

CR 03060(c) and CR 03060(d)

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- vs. -

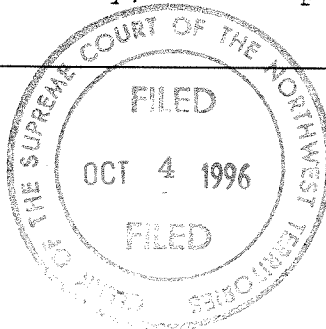
DANNY AALUK

Transcript of the Oral Reasons for Sentence by The Honourable
Mr. Justice J.E. Richard at Kugluktuk in the Northwest
Territories, on Thursday, 26th September, A.D. 1996.

APPEARANCES:

Ms. B. Schmaltz:

Mr. V. Foldats:



Counsel for the Crown

Counsel for the Accused

Charges under s. 271, s. 267(1)(a) Criminal Code of Canada

1 THE COURT: Mr. Aaluk is now to be sentenced
2 for two crimes of violence committed in his home
3 community of Gjoa Haven in 1994 and 1995. These
4 charges were before two separate juries in Kugluktuk
5 this week.

6 On the first charge, assault with a weapon, the
7 jury found him guilty as charged.

8 Today, just as his second jury was to start
9 hearing evidence on the second charge, a charge of
10 sexually assaulting a male person, he changed his plea
11 to guilty.

12 The circumstances of the s. 267 offence are as
13 follows: The incident occurred in April 1995 in
14 Mr. Aaluk's home community of Gjoa Haven. He and the
15 other individual, who was 18 years old at the time,
16 were drinking home-brew at Mr. Aaluk's home. When the
17 victim decided that he wanted to leave, Mr. Aaluk
18 prevented him from doing so. He wanted the younger man
19 to go to bed with him but the victim did not want to do
20 so, he wanted to leave.

21 In the course of holding onto the victim and
22 insisting that he stay, the offender took a knife. He
23 held it against the victim's neck stating that he could
24 kill him if he wanted to.

25 This crime, assault with a weapon, carries a
26 maximum penalty of ten years' imprisonment in a federal
27 penitentiary.

1 The second crime for which Mr. Aaluk is to be
2 sentenced today is sexual assault contrary to s. 271 of
3 the Criminal Code. That crime also carries a maximum
4 sentence of ten years' imprisonment.

5 The circumstances of this crime are that in the
6 summer of 1994, the offender was visiting a friend's
7 home in Gjoa Haven. His friend was not there but the
8 friend's 25-year-old brother was present.

9 The offender made sexual advances to the victim
10 and the victim resisted. The victim was afraid of
11 Mr. Aaluk however, and Mr. Aaluk was successful in
12 forcing the victim to remove his pants and lay on his
13 back in a bed. Mr. Aaluk then removed his own pants,
14 fondled the other man's genitals, and then laid on top
15 of the other man with their genitals in contact for 15
16 to 20 minutes.

17 There was no other violence used, no physical
18 injuries suffered.

19 The victim of this sexual assault, I am told, is a
20 specially challenged person and this assault and the
21 attendant interviews and court appearances have exacted
22 a great deal of strain and stress and emotional trauma
23 on the victim to the point where he says that he was,
24 on occasion, contemplating suicide.

25 Crown counsel has very fairly acknowledged that
26 the result of Mr. Aaluk's decision to plead guilty in
27 the final analysis, even though late in the day, is of

1 some considerable and significant relief to the
2 victim. And she, that is Crown counsel, agrees that
3 Mr. Aaluk should be given credit for that significant
4 fact.

5 Mr. Aaluk has a substantial criminal record for a
6 man of 26 years of age.

7 He got involved in the illegal use of drugs and
8 the abuse of alcohol at a young age in his home
9 community, and he has been in and out of court on a
10 regular basis these past ten years.

11 He has seven prior convictions for crimes of
12 violence and has been in jail on at least five previous
13 occasions.

14 One of his prior convictions is for a sexual
15 assault in circumstances not unlike those of the sexual
16 assault in the present Indictment.

17 With respect to the present charges, he has spent
18 approximately three months in pre-trial custody, and I
19 agree that he should be given some credit for that
20 period when his liberty was withdrawn by the
21 authorities because of these charges.

22 Crown and defence counsel have made a joint
23 submission of a global sentence of two years'
24 incarceration followed by a period of probation, and I
25 thank counsel for their endeavors in arriving at a
26 joint submission and I can indicate that I concur in
27 their recommendation in this instance.

1 This is a case where the plea of guilty, in these
2 special circumstances, mitigates the sentence that
3 would otherwise be imposed.

4 Please stand now, Mr. Aaluk.

5 Mr. Aaluk, firstly, for the crime that you
6 committed in assaulting Kenneth Piqiqnak and using a
7 knife contrary to s. 267(1)(a) of the Criminal Code, it
8 is the sentence of this Court that you serve a term of
9 imprisonment of 12 months.

10 And secondly, for the crime of sexually assaulting
11 Patrick Kikoak, contrary to s. 271 Criminal Code, I
12 hereby sentence you to serve a term of imprisonment of
13 12 months -- just a moment. Twelve months less one
14 day, that sentence to be consecutive to the term of
15 imprisonment on the 267 conviction.

16 And in addition, I direct that for a period of
17 three years following the expiration of your sentence
18 of imprisonment, you shall comply with the following
19 terms prescribed in a probation order: You shall keep
20 the peace and be of good behaviour. You shall appear
21 before this Court when required to do so by the Court.
22 You shall notify your probation officer in advance of
23 any change of address and promptly notify your
24 probation officer of any change in your employment or
25 occupation. You will have no contact whatsoever with
26 Kenneth Piqiqnak or Patrick Kikoak. You will take
27 whatever counseling or treatment programs that are

1 recommended to you by your probation officer.

2 And with respect to that probation order,
3 Mr. Aaluk, when it has been prepared I am going to have
4 the Clerk of the Court, with the assistance of your
5 lawyer Mr. Foldats, arrange to read it over to you, to
6 give you a copy, and also to advise you of the
7 provisions of s. 732.2(3) and s. 733.1 of the Criminal
8 Code.

9 And finally, Mr. Aaluk, as I am required by law to
10 do so, I hereby order, pursuant to s. 100 of the
11 Criminal Code of Canada, that you are prohibited from
12 having in your possession any firearm or ammunition or
13 explosive substance for a period of time commencing on
14 today's date and expiring on a date ten years after
15 your release from prison. Any such item in your
16 possession at this time shall be surrendered to a
17 police officer or otherwise disposed of within one
18 month of today's date.

19 Mr. Aaluk, I heard you say to me this morning that
20 when you finish your jail time you want to take some
21 counseling, take some education, and you told me that
22 this is going to be your last appearance in court. And
23 I hope when you go to jail that you think about what
24 you said today every day that you are there.

25 Most young men your age eventually get tired of
26 going in and out of jail, they want to do something
27 more productive with their lives, and I sincerely hope

1 that you have reached that stage.

2 Some people may feel, because of your record, that
3 I have been too lenient with you today but it's my hope
4 that two years is enough time and that you are not
5 going to be back here again, so I wish you luck.

6 You may sit down.

7 Now, is there any other matter that we haven't
8 dealt with?

9 MS. SCHMALTZ: Nothing further from the Crown,
10 sir.

11 MR. FOLDATS: Nothing further from the defence,
12 thank you.

13 THE COURT: Thank you, then we will close
14 court.

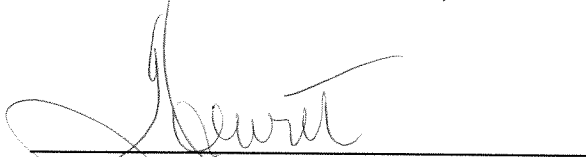
15 **(AT WHICH TIME ORAL REASONS FOR SENTENCE CONCLUDED)**

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17 Certified Pursuant to Practice Direction
18 #20 dated December 28, 1987

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Lois Hewitt,
Court Reporter

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