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CR 03489

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES
IN THE MATTER OF:

HER MAJESTY THE QUEEN

- and -

SIMEONIE AMAGOALIK



Transcript of the Reasons for Sentence delivered by
Justice A. H. Wachowich, in Resolute Bay, in the Northwest
Territories, on the 6th day of January, A.D. 1998.

APPEARANCES:

MS. D. ROBINSON: On behalf of the Crown
MS. S. COOPER: On behalf of the Defence

Charge under s. 271 C.C.

1 THE COURT: Mr. Amagoalik, on this charge to
2 which you have pleaded guilty I sentence you to a
3 period of imprisonment of two years less one day. You
4 may serve your sentence in the community upon the
5 condition that you comply with the terms of an order
6 which I am about to make and impose upon you.

7 You may be seated.

8 Before setting out the conditions, Mr. Amagoalik,
9 I want to make some comments.

10 First of all, both your lawyer and the Crown have
11 come to this court suggesting that there should be a
12 sentence of two years less one day to be served on
13 conditions. I make it clear to you that they are the
14 lawyers and they do not set the sentence; I do the
15 sentencing. Even if the lawyers have agreed upon the
16 sentence you should serve that does not mean that I
17 have to agree with them. I could if I thought it was
18 best and in the cause of justice to sentence you to
19 four or five years and you'd serve that time in jail,
20 but in this case I agree with the lawyers. And "Why"
21 you might ask; because what they have suggested is fair
22 and just. My obligation is to ensure that justice is
23 done.

24 Some of the reasons why I feel that this is fair
25 and just are as follows: You came to this community
26 not of your own free choice but you were forced by a
27 government to settle here. You came to this land and

1 accepted challenges of the hardship. For 64 years you
2 were an honourable man, you were the proud father of
3 children and the proud grandfather of 12
4 grandchildren. You were a hunter in the tradition of
5 your race, but also you were a leader in your
6 community. You served on the council of the hamlet,
7 you assisted the National Parks Commission and you were
8 the leader in the exiled group looking for
9 compensation. All this time you remained with your
10 wife and your children, you witnessed her sad death,
11 you worked hard and learned how to operate heavy
12 equipment, and you gained a reputation of being a
13 generous, honest and reputable man and for 64 years
14 people could have looked up to you. Then you brought
15 shame upon yourself and your family and you ruined your
16 reputation for a shameful act that brings you here
17 today.

18 No person, no woman should ever be assaulted in
19 whatever society one is raised, but to have assaulted
20 your own daughter is one of the most shameful and
21 disgraceful acts that a man can commit, especially a
22 sexual assault of this type. You did something to her
23 to satisfy yourself for your own particular
24 satisfaction, and this whole incident could have been
25 worse if she had not cried and yelled "Stop". It is
26 fortunate for you that you did stop and it is fortunate
27 for you that you used no weapon or any threat when you

1 did this act. If it was otherwise, you would be going
2 to jail for a long time.

3 It is also fortunate for you that you come here
4 without any criminal record because if you had a record
5 for similar offences you would probably be going to
6 jail for a long time, but I am satisfied from what your
7 lawyer has said that this was an isolated act, that it
8 was influenced by alcohol and that since then you've
9 had nothing to drink.

10 You have shown remorse and that impresses the
11 court. Your daughter has not requested that this court
12 give a bigger punishment than has been agreed upon.
13 You can be grateful to her because I would have
14 listened to what she had to say if she wanted you
15 punished more. Therefore, the sentence that this court
16 imposes upon you and the shame that you have brought
17 upon yourself I am satisfied is sufficient punishment
18 for what you have done.

19 I do not denounce you, Mr. Amagoalik, as a man; I
20 denounce what you did as a man. You showed some
21 dignity as a man by pleading guilty, showing your
22 remorse and saving your family from testifying against
23 you in open court.

24 Therefore, the two years less a day which I have
25 sentenced you to in prison will be a conditional
26 sentence whereby you serve your sentence in the
27 community. You must keep the peace and be of good

1 behaviour; you must appear before this court when you
2 are required to do so by this court; you must report to
3 the community supervisor during this week and
4 thereafter continue to report as your supervisor
5 directs you. During this time you must reside in
6 Resolute Bay and you are not to leave Resolute Bay
7 without the written permission of the court or the
8 supervisor. You may only leave Resolute Bay for the
9 purposes of hunting or camping and for medical
10 treatment so long as you notify your supervisor. You
11 are not to consume any alcoholic beverages or any
12 intoxicating substances. These conditions are
13 mandatory and cannot be changed.

14 You must understand that if you violate any of
15 those conditions you may be required to serve the
16 remainder of your sentence in jail.

17 As an additional condition to your sentence you
18 will be required to complete 150 hours of community
19 service work and you must complete it within 18 months
20 of today. If people ask you why you are working and
21 doing community work service, that should remind you of
22 how bad this act was.

23 I am obliged to ensure that you receive an
24 explanation of the substance and the procedures of
25 Sections 742.4 and 742.6 of the Criminal Code. I can
26 delegate that authority to the clerk and I therefore
27 make the following directions: The clerk is to provide

1 you with a copy of the conditional sentence order and
2 if an explanation of the order is requested that will
3 be given to you. The clerk is to explain to you the
4 substance and procedure of those sections to ensure
5 that you understand the conditions that have been
6 imposed upon you and to ensure that you understand if
7 you violate any of those conditions and the procedure
8 to be followed if you wish to make an application to
9 change any of the conditions of the order.

10 Finally, the clerk is to certify that the order
11 and explanation has been given to you and that you have
12 indicated your understanding of them. If the clerk
13 cannot make that certification, you will be brought
14 before this court for further directions.

15 Under the Code you have the right to apply to the
16 court to change those conditions of the order that I
17 have made. Any application for a change must be made
18 in writing and is to be sent to the prosecutor and to
19 the court. It must outline the proposed change and the
20 reasons for the change. A hearing may be held and the
21 court may approve or refuse the change that you have
22 proposed or it may make any change that it considers to
23 be appropriate.

24 The prosecutor or the supervisor may also apply to
25 change the conditions. If they do so, you are to be
26 notified of the proposed change and you will have 7
27 days to apply to the court for a hearing to discuss the

1 change. If you do not respond to the notice within
2 those 7 days, the change will take place 14 days after
3 the court has been notified of the proposed change and
4 you will be required to comply with the new
5 conditions.

6 These sections of the Code also provide that if
7 you violate any of the terms of the conditional
8 sentence order you can be taken into custody or subject
9 to a summons. In that event, a hearing will be held.
10 If the court is satisfied that a violation has
11 occurred, the court may change the additional
12 conditions of the order, may suspend the order and
13 direct you to serve a part of your sentence in custody
14 and then resume the remainder of your sentence in the
15 community.

16 Thirdly, the court may terminate the conditional
17 sentence order in that you serve the remainder of your
18 sentence in custody. Where a breach is alleged, the
19 supervisor is required to provide a written report
20 outlining the alleged breach. You have a right to
21 receive a copy of that report.

22 Mr. Amagoalik, do you understand the order and the
23 explanation that I have given you?

24 THE ACCUSED: Yes.

25 THE COURT: I'm satisfied that this court has
26 taken reasonable measures to ensure that the offender
27 understands. Now that I have explained the order to

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you, it will not be necessary for the clerk to do so and I merely direct that the clerk provide you with a copy of the order.

Finally, Mr. Amagoalik, I am not prohibiting you from possessing weapons under the Criminal Code and I want you to understand that I am treating you as leniently as I possibly can in light of this most serious offence that you have committed to which you pleaded guilty.

May the balance of your days be peaceful and without violence and without any further criminal activity.

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

Annette Wright

Annette Wright
Court Reporter