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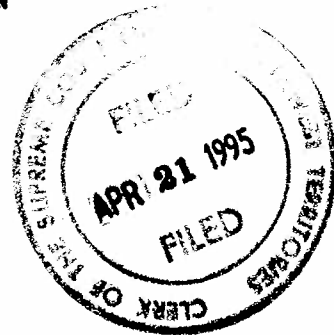
IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

VS

C M K



Transcript of the Oral Reasons for Sentence delivered by The Honourable Mr. Justice J. Z. Vertes, at Yellowknife in the Northwest Territories, on Thursday, April 13th A.D., 1995.

APPEARANCES:

MS. L. MINISH-COOPER:

Counsel for the Crown

MR. C. REHN:

Counsel for the Defence

1 THE COURT: C M K has entered
2 pleas of guilty to three charges. The first is a
3 charge of sexual assault on E M occurring
4 sometime in late 1991 or early 1992. B is a
5 family friend of the accused, indeed a relative of his
6 wife, and was at the time 12 or 13 years old. This
7 offence consists of the accused placing his hand over
8 the victim's breast.

9 The second charge also concerns a sexual assault
10 on B in the same time frame. In this offence
11 the accused took B 's hand and placed it on his
12 penis. This lasted only momentarily.

13 Some time after these two incidents, the accused
14 was confronted by B 's family and apparently the
15 two families reached some sort of reconciliation.

16 The third charge, however, arose in February of
17 1994. This involves an assault, a common assault, on
18 T S . This offence consisted of unwanted
19 touching and tickling of the victim by the accused.
20 T was 14 years old at the time. It was this
21 charge that led to the disclosure of the earlier
22 offences. From all that I have heard, I think it is
23 fair to say that it is likely that the earlier
24 offences would not have come forward without this
25 later offence having been disclosed to the police.

26 The accused was arrested in June of 1994 and
27 admitted his actions in a statement to the police. In

1 that statement he expressed regret for his actions.
2 He said he did not know why he acted that way and he
3 indicated a desire to get help. Shortly after he was
4 charged he voluntarily entered into psychotherapy
5 treatment.

6 The accused has no previous criminal record. He
7 is 30 years old. He has been in a commonlaw
8 relationship for the past nine years and has three
9 young children. He is by all accounts a good worker,
10 a good family man, and people who know him are shocked
11 by these charges and say it is out of character for
12 him. The presentence report describes him as a
13 suitable candidate for probation.

14 I heard from the accused's psychiatrist, Dr.
15 Robert Clemmey, who also provided a written report.
16 Dr. Clemmey's opinion was that the offences arose due
17 to the accused's immature personality and undeveloped
18 sense of personal boundaries. The accused, according
19 to his doctor, allowed himself to entertain sexual
20 fantasies toward B , even though she was a child,
21 and then acted on them through insufficient personal
22 control. When asked if the accused possessed any
23 general tendency towards sexual fantasies involving
24 children, Dr. Clemmey replied in the negative and said
25 that the incidents with B were isolated events
26 arising out of the accused's personal circumstances at
27 the time.

1 With respect to the offence involving T , Dr.
2 Clemmey did not detect any sexual aspect to that
3 incident. I place some emphasis on these opinions
4 because if there had been any indications of a general
5 tendency towards this type of behavior, my sentence
6 would be radically different. In Dr. Clemmey's
7 opinion, the accused is genuinely remorseful, accepts
8 responsibility for his actions, and poses a very low
9 risk of reoffending.

10 It is now my responsibility to impose a sentence
11 that will maintain society's confidence in the
12 administration of the criminal law, but yet at the
13 same time recognize the unique features of this case.

14 The primary and fundamental purpose of sentencing
15 is to protect society - to preserve the well-being and
16 order of society. This involves a blending of the
17 principles of deterrence, rehabilitation, and
18 denunciation. The paramount considerations are the
19 circumstances of the particular offence, and the
20 particular offender. Accountability, not punishment
21 for punishment's sake, is the primary focus of
22 sentencing.

23 Crown counsel quite properly points out that
24 society and the courts condemn the sexual violation of
25 children. This is due to a number of factors
26 including, as we know, the often devastating and
27 long-standing psychological trauma suffered by victims

1 of childhood sexual abuse. In such circumstances,
2 appellate courts have said that only in exceptional
3 cases can incarceration be avoided.

4 In this case there are a number of aggravating
5 features. There is the repetition of the sexual
6 conduct with B . All three offences were
7 committed in similar circumstances, and most
8 significantly, the accused was an adult who was in
9 somewhat of a position of trust, certainly towards
10 B , who was related to his family.

11 But there are also significant mitigating factors.
12 All incidents were very brief. None of the incidents
13 was accompanied by elements of overt force or
14 coercion. He has pleaded guilty. The incidents with
15 B were addressed within the family. And he has
16 taken major steps in his rehabilitation.

17 Judges often say that rehabilitation remains the
18 only certain way of permanently protecting society. A
19 court should not hesitate to impose a rehabilitative
20 non-custodial sentence if the requirements of
21 accountability can be met by conditions and
22 restrictions on future behavior.

23 Crown counsel submits that I must at least
24 consider the possibility of incarceration in this case
25 (although I did not detect in all frankness a strong
26 representation in favour of it). The Criminal Code
27 provides a wide spectrum of potential penalties for

1 these offences, anything from a complete discharge to
2 10 years imprisonment.

3 In this case, due to the significant mitigating
4 factors noted above, I have concluded that this is an
5 exceptional case that justifies not sending the
6 accused to prison. In my view incarceration would be
7 completely counter-productive.

8 Defence counsel has argued for a discharge of some
9 sort. In support of this he cites the accused's
10 efforts at rehabilitation, the low prospects of his
11 reoffending, and the adverse impact of a criminal
12 conviction on the accused's employment. My initial
13 inclination in all honesty was that a discharge would
14 be inappropriate in cases of sexual violence.

15 The Criminal Code provides that the court may
16 either absolutely or conditionally grant a discharge
17 to an offender. A conviction is still recorded, but
18 by having been discharged, the offender has no
19 criminal record unless, of course, he reoffends. The
20 criteria for granting a discharge are that a discharge
21 must be in the best interests of the accused, and must
22 be not contrary to the public interest.

23 Is a discharge in the best interests of the
24 accused? This presupposes that the accused is a
25 person of good character without previous convictions,
26 that it is not necessary to enter a conviction against
27 him in order to deter him from future offences or to

1 rehabilitate him, and that the entry of a conviction
2 against him may have significant adverse
3 repercussions. From all that I have heard in this
4 case, I am satisfied that this criterion is met in
5 this case.

6 Is a discharge not contrary to the public
7 interest? This relates to the necessity of a sentence
8 which will be a deterrent to others who may be likely
9 to commit a similar offence. This factor, however,
10 does not preclude the judicious use of the discharge
11 provisions (especially since there is the ability to
12 attach conditions) and I note that the Criminal Code
13 does not preclude the availability of a discharge for
14 these offences.

15 In my opinion, the general principles of
16 sentencing with respect to sexual crimes should be
17 sufficiently established so as to constitute a general
18 deterrence. The specific circumstances of this case
19 and this offender are sufficiently different so that
20 no one could, or should, mistake this case as a
21 precedent for future cases. The sentence I am about
22 to impose is structured on the exceptional
23 circumstances of this case only. For that reason, I
24 find that the second criterion is met.

25 Is there any reason to impose a suspended sentence
26 as opposed to a conditional discharge? In both cases
27 probation terms can be imposed. In both cases if the

1 accused reoffends, he can be brought back before me
2 and resentenced for these offences. The only
3 difference is that if he has been discharged, then
4 there is no record. It seems to me that if the
5 presence of a record jeopardizes his employment,
6 thereby jeopardizing his family's security and
7 well-being, then that could easily jeopardize the
8 efforts at rehabilitation. I see no reason,
9 therefore, not to allow the chance at least for the
10 accused to maintain his livelihood through the absence
11 of a record.

12 Mr. K , will you stand up. Mr. K , I took
13 seriously your expressions of remorse, your apologies
14 to B and T . I took seriously what has been
15 said on your behalf. It is sometimes said that the
16 road to redemption starts with the step of
17 self-awareness. It seems to me that you are on that
18 road, and I fervently hope, sir, that you will be able
19 to put your life and the life of your family back
20 together again. By this sentence I am giving you an
21 opportunity to do that.

22 The guilty pleas and convictions have already been
23 recorded with respect to all three offences. However,
24 with respect to all three offences, I hereby grant you
25 a conditional discharge. The condition of your
26 discharge is that you be on probation for a period of
27 two years, and subject to a probation order with the

1 following terms. First, you are to keep the peace and
2 be of good behavior. Second, you are to report
3 forthwith to a probation officer and continue to
4 report as and when directed by the probation officer.
5 Third, you are to participate in such counselling or
6 therapy programs as may be directed by your probation
7 officer. Fourth, you are to continue psychotherapy
8 until such time as your doctor determines it is no
9 longer necessary.

10 Now, sir, I am going to direct that you stay
11 behind after we close court. The clerk will prepare
12 the probation order. You will have an opportunity to
13 review it. I am sure your lawyer will review the
14 terms with you, and you will have an opportunity to
15 sign it. But I want you to be under no
16 misapprehension. It is a conditional discharge. If
17 you abide by the terms, if you are free of any further
18 offences, then you will have no criminal record. This
19 is your chance, sir, to maintain your employment, and
20 as I said, to maintain some financial security for
21 your family. I don't know whether your employer will
22 or will not deal with a conditional discharge the same
23 way they would with an ordinary criminal conviction,
24 but that's something at least you have the opportunity
25 to pursue. So it is all up to you, sir.

26 But if you do commit another offence, any type of
27 offence, I want you to understand very clearly that

1 you can be brought back before me and you can be
2 sentenced, tried and sentenced not just for whatever
3 new offence you commit, but you can be resented for
4 these offences. Do you understand that?

5 THE ACCUSED: Yes, I do.

6 THE COURT: I also want you to understand that if
7 you do not abide by any of the conditions of your
8 probation order, if you commit any other type of
9 offence, then you can be charged for that. You can be
10 sentenced for that. The terms of your probation can
11 be changed. The probation order can be extended. Do
12 you understand that, sir?

13 THE ACCUSED: Yes, I do.

14 THE COURT: In addition, Mr. K , I direct that
15 you pay a victim fine surcharge of \$500. I want to
16 explain that to you. Those fine surcharges go into a
17 fund to help victims of crime. They go into a fund to
18 help all victims of crime with various programs and
19 services provided for them. So that's going to be
20 your direct contribution to the aid and assistance of
21 not only past but future victims of crime. You will
22 have three months within which to pay that. And if
23 you do not pay that, you will serve one month in jail.
24 Do you understand that.

25 THE ACCUSED: Yes, I do.

26 THE COURT: You may have a seat. Under the
27 circumstances, counsel, considering all that I heard,

1 I decline to make any order under Section 100 of the
2 Criminal Code. Now, is there anything else we need to
3 address?

4 MR. REHN: My Lord, Dr. Clemmey stopped me on the
5 way out with respect to how he should deal with--or
6 whether the court would just order the normal fees
7 with respect to his attendance, or whether he should
8 submit a bill. Should I just take that up with the
9 clerk?

10 THE COURT: He is your witness, Counsel. I
11 suggest you discuss it with him and discuss it with
12 the clerk. There is a tariff of experts fees that the
13 court pays. General policy is that anything over and
14 above that is the responsibility of he who hires the
15 expert.

16 MR. REHN: That's understood.

17 THE COURT: Anything else?

18 MR. REHN: No, sir.

19 MS. MINISH-COOPER: No, My Lord.

20 THE COURT: Before we close, Counsel, I want to
21 extend my appreciation to both of you for your
22 submissions in this case and for the manner in which
23 you both handled it. We will close court.

24

25 (AT WHICH TIME THESE PROCEEDINGS WERE CONCLUDED)

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

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L. Young
Laurie Ann Young
Court Reporter