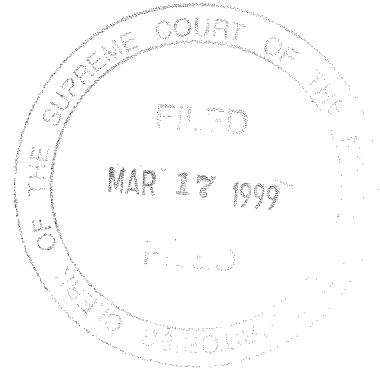


IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN



- v -

STYD WILLIAM KLUGIE

Transcript of the Oral Reasons for Sentence of The Honourable Justice J. Z. Vertes, sitting in Yellowknife, in the Northwest Territories, on the 16th day of March, A.D. 1999.

APPEARANCES:

Ms. L. Colton:	Counsel for the Crown
Mr. J. Brydon:	Counsel for the Defence

1 THE COURT: The accused, Styd William Klugie, has
2 pleaded guilty to a charge of sexual assault. The
3 plea came half way through his jury trial on this
4 charge after the victim and two other witnesses had
5 testified. So while the guilty plea may not receive
6 as great a consideration as one that is entered early
7 on in the proceedings, it is still worthy of some
8 consideration.

9 The offence has been characterized by the Crown
10 as an "attempted rape". The accused was a guest in
11 the victim's home. He had been at a party there. He
12 had been drinking. After the victim had fallen
13 asleep, he went to where she was sleeping and he
14 removed her pants and lay on top of her. She woke up
15 and pushed him off. She then went into another room.
16 She woke up later to find the accused lying beside
17 her. She screamed and he left.

18 Defence counsel described this encounter as an
19 "inept seduction". I think that unrealistically
20 minimizes the seriousness of the accused's conduct.
21 He took advantage of a vulnerable person, vulnerable
22 because she was asleep. There was no evidence of any
23 amorous interaction between the two of them earlier,
24 nothing to suggest that his advances would be
25 welcome. It was a thoughtless act for his own
26 gratification. It was a violation of the victim's
27 physical integrity and well-being. Inept it may have

1 been, but it was no seduction. It was a serious
2 criminal offence.

3 The fundamental purpose of sentencing is to
4 protect society by a blending of deterrence,
5 rehabilitation and denunciation. The fundamental
6 guiding principle is that a sentence must be
7 proportionate to the gravity of the offence and the
8 culpability of the offender. There are some crimes,
9 however, where the primary considerations are
10 deterrence and denunciation. Deterrence meaning that
11 others are discouraged from this type of conduct, and
12 denunciation meaning society's condemnation of this
13 type of conduct. Sexual assault is one of those
14 crimes.

15 Crown counsel suggested a sentence of 18 months
16 imprisonment. Defence counsel suggests no time or at
17 least a conditional sentence. As I understand the
18 submissions there are two factors to support this.

19 First, defence counsel points out that the
20 accused has already spent four months in custody.
21 This trial was the second trial on this offence. The
22 accused had been previously tried and convicted and
23 sentenced to three years imprisonment. The four
24 months was spent in federal custody after that trial
25 and until he was granted bail pending appeal. The
26 Court of Appeal overturned that conviction and
27 directed a new trial. These four months should be

1 taken into account.

2 Second, defence counsel points to the accused's
3 conduct since this offence. The offence was
4 committed in 1996. The accused is now 28 years old.
5 He has no criminal record. He has been living with
6 his parents in Fort Resolution. It is apparent that
7 he has a very supportive family. He works as an
8 environmental researcher and holds a diploma in
9 environmental technology. Since the offence he has
10 not touched alcohol and has taken numerous steps to
11 expand his own well-being through cultural healing
12 programs. All of this is to his credit. I am
13 convinced that he poses no further danger to society.

14 I have given careful thought to the
15 appropriateness of a conditional sentence. Crown
16 counsel reminded me of the Alberta Court of Appeal
17 decision in R. V. Brady [1988] 121 C.C.C. (3d) 504, a
18 decision followed by the Northwest Territories
19 courts. In Brady, the Court said that a conditional
20 sentence would not ordinarily be available for those
21 offences where the paramount considerations are
22 deterrence and denunciation. Barring exceptional
23 circumstances, a term of actual imprisonment is
24 called for.

25 I point out that very recently the Alberta Court
26 of Appeal elaborated on this position. In R. V. Goin
27 (released on February 3, 1999), the Court noted that

1 the conditional sentencing regime is applicable to
2 all crimes not specifically excluded by Parliament.
3 Whether or not deterrence and denunciation are the
4 primary considerations in a given case depends on the
5 factual circumstances of the case. And, the decision
6 to impose or not impose a conditional sentence is
7 both fact-driven and discretionary.

8 In my opinion, the circumstances of the offender
9 would make him a candidate for a conditional
10 sentence. The circumstances of the offence, however,
11 are such that deterrence and denunciation must be
12 emphasized. As Crown counsel observed, this type of
13 crime - that is taking advantage of a vulnerable
14 woman - is a highly prevalent crime in this
15 jurisdiction. There is nothing exceptional in these
16 circumstances. Sentences for this type of crime must
17 demonstrate that this behavior on the part of young
18 men is totally reprehensible and that our communities
19 will not tolerate it. For these reasons, I have
20 concluded that a conditional sentence would not be
21 appropriate. I note that the same consideration
22 motivated my colleague, Justice Schuler in R. V.
23 Rabesca, [1998] N.W.T.J. No. 27, the case referred to
24 by counsel on this sentencing hearing.

25 Considering all of these circumstances, I
26 sentence the accused to a term of 12 months
27 imprisonment. I trust that he will be able to serve

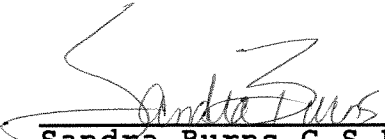
1 his sentence at the South Mackenzie Correctional
2 Center where he can at least be close to his family.
3 There will be no victim of crime fine surcharge.
4 Also, considering the accused's employment
5 circumstances, I exempt him from the mandatory
6 firearms prohibition order. Is there anything else
7 we need to address, counsel?

8 MR. BRYDON: No, My Lord.

9 MS. COLTON: No, Sir.

10 THE COURT: Then thank you for your submissions
11 once again and we're adjourned.

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13 Certified pursuant to Rule 723 of the Supreme
14 Court Rules.

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16 Sandra Burns C.S.R. (A)
17 Court Reporter
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