

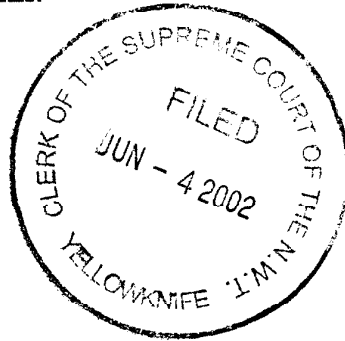
IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

ALBERT CASAWAY



Transcript of the Oral Reasons for Sentence of The
Honourable Justice V.A. Schuler, sitting in Yellowknife, in
the Northwest Territories, on the 8th day of May, A.D. 2002.

APPEARANCES:

Ms. B. Schmaltz:

Counsel for the Crown

Mr. J. Brydon:

Counsel for the Defence

1 THE COURT: All right. Well, I have to, I think,
2 start from the -- looking at this as a very serious
3 offence obviously.

4 The victim of the offence was 12 years old at
5 the time. She was a visitor in Mr. Casaway's home.
6 There is an aspect of breach of trust there. She was
7 there with his daughter, they were asking to stay the
8 night. So, in those circumstances, she is a guest in
9 the home, was entitled to feel that she would be
10 safe, that nothing would happen to her, and obviously
11 because of her young age and Mr. Casaway being the
12 adult who was there, she was in a vulnerable
13 situation.

14 The point that was raised by Mr. Brydon about
15 whether if deterrence is to be served in a case like
16 this, what one is really seeking to deter is
17 intoxication. I know this has been raised in other
18 cases and some people say that when a person gets so
19 intoxicated that they're out of control, there is
20 really no deterrence. But it seems to me that it
21 also has to be looked at from the point of view that
22 when a person realizes that when they drink to excess
23 they can do things that are very wrong, they can
24 commit crimes, that when they realize what the
25 penalty for that is, that that may, in fact, serve
26 the goal of deterrence. In other words, you can't
27 get so intoxicated that you're out of control and

1 then say, Well it wasn't really my fault because I
2 was out of control and it won't really help anyone
3 else or deter anyone else because when they're out of
4 control they're not going to be thinking about the
5 fact that they may go to jail.

6 Now, obviously the courts are limited in what
7 they can do to deal with the problem of people
8 drinking until they're out of control, until they do
9 things that they probably would never otherwise do,
10 but this is one way of dealing with it is to impose a
11 significant term of incarceration so that other
12 people know that that is not an excuse. It's not a
13 justification for what happened. It's not an excuse.
14 It doesn't somehow make the offence less serious.

15 I accept that there was no real planning with
16 respect to this offence and, as I said, and if I
17 didn't say it, obviously a conviction will be entered
18 on Count 2 in the indictment. It's not -- wasn't
19 clear from the evidence exactly how the sexual
20 assault started, but the important factor, in my
21 view, is that Mr. Casaway was 37 years old; as I said
22 this is his young daughter's young friend who is
23 staying over night, and even if she was so out of
24 control that she might have been doing things that
25 one might not expect of a 12-year-old, he, as the
26 adult, is obliged to stop the situation. And I say,
27 "if she was doing things," I'm not making a finding

1 that she was doing things, but he's the adult, he's
2 in control of the situation first of all, and he is
3 the one with the responsibility for stopping it.
4 That's one of the roles that adults have to play with
5 children is to make sure that they don't do things
6 that they might otherwise do whether because of their
7 young age or because they are intoxicated or because
8 they don't understand what the consequences are.

9 Neither counsel has referred really to the
10 guilty plea and obviously in this case the guilty
11 plea doesn't carry a lot of weight. The victim still
12 had to testify. The guilty plea only came at the
13 very end of the Crown's case, but I acknowledge it,
14 it is worth something obviously. It's an indication
15 that Mr. Casaway finally is taking responsibility for
16 what he did, so I do give some consideration to the
17 fact that he has pleaded guilty.

18 With respect to the remand time, as I understand
19 it from what counsel have said, there is somewhere
20 between four and five months of remand time, time
21 that he has spent in pretrial custody that is not
22 attributable to a sentence that was imposed on him.

23 Now, how that remand time is to be dealt with
24 obviously is within my discretion. I think that
25 there is a basis to differentiate between the
26 situation where a person is detained from day 1 on
27 arrest and can't make bail and is not released from

1 custody, and the situation where someone is released
2 and then ends up in custody because they have been
3 charged with breaching the terms of their release or
4 other offences which isn't the case in this case
5 other than the failing to appear.

6 In any event, I do give some credit to the
7 remand time, to the nonsentence remand time. I also
8 take into account Mr. Casaway's record. Some of it
9 is 20 years old; two of the offences on it or
10 convictions on it are 20 years old, and one is
11 approximately 11 years old, 11 or 12 years old. The
12 more recent ones all essentially result from the
13 process he was on as a result of this charge. But,
14 again, they're unrelated. There are no assaults,
15 there are no sexual offences of any kind on the
16 record so the record doesn't really affect, in my
17 view, the sentence that should be imposed and I have
18 to note obviously, as well, that the more recent
19 offences all occurred after the offence that I have
20 to sentence him for now.

21 I take into account that it does appear that he
22 has worked hard in the past to support his family. I
23 take it from what's been said that the family
24 situation, not only the separation from his wife but
25 also the circumstances, the involvement of Social
26 Services, has not been a very easy one. It is to his
27 credit that he has made efforts and he has taken on

1 the responsibility of supporting his children.

2 I have to agree with the Crown that the main
3 aggravating circumstances in this case is the age of
4 the complainant and she was obviously very young. 12
5 years old, in my view, is very young and the
6 circumstances of her actually being in the home also
7 aggravates the situation.

8 Stand up please, Mr. Casaway. Having given
9 consideration to all of the factors, the sentence I
10 am going to impose and I do impose on you is one of
11 three years in jail. I am going to have the warrant
12 endorsed with the recommendation that you be
13 permitted to serve your time in the Northwest
14 Territories.

15 I am obliged, because of the offence, to make a
16 firearm prohibition order, and I will make that order
17 in the usual terms. It will commence today and it
18 will expire ten years from your release from
19 imprisonment, but pursuant to Section 113 of the
20 Criminal Code, I also authorize the appropriate
21 firearm -- and I can't think of the name of the
22 position.

23 MR. BRYDON: It's the firearms officer.

24 THE COURT: Firearms officer to issue the
25 necessary certificates and other documentation to you
26 so that you may have the use of a firearm for
27 purposes of hunting for your family.

1 I'm also obliged to make a DNA order, do you
2 have a draft order, Ms. Schmaltz.

3 MS. SCHMALTZ: I do have a draft order, Your Honour,
4 I was just looking at it though and there is a
5 mistake in it. If I could provide the Court and my
6 friend -- I'll seek his consent on a draft order to
7 provide to the Court.

8 THE COURT: All right, that's fine. If there is a
9 problem you can always bring the matter back before
10 me, but otherwise I assume -- I'll assume that you
11 will submit it through the registry.

12 MS. SCHMALTZ: Yes.

13 THE COURT: All right. You can have a seat, Mr.
14 Casaway. The victim of crime surcharge will be
15 waived in the circumstances. Is there anything else
16 that I need to deal with?

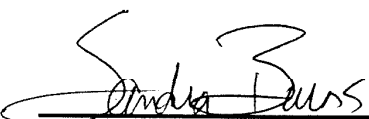
17 MS. SCHMALTZ: Nothing from the Crown.

18 MR. BRYDON: I know of nothing.

19 THE COURT: All right. All right, we'll close
20 court then.

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22 **Certified pursuant to Practice Direction #20**
23 **dated December 28, 1987.**

24 
25 **Sandra Burns R.P.R., C.R.R.**
26 **Court Reporter**

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