

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

C A N A D A)

NORTHWEST TERRITORIES)

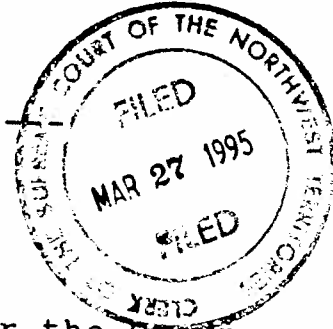
BETWEEN:

HER MAJESTY THE QUEEN

- and -

R M B.

Sentencing given by The Honourable Mr. Justice
J.E. Richard, at Norman Wells, Northwest
Territories, on the 9th day of March A.D. 1995



APPEARANCES:

J.A. MacDonald, Esq., Appeared for the Crown

C. Rehn, Esq., Appeared for the Defence

Cheryl Mendryk, Ms., Court Reporter

(Charged under Section 271 of the Criminal Code)

1 THE COURT:

R

B

, a 34-year old

2 Dene from Fort Good Hope has been convicted by a
3 jury of a serious crime of sexual assault, and it
4 is now my serious responsibility to impose a
5 proper sentence upon him for that crime.

6 Sexual assault is a crime that is regrettably
7 all too prevalent in these Territories in recent
8 years. Virtually every week of the year in one or
9 more communities in these Territories the courts
10 are sentencing young men for committing a sexual
11 assault against a vulnerable woman. And most
12 often, as in this case, the victim is well known
13 to or an acquaintance of the offender. Also, in
14 most cases, as here, the offender is in an
15 intoxicated state, and that intoxicated state has
16 affected his judgment, has been a significant
17 factor in him doing something that he would not do
18 if completely sober.

19 It is a sad fact of life today that so many
20 healthy young men are being sent away to a
21 correctional center or to a penitentiary for a
22 substantial period of incarceration instead of
23 living that part of their lives as productive
24 citizens in their own communities, contributing to
25 their community, to their family, and to their
26 people. I can sincerely say that this is not a
27 part of my job or my responsibilities that I

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1 enjoy.

2 A penitentiary term of three years has in
3 recent times become almost a standard sentence for
4 the type of crime committed by R B ;
5 yet, the sexual assaults continue. One might
6 legitimately question whether the sentences
7 imposed are effective as a general deterrent.

8 That said, there is sufficient empirical data
9 available to safely conclude that a three-year
10 sentence is indeed effective as a specific
11 deterrent, for it is only rarely that we see in
12 the courts of the Northwest Territories a repeat
13 offender who has already served a sentence of
14 three years for sexual assault. Deterrence, then,
15 is rightly considered to be one of the most
16 important principles that guide a sentencing judge
17 in cases involving sexual offenders.

18 Another principle that is also of
19 significance is denunciation. By this is meant
20 that the sentence imposed for a crime of this
21 nature must be a reflection of our society's
22 condemnation of this kind of conduct as being
23 unacceptable, unacceptable to Dene and non-Dene
24 alike. All sentencing principles, whether
25 deterrence, denunciation or any other are invoked
26 by the Court with the aim of achieving the overall
27 purpose or objective of the criminal law process,

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1 and that is the protection of the public.

2 In the context of this case, protection of
3 the public means protection of vulnerable women in
4 the communities, protection from being violated at
5 the hands of selfish men, drunk or sober, friend
6 or stranger.

7 In the present case, the offender is a
8 34-year old man who was born and raised in the
9 Dene community of Fort Good Hope. He is single at
10 the present time, although he has had at least two
11 marital or common-law relationships in the past,
12 and children have resulted from those
13 relationships. He has a Grade 9 education in the
14 formal sense, although it is my impression from
15 the brief opportunity I have had to hear him speak
16 and to observe him that he is a much more learned
17 or "small'e" educated person than one would
18 normally associate with a Grade 9 education.

19 He has over the years followed the
20 traditional pursuits of the Dene in hunting and
21 trapping and living on the land, but he has also
22 worked sporadically in the wage economy and has
23 acquired some valuable skills in the construction
24 trade.

25 Mr. B has a relatively minor criminal
26 record as follows: in 1990, he was convicted of
27 careless use or careless storage of a firearm and

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1 was assessed a \$350 fine. Also in 1990, driving
2 while over 80 milligrams percent, \$700 fine. Also
3 in 1990, failure to attend court, \$30 fine; and
4 October 1991, common assault, \$700 fine.

5 The offence for which Mr. B. is being
6 sentenced today occurred in August 1993 here in
7 the town of Norman Wells while Mr. B was in
8 this community for a few days between jobs.

9 In the bar he met his niece, who was also
10 from Fort Good Hope, and who is 12 or 13 years his
11 junior. They had not seen each other for a few
12 years, and they had a couple of beers together in
13 the bar. As Mr. B did not have a place to
14 stay that evening, his niece invited him to stay
15 with she and her boyfriend or common-law husband
16 at their trailer.

17 The common-law husband picked them up at the
18 bar, and the three of them and some others
19 continued drinking at the trailer through the
20 course of the evening. There was also an
21 ingestion of hashish by these people during the
22 evening.

23 At midnight or later, the niece and her
24 husband went to bed in the master bedroom. It was
25 the niece's testimony at trial that at
26 approximately 3:30 a.m. she awoke to find this
27 offender, R B , on top of her having

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1 sexual intercourse with her without her consent
2 while her husband lay sleeping beside her. She
3 pushed her uncle off of her, her husband woke up,
4 and Mr. B was immediately ejected from the
5 trailer. Later that morning, the victim's husband
6 sought out Mr. B and administered a severe
7 beating on him. The husband is presently awaiting
8 sentencing for that incident after pleading guilty
9 to assault causing bodily harm.

10 Those, then, are the awful circumstances of
11 R B 's crime. It is clear that in
12 behaving as he did, he displayed a contemptuous
13 disregard for the personal feelings and the
14 integrity of his young relative. There is no
15 doubt in my mind that his state of intoxication
16 resulting from his voluntary ingestion of alcohol
17 and hash was a factor in his behavior; but as he
18 well knows, his self-induced intoxication is no
19 excuse.

20 I accept as genuine that part of R
21 B 's testimony when he said that after he
22 sobered up he felt ashamed for what he'd done. I
23 also accept as genuine Mr. B 's words during
24 the sentencing hearing when he said that he will
25 likely be living with this mistake for the rest of
26 his life, but that he wants to turn his life
27 around and do whatever is necessary to regain the

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1 respect of his community, his relatives and
2 especially his children. He strikes me as being
3 sincere in that regard, and I do hope he keeps
4 that in mind while he is serving his term of
5 imprisonment, and I can only wish him good luck in
6 that endeavor. However, in the meantime, he must
7 pay the price for what he has done, the price
8 being a significant interference with his freedom
9 and his daily activities.

10 In addition to imposing a term of
11 imprisonment, the law normally requires me in a
12 case like this to make a ten-year firearms
13 prohibition order.

14 In this case, Mr. B , through his
15 counsel, has made application for an exemption
16 from that law pursuant to Section 100(1.1) of the
17 Criminal Code. Taking into consideration the
18 personal circumstances of Mr. B , what has
19 been said on his behalf and the matters listed in
20 Section 100(1.2) of the Criminal Code, I am
21 satisfied that Mr. B has established that it
22 is not desirable in the interests of his safety
23 and the safety of others that such an order be
24 made, and the circumstances here are such that it
25 would not be appropriate to make the Section 100
26 order, and I therefore decline to make the order.

27 Also, in view of the fact that Mr. B

Gabe's

1 will be incarcerated for the next while, I decline
2 to impose any Victim Fine Surcharge.

3 Please stand now, Mr. B . Mr. B ,
4 for the crime that you have committed, the sexual
5 assault of S T , it is the sentence of
6 this Court that you be imprisoned for a period of
7 three years, and I will have the Clerk of the
8 Court endorse the Warrant of Committal that takes
9 you to jail with this Court's strong
10 recommendation that you be permitted to serve your
11 term of imprisonment at a correctional facility
12 within the Northwest Territories. You may sit
13 down now.

14 Now, counsel, is there anything further on
15 this case?

16 MR. MacDONALD: Not from the Crown, My Lord.

17 MR. REHN: No, My Lord.

18 THE COURT: This is the last case on the
19 docket, and we'll close court.

20 (SENTENCING HEARING CONCLUDED)

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1 I, Cheryl Mendryk, C.S.R.(A), hereby certify
 2 that I attended the above Sentencing Hearing and
 3 took faithful and accurate shorthand notes and the
 4 foregoing is a true and accurate transcript of my
 5 shorthand notes to the best of my skill and
 6 ability.

7 Dated at the City of Calgary, Province of
 8 Alberta, this 12th day of March, A.D. 1995.

9
 10
 11 Cheryl Mendryk
 12 Cheryl Mendryk, C.S.R.
 13 Court Reporter.