

CR 03550

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- vs. -

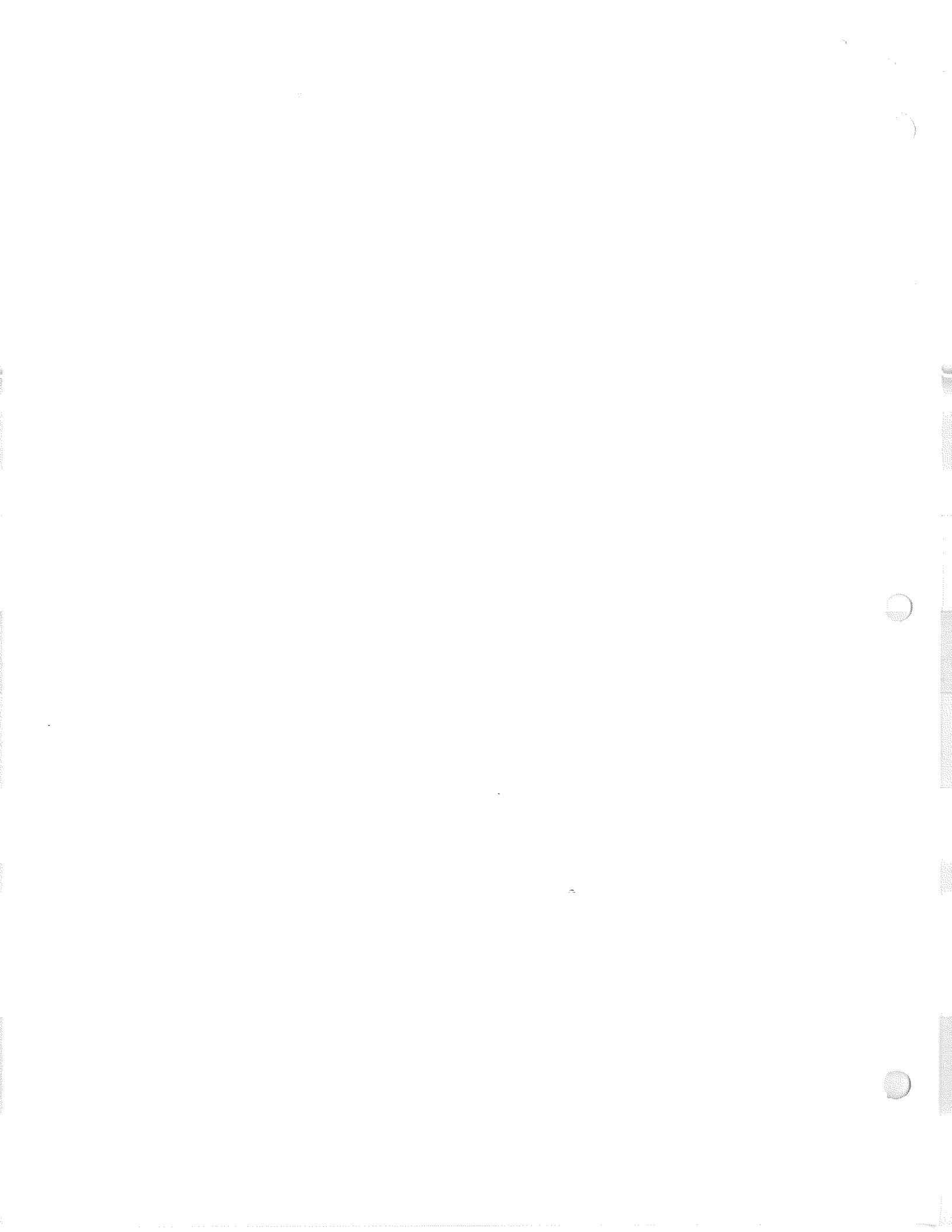
JOSEPH KALLUK

Transcript of the Oral Reasons for Sentence by The Honourable Justice P. Power, at Arctic Bay in the Northwest Territories, on Tuesday, September 29th A.D., 1998.

APPEARANCES:

Mr. A. Dewar:	Counsel for the Crown
Ms. S. Cooper:	Counsel for the Accused

Charge under s. 146(1) Criminal Code of Canada



1 THE COURT: The accused has entered a plea of
2 guilty to the charge that between the 18th of May, 1981
3 and the 30th of September, 1983, at Arctic Bay in the
4 Northwest Territories, did have sexual intercourse with
5 Neomi Barnabas, a female person, not his wife, and
6 under the age of 14 years.

7 MR. DEWAR: Pardon me for interrupting, My
8 Lord, I just mention once more that Ms. Barnabas
9 wouldn't mind providing an oral Victim Impact Statement
10 if the Court would be in a position to hear it.

11 THE COURT: The Court certainly will recognize
12 Ms. Barnabas if she chooses to address the Court, be it
13 verbally or by providing the Court with a written
14 impact statement. If Ms. Barnabas wishes to make any
15 comment, now is the appropriate time.

16 (NEOMI BARNABAS TAKES WITNESS STAND)

17 THE COURT: Ms. Barnabas?

18 THE WITNESS: Yes. I really don't have much to
19 say.

20 THE COURT: This is not in any way to embarrass
21 you and if you have something you wish to add, you are
22 at liberty to do so. If you don't wish to say anything
23 further, that's certainly your right.

24 THE WITNESS: (Through the Interpreter) I don't have
25 much to say about it now.

26 THE COURT: Do you wish to say anything
27 further?

1 THE WITNESS: No.

2 THE COURT: Thank you, Ms. Barnabas.

3 The Court acknowledges the submissions made by
4 Mr. Dewar and Ms. Cooper with respect to the
5 appropriate sentence that should be imposed in this
6 particular case.

7 The Court acknowledges also that we are in a
8 community at the north end of Baffin Island, a
9 community of some 600 to 650 citizens, a community
10 where most of the people know each other and have known
11 each other for many years or generations.

12 The Court acknowledges also the fact that the
13 accused has come forward in front of his peers, members
14 of his community, and entered a plea of guilty.

15 In determining the appropriate sentence in any
16 criminal trial, the Court has to consider the
17 circumstances, has to consider the fact that this
18 incident arose some 15 to 17 years ago and that the
19 accused since 1983, the last time mentioned in the
20 charge, has been a law abiding citizen.

21 The fundamental purpose of the Court imposing a
22 sentence is to prevent crime taking place in a
23 community, to foster a respect for the law and
24 maintenance of a just, peaceful, and safe society in
25 which all children and adults may live.

26 The Court in imposing any penalties or sanctions
27 has to have the following objectives in mind:

1 To denounce unlawful conduct;

2 To deter the offender and other persons in the
3 community from committing like crimes;

4 And where necessary, to separate an offender from
5 his community and place him in an institution;

6 And to consider the rehabilitation of the
7 offender.

8 There is no doubt in the Court's mind that the
9 accused breached a position of trust when he took
10 advantage of a young girl between the age of 11 and 13.

11 The Court takes into consideration the fact that
12 Joseph Kalluk has no prior criminal record, that the
13 complainant was not put through the stress and trauma
14 of having to testify before a jury and the members of
15 the community who have attended this day at this trial.
16 He, having entered a plea of guilty, acknowledges that
17 a serious mistake was made and that he has true remorse
18 for the victim in this case by entering this plea.

19 The Court is in agreement with the submissions of
20 counsel and imposes a conditional sentence of six
21 months plus a probation order of six months.

22 The accused will be subject to the following
23 conditions under the probation order: He will keep the
24 peace and be of good behaviour. He will abstain from
25 the consumption of alcohol or illegal drugs. He will
26 report to the designated probation officer within the
27 community within 48 hours of today's date. [Amended by

1 His Lordship to read: He will report to the Elders
2 Committee of the Community of Arctic Bay each month
3 until such time as the social worker arrives in Arctic
4 Bay.]

5 The Court will not impose any house arrest on the
6 accused as I do not consider that necessary or required
7 under the circumstances. There have certainly been
8 occasions where the complainant has been in the
9 community during the preliminary hearing and prior to
10 the trial today and nothing has occurred that would
11 cause concern to the Court.

12 There will be a no-contact provision where the
13 accused will not come into verbal or physical contact
14 with the complainant. That will remain in force during
15 the period of the conditional sentence and six months
16 probation order.

17 As a condition of the conditional sentence, the
18 accused will perform 120 hours of community service in
19 Arctic Bay subject to the specific supervision of the
20 probation officer. [Amended by His Lordship to read: As
21 a condition of the conditional sentence, the accused
22 will perform 120 hours of community service in Arctic
23 Bay subject to the supervision of the Elders Committee
24 of Arctic Bay.]

25 The Court recognizes that this incident which
26 brings the accused before the Court happened when he
27 was a very young man, in his 20s, and in the opinion of

1 the Court he is now a mature adult of 38 years and does
2 not require any additional counselling or treatment
3 with respect to this offence and the Court does not
4 impose that as a condition.

5 I take it that the imposition of any firearm
6 prohibition would result in a hardship to the accused?

7 MS. COOPER: Yes, My Lord, I discussed this with
8 my friend. It is our understanding that it is
9 discretionary and the Crown is not seeking it,
10 recognizing the cultural aspect.

11 THE COURT: Bearing in mind that we are in
12 Arctic Bay, that a great many of the citizens of this
13 community are involved in fishing or hunting, the Court
14 does not impose any prohibition on the accused having
15 firearms in his possession.

16 THE CLERK: My Lord, the probation order is
17 concurrent or consecutive to the conditional one?

18 THE COURT: Consecutive. The probation order
19 will follow the six-month conditional sentence.

20 Anything further?

21 MS. COOPER: No, My Lord.

22 MR. DEWAR: I note that there is no probation
23 officer in town and I suppose that it may be possible
24 to report to a probation officer by phone. I don't know
25 if that could be done in 48 hours or not. I just
26 mention that.

27 THE COURT: The closest probation officer would

1 be in Iqaluit?

2 MR. DEWAR: Iqaluit. There is a social worker
3 and I'm not sure if the social worker has the
4 designation to operate as a conditional sentence
5 supervisor or probation officer, but perhaps report to
6 the social worker.

7 THE COURT: Is the social worker present
8 today? I think that he was here this morning.

9 MR. DEWAR: He is not here today.

10 So perhaps report to a conditional sentence
11 supervisor within 48 hours or as soon as possible
12 thereafter.

13 THE COURT: I have no difficulty with that
14 condition and if the social worker has assumed those
15 responsibilities in this community, than rather a
16 probation officer we should substitute the social
17 worker.

18 MS. COOPER: In my experience the social worker
19 is the probation officer, they are one of the same, and
20 that is satisfactory.

21 THE COURT: All right, I have no difficulty
22 with that.

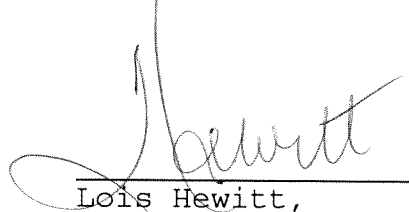
23 MR. DEWAR: As well, My Lord, you indicated no
24 contact physical or verbal. I just wonder if you would
25 direct or indirect as physical and verbal doesn't cover
26 some of the --

27 THE COURT: That's satisfactory.

1 THE CLERK: It should be direct or indirect?
2 THE COURT: Yes.
3 THE CLERK: Thank you, My Lord.
4 MR. DEWAR: And I know that you indicated that
5 you were not ordering treatment. I take it
6 implicitedly from that that you weren't ordering an
7 assessment to see whether it was necessary.
8 THE COURT: That's correct.
9 MR. DEWAR: Thank you.
10 THE COURT: Thank you then, we will adjourn.

11 (AT WHICH TIME THE ORAL REASONS FOR SENTENCE CONCLUDED)

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

16 

18

Lois Hewitt,
19 Court Reporter

