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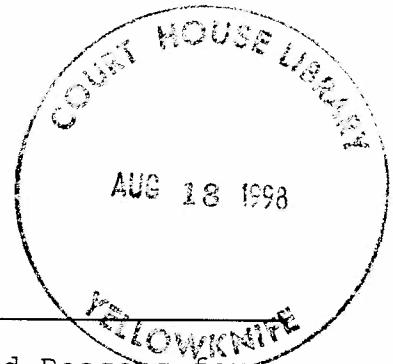
IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- and -

MICHAEL MANTLA



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Transcript of the Reasons for Judgement and Reasons for Sentence delivered by Justice J. Z. Vertes, in Yellowknife, in the Northwest Territories, on the 5th day of May, A.D. 1998.

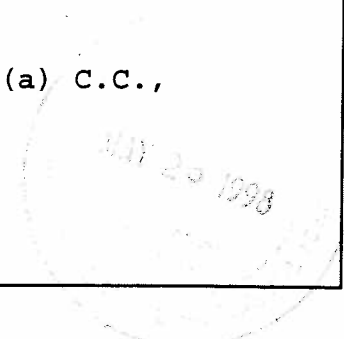
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APPEARANCES:

MR. B. ALLISON: On behalf of the Crown  
MS. J. MERCREDI: On behalf of the Defence

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Charges under ss. 145(1) (a) C.C., 264.1(1) (a) C.C.,  
129(a) C.C., 271 C.C., 270(1) (a) C.C

Bar on Publication of Complainant / Witness  
Pursuant to Section 486 of the Criminal Code



1 THE COURT: The accused, Michael Mantla, was  
2 charged with five offences. All of them relate to a  
3 series of incidents occurring here in Yellowknife on  
4 June 14th, 1997.

5 Count 1 is a charge of sexual assault. For the  
6 reasons that follow, I find the accused guilty of that  
7 charge.

8 Count 2 is a charge of uttering a death threat. I  
9 dismissed this charge at the end of the Crown's case  
10 due to a lack of evidence. So the accused is not  
11 guilty on Count 2.

12 Count 3 is a charge of resisting a police officer  
13 in the execution of his duty. For the reasons that  
14 follow, I find the accused not guilty on that charge.

15 Count 4 is a charge of assaulting a police  
16 officer. I find the accused guilty of that charge.

17 Finally, Count 5 is a charge of escaping lawful  
18 custody. I find the accused guilty of that charge.

19 The facts are as follows.

20 During the evening of June 13, 1997, the accused  
21 was in Yellowknife. He was over at the home of the  
22 complainant's sister. The sister, C , is 26 years  
23 old. The accused is 27 years old. They have known  
24 each other for seven or eight years and had been going  
25 together for one or two months. The complainant, who  
26 was 12 years old at the time, was there along with a  
27 friend of hers from school. The accused and C

1 smoked some marihuana. The complainant had been  
2 drinking at another house that evening. After a while  
3 the accused left. Later on as he was returning he met  
4 the complainant and her friend outside. They told him  
5 that C did not want anyone to stay at her home but  
6 he could stay at "M 's place". M was a friend of  
7 C , M T , who had an apartment in the same  
8 complex. The two girls then went somewhere else. The  
9 accused, thinking that the "M " they were referring  
10 to was his cousin, M Z. C , went to that  
11 apartment.

12 The accused entered the apartment. He was met by  
13 M 's brother, C T . They introduced  
14 themselves. At some point, the complainant and her  
15 girlfriend arrived. At one point C became  
16 concerned that his girlfriend may have taken some pills  
17 so he called an ambulance. When the ambulance arrived,  
18 the accused started to become rude and disruptive.  
19 C then asked the ambulance attendants to call the  
20 police.

21 The police, two male officers and two female  
22 officers, arrived on the scene at approximately 1:20  
23 a.m. on June 14th. They encountered the accused,  
24 C 's girlfriend and a young woman, who I conclude  
25 was the complainant's girlfriend, in the living room.  
26 That young woman was observed to be crying and directed  
27 the police officers to a back bedroom. Meanwhile, the

1 accused was swearing at the officers telling them to  
2 get out.

3 In the back bedroom the officers found the  
4 complainant asleep and naked. Constable Barrieau asked  
5 the accused if he knew who she was. The accused  
6 replied to the effect: "Leave her alone, Let her sleep  
7 it off, I just gave her the ride of her life." The  
8 accused admitted saying this.

9 The female officers tried to awaken the  
10 complainant. They had difficulty. Finally she awoke.  
11 She was described by one of the officers as being  
12 extremely intoxicated. She was having difficulty  
13 standing or speaking. The officer smelled the odour of  
14 alcohol on her. They wrapped a sheet around her. She  
15 was hysterical and tried to fight them. They had to  
16 handcuff her to control her.

17 The officers took the complainant straight to the  
18 hospital. Her mother was also brought to the  
19 hospital. Her mother described the complainant as  
20 being hysterical and obviously intoxicated. Tests  
21 taken at the hospital revealed semen on a vaginal  
22 swab. I was not told of any follow-up testing on this  
23 sample.

24 Back at the apartment C T asked the  
25 officers to remove the accused. They tried and then a  
26 struggle ensued. Eventually the police handcuffed him  
27 and removed him to the police van. There the accused

1 was kicking at the vehicle and acting in such a manner  
2 that the police used pepper-spray to subdue him.

3 The accused was lodged into cells. He was given  
4 an opportunity to call a lawyer. He says he was unable  
5 get through to one but he never said this to the  
6 police.

7 Later that same day, Corporal Johnson took the  
8 accused out of his cell. He wanted to try to interview  
9 him. On their way to the interview room, the accused  
10 said he did not want to talk to him. As Corporal  
11 Johnson was returning the accused to his cell, the  
12 accused tackled him, threw him to the ground, and  
13 escaped through an exit. Corporal Johnson chased him  
14 for close to ten minutes and eventually caught up to  
15 him. It took three or four officers to subdue the  
16 accused on that occasion.

17 With respect to the charge of sexual assault, the  
18 accused admits that he had sex with the complainant.  
19 He says, however, that he thought she was older and  
20 that she was consenting to it.

21 The Criminal Code stipulates that consent is no  
22 defence to a charge of sexual assault if the  
23 complainant is under 14 years of age. It is also no  
24 defence to a charge of sexual assault that the accused  
25 believed the complainant was 14 years old or more  
26 unless the accused took all reasonable steps to  
27 ascertain the age of the complainant. The burden of

1 proof is, as always, on the Crown, but there is an  
2 evidentiary burden on the accused to show what steps,  
3 if any, he took to ascertain the correct age.

4 In this case the accused said that he thought the  
5 complainant was 15 or 16 years old. Yet he never asked  
6 her how old she was. He knew that she was C 's  
7 younger sister. C testified that just a week or so  
8 earlier she told the accused that her sister was just  
9 12 years old. The accused denied having this  
10 conversation. I do not need to rely on it on this  
11 issue.

12 I observed the complainant. While she may try to  
13 act a little older than what she is, I do not think  
14 that anyone could mistake her as being older. It was  
15 therefore incumbent on the accused to take some steps  
16 to ascertain her age. He took none. In fact, he did  
17 not even talk with her.

18 I acknowledge that the accused's subjective belief  
19 is a factor to consider. But, having regard to the  
20 other evidence as to this man's lack of thought that  
21 night and his own evidence that he did not think much  
22 about what was happening, I reject his evidence of  
23 subjective belief. It is unreasonable and could not  
24 have been honestly held.

25 I also acknowledge that one of the officers and  
26 C T said that the complainant at first  
27 looked to be about 15 years old. That evidence is a

1 factor to consider, but so are the highly-charged  
2 circumstances in which those observations were made.

3 While this is enough to dispose of the sexual  
4 assault charge, I want to say that even if I had a  
5 doubt as to the accused's belief as to the  
6 complainant's age, I have no doubt that the complainant  
7 was incapable of consenting due to her intoxication and  
8 that the accused failed to take reasonable steps to  
9 ascertain if the complainant was consenting.

10 The accused testified that while he was in the  
11 living room at M 's apartment, the complainant lay  
12 face down on the couch. She seemed to be napping. He  
13 said that the complainant got up and said she was going  
14 to sleep in the bedroom. He said he saw her stumble.  
15 Then he said that moments later when he came out of the  
16 bathroom, she put her arms around him and started  
17 kissing him. They then proceeded into the bedroom and  
18 had sex.

19 The complainant testified that all she could  
20 remember was being in M 's apartment and going to the  
21 bedroom to sleep. She said she had flashbacks of the  
22 accused having sex with her and of the accused grabbing  
23 her arm. She could not say, however, whether these  
24 things were true. When asked if she let him go to the  
25 bedroom with her, she emphatically said "not possible",  
26 "I wouldn't allow him to go with me".

27 The accused's evidence shifted from time to time.

1 He said he did not think she was drunk; then he said  
2 that he did not know that she was so drunk; then he  
3 said that he thought she was pretending to be drunk.  
4 Whatever it was, he should have been put on guard as to  
5 her capability of consenting as well as her age. But  
6 he took no steps. He just went ahead and had sex with  
7 her. His evidence, in my opinion, is unbelievable and  
8 I reject it. Hence I convict the accused on Count 1.

9 Defence counsel submitted that the accused's  
10 statement to the police at the apartment is indicative  
11 of an innocent mind, the fact that he had nothing to  
12 hide, and therefore can be used to support his state of  
13 mind as to the complainant's age and consent. Assuming  
14 that the statement can be used in that manner, I do not  
15 draw that inference. The accused did not know why the  
16 police were there. He was acting in a rude and  
17 aggressive manner nevertheless. It seems to me that  
18 the statement could be equally indicative of either his  
19 knowledge that she was "sleeping it off" because she  
20 was intoxicated or his conceit and bravado as to what a  
21 "man" he thought he was (much like the personal items  
22 belonging to the complainant that he stuffed into his  
23 pockets can be considered to be his "trophies" of that  
24 night's encounter).

25 On Count 3, there was conflicting evidence from  
26 the accused and Constable Barrieau as to how the  
27 struggle started and how it unfolded. In my opinion

1 the police officers were justified in removing the  
2 accused from the apartment and taking all the steps  
3 they did to subdue him. Nevertheless, it seems to me  
4 that when the police have to use physical force on  
5 someone then one can expect some degree of force in  
6 return. It seems to me that the accused's actions in  
7 struggling while restrained are more in the nature of a  
8 natural reaction, something that comes, unfortunately,  
9 with the job description of being a police officer.  
10 The accused's actions in the van, while possibly  
11 constituting malicious damage of property, come after  
12 he was restrained so it cannot be said to be resistance  
13 to prevent detention. I have a doubt as to the  
14 accused's intention. Hence I find the accused not  
15 guilty of Count 3 and dismiss that charge.

16 With respect to Counts 4 and 5, all of the  
17 elements of an assault and an escape are satisfied by  
18 the evidence. There is no evidence of any reasonable  
19 excuse on the part of the accused, not self-defence,  
20 not necessity, not diminished mental capacity. He  
21 admitted to assaulting the police officer. He admitted  
22 to escaping custody. Hence I convict the accused on  
23 these two counts.

24 **(SENTENCING SUBMISSIONS MADE BY COUNSEL)**

25 THE COURT: Probably the most difficult task a  
26 judge has to perform is trying to determine in each  
27 case an appropriate sentence on someone who has been

1 convicted of a crime. If we have offenders who have  
2 long criminal histories and who we can truly call  
3 criminals, then that task is very easy, or at least  
4 easier. It is, however, most difficult when we see an  
5 offender who, by all accounts, can lead a worthwhile  
6 and productive life, can be a valuable member of his  
7 community and can be a very supportive person to his  
8 family, and then who for some reason, whether some  
9 emotional problem, mental problem, drug or alcohol  
10 problem, who for some reason, in one night through some  
11 foolish, thoughtless and selfish act forever changes  
12 the course not only of his own life, but the lives of  
13 those he says he loves, the lives of his own family,  
14 his own child, and the lives of the victims of his  
15 crime.

16 In this case, Mr. Mantla was convicted by me of  
17 three criminal offences. The facts and circumstances  
18 of those offences I have already covered in my judgment  
19 in entering the convictions. I do not need to repeat  
20 them.

21 The most serious offence of course is that of  
22 sexual assault. Crown counsel has suggested that I  
23 should consider a range of imprisonment of three to  
24 five years. As he describes it, the sexual assault was  
25 an act of full intercourse with a child of 12, who at  
26 the time was under the influence of alcohol.

27 This was not a case like some others that we hear

1 where we have two relatively young people who are in  
2 love with each other and become passionate and end up  
3 making love and the girl just happens to be under the  
4 age of consent. Here the accused was 14 or 15 years  
5 older than the complainant. He knew her to be the  
6 younger sister of a friend of his. He could and  
7 should, and I'm convinced he did, see that she was  
8 under the influence of alcohol, and I'm convinced he  
9 took advantage of her for his own selfish purpose.

10 It is a very serious offence. It is an offence  
11 that calls for denunciation and deterrence. It is the  
12 type of offence where most people who commit these  
13 offences are sent to penitentiaries. Therefore I have  
14 to keep in mind that similar offences should draw  
15 similar sentences.

16 It does not matter, in my mind, how the  
17 complainant may have been acting when she was under the  
18 influence of alcohol. There is no excuse for an older  
19 man to take advantage of a young girl like that, none  
20 whatsoever. So I have no alternative but to consider a  
21 penitentiary sentence.

22 Now, what I cannot understand is how this accused  
23 could do such a thing. I am convinced it was out of  
24 character for him. I see his education and employment  
25 background is quite good. He has held responsible  
26 positions. He was, I notice, a platoon and instruction  
27 leader for the cadets. I have a letter from the Chief

1 of the Dogrib Rae Band in which the accused is  
2 described as an active member of the band who has  
3 always been ready to lend assistance to his elderly  
4 father and other community residents who may be in  
5 need. The Chief describes him as one who has always  
6 put his family needs first ahead of his own. Of course  
7 the Chief says that he cannot comment on the  
8 circumstances surrounding this trial. However, the  
9 Chief says that he can vouch for the accused's positive  
10 involvement in and around their community and he  
11 certainly will be missed. So it is inexplicable to me  
12 how someone can be held in such good regard and then go  
13 out and in one night commit this crime and act in such  
14 a bizarre and aggressive and violent manner, as I heard  
15 him acting on this night in question.

16 I heard that some of his emotional difficulties  
17 started in 1996 when he lost his job and he started  
18 having difficulties with his common-law partner. I  
19 heard how he was drinking and apparently doing a lot of  
20 drugs. Perhaps those are all factors that went into  
21 this. But the sad part about it, that one night will  
22 now change his life. It will affect the lives of his  
23 partner and his daughter, and as we've heard, it has  
24 already affected the lives of his victim and her  
25 family.

26 I heard from the victim's mother how the victim  
27 became depressed, suicidal, had to drop out of school.

1 These are all things that the accused will have to live  
2 with.

3 The difficulties his incarceration will cause for  
4 his family, for his father, for his daughter, are all  
5 things the accused will have to live with. My only  
6 hope is that the good background of the accused will be  
7 something that the accused will be able to build on,  
8 and when he comes out of jail that he will be a better  
9 person and a responsible person, the type of person  
10 that the Chief and others apparently think he can be.

11 He is still young; he's only 27 years old. There  
12 is plenty of time ahead for him to prove that he can be  
13 a worthwhile member of the community, a good father to  
14 his children.

15 Stand up, Mr. Mantla.

16 Mr. Mantla, your lawyer did and said everything  
17 possible on your behalf in this case. I hope that over  
18 the next little while you'll think about what you can  
19 do to plan for your future and the future of your  
20 family, how you can improve your education, your  
21 situation. Use the time ahead not to sit and sulk and  
22 complain about your problems, but to try and deal with  
23 whatever those problems are. You are a grown man now,  
24 you have family responsibilities and only you can take  
25 control of your life so that none of this ever happens  
26 again.

27 On Count 1, I sentence you to serve a term of

1 imprisonment of three years.

2 I should say, counsel, that I have taken into  
3 account the background of this man. I recognize that,  
4 while he has a minor criminal record, he has never been  
5 incarcerated previously, so I take that into account.  
6 I take into account the two months in pre-trial custody  
7 that he spent after his arrest.

8 With respect to Count 4, I sentence you to serve a  
9 term of imprisonment of six months. That term will be  
10 consecutive to the three-year term on Count 1.

11 On Count 5, I sentence you to serve a term of  
12 imprisonment of six months. That will be concurrent to  
13 the sentence on Count 4, but of course Counts 4 and 5  
14 will be consecutive to Count 1.

15 Mr. Mantla, it is not up to me to decide where you  
16 serve your sentence. Based on everything that I have  
17 heard, I am going to have the warrant endorsed with my  
18 recommendation to the correctional officials and the  
19 parole authorities that they give early consideration  
20 to what will best serve your needs; an early assessment  
21 of whatever counselling programs and education programs  
22 that you may be best able to profit from during the  
23 time of your incarceration; and, more importantly,  
24 where that may best be achieved, whether it's at the  
25 correctional centre here in Yellowknife or some other  
26 facility. Based on that early assessment they will  
27 make a decision as to where it would be best for you to



1 serve your time, taking into consideration as well your  
2 family connections and your background and your  
3 connection to this area.

4 Now, the correctional authorities will receive a  
5 transcript of my remarks, they'll receive copies of the  
6 exhibits that were submitted on the sentencing - I  
7 think that's an automatic procedure - so they will know  
8 my wishes in this regard.

9 You may have a seat.

10 Counsel, I am not going to make a Section 100  
11 order. I fail to see the purpose of one under these  
12 circumstances.

13 There will be no victim of crime fine surcharge.

14 I'm going to direct that Exhibits 3, 4, 5 and 6  
15 that were filed during the trial be returned by the  
16 clerk to the custody of the police, perhaps through the  
17 offices of the Crown Attorney. Mr. Allison, you could  
18 take those exhibits and give them to the police and  
19 they should hold onto them until the end of the appeal  
20 period, after which they can be destroyed or returned  
21 to their rightful owner if the owner may wish.

22 Is there anything else we need to cover, counsel?

23 MR. ALLISON: No, My Lord.

24 THE COURT: Miss Mercredi?

25 MS. MERCREDI: Nothing.

26 THE COURT: Thank you for your services,

27 Mr. Rabesca.

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

*Annette Wright*  
Annette Wright  
Court Reporter