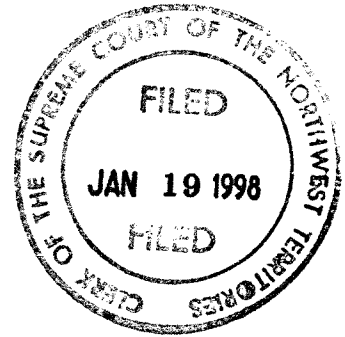


IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES  
IN THE MATTER OF:

HER MAJESTY THE QUEEN

- and -

ALBERT JOHN KOE



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Transcript of Oral Reasons for Sentence delivered by The Honourable Justice V.A. Schuler, sitting at Fort McPherson, in the Northwest Territories, on Tuesday, January 6, A.D. 1998.

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APPEARANCES:

Ms. L. Charbonneau:	On behalf of the Crown
Mr. A. Fox:	On behalf of the Defence

(Charge under s. 279(2) of the Criminal Code)

1 THE COURT: I am not sure if I did indicate  
2 for the record that a conviction will be entered, but  
3 it will be entered on Count 2 of the Indictment.

4 Mr. Koe has pleaded guilty to a charge of sexual  
5 assault and is now convicted of sexual assault contrary  
6 to Section 271 of the Criminal Code.

7 The lawyers have presented what we call a joint  
8 submission. In other words, they have jointly  
9 suggested a sentence that they say is appropriate in  
10 all the circumstances, and certainly the law is that  
11 unless the joint submission is unreasonable, that it  
12 should be accepted by the Court, subject, of course, to  
13 the Court's discretion to impose a sentence that it  
14 thinks is fit.

15 In this case there are a number of factors to be  
16 considered. First of all, I have to take into account  
17 the prevalence of sexual assault, the problem of sexual  
18 assault, in the Northwest Territories. It is probably  
19 the most frequent offence that is dealt with by this  
20 Court. By that, I mean by the Supreme Court of the  
21 Northwest Territories.

22 In this case, the facts of the offence which have  
23 been read in and to which I will just refer briefly are  
24 that the accused and the complainant, who were known to  
25 each other and had known each other since they were  
26 children, had been drinking and ended up going together  
27 to a certain house in Fort McPherson, and after others

1 had left the house, the accused then pulled down  
2 various items of clothing on the complainant and got on  
3 top of her. His pants were down, and there was a  
4 struggle. In other words, the complainant struggled to  
5 try to push the accused off of her. His spouse then  
6 walked into the house, at which point the accused got  
7 off the complainant and the spouse then assaulted the  
8 complainant.

9 Now, the circumstances are, I think, what would  
10 fairly be called under the old law a situation that  
11 amounts, really, to attempted rape. The circumstances  
12 also indicate to me that but for the accused's spouse  
13 walking into the room, matters might have continued  
14 on. In other words, it is not a situation where the  
15 accused stopped simply because he realized that the  
16 complainant was not agreeable to what he was trying to  
17 do.

18 I have to take into account also as an aggravating  
19 factor, that the accused has a criminal record and does  
20 not come before the Court as a person who has not been  
21 in trouble with the law before. In this particular  
22 case, although there are no sexual assaults on the  
23 record, I note there are seven convictions for assault,  
24 for one of which the accused received a sentence of  
25 eleven months in jail. So considering that and other  
26 jail sentences imposed for some of the other assaults  
27 on the record, obviously these were assaults of some

1           significance; they were not minor matters.

2           Now, I also have to take into account the fact  
3           that the accused, Mr. Koe, has pleaded guilty. And I  
4           should have asked, and I will do that now, Mr. Koe,  
5           whether there is anything that you want to say to the  
6           Court before I sentence you. You are not obliged to  
7           say anything, but if you wish to, you may do so. If  
8           you do wish to say something, stand up, please.

9           Does your client wish to say anything, Mr. Fox?

10          MR. FOX:                   He doesn't have anything further  
11          to add, My Lady.

12          THE COURT:                Thank you.

13                 In terms of other matters that I must consider in  
14                 this case, the guilty plea is a significant factor. It  
15                 has saved the complainant from having to testify at a  
16                 trial. We are all aware of the stress and the  
17                 discomfort that people go through when they have to  
18                 testify about personal and difficult matters such as  
19                 this in a courtroom. So there is a significant  
20                 acknowledgment, I think, in the guilty plea that the  
21                 accused did not wish to put her through that. The  
22                 guilty plea also indicates to me that the accused is  
23                 accepting responsibility for what happened. He is  
24                 willing to take the consequences of his actions, and  
25                 that is something that is to be considered in his  
26                 favour as well.

27                 Also very significant in this case is the remand

1 time. The accused has been in custody for close to one  
2 year at this point in time, and although there is no  
3 hard and fast rule, it is often, I think, fair to say  
4 that remand time is accepted as being the equivalent of  
5 something more than that in what would have been time  
6 served because the accused does not gain any remission  
7 with respect to the remand time and, also, because  
8 often the circumstances of it are such that an accused  
9 person who is in remand is not able to participate in  
10 programs or other types of assistance that would  
11 otherwise be available.

12 I also take into account Mr. Koe's personal  
13 circumstances. I have been told that he is 32 years  
14 old, that he is involved in a common-law relationship  
15 and has children and that he has obligations with  
16 respect to his elderly mother.

17 I can only say that I hope, and noting that  
18 alcohol was involved in this offence and noting also  
19 the ravages, really, that alcohol has effected in the  
20 Northwest Territories and the terrible consequences of  
21 alcohol, I can only hope, Mr. Koe, that maybe now at  
22 the age of 32, maybe the people you will look to are  
23 people like your brother, who, I have been told, has  
24 been able to beat his alcohol problem, and maybe that  
25 is the kind of person that you will look at as a role  
26 model for you so that this type of thing does not  
27 continue and does not happen again, because, sad to

1 say, it is almost a guarantee, from what I have seen of  
2 your criminal record and what I have been told about  
3 this case, it is almost a guarantee that if you  
4 continue to drink, you will continue to get in trouble  
5 with the law and probably continue to go to jail, and I  
6 am sure that is not the life you want, I am sure it is  
7 not the kind of thing you want for your family. I am  
8 sure you realize as well that when members of your  
9 family such as your brother, who, I am told, is the  
10 chief -- when you commit offences, there is a certain  
11 amount of shame that is brought on your family and on  
12 people in your family who have been able to beat these  
13 kinds of problems. You should be joining them in  
14 trying to beat your problems instead of just continuing  
15 on the same way and ending up in jail over and over  
16 again. Now, that is a decision that only you can  
17 make. I cannot make that decision for you, I cannot  
18 force you to change your ways. But at the age of 32,  
19 it seems to me that you should realize that it is time  
20 to join the older brothers in your family in turning  
21 your life around and not engaging in this kind of  
22 behaviour, which is really -- it is not only criminal  
23 behaviour, but it is very foolish behaviour, and it  
24 certainly, in the end, only results in very bad  
25 consequences for the complainant, for the community,  
26 and for you yourself.

27 Now, in considering the submission that has been

1           made, as I said, taking into account the remand time  
2           which is close to one year and which I think, in terms  
3           of the credit to be given to it, would amount to  
4           approximately a two-year sentence, considering all the  
5           factors that I have mentioned, I find that the  
6           submission is reasonable in the circumstances and I am  
7           prepared to accede to it. Counsel have also suggested  
8           that there be an order that the accused enter into a  
9           recognizance or peace bond, that he not initiate  
10          contact with the complainant in this case, and I think  
11          that is a reasonable condition as well.

12                 Now, I want to make sure, Mr. Koe, that if I make  
13          that order, that you understand then what it means,  
14          which is that you are not to talk to the complainant in  
15          this case, Miss Vaneltsi, you are not to approach her  
16          or speak to her or send anyone else to approach her or  
17          speak to her. Do you understand that?

18          THE ACCUSED:                     Yeah.

19          THE COURT:                     All right. Stand up, please,  
20          Mr. Koe.

21                 In light of the remand time, which, as I have  
22          said, I regard as being the equivalent of an  
23          approximately two-year sentence, I am going to sentence  
24          you to one day in jail which will be served by your  
25          attendance here in court. I have to do that because I  
26          have to impose a sentence on you and that is why I am  
27          only making it one day. I am also going to order that

1           you enter into a peace bond, the condition of which  
2           will be that you are not to initiate contact with the  
3           complainant, Anne Marie Vaneltsi, for a period of one  
4           year commencing today. I expect that counsel can draft  
5           that peace bond and then Mr. Koe will have to enter  
6           into it before a justice of the peace. I think I will  
7           also make the order that that be done within 30 days of  
8           today's date; in other words, the formal signing of  
9           it. But you are bound by that from this date on,  
10          Mr. Koe. Do you understand that?

11        THE ACCUSED:                    Yeah.

12        THE COURT:                     All right. There will be no  
13          victim of crime surcharge in the circumstances..

14                Is there anything else, Counsel, that needs to be  
15          addressed then on that matter?

16        MS. CHARBONNEAU:                No, My Lady.


17        MR. FOX:                        No, My Lady.

18        THE COURT:                     Thank you very much for your  
19          submissions in that matter.

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

  
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Jape Romanowich  
Court Reporter