

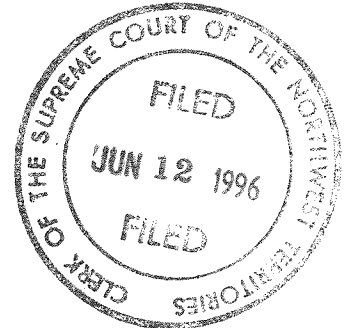
IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- and -

PETER KADLAK, JR.



Transcript of Reasons for Sentence delivered by The Honourable Mr. Justice S.R. Kurisko, sitting at Rankin Inlet, in the Northwest Territories, on Wednesday, May 29, A.D. 1996.

APPEARANCES:

| | |
|---------------------|--------------------------|
| Ms. M. Nightingale: | On behalf of the Crown |
| Mr. G. Malakoe: | On behalf of the Defence |

(Charge under Section 267(1)(a) of the Criminal Code)

1 THE COURT: The accused, Peter Kadlak, Jr.,
2 has pled guilty to the offence of committing an assault
3 on Simon Aglak, while using a knife, contrary to clause
4 267(1)(a) of the Criminal Code.

5 The facts are succinctly outlined in an Agreed
6 Statement of Facts filed as Exhibit 1 and need not be
7 repeated in detail.

8 The aggravating factors emphasized by the Crown
9 are as follows.

10 The accused knew what would happen when he went to
11 the scene. He was wearing a mask. He was carrying a
12 knife. The accused held the knife against the cheek of
13 Aglak. He was present when threats were made. The
14 victim was very frightened, and, I may add,
15 understandably so. And it was fortunate that the
16 intended purpose -- not "fortunate." It was merely by
17 chance that the intended purpose of the visit was not
18 fulfilled.

19 In mitigation, the Crown acknowledges the youth of
20 the accused who was born on January the 5th, 1977. It
21 is acknowledged he appears to have been a follower.
22 The accused has agreed to assist the prosecution and
23 provided a detailed statement.

24 The Crown recommends a period of incarceration of
25 from six to nine months.

26 In support of the low end of this range, counsel
27 for the accused emphasizes that the accused was a

1 follower in the events which occurred, playing a
2 secondary or subsidiary role in the events.

3 Even after placing the greatest emphasis on the
4 role by the accused in the events, the Court
5 nevertheless concludes the seriousness of the offence
6 cannot be down-played to the extent advanced by counsel
7 for the accused.

8 The range of sentence is extremely favourable to
9 the accused. There can be no doubt that the voluntary
10 statement of the accused, implicating himself and the
11 co-accused, has influenced the Crown in making its
12 recommendation as well it should.

13 In view of the recommended range of sentence, a
14 contentious issue on this sentencing is the ten-year
15 prohibition against possession of firearms, ammunition,
16 or an explosive substance the Court is required to
17 impose under subsection 100(1) of the Code.

18 The Crown submits the order should issue.

19 Counsel for the accused asks the Court to exercise
20 the discretion granted under subsection 100(1.1) and
21 100(1.2) and not impose the order.

22 These provisions read as follows. Subsection
23 100(1.1):

24 "The court is not required to make an
25 order under subsection (1) where the
26 court is satisfied that the offender has
27 established that

(a) it is not desirable in the interests
of the safety of the offender or of any

1 other person that the order be made; and
2 (b) the circumstances are such that it
3 would not be appropriate to make the
order."

4 Subsection 100(1.2):

5 "In considering whether the circumstances
6 are such that it would not be appropriate
7 to make an order under subsection (1),
the court shall consider

8 (a) the criminal record of the offender;
9 the nature of the offence and the
circumstances surrounding its commission;

10 (b) whether the offender needs a firearm
11 for the sustenance of the offender or the
offender's family; and

12 (c) whether the order would constitute a
13 virtual prohibition against employment in
the only vocation open to the offender."

14 The accused has testified that using a firearm for
15 hunting is a part of his culture and way of life. At
16 the age of five, he shot his first caribou. He
17 accompanies his father and his siblings regularly to
18 hunt and provides food for members of his family and
19 others. Nevertheless, the Court concludes hunting is
20 not essential to his livelihood because he can and does
21 earn a living by other work. Nevertheless, it is a
22 part of his way of life.

23 The Court is influenced by the fact that he is at
24 a crucial stage in turning around his life. His recent
25 spate of convictions as set out in Exhibit 2, which I
26 have considered, precede the present conviction.

27 Remorse and rehabilitation are desirable and necessary

1 objectives in sentencing. They are easy words to
2 utter. I hear them stated time and time again by
3 counsel on behalf of their clients. In this case,
4 however, the words are more than utterances.

5 The case against the accused was not the
6 strongest. In confessing, he has manifested his
7 intention to face up to the responsibility for what he
8 has done and to pay his debt to society. He has also
9 placed himself at risk - a risk which is far greater
10 than any to himself or others that would arise out of
11 possessing a firearm. It appears that he has started
12 on the road to rehabilitation. His thoughts in the
13 past of suicide indicate this journey is not without
14 risk and danger.

15 Having particular regard to the foregoing
16 considerations relating to rehabilitation and recovery,
17 as well as the other factors outlined in subsection
18 100(1.2), it is my view that it would not be
19 appropriate to make a prohibition order. In coming to
20 this conclusion, I believe the order is not required
21 for the safety of the offender or any other person.

22 However, in recognition of the seriousness of the
23 offence, I impose a jail term of nine months. I
24 strongly recommend that the accused be incarcerated at
25 the Baffin institution.

26 Is that the correct --

27 MR. MALAKOE: Baffin Correctional Centre.

1 THE COURT: At the Baffin Correctional
2 Centre.

3 Could I have the Indictment? The date? May
4 29th?

5 MS. NIGHTINGALE: That's correct.

6 THE COURT: Mr. Kadlak, will you stand,
7 please.

8 I have endorsed the Indictment as follows:

9 "For reasons dictated in open court, the
10 accused is sentenced to imprisonment for
11 nine months. The Court recommends that
12 the accused serve this sentence at the
13 Baffin Correctional Centre. It is in the
14 personal safety interests of the accused
15 that this recommendation be carried out."

16 Is there anything further?

17 MR. MALAKOE: My Lord, I only raise this --

18 THE COURT: You can be seated now.

19 MR. MALAKOE: -- because of the intent of that,
20 and my concern is this. The intent of that is to keep
21 him separate from the other person involved.

22 THE COURT: Right.

23 MR. MALAKOE: I guess the corollary to him being
24 at BCC, or Baffin Correctional Centre, is that the
25 other person is not at BCC. So as long as that's true,
26 then my client should be at BCC, and I don't know if
27 your order should reflect that.

28 THE COURT: Well, I can change that to say the
29 purpose of this order is to make certain that -- of
30 course we are presuming something.

1 MR. MALAKOE: Exactly. We're presuming

2 Mr. Ussak will never ever be at BCC.

3 THE COURT: That is right.

4 MR. MALAKOE: And should he ever show up there,

5 I would like my client moved out of there. If the

6 order would reflect that, it would be more appropriate

7 for the safety --

8 THE COURT: I have added:

9 "It is essential to the personal safety
10 of the accused that he not be confined to
11 the same institution as Yves Ussak should
12 that contingency arise."

12 Is that satisfactory?

13 MR. MALAKOE: I'm content with that. Thank you.

14 THE COURT: Is there anything the Crown wishes
15 to add?

16 MS. NIGHTINGALE: No. Thank you.


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

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Jane Romanowich
Court Reporter

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