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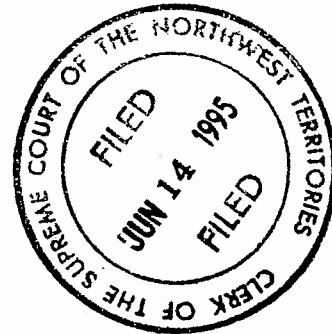
IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- vs. -

ERIC EDSON KOTCHEA



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Transcript of the Reasons for Sentence of The Honourable  
Mr. Justice M. M. de Weerdt, at Fort Simpson in the  
Northwest Territories, on Wednesday, June 7th A.D., 1995.

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APPEARANCES:

MR. M. DALE: Counsel for the Crown  
MR. S. SHABALA: Counsel for the Accused

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(CHARGED UNDER s. 271 CRIMINAL CODE OF CANADA)

1 THE COURT: Eric Edson Kotchea is before the Court  
2 this afternoon having been found guilty of a sexual  
3 assault at Trout Lake between December 1, 1993 and  
4 December 31, 1993, here in the Northwest Territories,  
5 all contrary to Section 271 of the Criminal Code.

6 This is an offence, which having been tried before  
7 a jury, is punishable by a term of imprisonment of up  
8 to ten years apart from any other punishment which may  
9 be imposed pursuant to law.

10 The offence of sexual assault is relatively new in  
11 our law and covers a great many different forms of  
12 sexual activity amounting to an assault.

13 In this case, the evidence before the Court is  
14 that the accused came to the bedroom of a 9-year-old  
15 girl, laid down on her bed, rearranged her night  
16 clothes so that he could place his hand on her private  
17 parts, which he did, that she awoke and that he then  
18 ceased what he was doing and left the room.

19 As counsel have brought to my attention, there was  
20 another individual in the house at the time by the  
21 name of Andrew Lomen. Mr. Lomen has been convicted of  
22 a similar offence, I am told, on a guilty plea; that  
23 offence having been committed in March of 1993 but for  
24 which he was not convicted in Court until November of  
25 1994. I note therefore in passing that  
26 notwithstanding Mr. Lomen having committed such an  
27 offence on the same victim in March of 1993, he was

1 still somehow at large in December of 1993 when he and  
2 this present accused arrived at the victim's home,  
3 were admitted, and where this offence took place.

4 This surely tells us something is seriously wrong  
5 if this could be allowed to occur. I am not in  
6 possession of information which would allow me to  
7 understand how this could happen. Perhaps those who  
8 are concerned in these matters will make it their  
9 business to find out so that such a situation need not  
10 be repeated. In all events, this young girl was  
11 placed at risk in a situation where that might have  
12 been prevented.

13 Furthermore, the fact that Mr. Lomen's case wasn't  
14 dealt with for over a year and a half tells us  
15 something. Something is very seriously wrong in  
16 whatever system is supposedly looking after these  
17 things. None of that, of course, in any way reduced  
18 the responsibility which Mr. Kotchea must bear for the  
19 offence of which he has been found guilty.

20 Crown counsel is correct to point out that Mr.  
21 Lomen entered a guilty plea whereas Mr. Kotchea did  
22 not. In reckoning the sentence, the Court in Mr.  
23 Lomen's case was therefore entitled to reduce the  
24 punishment whereas I am not able to do that; no guilty  
25 plea having been offered in this case.

26 I understand counsel to be in agreement and to be  
27 correct in agreeing that this is a case which requires

1 a sentence which will operate to reflect the Court's  
2 denunciation of the offence, and to the extent that is  
3 possible, general deterrence to others against  
4 committing offences of this kind.

5 There have been advocates who say that the Courts  
6 should impose maximum penalties for all such offences  
7 but a moment's reflection reveals the fallacy in that  
8 sort of thinking because where the offender is going  
9 to be faced with the maximum penalty, he will be  
10 inclined to go as far as possible and consequently  
11 more serious offences will be committed where  
12 restraint does not have some payoff.

13 In this case, the offender did desist as soon as  
14 the young person woke up and began, as she said, to  
15 "wiggle" to get away from him. To that extent, there  
16 is some mitigation in the offence. In other words, it  
17 did not proceed further than it might have done.

18 This is the sort of offence which comes before the  
19 Court as so often offences of this kind do in the  
20 Northwest Territories where alcohol abuse is evident  
21 not only in the offender but in others who were adult  
22 persons in the situation who might have, one would  
23 have thought, shown a greater degree of responsibility  
24 in the presence of a child; a very bright and  
25 wonderful child who deserved better from her parents  
26 and elders. And deserved better from the accused.

27 Would you stand up, Mr. Kotchea.

1 The sentence of the Court is that you shall serve  
2 a term of imprisonment. The sentence of the Court is  
3 that you shall serve a term of 11 months in prison.  
4 In addition, there will be a Victim Fine surcharge in  
5 the amount of \$500; failing which, you shall have to  
6 serve an additional one month in prison consecutive to  
7 the 11 months.

8 Do you understand?

9 THE ACCUSED: Yes, sir.

10 THE COURT: If you can find that money, you may  
11 save yourself a month in jail.

12 On your release, you will begin to serve one  
13 year's probation and the terms of your probation will  
14 be as follows: You will immediately report to the  
15 senior probation officer in the place where you then  
16 are and thereafter at such times and places as your  
17 probation officer may designate. You will immediately  
18 inform your probation officer of any change in your  
19 address, occupation, or employment. You will, during  
20 the term of your probation, accept the directions of  
21 your probation officer as to any counselling or  
22 treatment for any alcohol or drug problem which you  
23 may have and in respect of any sexual abuse training  
24 that may be available to you.

25 Do you understand?

26 THE ACCUSED: Yes.

27 THE COURT: You will during the first six months

1 of your probation abstain absolutely from the  
2 possession or consumption of any alcoholic beverage  
3 except for a regular church service, if alcohol forms  
4 any part of that, and except as may be prescribed for  
5 you by a medical doctor.

6 Do you understand?

7 THE ACCUSED: Yes.

8 THE COURT: You shall, during the entire year of  
9 your probation, remain within the Northwest  
10 Territories unless you are given written permission in  
11 advance by your probation officer to go elsewhere.  
12 During the six months that I have mentioned, you shall  
13 not remain in any place where alcohol is distributed,  
14 sold, or consumed. If there is a party where you are  
15 staying at, you have to go somewhere else.

16 THE ACCUSED: Yes.

17 THE COURT: There are additional terms which I  
18 have considered but I am going to hear first from Mr.  
19 Dale and Mr. Shabala before I add any. Mr. Dale?

20 MR. DALE: Sir, well, I am concerned about the  
21 welfare of the victim and her family and yet I wonder  
22 if it is practical to impose an order of no contact  
23 with the victim if the accused resides in such a small  
24 community as Trout Lake. It may be --

25 THE COURT: -- I think that that is a well  
26 intended suggestion but what worries me about it, in  
27 the situations that I have confronted from time to

1 time, is sometimes it helps the victim if there can be  
2 a victim-offender reconciliation and confrontation as  
3 in some communities is a traditional way of dealing  
4 with situations such as this, and I am thinking of  
5 Arctic Bay and places in the Eastern Arctic. That may  
6 not be something that is known or done here in this  
7 part of the MacKenzie. Rather than prevent that from  
8 happening, I have seen it happen with very good  
9 results reported to us by the social worker who  
10 performed the confrontation and I am thinking of  
11 Rebecca Williams of Arctic Bay in particular so I  
12 think perhaps I will leave this to the probation  
13 officer.

14 MR. DALE: Yes, sir.

15 THE COURT: Let me do it this way, subject to  
16 anything that Mr. Shabala says, no contact unless  
17 arranged by the probation officer. All right?

18 MR. SHABALA: That would seem most appropriate, My  
19 Lord.

20 THE COURT: Mr. Kotchea, there will be an  
21 additional term then. During the year of your  
22 probation, you will not be in contact with Joyce Jumbo  
23 unless that is arranged by your probation officer.

24 Do you understand?

25 THE ACCUSED: Yes.

26 THE COURT: Have you any questions?

27 THE ACCUSED: No.

1 THE COURT: All right, then be seated.

2 MR. DALE: Sir, an exhibit was entered. May  
3 there be an order returning that exhibit to the RCMP  
4 for disposal?

5 THE COURT: Which exhibit is that?

6 MR. DALE: There was a drawing.

7 THE COURT: We usually keep documentary evidence  
8 in the Court. The police don't need it.

9 MR. DALE: All right. It won't take up too much  
10 space.

11 THE COURT: I should have added, and I will now,  
12 that the Clerk of the Court will prepare the probation  
13 order in writing. You, Mr. Kotchea, will be given a  
14 copy of that and it will be read over to you and you  
15 will sign to show that you have heard it read. You  
16 should know that if you breach that order in any way,  
17 you can be charged and brought back to Court charged  
18 with that breach and you could be prosecuted quite  
19 severely for any such breach. I am going to ask Mr.  
20 Shabala to read over to you the provisions of the  
21 Criminal Code that apply in that connection, and I  
22 take it that you will?

23 MR. SHABALA: Yes, My Lord.

24 THE COURT: You can also be brought back to Court  
25 and additional terms can be imposed - your probation  
26 can be lengthened to three years. I could have  
27 imposed community service work but it occurred to me

1 that since a Victim Fine surcharge had been imposed, I  
2 would not in this case also impose community service  
3 work. Just keep it in mind; that can be added if it  
4 should seem necessary.

5 THE ACCUSED: Yes.

6 THE CLERK: Excuse me, My Lord, is there a time to  
7 pay on the Victim Fine surcharge?

8 THE COURT: Well, that's an excellent question. I  
9 am not aware of any regulation made under Section  
10 727.9 of the Criminal Code in this connection. However  
11 what I propose to do is give the accused fairly ample  
12 time within which to pay that since he is going to be  
13 incarcerated in any event. Would three months be  
14 enough? Would you be able to find that money in three  
15 months?

16 THE ACCUSED: Yes.

17 THE COURT: You can try. All right, I will give  
18 you three months to pay.

19 There was another matter set for 2 o'clock. This  
20 matter now can stand down. Is your other client  
21 available?


22 MR. SHABALA: He is, My Lord.

23 THE COURT: We will stand down briefly then until  
24 you are ready.

25 (ADJOURNMENT)

26 (AT WHICH TIME THIS SENTENCING CONCLUDED)  
27

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

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Lois Hewitt,  
Court Reporter