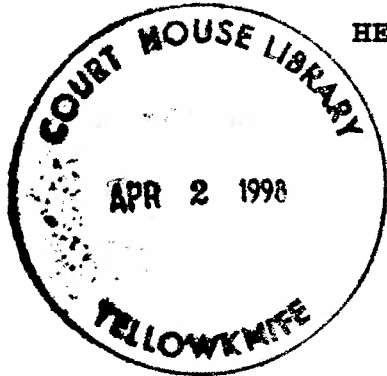


IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

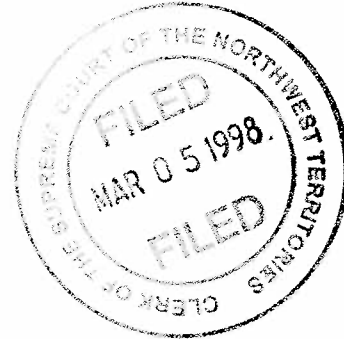
IN THE MATTER OF:



HER MAJESTY THE QUEEN

- and -

LEONARD MASUZUMI



Transcript of the Reasons for Sentence before Justice
T.P. O'Connor, in Norman Wells, in the Northwest
Territories, on the 11th day of February, A.D. 1998.

APPEARANCES:

MR. S. COUPER:

On behalf of the Crown

MR. R. GORIN:

On behalf of the Defence

Charge under s. 271 C.C.

1 THE COURT: The offender in this matter, Leonard
2 Masuzumi, pleaded guilty to one count of sexual
3 assault, the plea coming on the morning of his trial
4 date in Norman Wells.

5 The assault occurred on October 10th, 1996, at
6 Fort Good Hope where he and the complainant live. The
7 complainant is a friend of the offender's sister. The
8 two women had been drinking heavily at the offender's
9 home. The complainant either fell asleep or passed out
10 on a couch. The offender had not been drinking. The
11 complainant woke up to find the offender on top of her
12 having intercourse with her. He had his hand over her
13 mouth and told her to be quiet. She pushed him off
14 her, pulled up her pants and fled the home. Crying and
15 in a distressed state, she reported the assault a short
16 time later to her grandfather and several others. She
17 underwent a sexual assault examination the next day
18 after which she reported the incident to the police.

19 The complainant was 24 years old and was not
20 married at the time of the offence. The evidence of
21 the emotional and psychological effect on her is not
22 extensive. It appears she suffered immediate trauma in
23 that when reporting the offence she was tearful and
24 upset. She has been taking counselling for
25 approximately the last year and has now been doing
26 better. Again, the extent of the need for counselling
27 or the extent of the counselling is not known.

1 The offender was 36 years old at the time of the
2 offence, he is living in a common-law relationship with
3 four children. Unfortunately, he was present when a
4 fifth child was killed by an impaired driver when she
5 was seven years old. The trauma of this event has
6 caused or contributed to his common-law wife, the
7 mother of the deceased daughter, to become an
8 alcoholic.

9 The offender is a full-blooded Slavey who leads a
10 traditional lifestyle. He supports his family by
11 hunting moose and caribou while giving some of his
12 excess kill to the elders in Fort Good Hope.

13 He has a criminal record which includes 14
14 convictions for Criminal Code violations and several
15 bylaw and liquor offences. He has no record for any
16 offences similar to the one before this court. The
17 longest term he previously served was four months. He
18 was on probation at the time of this offence. He
19 stopped drinking alcohol about ten years ago and has
20 not drank since then.

21 His first trial on this charge ended with a hung
22 jury and a mistrial. At that trial the complainant was
23 required to give evidence. The offender testified he
24 and the complainant had consensual sexual intercourse.
25 He now admits, with his plea of guilty, the complainant
26 did not give her consent.

27 Mr. Couper, for the Crown, argues forced sexual

1 intercourse is at the upper end of the sexual assault
2 spectrum and that it requires a sentence which reflects
3 the seriousness of the offence. He seeks a
4 penitentiary term of between two and two-and-a-half
5 years.

6 The primary concern of this court should be the
7 recognition of the sentencing principles of general
8 deterrence and denunciation. The Crown argues the
9 principle of a general guideline for this type of
10 serious offence of three years imprisonment as
11 established by the Alberta Court of appeal in Regina v.
12 Sandercock (1985) 48 C.R. (3d) 154, still applies; that
13 is, the sentencing judge should accept the general
14 guideline as an objective standard. The court should
15 then analyze and apply the mitigating and aggravating
16 factors of the specific case and adjust the sentence up
17 or down to reflect these factors.

18 The defence says a sentence of two years less a
19 day would serve the ends of justice in this case.
20 Mr. Gorin points out the difference between the lower
21 end of the range suggested by the Crown and that argued
22 by the defence is one day. If the principles of
23 general and specific deterrence and denunciation can be
24 met by a two-year sentence, they can certainly also be
25 met by a sentence of one day less than those two
26 years.

27 The advantage to the offender at the slightly

1 lesser term is that it would be served in the
2 territory, likely Yellowknife, rather than in a federal
3 penitentiary in Alberta, thus allowing the offender and
4 his family the opportunity to see each other more
5 often. His rehabilitation would be enhanced by this
6 and also by the fact that his sentence would be served
7 where many of the inmates and correctional officers are
8 Dene.

9 The characterization of sexual assaults in
10 categories, such as a major sexual assault, so as to
11 then apply a "starting point" approach to sentencing
12 has been found invalid by the Supreme Court of Canada
13 in R. v. McDonnell (1997) S.C.J. No. 42. The Supreme
14 Court reaffirms the principle that appeal courts should
15 defer to trial sentencing judges except where the
16 sentence is demonstrably unfit. However, where the
17 courts attempt to create categories of offences and
18 base sentencing parameters on them, they usurp the
19 function of Parliament. The role of the courts is to
20 interpret sections of the code, not write new ones.

21 The Supreme Court found that the Alberta Court of
22 Appeal had effectively created a new section of the
23 Code when it defined "major sexual assault" for
24 sentencing purposes in the Sandercock case. This is no
25 longer the approach being taken by sentencing trial
26 judges in this jurisdiction.

27 The matter before this court is a serious sexual

1 assault which would have met the definition of a major
2 sexual assault as set out in Sandercock; however, it no
3 longer requires a starting point for sentencing of
4 three years based on such a characterization.

5 I have considered the mitigating factors in this
6 matter to include the offender's plea of guilty, albeit
7 late in the day. It has less weight than if he had
8 done so in time to save the complainant the anxiety of
9 giving evidence twice (at the preliminary hearing and
10 the first trial) and the further anticipation of having
11 to do so again at this trial. It would have saved much
12 of the cost of the proceeding in Norman Wells,
13 including the summoning of a jury panel. Also, the
14 offender now appears to be experiencing real remorse
15 for the offence.

16 There are present here few, if any, of the
17 aggravating factors set out in Sandercock which place
18 an offence at the higher end of the seriousness scale
19 of sexual assaults. There was no kidnapping, forcible
20 confinement or stalking of the victim. There is no
21 evidence of repeated assaults or acts of horror or
22 degradation, other than the forced intercourse itself,
23 nor of an invasion of the complainant's home, nor of
24 the use of a weapon. By pointing out these factors,
25 this court does not in any way mean to diminish the
26 severity of the offence before it. Forced
27 non-consensual intercourse is rape, one of the most

1 serious offences in the Criminal Code.

2 However, taking into account all of the above,
3 this court feels a sentence of two years less a day is
4 appropriate to satisfy all the principles of sentencing
5 in this case, including those of general and specific
6 deterrence, denunciation of the offence and the
7 rehabilitation of the offender.

8 Accordingly, Mr. Masuzumi, you are sentenced to a
9 term in the territorial correctional system of two
10 years less a day.

11 The defence has sought an exemption to the
12 otherwise mandatory imposition of a weapons and
13 firearms prohibition under section 100 of the Code.
14 The Crown is not opposed to the granting of such an
15 exemption. Thus, pursuant to section 100(1.3), the
16 offender is granted such an exemption for the reasons
17 that he requires and depends on the use of firearms to
18 support himself and his family.

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20

21
22 Certified pursuant to Practice
23 Direction #20 dated December 28,
1987.

24
25 Annette Wright
26 Annette Wright,
27 Court Reporter