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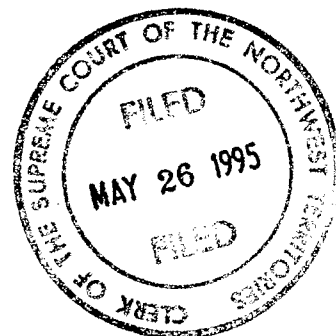
IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- vs. -

JEFFERY CHARLES KELLY



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Transcript of the Reasons for Sentence of The Honourable Mr. Justice J. Z. Vertes, at Fort Good Hope, in the Northwest Territories, on Friday, May 19th A.D., 1995.

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APPEARANCES:

MR. J. A. MacDONALD:

Counsel for the Crown

MR. T. BOYD:

Counsel for the Accused

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(CHARGED UNDER s. 271 CRIMINAL CODE OF CANADA)

1 THE COURT: Jeffrey Charles Kelly was convicted by  
2 a jury on a charge of sexual assault occurring here in  
3 Fort Good Hope on July 17, 1994.

4 The victim is 19 years old. She described the  
5 accused as a friend but not as someone with whom she  
6 had been romantically involved with in any way. The  
7 victim, the accused, and various other people were at  
8 a party. The victim became quite intoxicated. She  
9 and a girlfriend left the party and went to another  
10 house. Another friend Daniel Jackson came to the  
11 house and saw both young women asleep. He too fell  
12 asleep. He awoke later to find the accused on top of  
13 the victim engaging in what appeared to be sexual  
14 intercourse and the victim seemed to be still asleep.  
15 He then went to call the police. When he returned and  
16 when the police arrived, the victim was still asleep.  
17 She knew nothing about what had happened to her until  
18 told by others.

19 The accused testified that when he arrived at the  
20 other house, he awoke the victim. He claimed that she  
21 then wanted to engage in sexual activity so he  
22 attempted intercourse. He said that he could not  
23 complete the act because of his own state of  
24 intoxication.

25 The jury obviously rejected this story. In my  
26 opinion, the accused's evidence was not only  
27 unbelievable but was a desperate attempt to raise a

1 doubt by any means possible. I think that the jury  
2 were quite right to conclude that the accused took  
3 advantage of this young woman when she was defenceless  
4 to take care of herself. He thought of nothing but  
5 his own desires.

6 The offence of sexual assault is punishable by a  
7 prison term of anywhere up to ten years. The  
8 appropriate sentence can only be assessed, however, in  
9 the circumstances of the offence and the circumstances  
10 of the offender.

11 Here we have an attempted rape on a helpless young  
12 woman. The fact that there is no other evidence to  
13 suggest completed intercourse means that I have to  
14 give the benefit of the doubt to the accused and treat  
15 this case as an attempted rape only. The fact that it  
16 may be an attempt, and not a completed rape, and the  
17 fact that the victim was unconscious as opposed to  
18 awake, do not, in my opinion, affect the designation  
19 of this offence as a "major sexual assault".

20 In these cases, sentencing is based mainly on  
21 three principles:

22 First, what we call general  
23 deterrence - the hope that the sentence  
24 will deter others from committing this  
25 type of crime.

26 Second, denunciation - the  
27 expression of the community's

condemnation of this conduct; and,

2 Third, protection. Protection of  
3 this victim and other potential victims.  
4 On a lesser scale, but not to be forgotten, is the  
5 hope that the sentence will teach the offender that he  
6 should never act like this again and will give the  
7 offender an opportunity for rehabilitation so that he  
8 may return to his community as a wiser and better man.  
9 We must also not lose sight of the effect this  
10 crime has had on the victim.  
11 In a victim impact statement she writes, and I  
12 quote,

13 Before Jeffrey Kelly sexually  
14 assaulted me, I felt I could trust  
15 people, that something like this could  
16 never happen to me. Before this sexual  
17 assault, I got along with people and had  
18 alot of friends. I was outgoing and  
19 happy. I was doing well in school. I  
20 had no problems sleeping and ate  
21 properly. Before Jeffrey Kelly sexually  
22 assaulted me, I looked forward to coming  
23 back to Fort Good Hope on school breaks.  
24 Since the sexual assault, I barely have  
25 any friends. I stay away from people.  
26 I no longer trust people and feel that I  
27 will never trust people again. My  
school work has suffered. Since the  
sexual assault, I have been barely able  
to sleep. I skip meals. I now feel  
that I am a boring person and feel left  
out. I hardly have any friends. I have  
lost a very good friend because of what  
Jeffrey Kelly did to me and that continues  
to upset me. I no longer have any  
interest in coming to Fort Good Hope on  
school breaks.

These are the words of the victim of this crime.  
It is the victim who will suffer the consequences of

1 this crime for a long time to come. And as can be  
2 seen, the psychological harm caused to the victim is  
3 no less severe because she was not awake at the time  
4 of the offence.

5 The accused is 28 years old. He is the father of  
6 a young boy who lives with his natural mother. The  
7 accused is a carver and was recently accepted into the  
8 Arctic College Fine Arts certification program.  
9 Unfortunately, that will now be put on hold.

10 Unfortunately as well is the fact that the accused  
11 has a lengthy criminal record. Since 1984, he has  
12 been convicted of 25 criminal convictions, four of  
13 which were crimes of assault. It appears to be a  
14 consistent pattern of criminal conduct and frankly it  
15 appears that the people of this community need to be  
16 protected from him.

17 I had an opportunity to hear from the accused's  
18 mother. She told me how much it hurt her to see her  
19 son going in and out of jail over the years. I am  
20 sure it did. She told me how she feels that she has  
21 not been supportive enough for her son. I cannot  
22 judge that. But the accused is a grown man. He knows  
23 what life is like behind bars. He knows that he  
24 should control his behaviour, yet back last July he  
25 took advantage of a young woman who could not defend  
26 herself. It seems to me that it is time that he took  
27 responsibility for his actions. He has nobody to

1 blame but himself.

2 I also heard from the accused. He apologized for  
3 the pain he caused the victim. That is very good.  
4 But, he sat in front of a jury and told them that the  
5 victim wanted to have sex with him. Was he lying to  
6 the jury then? Or is he being insincere today? My  
7 only hope is that the accused will start from today to  
8 think about his life, to think about how he can be an  
9 upstanding and responsible man in the future, to plan  
10 on how he will change his life so that he will never  
11 hurt anyone again.

12 Stand up, Mr. Kelly.

13 I sentence you to serve a term of imprisonment of  
14 four years.

15 Now, Mr. Kelly, you will undoubtedly be paroled  
16 long before that four years is up and you know, as  
17 well as I know, that what you make of it is only up to  
18 you. There are programs to improve your education.  
19 There are counselling programs and there are programs  
20 in life skills training and all sorts of other things  
21 and I hope that you will take advantage of them,  
22 because you are still a young man, and you can still  
23 come back and be a productive and responsible and  
24 respected member of this community. But it is only up  
25 to you to change your life.

26 Under the circumstances, counsel, I decline to  
27 impose a Section 100 order and the reason for that is

1 this: It seems to me that when Mr. Kelly returns to  
2 this community, it may be a very helpful and  
3 productive part of his rehabilitation to, as his  
4 mother said, go back out in the bush, learn some of  
5 the skills of his people and participate in those  
6 activities. And I don't want to put any impediments  
7 in that way. Also, under the circumstances there will  
8 be no crime surcharge.

9 You may sit down, Mr. Kelly.

10 Is there anything else, counsel, that we need to  
11 address?

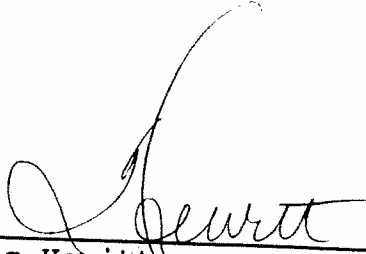
12 MR. MACDONALD: Nothing, sir.

13 MR. BOYD: Not from defence, sir.

14 THE COURT: Thank you, that is all.

15 (AT WHICH TIME THIS SENTENCING CONCLUDED)  
16  
17

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

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23 \_\_\_\_\_  
24 Lois Hewitt,  
25 Court Reporter  
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