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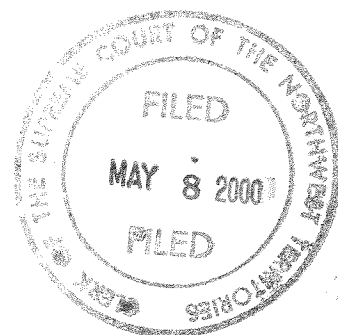
IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- and -

KEITH WIDOW



Transcript of the Reasons for Sentence delivered by The Honourable Justice V.A. Schuler, sitting in Yellowknife, in the Northwest Territories, on the 4th day of May, A.D. 2000.

APPEARANCES:

Mr. M. Scrivens:	Counsel for the Crown
Mr. A. von Kursell:	Counsel for the Defence

1 THE COURT: Counsel, ready to proceed?

2 MR. SCRIVENS: Yes, My Lady.

3 MR. VON KURSELL: Yes, My Lady.

4 THE COURT: Mr. Widow, before I sentence you,
5 is there anything that you would like to say? If so,
6 please stand.

7 THE ACCUSED: In the first place, I'd like to
8 thank you, Your Honour, to let me speak on behalf of
9 myself.

10 THE COURT: I'm sorry, I just didn't hear
11 what you said.

12 THE ACCUSED: First of all, I'd like to thank
13 you for letting me speak on behalf of myself.

14 THE COURT: All right.

15 THE ACCUSED: Now to this day since I've been
16 in remand, I've been finding everything really hard
17 and taking it so much. And I put myself in a really
18 bad position where it has taken me from my family,
19 which I regret. I've got two beautiful girls and a
20 wife.

21 I stopped drinking for a number of years, quit
22 doing drugs in 1994, and I tried to refrain away from
23 -- attaining new friends, staying away from bars, and
24 hanging out with decent people. On weekends I spend
25 my time at the Salvation Army.

26 I'm deeply sorry for the Tsetso family and Miss
27 Angela Tsetso for what I put them through. And I'd

1 like to thank all my support - Father Pochat, Chris
2 Anderson - for come to the court and supporting me.
3 That's all I have to say. Thank you.

4 THE COURT: All right. Thank you.

5 MR. VON KURSELL: Does Your Ladyship wish that the
6 defendant stay standing while the sentence is being --

7 THE COURT: No, that's fine. He can sit
8 down. That's fine. Thank you.

9 First of all, I would like to thank counsel for
10 their submissions and the materials that were
11 provided.

12 Keith Widow has been convicted by a jury of
13 sexual assault. From the verdict, I conclude that the
14 jury accepted as fact that Mr. Widow had sexual
15 intercourse with the victim after she had fallen
16 asleep on his bed.

17 The circumstances of this offence are not
18 particularly unusual, unfortunately, in that they
19 involve an accused taking sexual advantage of a
20 sleeping victim. The one difference from many of the
21 cases that I see in this court which involve sleeping
22 victims is that in this case the victim fell asleep on
23 Mr. Widow's bed. She had used his washroom and was
24 sitting on the bed, chatting with Mr. Widow who was
25 already lying down on it, and her friend Miss Lafferty
26 was lying on the floor. At some point they all fell
27 asleep. So in that sense, the case is not like those

1 that I see more often where the accused breaks into
2 the victim's house or comes uninvited into her
3 bedroom. However, that does not excuse what Mr. Widow
4 did. He still violated the sexual privacy and
5 integrity of the victim and it is still a serious
6 offence.

7 Mr. Widow, on his own evidence, had not been
8 drinking that night. He took advantage of the
9 vulnerable, sleeping victim, a teenager some ten years
10 younger than he. Her Victim Impact Statement has been
11 filed with the Court, and in it she speaks of the fear
12 she went through after the offence and her consequent
13 inability to sleep, as well as the trauma of having to
14 testify in court.

15 Mr. Widow is now 29 years old and lives in Rae
16 with his common-law wife of two years and her two
17 children. He has a Grade 10 education. He is
18 obviously an ambitious and hard-working individual in
19 that he completed the Air Tindi flight school and also
20 obtained a commercial helicopter licence. He has been
21 employed mainly as a fire fighter over the last ten
22 years in positions of increasing authority and
23 responsibility. He has certification from Renewable
24 Resources as a fire boss.

25 He grew up the community of Tulita and has spent
26 a lot of time on the land. The letter from this
27 common-law wife, Miss Steinwand, says that he is a

1 great provider for his family in hunting caribou and
2 other game. That letter and the others, which have
3 been marked collectively as Exhibit S1, portray
4 Mr. Widow as a hard-working individual with goals in
5 life. It is said that he is a person who exercises
6 self-discipline with respect to alcohol consumption,
7 and it would appear that he is disciplined as well in
8 other areas of his life.

9 I take all of this into account as well as the
10 fact that Mr. Widow has no criminal record. It does
11 seem that the offence of which he has been convicted
12 is out of character for him.

13 Mr. Widow exercised his right to a trial, and he
14 is not to be treated more harshly because of that.

15 Both counsel have commented about the
16 significance of the Agreed Statement of Facts in this
17 case so I will deal with that. The agreed fact was
18 that Mr. Widow did have intercourse with the victim.
19 Had he not formally admitted that, the Crown would
20 have called DNA and other evidence to prove the fact
21 of intercourse since the complainant did not know what
22 had happened because she was asleep. So the admission
23 did save the Crown from calling those other witnesses
24 and save the DNA expert and others from the
25 inconvenience of coming to Fort Simpson to testify. I
26 agree that that is something in Mr. Widow's favour and
27 that it is not lessened by anything that he tried to

1 make of the admission with the jury. However, DNA
2 experts and other such professional witnesses are not
3 usually expected to be traumatized or upset by having
4 to testify. So saving them from having to testify,
5 while it does carry some weight, does not carry the
6 weight that it does when the complainant in a sexual
7 assault case is saved the trauma of testifying.

8 I have reviewed the cases submitted by defence
9 counsel and also the recent cases of Proulx, L.F.W.,
10 R.N.S. and R.A.R. from the Supreme Court of Canada on
11 the issue of what the sentence should be for this type
12 of offence and whether a conditional sentence might be
13 appropriate. Because of all the circumstances, I have
14 given the question of the sentence very serious
15 consideration.

16 A sentence can be made conditional, that is
17 ordered to be served in the community, only if it is a
18 sentence of imprisonment of less than two years and if
19 I am satisfied that serving the sentence in the
20 community would not endanger the safety of the
21 community and would be consistent with the fundamental
22 purpose and principles of sentencing. There is no
23 evidence that Mr. Widow is a danger to the community,
24 nothing based on his past or recent behaviour. For
25 many years in this jurisdiction for this type of
26 offence - that is, sexual assault where there is
27 intercourse and no violence beyond the physical force

1 inherent in the act and where the offender does not
2 have a prior record for sexual assault - the sentences
3 imposed have been generally around the three-year
4 mark. That is, three years in jail. Sometimes the
5 sentences have been somewhat less depending on the
6 circumstances of the case. However, this Court has
7 always treated the offence of sexual assault as being
8 very serious and requiring a sanction or punishment
9 that is significant enough so as to act as a deterrent
10 to others and to denounce, to show society and the
11 community disapproval of this type of crime.

12 As I said, I have reviewed the cases submitted by
13 defence counsel. Some, such as the Rabesca and Klugie
14 cases, did not involve full intercourse. In others,
15 such as L.R. and T.G., there were guilty pleas as
16 mitigating factors. In Horesay, the circumstances
17 were quite different. The point is that each case
18 must be decided on its own facts.

19 In Proulx, the Supreme Court of Canada has made
20 it clear that there is no presumption either for or
21 against a conditional sentence, but that a conditional
22 sentence should be considered in all cases where the
23 prerequisites are satisfied; and as I understand the
24 judgment in Proulx, although the Court acknowledged
25 that a conditional sentence can provide a significant
26 level of denunciation and deterrence, where those
27 objectives are particularly pressing, incarceration

1 will generally be the preferable sanction.

2 The elements in Proulx which are said to favour a
3 conditional sentence - those being remorse, the
4 willingness to make reparation and take responsibility
5 for what happened - may be more noticeable or more
6 prevalent where there is a guilty plea. In this case,
7 Mr. Widow, when asked to speak, did indicate an
8 apology for the victim and her family. However, apart
9 from that, I am not sure that in this case there is an
10 indication of remorse, the willingness to make
11 reparation and take responsibility to an extent that
12 would make those considerations more significant than
13 others.

14 On the one hand, Mr. Widow is a person of
15 otherwise good character. On the other, this was a
16 serious offence and one which is far too prevalent in
17 our community of the Northwest Territories. I have
18 concluded that while I should give Mr. Widow some
19 credit for his background and the good things that he
20 has done in his life, the gravity of the offence, the
21 moral blameworthiness and that he was sober and took
22 advantage of the victim who had come into his house to
23 use the washroom and then fell asleep, and the need
24 for denunciation and deterrence make both a sentence
25 of less than two years and a conditional sentence
26 unsuitable.

27 Please stand up, Mr. Widow.

1 Mr. Widow, it gives me no pleasure to send you to
2 jail, but I know, also, from what I see in this court,
3 that a strong message has to be sent to people who
4 would engage in this type of behaviour because the
5 message hasn't gotten through so far. The sentence I
6 impose on you, Mr. Widow, is two and a half years in
7 jail.

8 Under Section 109 of the Criminal Code, there
9 will be a prohibition order against your possession of
10 firearms, ammunition, and the other items referred to
11 in that section for a period of time that begins today
12 and expires ten years from your release from
13 imprisonment. You will have 14 days to surrender any
14 such items to the R.C.M.P.

15 Relying on what is set out in your wife's letter
16 and also in consideration of the fact that you have no
17 record and there was no weapon involved in this
18 offence, and considering, as I said, your wife's
19 letter and the fact that you may need a firearm for
20 purposes of your employment and also that you do use
21 it to sustain your family, I order that pursuant to
22 Section 113(1) of the Criminal Code, the Chief
23 Firearms Officer or Registrar is authorized to issue
24 to you a licence or registration certificate for
25 sustenance or employment purposes; and the victim of
26 crime surcharge is waived.

27 Is there anything else I need to deal with,

1 Counsel?

2 MR. VON KURSELL: Would Your Ladyship be prepared
3 to entertain a recommendation for service of the
4 incarceration to be in the Territories?

5 THE COURT: Yes, I have no difficulty with
6 making that recommendation. The warrant will be
7 endorsed with the recommendation that Mr. Widow be
8 permitted to serve his time in the Northwest
9 Territories.

10 That's up to the correctional authorities,
11 Mr. Widow. I can't order them to let you serve your
12 time here. I don't have that power. But the
13 recommendation is there that they consider that.

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

15 THE COURT: Is there anything further?

16 MR. VON KURSELL: No, My Lady.


17 MR. SCRIVENS: No, My Lady.

18 THE COURT: Thank you very much, Counsel.

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Certified Pursuant to Rule 723
of the Rules of Court



Jane Romanowich, CSR(A)
Court Reporter