

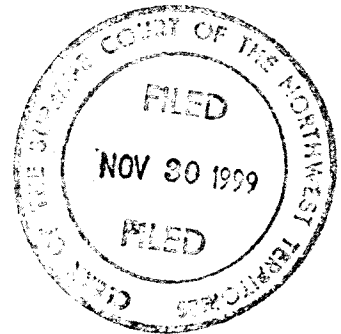
IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

LOUIS LLOYD LAFFERTY



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Transcript of the Oral Reasons for Sentence by The Honourable Justice V. A. Schuler, sitting in Hay River, in the Northwest Territories, on the 18th day of November, A.D., 1999.

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**APPEARANCES:**

Mr. M. Scrivens:

Counsel for the Crown

Mr. A. von Kursell:

Counsel for the Defence

1 THE COURT: Before I sentence you,  
2 Mr. Lafferty, is there anything that you would like to  
3 say? If so, please stand up.

4 THE ACCUSED: No.

5 THE COURT: Louis Lloyd Lafferty has pleaded  
6 guilty to a charge of sexual assault. Briefly stated  
7 the facts that were put before me and have been  
8 admitted by Mr. Lafferty are that in August of 1998, in  
9 the early morning hours after a drinking party,  
10 Mr. Lafferty entered the residence where the party had  
11 been and sexually assaulted the victim who had been  
12 passed out or sleeping with her husband.

13 The sexual assault took place while the husband  
14 was in the bathroom. He returned to find the accused  
15 having sexual intercourse with his wife, and the  
16 circumstances were described to me as involving brief  
17 penetration.

18 I have in earlier cases, such as the Martin case  
19 that was cited by counsel, rejected the notion that  
20 there is any significant distinction between a sexual  
21 assault on a sleeping victim and a sexual assault on a  
22 victim who is awake and aware of what is happening.

23 I note that in the N. P. case, also cited by  
24 counsel, Mr. Justice Richard considered the fact that  
25 the victim was passed out and alone, and therefore in  
26 what he described as a particularly vulnerable state,  
27 as an aggravating factor.

1                   In this case I would characterize the sexual  
2 assault as a serious and contemptuous intrusion of the  
3 victim's personal and physical integrity and privacy.  
4 There is no evidence before me of whether the victim  
5 has suffered any lasting effects of the assault,  
6 although common sense dictates that it must have been  
7 extremely upsetting for her to learn what had  
8 happened.

9                   I am told that Mr. Lafferty is 37 years old and  
10 the father of three young children. He was born and  
11 raised and lives in Fort Resolution with his family.  
12 He has been steadily employed there and has supported  
13 his family.

14                  There is a substantial criminal record which  
15 goes back 20 years. It includes convictions for  
16 indecent assault on a female in 1979, assault causing  
17 bodily harm in 1982, assault causing bodily harm in  
18 1990, and sexual assault in 1991. For this last  
19 conviction he received a jail term of three years.

20                  Crown counsel presented a transcript of the  
21 sentencing judgement in that case from which it can be  
22 seen that the facts were almost identical to this one.  
23 The victim in that case was passed out at a drinking  
24 party and then awoke to find Mr. Lafferty having sex  
25 with her. There are some minor differences in the  
26 facts, but in my view they do not detract at all from  
27 the conclusion that these were almost identical

1 offences.

2 I have to bear in mind that Mr. Lafferty was  
3 sentenced for the conviction in 1991. The sentence  
4 that I will impose will not be aimed at punishing him  
5 again for that earlier offence. I also take into  
6 account that his conviction for that offence was eight  
7 years ago, although he has unrelated and less serious  
8 convictions in the meantime.

9 So it cannot be said that there is a complete  
10 gap in the record, because Mr. Lafferty has continued  
11 to come into conflict with the law. The fact that  
12 Mr. Lafferty has previously been convicted of, as I  
13 have said almost an identical offence, and clearly did  
14 not learn from the sentence imposed is significant. It  
15 along with the entire record indicates, in my view,  
16 that Mr. Lafferty is a threat to the personal safety of  
17 others.

18 There is no evidence before me as to the extent  
19 of Mr. Lafferty's intoxication on this occasion. I  
20 conclude that he had been drinking, he was at the  
21 drinking party. Clearly from the record drinking is a  
22 problem in his case; however, whether he was  
23 intoxicated or not, clearly as I have said, he is a  
24 threat to the safety of others.

25 This type of sexual assault, by which I mean a  
26 sexual assault on a sleeping victim or a victim who is  
27 passed out, is not at all uncommon in our society, and

1 the sentence that I impose must aim at denouncing this  
2 type of behavior showing that society, the people in  
3 the Northwest Territories, do not accept this type of  
4 behavior, and also at discouraging others from  
5 committing this type of offence. But in this case it  
6 must also deter Mr. Lafferty from repeating this  
7 behavior, and as I have indicated, the last sentence of  
8 three years did not do that, and in my view therefore  
9 something more is required.

10 In mitigation there is the guilty plea. I do  
11 accept that it indicates that Mr. Lafferty is taking  
12 responsibility for what he did. It did save the victim  
13 from having to testify at trial, although I would  
14 simply temper that by noting that it did not save her  
15 the stress of expecting to have to testify at trial.

16 Both counsel acknowledge that a jail term is  
17 appropriate in this case. It has not been suggested to  
18 me that there is any other suitable option. I am aware  
19 that as happens in many of these cases, Mr. Lafferty's  
20 family will no doubt suffer by his being incarcerated,  
21 especially in light of the difficulties that have come  
22 about with the infant.

23 Mr. Lafferty is the one who will have to bear  
24 the responsibility and blame for that. I can only  
25 suggest, Mr. Lafferty, that in the future when you are  
26 drinking, or even when you are not drinking, and you  
27 are about to do something that is likely to result in

1           your being incarcerated, that you think of your family;  
2           not just the effect on them in terms of your being  
3           removed from the family, but also think what kind of  
4           example you are setting for your children by engaging  
5           in this kind of behavior. I am sure you do not want  
6           your children to grow up doing the same kind of thing  
7           and spending big chunks of their lives in jail.

8                     My task is to do what is required for the  
9           protection of the public and the safety of society. I  
10          have looked at the cases that were cited by defence  
11          counsel, all of the sentences in those cases of course  
12          have to be viewed as resulting from a blend of the  
13          particular circumstances of those cases and those  
14          individuals, and as Mr. von Kursell acknowledged, there  
15          is no case on all fours with this one.

16                    I have referred to the factors that in my view  
17          are important in this case. Stand up please,  
18          Mr. Lafferty. Having taken into account all of the  
19          circumstances, I sentence you to a term of  
20          incarceration of four years. There will be no victim  
21          of crime surcharge.

22                    I have not heard any submissions on the question  
23          of a firearm prohibition order. I do not know counsel  
24          whether you want to make submissions.

25          MR. VON KURSELL:            I defer to my friend, My Lady.

26          THE COURT:                 Well, let me ask you this:

27                    Essentially it follows, and unless Mr. Lafferty falls

1           within the categories that provide that there not be  
2           such an order, there would in fact be an order.

3           MR. SCRIVENS:                   That is correct.

4           MR. VON KURSELL:                Yes, My Lady. Mr. Lafferty, I  
5           understand, when he's in his off season does hunt  
6           regularly with his wife and by himself, and that's  
7           stemming from his involvement during the six years he  
8           spent in the bush. This is a means by which he  
9           augments the family's sustenance when he not employed  
10          in his off seasons.

11          THE COURT:                    You can have a seat,  
12          Mr. Lafferty. Does the Crown have anything?

13          MR. SCRIVENS:                I have no comment and no position  
14          with respect to it. Section 113 governs this now, and  
15          it provides an option for delegation of the  
16          responsibility in a sense to the chief firearms officer  
17          to decide under what terms, if any, it's appropriate  
18          for an individual to have access to firearms who is  
19          subject to a prohibition order.

20          MR. VON KURSELL:            And we seek that relief, My Lady.

21          THE COURT:                    All right. The order I will make  
22          then is that there will be a firearm prohibition order  
23          that commences today in the usual terms and expires ten  
24          years from Mr. Lafferty's release from imprisonment.  
25          That order is subject to Section 113 of the Criminal  
26          Code. In other words, the application referred to  
27          under Section 113 may be made by Mr. Lafferty, and I

1 make that order in consideration of what has been  
2 indicated to me about his personal circumstances and in  
3 consideration of the fact that there was no firearm  
4 involved in the commission of the offence.

5 Now is there anything further, counsel, that I  
6 should deal with?

7 MR. VON KURSELL: My Lady, I'm unsure, there wasn't  
8 an indication as to location of the sentence. Am I to  
9 understand that in the absence that it falls to the  
10 federal system?

11 THE COURT: Yes. Actually, Mr. von Kursell, I  
12 have no difficulty with that. All I can do of course  
13 is make a recommendation, I cannot order where he  
14 serves his sentence. But I will ask the clerk or  
15 direct the clerk to endorse the warrant to recommend  
16 that he be permitted to serve his time in the Northwest  
17 Territories, and just for the record the reason why I  
18 do that in this case is because of the family  
19 situation.

20 MR. VON KURSELL: Thank you, My Lady.

21 MR. SCRIVENS: Nothing further.

22 THE COURT: All right, thank you.

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25 Certified Pursuant to Practice Direction #20  
26 dated December 28, 1987

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Joel Bowker  
Court Reporter