

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

RICKY KIKOAK



Transcript of the Oral Reasons for Sentence by the Honourable Justice J. Z. Vertes, sitting in Tuktoyaktuk, in the Northwest Territories, on the 14th day of March, A.D., 2001.

APPEARANCES:

Mr. B. Lepage:	Counsel for the Crown
Mr. J. MacFarlane:	Counsel for the Defence

1 THE COURT: The accused, Ricky Kikoak, has
2 been convicted by a jury on a charge of sexual
3 assault.

4 The victim was an eight-year-old girl to whom the
5 accused was in a position of trust at the time of the
6 assault. The accused and his wife had been asked by
7 the victim's mother to act as surrogate parents to the
8 victim and her siblings for awhile last year. This
9 assault occurred sometime in the early part of last
10 year in the accused's home which at the time was the
11 victim's home as well. Thus he was in a position of
12 trust, a highly serious aggravating feature of this
13 case.

14 The victim, now nine years old, testified that
15 one time she was alone with the accused in the main
16 bedroom of the house. He removed her clothes, he
17 removed his clothes, he lay on top of her on the bed,
18 and his penis touched her vagina. After he stopped he
19 dressed her and she went out. She said nothing to the
20 accused's wife about what happened. Sometime later
21 she disclosed this incident to her mother who promptly
22 called the police. There was no evidence of physical
23 injury to the victim.

24 The sexual violation of a child by an adult is a
25 particularly serious crime. The safekeeping of
26 children is the responsibility of every adult in the
27 community. When that responsibility is broken,

1 especially by someone standing in the position of a
2 parent, then the entire community suffers. That is
3 why in cases such as this general deterrence and
4 denunciation are the primary considerations and other
5 principles are generally not as significant. This
6 type of case normally demands a significant period of
7 incarceration.

8 In this case counsel have presented me with two
9 widely divergent sentencing recommendations. On the
10 one hand, Crown counsel suggests a sentence of five
11 years imprisonment. He submits that I should regard
12 this as a case of sexual intercourse and that, coupled
13 with the victim's young age and the accused's breach
14 of trust, warrants such a severe sentence. On the
15 other hand, defence counsel suggests a conditional
16 sentence of under two years which can be served in the
17 community. Defence counsel supports this by noting
18 the restrictions that can be placed on the accused and
19 the fact that the evidence, in this case, does not
20 reveal what he calls a "major sexual assault."

21 The term "major sexual assault," as I understand
22 it, has never been one defined necessarily by the type
23 of assault, in particular, by penile penetration. The
24 term has always been used to describe a category of
25 assaults which involve a significant degree of
26 violation of the victim's physical and sexual
27 integrity. These are usually assaults found at the

1 serious end of the assault scale; namely, rape,
2 attempted rape, buggery, fellatio, and the like. But
3 it is not dependent on penetration.

4 In this case I have no hesitation in labelling
5 this offence as a "major sexual assault." I cannot,
6 however, assume intercourse. The evidence did not go
7 that far. The victim said that the accused's penis
8 touched her vagina and her vagina hurt. But there was
9 no medical evidence of physical trauma even though the
10 victim was apparently seen by a nurse. It may be
11 because of the delay in reporting but I cannot
12 consider this a case of intercourse. Attempted or
13 simulated intercourse certainly and that, combined
14 with the young age and the position of trust, makes
15 this a major sexual assault.

16 The accused is 42 years old. He has been in a
17 common-law relationship for over ten years. He has
18 worked all his adult life. He hunts and fishes to
19 help support his family. He has been described as a
20 quiet and caring man. Unfortunately, however, he also
21 has a related prior conviction. In 1986, he was
22 convicted of sexual assault on a 13-year-old girl and
23 sentenced to 18 months in jail. I recognize that the
24 conviction is quite dated but it is still significant
25 because of its relevance to the type of offence that
26 brings him to court now.

27 I must, of course, take into consideration the

1 fact that the accused is an aboriginal Canadian.
2 While that is a factor to consider, as I am directed
3 to do so by the *Criminal Code*, there were no
4 particular systemic or background factors brought to
5 my attention which may justify some different type of
6 sentencing approach. There were certainly no
7 particular cultural factors in this case. Indeed, the
8 accused was convicted by a jury of his people and his
9 community. In a case such as this where deterrence
10 and denunciation are the primary factors in
11 sentencing, there is no justification for any sentence
12 other than like one that any other offender in this
13 country would receive for this type of offence.

14 I also note that, but for his supportive family,
15 there are few mitigating circumstances here. The
16 accused denied his guilt and the jury obviously
17 rejected his denial. But he had a right to a trial.
18 I do not hold that against him. It is just that he
19 loses what would otherwise be the significant
20 mitigating effect of a guilty plea.

21 Considering all of these factors I have concluded
22 that a significant prison sentence is warranted.
23 Stand up, Mr. Kikoak.

24 Mr. Kikoak, you have chosen not to say anything
25 and you need not say anything, but a jury having found
26 you guilty, I can only say that you have been
27 convicted of a very despicable offence, and I simply

1 hope that when you serve your sentence and return to
2 your community and return to your family you can be a
3 far better role model for the children of this
4 community. I sentence you to serve a period of three
5 years imprisonment. You may sit down.

6 I am going to ask the clerk, counsel, to endorse
7 the warrant of committal with the recommendation that
8 Mr. Kikoak serve his sentence in a Northern facility
9 so that he can at least remain closer to his family,
10 and that he be considered for any available
11 counselling programs, if he wishes to take them.

12 And there will be in addition an order going in
13 the usual terms requiring him to provide a DNA sample.
14 And Mr. Lepage, you can draw up the formal order and
15 have it reviewed by Mr. MacFarlane for form and
16 contents.

17 I must, by terms of the *Criminal Code*, impose a
18 firearm prohibition order. As I understand the
19 *Criminal Code*, for this type of offence there is a
20 mandatory prohibition period of ten years prohibiting
21 the accused from having in his possession any firearms
22 or ammunition. Section 113 of the *Criminal Code*
23 enables me, however, to authorize the chief firearms
24 officer to consider issuing an authorization or a
25 certificate for the accused to possess firearms or use
26 firearms for the purposes of hunting or trapping or
27 for employment or other subsistence activity. As I

1 read that section, it is not up to me to exempt the
2 accused from a firearm prohibition order but simply to
3 authorize the otherwise competent authorities who are
4 directed with the responsibility of issuing firearms
5 certificates to consider issuing this man a firearms
6 certificate notwithstanding my prohibition order.

7 Since he comes from this community, more or less
8 raised in this community, in this region, and since I
9 assume he will be returning here after his period of
10 incarceration has been completed, and recognizing the
11 importance of traditional activities to the people of
12 this region, I think it would be appropriate to
13 authorize the chief firearms officer to issue this man
14 a certificate to possess or use firearms for these
15 traditional purposes, and by that I include hunting,
16 fishing, trapping, and other subsistence activities.

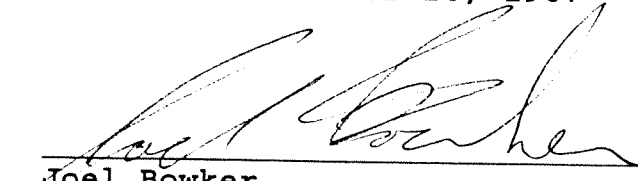
17 So the prohibition order will issue as
18 mandatorily required by the *Criminal Code*; however, I
19 make the order pursuant to Subsection 1 of Section 113
20 authorizing the chief firearms officer to issue this
21 man a certificate notwithstanding the prohibition
22 order. I hope that provision is clear, counsel.

23 Under the circumstances there will be no victim
24 of crime fine surcharge. Is there anything else we
25 need to deal with?

26 MR. LEPAGE: No, Your Honour. I think that's
27 all, thank you.

1 THE COURT: Mr. MacFarlane?
2 MR. MACFARLANE: No, Your Honour.
3 THE COURT: All right. Then I want to thank
4 both of you for the way in which you handled this
5 case, a most difficult one. Thank you, gentlemen.

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8 Certified Pursuant to Practice Direction
9 #20 dated December 28, 1987

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12 Joel Bowker
13 Court Reporter
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