

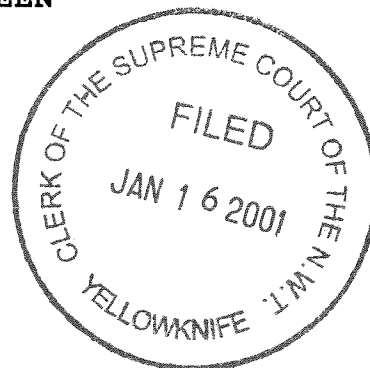
IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- and -

DEREK MICHEL



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 January, A.D. 2001.

APPEARANCES:

Ms. S. Kendall:

Counsel for the Crown

Mr. A. Mahar:

Counsel for the Defendant

1 THE COURT: Well, this is a joint submission
2 by Crown and defence, and in the circumstances, I
3 think it is a reasonable one.

4 The accused is 29 years old. The facts are that
5 he sexually assaulted his 17-year-old niece while she
6 was passed out. She was in a state of what appears to
7 have been extreme intoxication, and he also appears to
8 have been extremely intoxicated at the time.

9 There was a preliminary hearing at which the
10 niece testified, and I understand from what Crown
11 counsel has said that it has been a huge relief to her
12 that she has not had to testify again with respect to
13 this matter.

14 The guilty plea obviously is something that I
15 take into account notwithstanding that the niece did
16 have to testify at the preliminary inquiry. Obviously
17 it reflects remorse on the part of Mr. Michel, and as
18 Miss Kendall has specifically stated and as I am sure
19 is the case in virtually all of these cases, it is a
20 great saving of further trauma to the complainant that
21 she not have to yet again talk about these matters,
22 particularly in a courtroom.

23 There is, of course, the aggravating factor, and
24 I don't want to overlook it in any way, that this is a
25 breach of trust situation. Mr. Michel is the uncle of
26 this young girl, was in a position where he was
27 obligated to protect her, to show respect for her, to

1 treat her, obviously, with respect and with care, and
2 in doing what he did completely broke that trust
3 between niece and uncle. That in itself is something
4 that I think could very well justify a longer
5 sentence, but I do take into account that there is a
6 joint submission in this case, and, as I said, I don't
7 think that sentence suggested, that being two years,
8 is out of line. It is certainly within the range of
9 sentences for this type of offence and I am prepared
10 to accept it.

11 I take account of Mr. Michel's background.
12 Certainly the Charlene Catholique disappearance is
13 something that has been in the news from time to time,
14 and I can appreciate that it must be a very difficult
15 situation for him. But obviously he has to do
16 something about his alcohol problem. To me it is very
17 sad when alcohol and the ravages of alcohol result in
18 people having to serve lengthy jail terms. The
19 alcohol is not an excuse for what happened. It may
20 explain what happened, but Mr. Michel is taking
21 responsibility for doing what he did. But Mr. Michel,
22 if you have a severe alcohol problem, which it appears
23 that you do, the way to deal with it is to get some
24 help for it, and to me it is sad that it comes to the
25 point where to some extent you are simply relying on
26 the jail system to get you that help. I hope that you
27 will get help for it while you are in jail, but you

1 also have to see what you can do about it, because,
2 obviously, if you can't believe -- and I accept that
3 you can't believe that you actually did this to your
4 niece; but that just shows you what can happen when
5 you are in a state of intoxication. It seems to me
6 you have to come to grips with that somehow and you
7 have to decide what you are going to do about it to
8 make sure it does not happen again.

9 Would you stand up, please. I will also say for
10 the record that I consider the criminal record to be
11 unrelated, and in light of how dated it is, it does
12 not carry any great weight in this situation. I do,
13 as I say, accept the joint submission. I sentence you
14 to two years incarceration, Mr. Michel.

15 In light of your family circumstances, I will
16 make the recommendation that if it is deemed
17 appropriate and if you can get the appropriate alcohol
18 and other counselling here, that you serve your time
19 in the Northwest Territories, and I will also have the
20 clerk endorse the warrant that it is my recommendation
21 that you receive alcohol counselling as well as such
22 other counselling as the correctional authorities may
23 deem appropriate, and specifically what I am thinking
24 is some assistance in dealing with the issue about
25 Charlene Catholique. You can sit down now,
26 Mr. Michel.

27 There will be a ten-year firearm prohibition

1 order in the usual terms. It is to commence today and
2 it will continue for ten years following your release
3 from imprisonment. In light of what I have heard
4 about your usual activities and the need for a gun to
5 support yourself, I will order that, under Section 113
6 of the *Criminal Code*, you have leave to apply for
7 authorization to use firearms for sustenance and for
8 purposes of acting as a guide.

9 Now, is that wording sufficient, Counsel, do you
10 think, to cover Section 113?

11 MS. KENDALL: Yes, Ma'am.

12 MR. MAHAR: Yes.

13 THE COURT: All right.

14 THE COURT CLERK: The DNA order, Your Honour.

15 THE COURT: Yes, the DNA order I'll address
16 in a moment.

17 There will be an order that any such firearms be
18 surrendered to the RCMP forthwith on the understanding
19 that, in fact, there is not anything further to
20 surrender; but I think I have to make that provision.

21 The DNA order, I will just take a moment to look
22 at.

23 Now, Miss Kendall, in some of the orders I think
24 they've specified the dates --

25 MS. KENDALL: Yes.

26 THE COURT: -- on which the samples are to be
27 taken. I notice that is not specified in this order.

1 Is there any --

2 MS. KENDALL: Particular reason? Because I
3 knew that Constable McManus, who generally does the
4 orders, is away on holidays and I wasn't sure who
5 would be available. I see one of the officers here
6 today is certified to take DNA samples and so it will
7 be done today.

8 THE COURT: Is there any difficulty with the
9 order being worded the way it is?

10 MR. MAHAR: No.

11 THE COURT: That's fine then. I will make
12 that order as well. Now, is there anything further,
13 Counsel, I need to deal with?


14 MS. KENDALL: I assume that the victims of
15 crime surcharge is waived.

16 THE COURT: Yes, in the circumstances it will
17 be waived. Thank you very much, Counsel, for your
18 efforts in resolving this case.

19

20
21
22
23
24
25
26
27

Certified Pursuant to Rule 723
of the Rules of Court



Jane Romanowich, CSR(A)
Court Reporter