

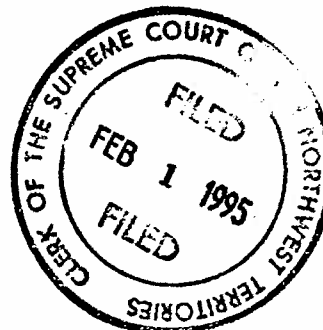
CR 02496

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- vs. -



MIKE KAIYOGANA

Transcript of the Oral Reasons for Sentence of The Honourable Mr. Justice J. E. Richard, at Cambridge Bay in the Northwest Territories, on Saturday, January 21st A.D., 1995.

APPEARANCES:

MS. B. SCHMALTZ: Counsel for the Crown
MR. H. LATIMER: Counsel for the Accused

(CHARGE UNDER s. 271 CRIMINAL CODE OF CANADA)

AN ORDER HAS BEEN MADE IN THIS CASE PROHIBITING PUBLICATION OF ANY INFORMATION THAT COULD DISCLOSE THE IDENTITY OF THE COMPLAINANT PURSUANT TO s. 486(3) OF THE CRIMINAL CODE

1 THE COURT: Mike Kaiyogana is a 35-year-old Inuk
2 who has lived in this community of Cambridge Bay for
3 the past 14 years. He has been living in a common-law
4 relationship with Mona Kaosoni during that time and
5 they have five children. It appears that he has until
6 now enjoyed a good reputation in this community as a
7 family man and as a community-minded person.

8 Yesterday, a jury of 12 of his fellow citizens
9 convicted him of the crime of sexual assault, and it
10 is now my unpleasant task to sentence him for that
11 crime.

12 The crime of sexual assault is an offence that is
13 punishable by up to ten years' imprisonment in a
14 federal penitentiary in southern Canada. There is no
15 minimum sentence. As the sentencing Judge, I
16 therefore have a wide range of possible sentences
17 within which to select the most fit and proper
18 sentence in each case.

19 In doing so, I am compelled by law to have regard
20 to the overall purpose or objective of the criminal
21 law process which is the protection of the public, the
22 protection of the members of the community including
23 vulnerable women in the community.

24 I am also obliged to consider certain principles
25 of sentencing such as deterrence, denunciation, and
26 rehabilitation of the offender.

27 Deterrence in this context simply means that the

1 sentence that is imposed must be one which will
2 hopefully have the effect of deterring Mike Kaiyogana
3 from ever again taking advantage of a vulnerable
4 unconscious woman for his own selfish sexual purposes.
5 And also, will hopefully discourage other men in the
6 community from doing the same thing.

7 Denunciation as a sentencing principle means that
8 the sentence that is imposed should adequately reflect
9 this community's condemnation of this kind of conduct
10 as unacceptable behaviour in this community.

11 Rehabilitation is also an important principle;
12 that is, the sentence that is imposed should hopefully
13 lead to the rehabilitation of the offender before the
14 Court because that is the best protection that society
15 can have against criminal conduct by him in the
16 future.

17 In addition to the sentencing principles, I am
18 also required to take into consideration the specific
19 crime that has been committed by the offender before
20 the Court and the circumstances of that crime and also
21 the offender's personal background or history.

22 As I have stated, this man, Michael Kaiyogana, is
23 35 years of age and apparently a good family man who
24 has no criminal record of any kind. It appears that
25 he has been able to maintain steady employment
26 throughout his adult life and that he has always
27 provided adequately for his family. He is a valued

1 employee of the Government of the Northwest
2 Territories and in recent years, he has made positive
3 contributions to the community; for example, in the
4 fields of education and recreation.

5 His conduct which brings him to Court this
6 afternoon appears to be out of character for him,
7 because at the time of committing this crime, he was
8 certainly not thinking of his family or his community.

9 The crime committed by Mr. Kaiyogana for which he
10 is being sentenced today arose out of a drinking party
11 at his home here in Cambridge Bay in October 1993.

12 He and his wife had invited a number of people
13 into their home where everyone was drinking beer. One
14 of the people who was invited was the victim, M
15 O , who was 22 years old at the time and lived
16 across the street from the offender's home. She
17 arrived at midnight and drank 10 or 12 beer before
18 passing out on the livingroom floor.

19 In the early morning hours, she awoke to find
20 herself on one of the beds in a bedroom. Her pants
21 and panties had been lowered to her ankles. The
22 offender, Mike Kaiyogana, was on top of her and was
23 having sexual intercourse with her. She pushed him
24 off and he desisted. She then got dressed and went to
25 the livingroom to find her jacket and left the house.

26 In behaving as he did, Mike Kaiyogana displayed a
27 contemptuous disregard for the personal feelings and

1 integrity of this young woman.

2 This was a serious crime against another member of
3 this community.

4 Although Mike Kaiyogana appears to be proud of his
5 record of community service, and rightly so, on the
6 other hand I do not detect any remorse on his part for
7 his terrible behaviour in committing this crime.

8 The circumstances of Mr. Kaiyogana's crime are not
9 unusual. Regrettably, this kind of crime is all too
10 common in this jurisdiction. Almost every week of the
11 year, the Courts of this jurisdiction are dealing with
12 an offence of this very nature in one community or
13 other in the Northwest Territories.

14 Because of the prevalence of this kind of crime,
15 the Court must do its part in achieving the objective
16 of the criminal justice system by imposing a
17 meaningful sentence in a case like this one. A
18 substantial period of incarceration is required in
19 order to send a message that society and the community
20 will not tolerate this kind of behaviour, this kind of
21 abuse of vulnerable women.

22 Young women like M O , whether intoxicated
23 or sober, whether conscious or unconscious, are
24 entitled to expect that when they go and visit a
25 neighbour in the community, they are safe from attack
26 by men in the community, men who they should be able
27 to trust.

1 Mike Kaiyogana seriously breached the trust that
2 his neighbour and his community placed in him and now
3 he must pay the price.

4 Please stand, Mr. Kaiyogana.

5 Mr. Kaiyogana, for the crime that you have
6 committed, the sexual assault of M O contrary
7 to Section 271 of the Criminal Code, it is the
8 sentence of this Court that you be imprisoned for a
9 period of three years.

10 For the reasons listed in Section 100(1.1) of the
11 Criminal Code, I am going to decline to impose any
12 firearms prohibition order.

13 And because you will be incarcerated for the next
14 period of time, I also decline to impose any Victim
15 Fine surcharge.

16 You may sit down now.

17 Now, counsel, is there anything else required
18 with Mr. Kaiyogana's case?

19 MR. LATIMER: I just wanted to mention, My Lord, I
20 don't know if it's proper for me to ask if the Court
21 gives any -- can give any consideration to endorsing
22 the documents there any opinion on whether he should
23 serve that in prison in the Northwest Territories
24 because he is not the type of hardened criminal one
25 usually would expect to be in the company down south.
26 I just wanted to mention that. It's entirely up to
27 Your Lordship.

1 THE COURT: That's a valid point. I will have the
2 clerk endorse the warrant of committal that takes Mr.
3 Kaiyogana to prison with this Court's recommendation
4 that he be permitted to serve his time at a facility
5 within the Northwest Territories.

6 Anything further?

7 MR. LATIMER: Thank you very much, My Lord.

8 MS. SCHMALTZ: Nothing further, My Lord.

9 THE COURT: Fine, we will recess for five minutes.

10 (ADJOURNMENT)

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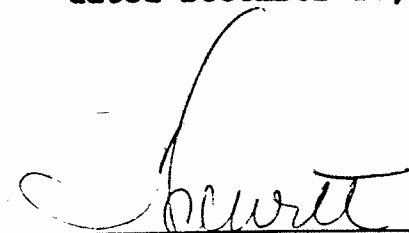
Certified Pursuant to Practice Direction #
dated December 28, 1987.

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Lois Hewitt,
Court Reporter

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