

*4 yrs in gaol
10 yrs - jurism prob.*

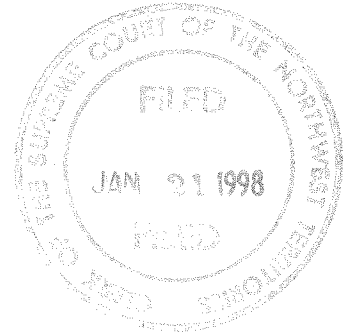
CR 03458

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

HER MAJESTY THE QUEEN

- and -

CLIFFORD HARROLD DIGNESS



Transcript of Oral Reasons for Sentence delivered by The Honourable Justice J.Z. Vertes, sitting at Yellowknife, in the Northwest Territories, on Monday, January 19, A.D. 1998.

APPEARANCES:

Ms. M. Nightingale: On behalf of the Crown
Mr. T. Kavanagh: On behalf of the Defence

(Charge under s. 270(x3) of the Criminal Code)

1 MR. KAVANAGH: My Lord, may Mr. Digness join me
2 at counsel table?

3 THE COURT: He can wait in the dock.

4 The offender, Clifford Harrold Digness, was
5 convicted after trial by jury on a charge that between
6 May 1996 and April 1997, he committed a sexual assault
7 upon the victim, his stepdaughter. The crime relates
8 not to one act but to ongoing acts over an 11-month
9 time frame when the victim was only 11 to 12 years
10 old. The acts consisted of touching and other gross
11 intrusions into this child's bodily integrity,
12 including acts of simulated intercourse, although there
13 were no acts of actual intercourse.

14 The victim tried to tell her mother early on in
15 the time frame but she was not believed. Eventually,
16 further disclosure was made and the police were called
17 in.

18 The victim, I am told, is doing well emotionally
19 through the support of her mother and counsel.

20 The offender was in the position of father to the
21 victim for the past ten years. He was therefore in a
22 position of great trust and authority.

23 We know now that possibly no crime has such
24 potential long-standing devastating effect as the
25 sexual abuse of a child by a person who is viewed by
26 that child as a provider of love and security. The
27 abuse of that trust is so serious that courts across

1 Canada have consistently imposed severe sentences.
2 Indeed, as counsel have noted, the Court of Appeal has
3 said that there should be a starting point of four
4 years imprisonment for serious offences involving the
5 sexual assault of a child by a person in a position of
6 trust. In my opinion, the facts of this case justify
7 reference to this starting point.

8 The offender is 30 years old. He has been
9 employed primarily as a commercial cook. He comes from
10 a large family. Unfortunately, however, this is not
11 the first offence of this type. In 1995, in Alberta,
12 the offender was convicted of the crime of sexual
13 interference upon this same victim. The offence
14 related to one incident in 1994 when the child was ten
15 years old. The offender pleaded guilty at the time and
16 was given a suspended sentence and two years
17 probation. He took counseling at the time. He has
18 apparently been on prescribed anti-depressant
19 medication since that time. He apparently attempted
20 suicide after that offence. Nevertheless, when the
21 incidents relating to the current conviction started,
22 he was still on probation. That is an aggravating
23 feature.

24 I recognize that merely incarcerating someone who
25 commits these types of offences is not likely to effect
26 total rehabilitation unless it is coupled with programs
27 of counseling and treatment for what is undoubtedly a

1 psychological imbalance. But incarceration is the only
2 sure way of protecting this victim and other potential
3 victims from a repetition of these types of offences by
4 this offender. It is also the only way our society can
5 adequately express its denunciation of this crime and
6 provide a deterrence to others from committing these
7 kinds of crimes.

8 There are a number of aggravating features. First
9 and foremost is that the offender did the same thing to
10 the same victim before. Even though he was convicted
11 for it, even though that act caused him great emotional
12 turmoil, he did not learn to control his criminal and
13 deviant impulses. Thus if the severity of sentencing
14 is to be based on the evident moral blameworthiness of
15 the offender, then this crime committed by this
16 offender calls for a severe sentence.

17 The offender has a record for other crimes,
18 although unrelated. One is an assault on the victim's
19 mother in 1992 and another is fraud in 1994. This is
20 also an aggravating feature, although of less weight.
21 I note, however, and it is somewhat significant to me,
22 that the accused was never incarcerated for any of his
23 past crimes. Therefore, the time he has spent awaiting
24 trial and the sentence which I will impose now will be
25 the first significant periods of incarceration for
26 him.

27 What mitigating factors are there in this case? I

1 can find none. There has been no expression of
2 remorse. The offender told me about how sorry he is to
3 have caused trouble for his family. I am sure he is.
4 The offender told me how he hopes he can, through
5 counseling, be a better person in the future. I hope
6 he can. But at no time did I hear either an
7 acknowledgment of responsibility or an expression of
8 remorse. He does not have to do either, I admit. I
9 cannot hold it against him. But obviously there is no
10 mitigation available either.

11 The offender's position throughout trial was a
12 denial of these acts. The jury disbelieved him.
13 Whether the offender sticks to that position now and in
14 the future is solely up to him to decide.

15 The offender has been in pre-trial custody for six
16 and a half months. He has been receiving counseling
17 and I commend him for that. He obviously must be given
18 credit for the period of pre-trial detention.

19 I have concluded that an appropriate sentence,
20 taking into consideration the nature of the acts, the
21 length of time over which these acts were committed,
22 the age of the victim, the nature of the relationship
23 of the offender to the victim, and the prior offence
24 against the same victim, would be one of five years
25 imprisonment. From that I subtract credit for
26 pre-trial custody. Such credit to be one year.

27 Stand up, Mr. Digness.

1 Mr. Digness, I sentence you to a total term of
2 imprisonment of four years. In addition, there will be
3 the usual mandatory order prohibiting the offender from
4 having in his possession any firearms or explosives for
5 a periods of ten years from the date of his release.
6 Any such firearms are to be surrendered forthwith.
7 Under the circumstances, there will be no victim of
8 crime fine surcharge.

9 Mr. Digness, I do not know where you are going to
10 be serving your sentence, but it is my hope that you
11 continue with whatever counseling or treatment programs
12 are made available to you. You are still a young man.

13 We do not know and we cannot tell what effect your
14 actions have had, what lasting effects your actions
15 have had on the victim of your crimes. Hopefully, she
16 will get over them. Hopefully, you will learn to get
17 over your problems. You may sit down.

18 Is there anything else we need to deal with,
19 Counsel?

20 MR. KAVANAGH: No, My Lord.

21 THE COURT: Miss Nightingale?

22 MS. NIGHTINGALE: No. I take it there are some
23 exhibits, though, in custody of the clerk which can be
24 returned after the expiry of the appeal period?

25 THE COURT: The only exhibits I recall are the
26 videotape and a transcript. Do you have a note of any
27 others, Madam Clerk?

1 THE CLERK: No, My Lord, just the two. Just
2 the transcript and the videotape.

3 THE COURT: The videotape can be returned to
4 the Crown. There is no reason for it to be kept by the
5 clerk's office. So I'll direct that the videotape be
6 returned by the clerk to the Crown's office at the end
7 of the appeal period. The transcript can stay on the
8 file. Anything else, Counsel?

9 MR. KAVANAGH: No, My Lord.

10 MS. NIGHTINGALE: No, My Lord.

11 THE COURT: My appreciation for your
12 submissions. Close court, please.

13 (PROCEEDINGS CONCLUDED)

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



Jane Romanowich
Court Reporter

