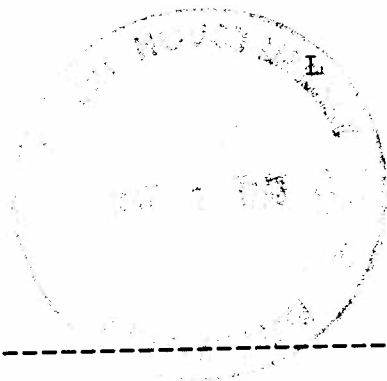


IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

HER MAJESTY THE QUEEN

- and -



P

Transcript of the Oral Judgment of the Honourable
Justice J. Vertes, sitting at Arviat, in the Northwest
Territories, on the 27th day of February, A.D. 1998.

APPEARANCES:

Ms. U. Arvanetes

For the Crown

Mr. T. Boyd

For the Defence

1 THE COURT: The accused was charged with the
2 offence of sexual assault. He pleaded not guilty
3 and elected trial by judge and jury. Halfway
4 through his trial, indeed, halfway through his
5 examination-in-chief he changed his plea to one of
6 guilty.

7 The circumstances of the offence can be
8 summarized very briefly. The offence took place in
9 1989 here in Arviat. The accused was 23 years old;
10 the victim was 14. The accused is the victim's
11 brother-in-law. One night he forced her into
12 sexual intercourse. She told him she did not want
13 to do it. He tried to change her mind by offering
14 to go out and sell some drugs and then he would
15 give her money. During his testimony, he
16 acknowledged that she did not want to have sex, but
17 he did not care. Obviously his counsel gave him
18 some good advice at that point and hence his change
19 of plea.

20 To my mind the fact that this man had a family
21 connection to the victim, the difference in their
22 ages, and the offer of money for sex are all
23 aggravating factors.

24 As a result of this assault, the victim became
25 pregnant and eventually gave birth to a daughter.
26 DNA testing has established that the accused is the
27 father of this child. The victim said that she did

1 not tell anyone about this assault until 1995
2 because the accused told her not to. However, she
3 could not hold it any longer. I also heard during
4 the trial how she at the time eventually received
5 counselling and then went to the police.

6 The accused is a 31-year-old Inuk. He was
7 raised in a stable traditional Inuit family. He
8 both works in the wage economy and pursues hunting
9 activities to provide food for his family and
10 others. He is a first offender. He is married and
11 he and his wife have three children. He is known
12 to have abused alcohol and drugs in the past.
13 There was some evidence that he was intoxicated at
14 the time of this offence (even though Arviat is a
15 dry community).

16 In this case, I had the benefit of a
17 presentence report. I want to thank Mr. Phillip
18 Dupuis, the local probation officer, for his good
19 work in preparing a comprehensive report within a
20 very short time-frame.

21 The report provides insight into what the
22 accused is thinking. At the time of the offence,
23 he did not think he did anything wrong. He just
24 thought that he manipulated a reluctant young woman
25 into sex by offering money from drug sales. He did
26 not think anything more about it for many years.
27 It was only when he was charged that he started to

1 understand that what he did was wrong and that his
2 actions have hurt the victim. The report notes,
3 however, that while the accused truly feels remorse
4 for this crime, he is more concerned about the
5 consequences to himself as well as the shame and
6 pain this brings to his family. It also indicates,
7 however, that the accused has matured and become
8 far more responsible in his conduct in the years
9 since this offence.

10 The report notes as well that the victim has
11 for years felt fearful of the accused because of
12 this crime. She also feels that this assault took
13 away her choices in life because of the pregnancy
14 and therefore she is very angry at the accused. To
15 the credit of the accused, however, the victim
16 confirms that he has never approached her since the
17 assault.

18 It is always a difficult process in arriving
19 at an appropriate sentence for a crime. The courts
20 do not sentence people just for the sake of
21 punishing them. The courts try to express, through
22 a sentence, how society views the seriousness of
23 the crime. In that sense, the courts are the voice
24 of the community. Through the sentence, the courts
25 try to denounce the crime, to show how wrong it is,
26 to show others that they should not commit such
27 crimes, to show the offender that he should lead a

1 crime-free life and to give him the opportunity to
2 rehabilitate himself. Ultimately, the purpose of
3 any sentence, indeed, the purpose of the criminal
4 law is to protect society.

5 Every sentence must be proportionate to the
6 gravity of the offence and the blameworthiness of
7 the offender. But the law says that in this case I
8 have a broad choice. The potential maximum penalty
9 is ten years imprisonment. There is no mandatory
10 minimum penalty. Courts, however, try to follow
11 what other courts have done in similar cases.

12 Generally speaking, a sexual assault involving
13 intercourse, especially where the victim is a
14 relatively young girl as here and where there is a
15 family connection as here, then the men who commit
16 this crime are usually sent to prison for several
17 years. That is because this is a crime that takes
18 advantage of someone who the offender should
19 protect, not abuse. It is also because this type
20 of crime usually causes serious long-term problems
21 for the victim.

22 The Crown has suggested that nothing short of
23 a three-year prison term would be appropriate.
24 Crown counsel quite properly points out that the
25 principles of general deterrence and denunciation
26 are paramount in this situation. In response to
27 the defence submission that a conditional sentence

1 should be imposed, she notes recent appeal court
2 guidance that says that conditional sentences are
3 not ordinarily appropriate for crimes where
4 deterrence and denunciation are to be emphasized. I
5 certainly concur with that approach. But that does
6 not mean to say that a conditional sentence would
7 never be appropriate even in those circumstances.

8 A case in point is that of Tugak, a case from
9 here in Arviat in April of 1997. There, I imposed
10 a conditional sentence after a joint submission by
11 the Crown and the defence. There a 20-year-old man
12 forced a 14-year-old girl into sexual intercourse
13 despite her trying to resist him. The guilty plea
14 came a little earlier than in this case but not
15 much earlier. As I recall, the guilty plea came
16 after the jury was selected and just before the
17 calling of evidence.

18 In November of 1997 my colleague Justice
19 Schuler imposed a conditional sentence in the case
20 of Griffin, a case of forcible intercourse by a
21 separated spouse. There have also been numerous
22 sexual assault cases where conditional sentences
23 were refused. The point is that it all comes down
24 to the circumstances of each particular case.

25 The Court of Appeal says that we should not
26 take a piecemeal approach, so I will not.

27 The Criminal Code says, among other things,

1 that I must be satisfied that serving the sentence
2 in the community would not endanger the safety of
3 the community and would be consistent with the
4 fundamental principles of sentencing. One of those
5 principles is that all available sanctions other
6 than imprisonment that are reasonable in the
7 circumstances should be considered for all
8 offenders, with particular attention to the
9 circumstances of Aboriginal offenders.

10 I have previously noted the aggravating
11 factors. There are other significant factors.

12 First, the offence occurred over nine years
13 ago. While this does not ordinarily make a
14 difference, it is a factor here since the offender
15 apparently led a blame-free life both before and
16 since this offence.

17 Second, he is functionally illiterate, with
18 limited education, relying primarily on the
19 Inuktitut language and thus imprisonment,
20 particularly in a penitentiary, would be even more
21 difficult than for other offenders.

22 Third, he comes from a relatively traditional
23 background, from a stable family situation, and one
24 where especially recently, he has shown himself to
25 be a responsible provider.

26 Fourth, I give credit for his guilty plea even
27 though it came after the victim had to testify.

1 While it cannot be given as much credit as it would
2 have been if it had come earlier, it is still a
3 sign of his sense of responsibility and an
4 acknowledgment of the harm he has caused, those
5 also being some of the fundamental objectives of
6 sentencing.

7 Fifth, and not insignificantly, the offence
8 occurred in an Aboriginal community which appears,
9 from my previous experience with this community, to
10 be doing a great deal to promote healthy living,
11 respect for each other, and an understanding of
12 what it takes to live responsible lives. To my
13 mind, very little would be accomplished by sending
14 this man to prison, and even if I do not, I expect
15 that everyone in this community will understand the
16 fact that he committed a serious crime, one that no
17 man should commit, and it is only because of the
18 special circumstances of this case that I am not
19 going to send him to prison as Crown counsel
20 requested.

21 Because of these factors, I would not sentence
22 this man to the penitentiary in any event, but I am
23 also satisfied that he does not pose a danger to
24 the community and that serving the sentence in the
25 community would be in accord with the principles of
26 sentencing.

27 Furthermore, I am also satisfied that there

1 are protective measures for the benefit of the
2 victim in this case, and some measures that I may
3 be able to impose through an appropriate order that
4 may eventually benefit the child that resulted from
5 this crime and perhaps bring to this man's mind
6 that his responsibility does not end with this
7 guilty plea, that he has a responsibility for a
8 human life that was brought into this world and
9 that is a responsibility that will last with him
10 forever.

11 I do not want anyone to misunderstand what I
12 am doing. Men who sexually abuse young girls, or
13 anyone for that matter, will usually be sent to
14 prison. If they do it in a situation where it's a
15 family member, they will be sent to prison for a
16 very long time. The only reason why I am not
17 sending this man to prison is because of his
18 special circumstances that I have outlined in my
19 decision.

20 Mr. P , I hope you understand that one
21 of the significant reasons why I am not sending you
22 to prison is because of the fact that you did lead
23 a crime-free life both before and after this
24 crime. And it is a crime, it wasn't just a
25 one-night stand as you may have thought. And I
26 hope that if you are truly a responsible man, that
27 you will work with other men in this community to

1 make sure that these types of crimes do not happen
2 in your community and that young people and women
3 of all ages will be protected by the men and not
4 taken advantage of. I am sure you understand
5 that?

6 MR. P : Nods heads indicating yes.

7 THE COURT: Stand up, Mr. P . I impose
8 a sentence of two years less one day. That
9 sentence is to be conditional served in the
10 community. If you commit any other crimes, if you
11 violate the terms and conditions that I am about to
12 impose upon you, the sentence can be revised, and
13 you may be sent to jail for that entire term. Do
14 you understand that?

15 MR. P : Yes.

16 THE COURT: You are to keep the peace and be
17 of good behavior. You are to abstain absolutely
18 from the possession or consumption of alcohol or
19 prohibited drugs. You are not to be in any place
20 where there may be alcohol or prohibited drugs
21 present. You are to be under the supervision of
22 the conditional service supervisor or the probation
23 officer as the case may be, and you are to report
24 to that supervisor whenever he or she tells you to
25 do so. You are not to leave the jurisdiction
26 without the permission of this court or the
27 permission of your supervisor. You are to perform

1 240 hours of community service work under the
2 direction of your supervisor. I am going to make a
3 further condition, Mr. P , that you are to
4 have no contact directly or indirectly with C
5 K . You are not to be in any house or building
6 where she is in. Do you understand that?

7 MR. P : Yes.

8 THE COURT: You are not to communicate with
9 her in any way whatsoever. I am also going to
10 direct that out of your hunting activities you
11 provide some country food every so often to C
12 K 's parents. They are the ones taking care of
13 your daughter, and in this way maybe you can show
14 that you are contributing to help taking care of
15 that family as well. Do you understand that?

16 MR. P : Yes, sir.

17 THE COURT: I am not going to impose a curfew,
18 counsel, because I think it would be meaningless.

19 Can either of you suggest or recommend any
20 other appropriate conditions?

21 MS. ARVANETES: Nothing from the Crown, sir.

22 MR. BOYD: No, sir, nothing from defence.

23 THE COURT: I hope that perhaps this sentence
24 can be viewed as a way of reconciliation as opposed
25 to simply sending a man who I understand is a
26 fairly responsible provider out of the community
27 for a period of time. Considering all that I heard

1 about this man, I decline to impose a Section 100
2 prohibition order.

3 There will be a \$50 victim of fine crime
4 surcharge payable within 60 days. Mr. P , I
5 direct that you pay \$50. That \$50, I think the
6 easiest thing is to deliver it to the R.C.M.P.
7 here. They will send it to the court office in
8 Yellowknife. That \$50 will go into a fund to help
9 pay for programs for victims of crime. That's your
10 small contribution to all victims of crime in the
11 North.

12 Anything else from Crown counsel?

13 MS. ARVANETES: No, sir.

14 THE COURT: Anything from defence?

15 MR. BOYD: Nothing from defence, sir.

16 THE COURT: Thank you, counsel. We can close
17 court.

18

19 (AT WHICH TIME THIS PROCEEDING WAS CONCLUDED)

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Certified pursuant to Practice
Direction #20 dated December 28, 1997


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Eva Robinson
Court Reporter