home
24 was an aggravating factor as well, and there was a
25 prior related record as the record included a
26 conviction for indecent assault, an offense with a
27 sexual nature.

1 Justice Marshall in that case considered a
2 sentence of five and a half years to be an appropriate
3 sentence, and in light of the remand time for which the
4 accused was given one year's credit, he imposed a
5 sentence of four and a half years, and I would submit
6 that that case in many of its elements is much more
7 serious than the case before you.

8 In the case of Regina v. Nilaulak, the decision of
9 the Supreme Court in April of 1987, the accused, again,
10 broke into the home of the complainant in the morning
11 -- the early morning hours before 8 a.m. The victim
12 was in the home with her two young daughters age 6 and
13 9, the father having left for work already. The accused
14 put the two young girls in one bedroom. They were
15 fully aware of something bad happening to their mother
16 at the time, and the victim was forced to perform
17 various sexual acts including intercourse with the
18 accused. The victim in this case was pregnant. She
19 made the accused aware of that fact, and during the
20 incident, her children were yelling in the other
21 bedroom to the accused not to hurt their mother's
22 baby. After that, the accused took the nine-year-old
23 into the bedroom and sexually assaulted her as well.

24 Again, in my submission, many factors in that case
25 are much more serious than the case before you. There
26 is a guilty plea in that case, and although it's not
27 clear from the reading of the case, it appears that

1 there was just less than five months of remand time
2 which the accused was given credit for -- the incident
3 having occurred November 11th, 1986 and the accused
4 being sentenced April 7th, 1987.

5 There wasn't, in that case, violence other than
6 the violence apparent to the sexual act itself, and the
7 complainant was left with bruising on her neck and her
8 throat from a choking or strangling which was
9 administered by the twisting of the clothing. And most
10 significantly in this case, there was a prior related
11 record including a conviction for rape in 1981 and a
12 sexual assault conviction in 1983.

13 The accused was convicted of sexual assault and
14 threatening to cause bodily harm, and he received a
15 sentence of seven years and three years consecutive for
16 the sexual assault on the nine-year-old.

17 Again, a case which involved a higher degree of
18 violence than the case before you involved a break-in
19 to the home of the victim, took place with the
20 knowledge of the two young children who were in the
21 home, and, in my submission, in many ways it is much
22 more violent and much more terrifying to the victim
23 than the case before you today. The most aggravating
24 being the prior related convictions, two of them
25 resulting in a sentence of seven years.

26 The case of R. v. Adams is a decision of the NWT
27 Court of Appeal dated January of 1988. The accused in

1 that case dragged a woman from the street into his
2 home. He took off her clothes and sexually assaulted
3 her, and, in the course of the assault, threatened to
4 penetrate her vagina with a broomstick on numerous
5 occasions, and he also choked her. He had locked the
6 door with the broomstick so that she was, in her mind,
7 quite clearly confined. There was, in this case, a
8 prior record although unrelated. There was eight
9 months of pretrial custody, and a sentence of six years
10 was imposed. The Crown appealed. That sentence was
11 dismissed. Although the Court submitted that it was on
12 the lower range of the sentence, it was within the
13 range, and the Court of Appeal did not vary the
14 sentence in any way.

15 Again, in that case, there was the violence over
16 and above the violence apparent in the sexual act, in
17 particular the choking. The choking in and of itself
18 is always considered very serious by the courts and
19 perhaps threats, which they were characterized by the
20 Court as being ugly threats, and I will simply leave it
21 at that -- threats of quite a different nature than the
22 ones before you today.

23 The Adams case is followed by a decision of
24 Justice de Weerd in February of 1988. R. v. Nitsiza,
25 and I submit that although Justice de Weerd does not
26 refer to the Adams case in his decision, it would be
27 unlikely that he would not be aware of the decision.

1 The Nitsiza case involved an accused who was found
2 guilty of assault causing bodily harm after a trial, so
3 the mitigating factor of the guilty plea was not
4 present.

5 The incidents occurred in a hotel room. The
6 victim and the accused had been drinking with another
7 person and when the drinking party left the hotel room,
8 the accused locked the door behind him, he punched and
9 choked the complainant, ripped off her clothing and
10 caused some rather severe injuries to her genitals by
11 ripping her before he had sex with her. The injuries,
12 particularly the serious injuries to the genitals,
13 included bruising and scrapes to the face and the
14 throat. There was a prior unrelated record.

15 There was seven months of remand time for which
16 the accused was given credit 14 months and a sentence
17 imposed on the accused in that case was one of four
18 years, and in my submission, the violence which was
19 involved in that particular incident is much more
20 serious than the violence which was involved in the
21 matter before the Court today.

22 The other case which has been filed is the
23 decision of Justice de Weerd, again, in Regina v.
24 Nadary, the decision of the Supreme Court in 1990. The
25 accused in that case, pled guilty to sexual assault
26 with a weapon and also to an attempt break and enter.

27 The accused had broken into the home of the

1 complainant. He was masked. He had pantyhose over his
2 head. He cut the telephone wires prior to entering the
3 home, and he held a knife at the complainant's throat
4 and demanded money. He then sexually assaulted her --
5 there being two acts of intercourse and one act of
6 fellatio, and he tied her up before he left. There was
7 a subsequent break and enter attempt two weeks later.
8 My understanding of the case was that it was at the
9 same home and involved the same victim which had some
10 of the elements of the previous incident whereby he was
11 seen around the residence cutting cable wires
12 apparently thinking that they were telephone wires, but
13 he was unable to gain entry into the home.

14 Most significantly, there was a prior record in
15 that case which included a conviction for sexual
16 assault with a weapon and for that prior conviction, he
17 had received a sentence of four years.

18 The case was basically a joint submission by Crown
19 and defense for a sentence of nine years to ten years,
20 and I understand that the sentence imposed was nine and
21 a half years with sexual assault with a weapon and one
22 year consecutive for the attempt to break and enter.

23 Again, in my submission, the level of
24 premeditation in that type of case, the cutting of the
25 telephone wires, the masking of the individual, the
26 breaking into the home and the prior related record,
27 make that offense much more serious than the one before

1 the Court today.

2 I would also like to refer the Court to a case
3 which is unreported which is decided by Justice Vertes
4 in the fall of 1993 Regina v. Kelly. I was counsel on
5 that matter. Mr. Kelly entered a guilty plea to a
6 charge of assault with a weapon. He, again, broke into
7 a home -- the home of the complainant. He had his face
8 covered. He had a knife with him. There were children
9 in the house at the time, and he had sexual intercourse
10 with the victim at knife point. There was a prior
11 record although it was unrelated, and there was remand
12 time which was taken into consideration. The exact
13 amount, I cannot recall. More than is present in the
14 case before you today, but to my recollection certainly
15 less than a year.

16 The sentence in that case imposed by Justice
17 Vertes was a sentence of five years, and I can advise
18 the Court that Justice Vertes had before him many if
19 not all of the cases that you have before you today,
20 that was decided prior to that time, including the
21 Adams case from the Court of Appeal.

22 So it's my submission that the range we are
23 looking at based on these cases is from the low range
24 of four and a half years of Ashoona to the upper range
25 of nine and a half years in the Nadary case.

26 I would submit that when we start talking about
27 eight and nine years, even seven years, those cases

1 involve offenses which are much more violent in nature
2 than the one before the Court that involved levels of
3 premeditation and quite often have prior related
4 records, so they are not applicable in my submission to
5 the case of R. v. Atagootak. I submit that the
6 aggravating factor of this particular case was the
7 inclusion of the third person in the incident and the
8 act of fellatio, but I submit in mitigation, there was
9 no violence to the victim over and above that apparent
10 of sexual acts themselves. As a result, there were no
11 physical injuries to the complainant.

12 I submit that it is significant that threats were
13 never made to injure the victim in this case. Indeed,
14 the very initial threat which took place immediately
15 prior to the incident was the threat by the accused to
16 do harm to himself not even to the other party that was
17 there or to anyone else, and it wasn't until the end of
18 the incident or towards the end of the incident that
19 threats were made again. And again, they were not made
20 to the victim directly. They were made to the third
21 party.

22 It is significant in my submission that during the
23 incident itself, there were no threats made. There was
24 no hitting, no punching, no violence of that nature.

25 The prior record, of course, is not flattering.
26 There are offenses of violence, however, there are no
27 offenses of a sexual nature on the record and that

1 distinguishes this particular accused in some way than
2 the accuseds that were before the Court in some of
3 those more serious cases that the Court heard today.

4 There have been four months in remand, and it's my
5 submission that an appropriate credit for that would be
6 eight months. I would submit that the Court has to
7 give him credit for at least an additional one-third
8 and although there is no written rule, double credit
9 time for remand is not uncommon in this jurisdiction.

10 I would submit that absent any remand time, an
11 appropriate sentence in this case would be in the range
12 of five to six years and when one takes into
13 consideration the remand time, than the sentence could
14 come down somewhat from that range. Subject to any
15 questions from the bench, those are my submissions.

16 THE COURT: Mr. Atagootak, do you wish to say
17 anything to the Court before sentence is passed?

18 THE ACCUSED: I am Mitusalie Atagootak. I
19 am 27 years old, and I am from Pond Inlet. Ever since
20 I was growing up, my life has been really hard for I
21 had to go through hard times, and sometimes they were
22 just unbearable. And ever since my mother and my
23 grandmother passed away, life has been very heavy
24 burden. Sometimes I don't know who to turn to for
25 help, even though I try to help myself, even though I
26 cannot help, sometimes who to turn to.

27 Ever since I moved to Clyde River, my life has

1 been a bit lighter since I was able to talk to some
2 people with the burdens that I have been carrying and
3 the concerns that I have been going through. Things
4 have been hard.

5 Even though I have been apologizing to the victims
6 with the things that I have done, but I don't think
7 they have believe me. If I am going to be spending
8 time in jail, once I get out, I am going to try and
9 turn my life into a more positive life and try to do
10 better in the future after I get out of jail. My
11 current girlfriend has been very helpful to me and has
12 been helping me out a lot and we have been happy and
13 even though we go through some every day problems
14 otherwise we have been going through good times that I
15 had ever since our relationship started. She is very
16 worried right now. We are presently very worried right
17 now wondering what's going to happen in this court
18 case. We are expecting a child in August even though
19 we have two right now. That's the situation right
20 now.

21 Before I met my present girlfriend, she had a
22 boyfriend before, but he past away with cancer. We
23 have been helping each other -- with the present
24 girlfriend that I have now. I have been helping her,
25 and we have been helping each other with our lives, and
26 we are happy where we are. After this court case is
27 over, and after I spend time in jail, she told me not

1 to come back to Pond Inlet but move to Clyde River, and
2 I agreed with her that I didn't want to move back to
3 Pond Inlet but stay in Clyde River.

4 Even though I don't seem to have a stable home
5 right now over in Clyde River, I have been enjoying it
6 because where I am right now -- where I was right now
7 in Clyde River, I wasn't breaking the law, but I was
8 trying to do positive things with my life and when I
9 was in Clyde River.

10 Even though there's other things I might want to
11 say, but since I have never talked in court before, I
12 find it really hard and that's the conclusion of my
13 speech.

14 THE COURT: Thank you. We will take a recess
15 for 20 minutes.

16 (ADJOURNMENT)

17 THE COURT: This young man, Mitusalie
18 Atagootak, is before the Court today to be sentenced
19 following his conviction yesterday by a jury of 12
20 members of this community of Pond Inlet.

21 The jury found him guilty of the serious crime of
22 sexually assaulting a 16-year-old girl and at the time
23 threatening to use a knife contrary to section 272(a)
24 of the Criminal Code of Canada.

25 The maximum penalty for this crime is 14 years
26 imprisonment in a federal penitentiary in Southern
27 Canada. There is no minimum penalty or punishment

1 provided by law.

2 When the Court decides what is the appropriate
3 sentence in each case, the Court has in mind the
4 primary purpose of our entire criminal law system,
5 which is the protection of the public including the
6 protection of vulnerable young women in the community.
7 The Court wants to achieve that end, that is, to
8 protect young women from being raped by selfish men for
9 selfish pleasures.

10 In deciding on what is an appropriate sentence,
11 the Court wants to deter or discourage other young men
12 in the community from behaving in such a disrespectful
13 and terrible way towards women.

14 In passing sentence upon a sexual offender like
15 Mitusalie Atagootak, the Court also wants to say on
16 behalf of the community of Pond Inlet and other
17 communities that this kind of criminal behaviour,
18 whether the offender is drunk or sober, is not
19 acceptable to the people of the community and that it
20 will result in severe punishment and removal from the
21 community.

22 Because there is such a wide range of possible
23 sentences for this crime, the Court is compelled to
24 look carefully at the personal background of the
25 particular offender, in this case, Mitusalie Atagootak,
26 and to consider what other things the person has done
27 with his life besides committing the sexual assault for

1 which he is being sentenced.

2 I am told that this man, Mitusalie Atagootak, is
3 now 27 years of age and that he grew up here in the
4 community of Pond Inlet. I am told that he had a
5 difficult home life, in particular, in his relationship
6 with his father. Apparently, he has achieved an
7 education of approximately a Grade 8 equivalent. He
8 has had a sporadic work record here in the community,
9 but he has at times been gainfully employed. He has
10 had a number of relationships with women over the years
11 and apparently has fathered six children. Recently
12 while on interim release living in Clyde River, he has
13 commenced yet a new relationship with a woman there,
14 and the two of them are expecting a child in August of
15 this year.

16 Mr. Atagootak has accumulated a significant
17 criminal record as follows: October 1994, presumably
18 in youth court, he was convicted of a theft charge and
19 placed on probation for six months. In March '85, he
20 was convicted of four counts of break and enter and
21 placed on probation for one year. In January of 1987,
22 again in youth court, here in Pond Inlet, he was
23 convicted of two counts of break and enter, a weapons
24 charge, and an assault causing bodily harm, and, again,
25 placed on probation for a period of 12 months. In
26 March, 1987, he was convicted for common assault and
27 sentenced to one-year imprisonment plus one year of

1 probation. In June, 1988, he was convicted of three
2 counts of break and enter and theft and sentenced to
3 two years less one day imprisonment followed by
4 probation of two years. In June, 1990, he was
5 convicted of aggravated assault and sentenced to 30
6 months imprisonment. In January, 1993 in Iqaluit, he
7 was convicted of common assault, assault with a weapon,
8 two counts of theft, a firearms offense, and forgery
9 and received a global sentence of 13 months
10 imprisonment. Finally, in February, '93, he was
11 convicted of possession of stolen property and
12 sentenced to a further one month in jail.

13 Counsel are in agreement that this record of prior
14 convictions, particularly for the crimes of violence,
15 is an aggravating factor affecting the determination of
16 sentence in this case.

17 Yesterday, the jury found that Mr. Atagootak
18 committed a further crime of violence namely a serious
19 sexual assault in July of 1995 at his home here in Pond
20 Inlet.

21 The circumstances of that crime were related by
22 the 16-year-old victim to the jury. She said that she
23 went to the offender's home on the invitation of the
24 offender's common law spouse, another 16-year-old girl,
25 after a drinking party at the home of the victim's
26 parents. She said that a short time later, at about 2
27 o'clock or 3 o'clock in the morning, the offender

1 arrived home. He told the two women that he wanted to
2 have sex with the two of them and that unless they
3 complied with his wishes, he would kill himself with a
4 large knife that he was holding in his hand. He then
5 instructed them to go with him to an upstairs bedroom
6 where he instructed them to undress and get on the bed
7 with him. He then had forcible intercourse with the
8 young victim, on three separate occasions. He also had
9 his own common-law spouse perform oral sex upon the
10 victim. The victim told the jury that she complied
11 with his wishes because she was scared. She was only
12 able to leave the house after the police arrived. Mr.
13 Atagootak was arrested by the police at the scene and
14 was in custody awaiting trial on this charge until his
15 release on bail in October, 1995.

16 I acknowledge that he should, therefore, be given
17 credit for approximately four months of pretrial
18 custody as is customary in a case like this.

19 Notwithstanding Mr. Atagootak's words to the Court
20 this morning, I find it difficult to detect any genuine
21 remorse in this man for his humiliating conduct towards
22 his young victim. There is, however, one glimmer of
23 hope and that is when he stated that he wished to try
24 to change his life once he is released from prison.

25 I am told by the Crown prosecutor that the victim
26 in this case shows signs of recovering from the trauma
27 inflicted upon her -- that she is indeed getting on

1 with her life, and it is the Court's sincere hope that
2 her recovery will continue.

3 The aggravating factors in this case are the
4 repeated acts of intercourse, the confinement for a
5 period of time, the use of a knife to threaten or
6 intimate, the additional humiliation visited upon this
7 16-year-old girl in the circumstances that I have
8 mentioned, and finally this man's previous history of
9 committing crimes of violence.

10 In my view, there are no mitigating factors that
11 would act in reduction of the sentence to be imposed.
12 A substantial period of incarceration is required for
13 Mr. Atagootak primarily for the protection of the
14 public from him and also for the other reasons that I
15 have mentioned.

16 Would you please stand, Mr. Atagootak.

17 For the crime that you have committed, committing
18 a sexual assault and threatening to use a weapon
19 contrary to section 272(a) of the Criminal Code, it is
20 the sentence of this Court that you serve a term of
21 imprisonment of five years. In addition, I hereby
22 order pursuant to section 100 of the Criminal Code of
23 Canada that you are prohibited from having in your
24 possession any firearm or ammunition or explosive
25 substance for a period of time commencing on today's
26 date and expiring on a date 10 years after you are
27 released from your term of imprisonment. Any such item

1 in your possession at this time shall be surrendered to
2 a police officer or otherwise disposed of within one
3 month of today's date. In the circumstances, there
4 will be no victim fine surcharge, and there will be an
5 order with respect to Exhibit 1, the knife. The
6 exhibit will be destroyed upon the expiration of the
7 appeal period.

8 Now, Mr. Atagootak, hopefully you are going to be
9 a more mature man when you are released from jail this
10 time, and I hope that during the time that you are in
11 jail that you think every day, every week of what you
12 said in court this morning that you want to be a
13 different person -- that you want to change your way of
14 life when you are released. You are going to have a
15 lot of time to think, and I hope you use it wisely and
16 that we don't see you here again in court. You can sit
17 down.

18 Anything further in this case counsel?

19 MR. GARSON: No, My Lord.

20 THE COURT: We will close court.

21 (PROCEEDINGS ADJOURNED)

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23 Certified Pursuant to Practice Direction
24 #20 dated December 28, 1987

25 
26 _____
27 Rae Gajadhar
Court Reporter

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