

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

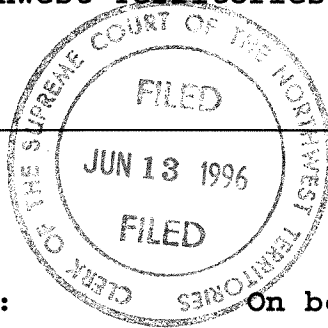
IN THE MATTER OF:

HER MAJESTY THE QUEEN

- and -

MAURICE BOUDREAU

Transcript of Reasons for Sentence delivered by The Honourable Madam Justice V.A. Schuler, sitting at Rankin Inlet, in the Northwest Territories, on Friday, June 7, A.D. 1996.



APPEARANCES:

Ms. M. Nightingale: On behalf of the Crown
Mr. G. Wallbridge: On behalf of the Defence

(Charge under Section 271 of the Criminal Code)



1 THE COURT: Mr. Boudreau, before I pass
2 sentence on you, is there anything you wish to say?

3 THE ACCUSED: No.

4 THE COURT: All right. Thank you.

5 In this case, Maurice Boudreau has been convicted
6 by a jury of sexual assault, and it's now my
7 responsibility as the presiding judge to impose an
8 appropriate sentence for that offence.

9 It is often said that sentencing is the most
10 difficult task that a judge has.

11 In terms of Mr. Boudreau's background, I have
12 heard that he is 51 years old, that he's been in the
13 hotel and hospitality business for 30 years, that he
14 has lived in Rankin Inlet for two and a half years and
15 has worked here at the Siniktarvik Hotel. His wife
16 continues to live in Winnipeg, and he has two sons,
17 ages 25 and 29, both of which, as I understand it, were
18 living with him, but only one of which currently
19 resides with him and is an apprentice carpenter here in
20 Rankin Inlet.

21 At the time of the incident which has led to the
22 conviction by the jury, Mr. Boudreau was Miss Popescu,
23 the complainant's, boss. He had fired her, but had
24 arranged to take her back on certain conditions.

25 I have heard that he has no criminal record. I
26 have also heard - he has indicated through his counsel
27 - that he feels that he has a good record of hiring

1 local Inuit people at the hotel here in Rankin Inlet
2 and that he has helped some of those people as well.

3 In terms of the facts of this case, the jury
4 obviously accepted the complainant's version of the
5 events.

6 What she told the Court was that on New Year's
7 Eve, after inviting the accused for dinner and after
8 having dinner, she went with him to his home to watch a
9 movie, that he made advances to her, and that despite
10 her saying "no" several times and indicating that she
11 did not want to have sex with him, and despite her
12 trying to push him away, he took her to the bedroom,
13 undressed her, and she felt that she had no way out, as
14 she said. He was her boss; she wanted to make sure she
15 got her job back and she was scared of him. And she
16 indicated that, as I said, she felt she had no way out,
17 and they engaged in oral sex and sexual intercourse.
18 She made it very clear that she did not consent and
19 that she voiced to the accused that she did not consent
20 to this.

21 In terms of the effect on her, she indicated that
22 she was upset and angry. She also testified at one
23 point that, as a result of this incident, she felt like
24 she wasn't worth anything.

25 This case, in my view, clearly comes within the
26 major sexual assault category set out in the Sandercock
27 case from the Alberta Court of Appeal which has been

1 adopted, approved and followed on many, many occasions
2 in this court.

3 If there is any doubt as to whether non-consensual
4 sexual intercourse is a violent offence, I think that
5 has been laid to rest by the McCraw case from the
6 Supreme Court of Canada in 1991 in which it was
7 indicated that non-consensual sexual intercourse is an
8 offence of violence and that psychological harm to the
9 victim is to be assumed.

10 At one time this Court did impose sentences that
11 were less than what Sandercock has called for, but that
12 is not the current practice of this Court. One only
13 needs to look at the sentencing of James Arvaluk which
14 took place late last year when the Court indicated that
15 an offence of non-consensual sexual intercourse is a
16 major sexual assault and calls for a sentence which
17 starts at three years.

18 The reason that the starting point for the
19 sentence is so rigid has been said many times to
20 reflect the principles of deterrence and denunciation -
21 denunciation to show that society condemns this kind of
22 activity, and deterrence which is necessary because
23 sexual assault is such a problem in our society. It
24 cuts across all classes, all types of people.

25 In this particular case I have to ask whether
26 there are any mitigating factors which would justify
27 reducing the sentence from the three-year starting

1 point, and I have to say that I don't see that there
2 are any mitigating factors in this case.

3 I do accept that the offence was not planned and
4 deliberate. But I would say that the absence of that
5 is not a mitigating factor. It simply doesn't
6 aggravate the offence. In other words, if there was
7 planning, then it would aggravate it. But there wasn't
8 in this case, as I've said.

9 The fact that Mr. Boudreau was Miss Popescu's boss
10 is an aggravating factor. It would be aggravating on
11 its own, but it is particularly aggravating in the
12 circumstances of this case because of the use of his
13 relationship, the use that he made of the fact that he
14 was her boss in the commission of the offence.

15 She was quite clear on her evidence that he had
16 told her that she had to do what he wanted because he
17 was her boss. There is a certain trust between a boss
18 and an employee, or even co-workers. Miss Popescu was
19 entitled to respect from Mr. Boudreau and, instead, she
20 was treated with contempt.

21 One of the things that was said in the Sandercock
22 case is that the key to a major sexual assault is the
23 evident blameworthiness of the offender which has been
24 described as a contemptuous disregard for the feelings
25 and personal integrity of the victim.

26 Mr. Boudreau, would you stand up, please.

27 It gives me no pleasure, Mr. Boudreau, to sentence

1 anyone. I appreciate that this will be a hardship on
2 your family. But I think you have to spend some time
3 thinking about the fact that that is the consequence of
4 your actions.

5 On the charge of sexual assault against Elena
6 Popescu, it is the sentence of this Court that you
7 serve a term of imprisonment of three and a half
8 years. There will be an order under Section 100 of the
9 Criminal Code, as I have not heard any submissions to
10 the contrary, prohibiting you from having in your
11 possession any firearm or any ammunition or explosive
12 substance for a period of time commencing on today's
13 date and expiring on a date ten years after the date of
14 your release from imprisonment. There will be no
15 victim of crime surcharge.

16 You may sit down now.

17 Is there anything further, Counsel?

18 MR. WALLBRIDGE: Yes, My Lady. If I might direct
19 your attention to one particular section of the
20 Criminal Code being Section 721(4) -- actually, sub (1)
21 and sub (4). And the subsection (1), "A sentence
22 commences when it is imposed, except where a relevant
23 enactment otherwise provides." And then in Section
24 (4) --

25 THE COURT: How does that --

26 MR. WALLBRIDGE: Well, I can inform the Court, My
27 Lady, if this Court saw fit, there have been

1 discussions with my friend the Crown counsel and with
2 the R.C.M.P. over the last short while with regards to
3 the possibility of the actual warrant being exercised
4 on Tuesday. The idea being that Mr. Peter Balt, who is
5 the president of EVAZ Group, is presently in Iqaluit
6 and is scheduled to be in Rankin Inlet on Monday. My
7 client of course is the general manager of the hotel.
8 There are only two very junior assistant managers at
9 the time. There are certain matters and affairs that
10 need to be put into order. The police would be
11 content, I understand, with the idea being that there
12 is a flight out of here on Tuesday sometime in the
13 early evening, and if my client were in fact to be put
14 into custody late on Tuesday, late in the afternoon,
15 and to report daily between now and then, the police
16 would be in agreement with that.

17 I appreciate this is highly unusual and it may not
18 be something which this Court feels it is within its
19 power to do. I would ask for your consideration of the
20 request, My Lady.

21 THE COURT: Ms. Nightingale, do you have
22 anything you wanted to say about that?

23 MS. NIGHTINGALE: Just from discussing this with
24 Sergeant Liel, he tells me that they cannot get the
25 accused out of the community before Sunday, and they
26 are already involved in an escort to or from
27 Yellowknife on the Tuesday. So it's not likely they

1 would actually get him out before the Tuesday anyways.

2 From my read of Section 721, it would appear that
3 because Mr. Boudreau has not been in custody to this
4 point, that it is upon the execution of the committal
5 warrant that he would be placed in custody, and we
6 certainly have no objections to allowing Mr. Boudreau a
7 few days to get his affairs in order.

8 THE COURT: Well, it's extremely unusual, and
9 I can't think of any case where I've ever seen that
10 section used in that way.


11 I don't, in the circumstances of this case, feel
12 that it would be appropriate for me to do that.
13 Sentence will commence now.

14 If there is nothing further, Counsel, we'll close
15 court.

16 MR. WALLBRIDGE: Nothing further. Thank you, My
17 Lady.

18 THE COURT: Thank you.
19
20

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

23 
24 _____
25 Jane Romanowich
26 Court Reporter
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