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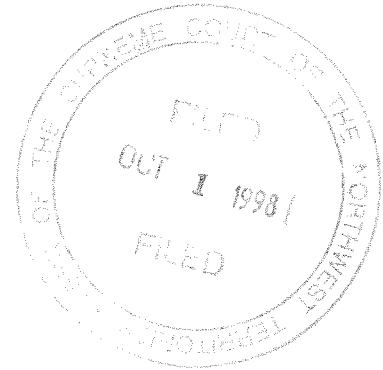
IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- and -

BERT KIMIKSANA



Transcript of Reasons for Sentence delivered by The Honourable Justice J.Z. Vertes, sitting at Holman, in the Northwest Territories, on Wednesday, September 2, A.D. 1998.

APPEARANCES:

Ms. D. Sylvain:	On behalf of the Crown
Mr. R. Gorin:	On behalf of the Defence

(Charges under ss. 271 (x3) and 246(2) of the Criminal Code)

1 THE COURT: The accused, Bert Kimiksana, has
2 been convicted of three offences after trial by judge
3 and jury. They all arose out of the same circumstances
4 on the same evening in question. The three offences
5 are two counts of sexual assault against two different
6 victims and one count of attempting to choke one of the
7 victims with intent to enable him to commit the sexual
8 assault.

9 Obviously, these offences are serious. Sexual
10 assault, pursuant to Section 271 of the Criminal Code,
11 carries a potential maximum penalty of ten years
12 imprisonment. The choking charge, under Section 246 of
13 the Criminal Code, carries a potential maximum of life
14 imprisonment.

15 The circumstances can be briefly summarized. The
16 two victims were drinking at the accused's home. One
17 victim passed out and the accused raped her. This was
18 witnessed by the other victim when she went to check on
19 her friend. The other victim was then attacked and
20 raped, during the course of which the accused choked
21 her. The accused has exhibited no remorse. He
22 maintained his innocence, as is his right, throughout
23 this trial; but he testified to a completely
24 unbelievable sequence of events that attempted to cast
25 all blame on what happened on one of the victims. The
26 jury quite rightly, in my opinion, rejected this
27 incredible concoction.

1 These crimes are a terrible invasion of the bodily
2 integrity of these women. I had the benefit of reading
3 the victim impact statement from one of them. In it,
4 she tells of how she has been depressed and fearful
5 because of this violation. Such reactions are quite
6 common with these types of crimes.

7 The accused, unfortunately, does not come to this
8 court with an unblemished past. He has 33 criminal
9 convictions. The first was in 1968 and the most recent
10 was in March of this year. His record is clear from
11 1972 to 1988. This was a time, so the accused said,
12 that he followed the word of God. Since then, as he
13 also said, he has fallen. With these convictions, he
14 is about to fall hard.

15 His record does not reveal extremely serious
16 crimes since he has never been sentenced to a
17 penitentiary term. It is, however, a related record in
18 that it has numerous convictions for crimes of
19 violence. He was convicted of sexual assault in 1989.
20 He has nine assault convictions, one conviction for
21 assault causing bodily harm, one for uttering threats,
22 and two for possession of a weapon for purposes
23 dangerous to the public peace. It seems to me that the
24 time has come so that this man is no longer a danger to
25 the peaceful citizens of this community.

26 The primary concerns in cases like this are the
27 sentencing goals of deterrence and denunciation. Crown

1 counsel argues that the guideline principles set down
2 by the Alberta Court of Appeal in R. v. Sandercock
3 (1985), 48 C.R. (3d) 154, are still applicable. That
4 would entail a penitentiary term of three years as a
5 starting point with that sentence being adjusted up or
6 down to account for aggravating or mitigating
7 circumstances.

8 The Supreme Court of Canada in R. v. McDonnell
9 (1997) S.C.J. No. 42, rejected this guideline approach
10 based upon the characterization of offences in
11 categories such as "major sexual assaults". It did,
12 however, reaffirm the principle that appeal courts may
13 set out starting-point sentences as guides for trial
14 judges.

15 In my opinion, the crimes committed in this case
16 call for severe penalties whether one resorts to the
17 starting-point approach or not. They certainly would
18 have fit the major sexual assault categories set out in
19 Sandercock. I do not rely on that. I rely simply on
20 the fact that this court has traditionally dealt with
21 these types of crimes by the imposition of penitentiary
22 terms. This is so that the community knows that these
23 crimes will be severely dealt with. It is an
24 outrageous crime against the integrity of innocent
25 people and it is a crime that will be met by severe
26 sentences. It is a lesson that the accused must learn;
27 it is a lesson that everyone must learn; it is a lesson

1 for the protection of the community as a whole.

2 In my opinion, there are no mitigating
3 circumstances in this case. The accused is 49 years
4 old. So he should have learned to control himself by
5 now. If he cannot control himself when he drinks, then
6 he should have learned by now not to drink. It is as
7 simple as that. The record and the circumstances of
8 the offender, of the offences, the attendant violence,
9 are all aggravating factors.

10 The accused has spent four and a half months in
11 pre-trial remand. I take that into account. I have
12 concluded, however, that an appropriate global sentence
13 is one of seven years.

14 Stand up, Mr. Kimiksana.

15 Mr. Kimiksana, you are old enough, and you have
16 been around long enough, to understand perfectly well
17 what I am talking about. You have been convicted by 12
18 members of your community of three very serious crimes;
19 three crimes of violence against these two women. Now,
20 whether you choose to acknowledge that or not is none
21 of my concern. But you are in a position whereby you
22 should, by now, know how to control your impulses and
23 know how to control your actions. At your age, you
24 should be an example to the younger people in this
25 community, not a danger to them. I am sure you
26 understand me when I say that.

27 On Count 3 of the Indictment, the charge of sexual

1 assault, the sentence is three years imprisonment. On
2 Count 4 of the Indictment, the other charge of sexual
3 assault, I sentence you to four years consecutive. On
4 Count 5, the attempted choking charge, I sentence you
5 to four years concurrent. That is a total of seven
6 years. There will be no victim of crime surcharge in
7 the circumstances. You may sit down.

8 With respect to a firearm prohibition order, the
9 Crown concedes that the accused is a hunter who pursues
10 it for sustenance. There is no information as to
11 whether he has a propensity to abuse firearms. I note,
12 however, that in 1990 a five-year prohibition was
13 imposed on him. I do not know the circumstances of
14 that ban, but I am not convinced that a ban is
15 necessary for the safety of others. This is especially
16 so when I consider the accused's age and his likely age
17 at the time when he will be released. I therefore
18 decline to make a Section 100 order.

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

21 MS. SYLVAIN: No, sir.

22 MR. GORIN: No, sir.

23 THE COURT: I think I made an order with
24 respect to the exhibits earlier. Did I not, Madam
25 Clerk?

26 THE CLERK: Yes.

27 THE COURT: Then, my appreciation to both of

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you, my appreciation to the community of Holman, and
also to the staff. We will close court.

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



Jane Romanowich
Court Reporter

