

CR 02684

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

HER MAJESTY THE QUEEN

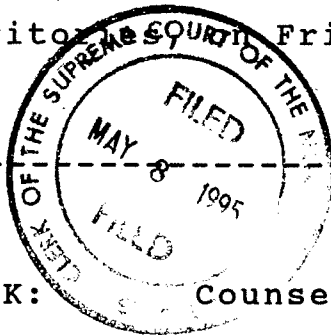
VS

A J E

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Transcript of a Sentencing given by The Honourable  
 Mr. Justice J.Z. Vertes, sitting at Inuvik in  
 the Northwest Territory, Friday, April 28,  
 A.D. 1995

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MR. R.G. KILPATRICK: Counsel for the Crown  
 MS. J. LILLEGRAN: Counsel for the Defence  
 MS. J. ROMANOWICH: Court Reporter

(Charges under Section 271 of the Criminal Code)

1 THE COURT: A J E has  
2 been convicted by a jury on a charge of sexual  
3 assault occurring in Sachs Harbour on March 13,  
4 1994. The victim was a distant relative of his,  
5 but someone whom he knew all his life as a  
6 friend.

7 The accused and several others were at the  
8 victim's home. Everybody was drinking quite a  
9 bit of alcohol. After everyone left, the accused  
10 raped the victim. She could not remember  
11 anything about the act itself, but, based on all  
12 of the evidence, I am satisfied that at the time  
13 she was either passed out or so incapacitated by  
14 alcohol that she had no idea what was happening.

15 Forensic evidence established that the  
16 victim had been sexually violated and that the  
17 possibility of this being anyone other than the  
18 accused was extremely remote.

19 The accused initially told the police that  
20 he did not have sex with the victim, or at least  
21 he had no memory of it. At trial, no doubt in  
22 part because of the weight of the forensic  
23 evidence, he admitted that he had sexual  
24 relations with his cousin but said it was with  
25 her consent. The jury obviously rejected this  
26 evidence completely and, in my opinion, they were  
27 right in doing so. To my ear, it was nothing

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1 more than a desperate and mean-spirited  
2 fabrication.

3 The emotional trauma inflicted on the victim  
4 by this attack was evident when she testified.  
5 The continuing emotional trauma is also recounted  
6 in the Victim Impact Statement filed on the  
7 sentencing. She says she will never be able to  
8 forgive or forget what he did to her. He took  
9 away her self-esteem and dignity. Nothing this  
10 Court does can heal the victim. By this  
11 sentence, the Court seeks and tries to deter the  
12 accused and others and to protect society. But  
13 retribution for retribution's sake itself is not  
14 one of the aims of sentencing.

15 This crime is a major sexual assault as we  
16 understand that term in the jurisprudence.

17 Courts in this jurisdiction have adopted a  
18 starting point of three years imprisonment as the  
19 sentence for a major sexual assault, which is  
20 characterized by the blameworthiness of the  
21 offender and the effect on the victim. For the  
22 purposes of this three-year starting point, it is  
23 assumed that the accused is mature, of previous  
24 good character with no criminal record, and that  
25 the crime was not premeditated. The Court then  
26 considers any aggravating and mitigating  
27 circumstances so as to determine the appropriate

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1 specific sentence for this specific crime.

2 In my opinion, this case fits the paradigm  
3 of the starting-point approach.

4 The accused is mature, or at least he should  
5 be. He is 21 years of age.

6 While he has a Youth Court entry for an  
7 unrelated criminal conviction in 1988, I think it  
8 is not material, and, thereof, I am prepared to  
9 say that for all intents and purposes he is of  
10 previous good character.

11 I am also convinced that the crime was not  
12 premeditated. Undoubtedly, the accused was under  
13 the influence of alcohol. In my opinion, to a  
14 greater extent than he was prepared to  
15 acknowledge. Having regard to the evidence in  
16 this case, alcohol consumption is not a defence  
17 to this charge, nor is it a mitigating factor.  
18 It does, however, point to a certain degree of  
19 spontaneity and an absence of planning and  
20 premeditation.

21 The accused grew up in Sachs Harbour and  
22 came to Inuvik at age 16 to attend school. His  
23 goal is to become a Renewable Resources Officer.  
24 I am told that he has a heart condition. But  
25 even though his doctors advise him not to drink  
26 or smoke, he still does.

27 I had the benefit of comments from a

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1 longtime friend of his who spoke quite highly  
2 about how the accused is a good friend,  
3 apparently sensitive to others, and how he treats  
4 others with respect. It is truly unfortunate  
5 that someone who can instill this type of  
6 friendship and faith in others allowed himself,  
7 perhaps with his inhibitions loosened by alcohol,  
8 to commit this crime that has caused a lasting,  
9 devastating effect on the victim and will now  
10 affect his own life in a major way for years to  
11 come.

12 Crown counsel submits that this crime  
13 revealed a contemptuous disregard for the dignity  
14 and integrity of another person. I agree. Crown  
15 counsel submits the accused violated the trust of  
16 a lifelong friend. I agree. Crown counsel  
17 submits that there are no mitigating factors. I  
18 agree, but with one qualification.

19 The accused is only 21 years old and he has  
20 never been in gaol before. In every case except  
21 the most heinous, we cannot lose sight of one of  
22 the goals of sentencing, that being the  
23 rehabilitation of the offender. An excessively  
24 long sentence of imprisonment may destroy any  
25 hope of rehabilitation. But my responsibility is  
26 to impose a sentence that will vindicate the law,  
27 send a message to this accused and to others that

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1 this type of crime will not be tolerated, to  
2 express society's denunciation of this type of  
3 activity and, to some extent, try, through the  
4 operations of the justice system, to instill back  
5 some sense of confidence in the victim of this  
6 crime.

7 Will you stand up, Mr. E . Do you have  
8 anything that you wish to say?

9 THE ACCUSED: I'd like to say I'm  
10 sorry for what happened. Take my punishment for  
11 what I did. Get it over and finish with it and  
12 try and start on with a new life.

13 THE COURT: I sincerely hope you do,  
14 Mr. E .

15 I think you are obviously an intelligent  
16 young man with possibly a good future ahead of  
17 you, and I sincerely hope that in the coming  
18 years you will not think back to today, but you  
19 will plan for the day when you will return to the  
20 community, when you will be released, and it will  
21 happen soon enough, and I hope that you will then  
22 plan as to how you can live your life so that you  
23 won't find yourself in this situation again, that  
24 you won't hurt anyone ever again, and that  
25 perhaps with your intelligence and skills that  
26 you could become an upstanding member and perhaps  
27 even a leading member of your community. Plan

1 for that, Mr. E ..

2 It is the sentence of this Court that you  
3 serve a term of imprisonment of three years.

4 Since a transcript of my remarks will go  
5 automatically to the correctional authorities, I  
6 will recommend to them that they give early and  
7 careful consideration to the most appropriate  
8 place for your incarceration having regard to  
9 your age, having regard to the fact that you may  
10 need ongoing medical attention, and having regard  
11 to the fact that it could only benefit your  
12 permanent rehabilitation by you being able to  
13 continue your education and skills training as  
14 much as possible.

15 You may sit down.

16 Under the circumstances, Counsel, I decline  
17 to make a Section 100 order. There will be no  
18 victim of crime surcharge.

19 Is there anything else we need to address?

20 MS. LILLEGRAN: My Lord, Mr. E had  
21 wished me to request of Your Lordship a  
22 recommendation that, if possible, he be allowed  
23 to serve his penitentiary term within the  
24 Northwest Territories.

25 THE COURT: Well, that's why I made  
26 the comments I did as far as recommendations.

27 MS. LILLEGRAN: I took it that way, Your

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1 Lordship, but I thought I'd place it very clearly  
2 before the Court.

3 THE COURT: Well, in many ways I'm  
4 not so sure that there may not be in fact better  
5 facilities for him to serve his' sentence in terms  
6 of his age and possibilities of future  
7 rehabilitation.

8 MS. LILLEGRAN: Yes.

9 THE COURT: So I would rather leave  
10 that to the correctional authorities, but with my  
11 strong recommendation that they give careful  
12 consideration to all of those factors that I  
13 mentioned.

14 MS. LILLEGRAN: Thank you.

15 THE COURT: Thank you, Counsel.  
16 Thank you, Mr. Kilpatrick.

17 (SENTENCING CONCLUDED)

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19 I, Jane Romanowich, Court Reporter, hereby  
20 certify that I attended the above-mentioned  
21 proceedings and took faithful and accurate  
22 shorthand notes, and the foregoing is a true and  
23 accurate transcript of my shorthand notes to the  
24 best of my skill and ability.

25 Dated at the City of Calgary, Province of  
26 Alberta, this 3rd day of May, A.D. 1995.

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Jane Romanowich  
Court Reporter.

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