



1 THE COURT: William Paul Nitsiza has been found
2 guilty by a jury yesterday of sexual assault.

3 The circumstances that were put before the jury
4 were that in February or March of 1988 over the period
5 of approximately a week or more, he had vaginal and
6 anal intercourse with the then eight-year-old
7 complainant, the niece of his then common-law spouse.
8 The victim testified that this happened when he was
9 babysitting her or she was staying at the home of her
10 aunt and him while her mother was out of town. In
11 those circumstances, in my view, a serious breach of
12 trust is involved. People who are entrusted with the
13 care of children or who agree to look after them or
14 who let them stay in their homes are making a
15 commitment to the child, to the child's parent and to
16 the community that they will keep the child safe from
17 harm and not abuse the child. Mr. Nitsiza breached
18 that commitment, and that is an aggravating
19 circumstance.

20 Also aggravating is the fact that he abused the
21 victim more than once. There was a conflict in the
22 evidence as between the victim and her mother as to
23 the exact time period over which the abuse likely took
24 place, and the number of incidents were not clear.
25 But I am satisfied on the evidence of the victim that
26 the incidents occurred a number of times, in other
27 words, more than once. That is an aggravating

1 feature, as well as is the fact that she was only
2 eight years old.

3 These events obviously had a traumatic and
4 serious effect on the victim which persists to the
5 present time, as set out in her victim impact
6 statement. It was also clear when she was testifying
7 that she is troubled by these events. She indicated
8 in her victim impact statement that she has trouble
9 with trust and that she has no self-esteem. It is
10 very sad to say that those are feelings that I have
11 heard about over and over again from victims of
12 childhood sexual abuse. Obviously, the effects on
13 victims of this abuse are profound although each
14 victim also suffers in their own way.

15 Mr. Nitsiza is a 40-year-old aboriginal man who
16 is in a common-law relationship at this time, not with
17 the aunt of the victim anymore. He lives in the
18 community of Wha'Ti where his elderly parents and
19 eight of his brothers and sisters also live. The
20 letter from his sister, which was marked Exhibit S-2,
21 and the evidence from Chief Nitsiza indicate that he
22 is considered a helpful member of the community,
23 helpful to his parents, elders and others. I
24 understand from what Chief Nitsiza said that there is
25 no community feeling against William Nitsiza or
26 concern about him.

27 I must also take into account Mr. Nitsiza's

1 record. At the time he committed these sexual
2 assaults in the present case, he did not have any
3 criminal record. However, subsequently, as set out in
4 Exhibit S-1, he was convicted in 1989 of sexual
5 assault and received a 20-month sentence which, I am
6 told, was a sexual assault on a babysitter, a teenage
7 babysitter. He was also convicted in 1992 of sexual
8 assault and received a sentence of four months' jail
9 and probation for a year. He was convicted in 1991 of
10 common assault for which he received a fine and
11 probation, and he was convicted in 1994 of obstructing
12 a peace officer for which he received a fine. There
13 are convictions in 1999 for breach of recognizance.

14 Sometimes a person is convicted of a crime they
15 committed long ago but since committing the crime they
16 have lived what we can call a completely clean life.
17 Mr. Nitsiza has not done that. He has continued to
18 get into trouble, particularly continued to commit
19 sexual assault. Having said that, I do take into
20 account that the last such offence was in 1992. But I
21 also have to consider that as recently as 1999 he
22 committed offences, in other words, the two breaches
23 of recognizance.

24 In my view, where it has been a long time since
25 the offence was committed, the court should be careful
26 of putting too much emphasis on that fact. I say this
27 specifically with respect to cases of child sexual

1 abuse. People who abuse children often count on the
2 child to remain silent, and just as the victim in this
3 case said in her evidence, a child is likely to be
4 embarrassed or scared and not say anything for a long
5 time. I think the court has to be careful about the
6 sentence imposed in such cases in not making it appear
7 that the longer the victim is silent, the more lenient
8 the sentence will be because of the passage of time.

9 I do take account of the fact that Mr. Nitsiza is
10 an aboriginal person, and that is a factor referred to
11 in the *Criminal Code*. I do note that in this
12 particular case there is no evidence of unique
13 systemic or background factors that may have played a
14 part in bringing Mr. Nitsiza before the court. I
15 acknowledge that the courts have been directed by the
16 Supreme Court of Canada to take serious consideration
17 of restorative justice initiatives.

18 I have considered what Chief Nitsiza has said
19 about what the community of Wha'Ti could offer or make
20 available as such an initiative in this case.
21 However, I do not see a specific plan or structure
22 that might adequately address this case.

23 Sexual abuse of children is a huge problem not
24 just in the Northwest Territories but all over. It is
25 a problem in aboriginal communities and it is a
26 problem in non-aboriginal communities. Sentencing for
27 this type of offence has to be aimed at deterring and

1 discouraging others who would commit this kind of
2 offence. It must also show how society condemns this
3 behaviour.

4 In this case specific deterrence may still be an
5 issue. With Mr. Nitsiza's record, I cannot say with
6 confidence that it is not an issue.

7 I note that this is not a case where the offender
8 shows remorse. That mitigating factor which was
9 present in some cases referred to (such as the *Horne*
10 case) is not present here. Mr. Nitsiza denies the
11 offence. I do not treat that as an aggravating
12 factor. Nor do I treat as aggravating his not guilty
13 plea; but it is not mitigating. Nor can his
14 protestation of innocence affect the sentence because
15 the jury has found him guilty of the offence.

16 For an offence like this (sexual abuse on more
17 than one occasion of a young child by a person who is
18 in the position of a caretaker of the child) the usual
19 range of sentence would be in the area of four to six
20 years. Parliament has indicated how seriously this
21 offence should be treated by having made the
22 punishment for the offence, as it was in 1988, a
23 maximum punishment of ten years available; in other
24 words, that was the longest term of incarceration that
25 could be imposed for that offence.

26 I have taken into account in this case the remand
27 time which was four months and ten days, and that

1 would be equivalent approximately to nine months,
2 using the factor described and approved in the *Wust*
3 case from the Supreme Court of Canada.

4 I also take into account in this case
5 Mr. Nitsiza's health situation. I was told by counsel
6 in his submissions that Mr. Nitsiza was diagnosed with
7 cancer in 1991, that he has had several surgeries as a
8 result, three of which were in the last three years,
9 and also that he is on medication. That is something
10 that I should consider carefully in the circumstances.
11 I do not think that it can completely govern the
12 sentence that I impose, but it is a somewhat unique
13 circumstance that I bear in mind. I bear in mind that
14 the consequences of incarceration in that situation
15 may be more harsh as a result.

16 Mr. Boyd has made a very thorough and
17 thought-provoking presentation in asking for a
18 conditional sentence. A conditional sentence is only
19 available if the sentence imposed is less than two
20 years. I have given considerable thought to that, but
21 in light of the sentence that I am going to impose a
22 conditional sentence is not available. I should say
23 that had I considered a conditional sentence, in other
24 words, had the sentence I am going to impose been
25 within the range that I could consider a conditional
26 sentence, the breaches of recognizance would have
27 caused me considerable concern about the propriety of

1 such a sentence.

2 Stand up, please, Mr. Nitsiza.

3 Mr. Nitsiza, in all the circumstances, the
4 sentence I impose on you is one of three years in
5 jail. I will direct the clerk to endorse the warrant
6 with a recommendation that you be able to serve that
7 sentence in Yellowknife. I do that because of your
8 medical situation and also so that you can be closer
9 to your family.

10 In the circumstances, not having heard any
11 submission that would suggest otherwise, there will be
12 a firearm prohibition order. I am not sure whether it
13 should be under Section 109 in light of the fact that
14 the offence occurred in 1988.

15 MS. KENDALL: I think you're right, I think it
16 should be Section 100.

17 THE COURT: It will be Section 100. And was
18 that five years under Section 100?

19 MS. KENDALL: Yes, My Lady.

20 THE COURT: All right. There will be an order
21 prohibiting you from the possession of firearms
22 explosives and ammunition for a period which starts
23 today and which finishes five years from your release
24 from imprisonment.

25 Can that order be made to surrender any such
26 items to the police forthwith?

27 MR. BOYD: Yes, My Lady. Mr. Nitsiza says he

1 has no firearms of his own.

2 THE COURT: All right. The order, then, will be
3 to surrender any such items to the RCMP forthwith.

4 I have looked at the DNA order. In the
5 circumstances, considering the offence and considering
6 the record, I think it is appropriate. I am satisfied
7 that it is in the best interests of the administration
8 of justice that the order be made and I will therefore
9 make it in the form submitted.

10 Now, I am not sure you mentioned a date in the
11 order.

12 MS. KENDALL: It's in the Appendix A. Tuesday
13 October 3rd.

14 THE COURT: All right, that's fine then. The
15 order with the appendix can issue.

16 You can sit down Mr. Nitsiza. Thank you.

17 Is there anything further, counsel, that I should
18 address?

19 MS. KENDALL: The victims of crime surcharge, My
20 Lady.

21 THE COURT: Yes, that will be waived in the
22 circumstances.

23 THE COURT CLERK: My Lady, the victim impact
24 statement, is that to be entered as an exhibit?

25 THE COURT: I guess we should mark it as an
26 exhibit.

27 MS. KENDALL: I think that would be appropriate.

1 THE COURT: We'll make that S-3.
2 THE COURT CLERK: Thank you.
3 THE COURT: Is there anything further?
4 MR. BOYD: Not from defence.
5 MS. KENDALL: Not from the Crown, My Lady.
6 THE COURT: Thank you very much counsel for your
7 submissions and your conduct of the case.

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11 Certified pursuant to Practice
12 Direction #20 dated December 18,
13 1987.

14 *Annette Wright*

15 _____
16 Annette Wright, RPR, CSR(A)
17 Court Reporter
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