

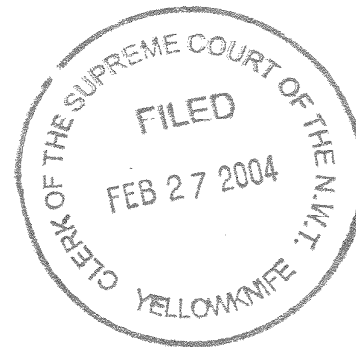
IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

JONOTHAN ELIAS



Transcript of the Oral Reasons for Sentence by The Honourable Justice R. P. Foisy, sitting in Tuktoyaktuk, in the Northwest Territories, on the 10th day of February, A.D., 2004.

APPEARANCES:

Mr. S. Niblock:

Counsel for the Crown

Mr. R. Gorin:

Counsel for the Defence

1 THE COURT: Jonothan, stand up. I am sure
2 that Mr. Gorin has told you that notwithstanding the
3 fact that this young girl consented, it is a consent
4 which was, I think, pretty slim, because she was in a
5 position where she could not really consent. There is
6 another thing. She was also under age. You did not
7 really do a lot to find out how old she was, although
8 your counsel tells me that you believe that she was 14
9 or 15, and I have no reason to reject that, but that
10 is not enough.

11 First of all, do not get yourself into that
12 situation; and secondly, when you are dealing with
13 young ladies you make sure of their age. That means
14 you have to make some inquiries. Even if you are just
15 going to go out and hold hands, you want to find out
16 how old she is.

17 Now, I am looking at your record, and it looks
18 worse than it is because you did go on what appears to
19 be three sprees, with the last one being in 1999, and
20 none of the offences relate to sexual misbehavior. So
21 in that sense it is an older record and it is not
22 related to this offence, so I take that into account.

23 Before conditional sentences were available in
24 the *Criminal Code*, which has not been that long ago,
25 you would have been going to jail for this. I am
26 going to go along with the joint submission of
27 counsel, because under the circumstances they could

1 well have recommended jail or they could well have
2 asked for a harsher sentence, and I would have said
3 that that was not unreasonable, but on the other hand
4 I have to apply a test, is the joint submission
5 reasonable or not? I think in this case it is.

6 But I want to tell you something about a
7 conditional sentence that maybe you already know. If
8 you breach, if you do not obey these conditions then,
9 since you are under a sentence, chances are you will
10 probably finish the rest of the sentence in jail. So
11 it is important that you not breach, it is important
12 to keep your nose clean. These conditions are not
13 going to be easy to meet. That is a year and a half,
14 18 months, with four months of house arrest.

15 I do not know how many courses, if there are
16 additional courses that are available to you in
17 Tuktoyaktuk, but if there is any course available
18 where you can better yourself, instead of sitting at
19 home watching television and sort of being bored with
20 life and not knowing what to do with yourself, you can
21 think of bettering yourself. Are your parents
22 traditional people, are they Inuvialuit?

23 THE ACCUSED: Yeah.

24 THE COURT: Do they go on the land sometimes
25 and hunt?

26 THE ACCUSED: (NO VERBAL RESPONSE).

27 THE COURT: Do you do any of this stuff?

1 THE ACCUSED: Not for a while.

2 THE COURT: So that makes you Inuvialuit, and
3 it would not hurt you if you learned a little bit
4 about the tradition of your people. If you decided to
5 take, I do not know, but is there a hunters and
6 trappers association here?

7 I am sure in this community there are traditional
8 things that can be done, there are courses available,
9 and there are organizations where if you want to learn
10 something other than sit around and play video games,
11 you can, and that is certainly one of the best ways to
12 start off your young life, find out and do things that
13 are related to your people. There are other courses
14 as well, just because you may not go back to school as
15 such, there are other courses where you can better
16 yourself.

17 All right. I am going to impose a conditional
18 sentence of 18 months. The statutory conditions will
19 be read to you by the clerk. You will report to the
20 supervisor here in Tuktoyaktuk within 48 hours, and
21 after that as the supervisor may direct. You will be
22 under house arrest for the first four months, and that
23 starts today.

24 You will not leave your parents' home or an area
25 15 yards from the home, unless; one, you are doing
26 part of the community service which I am going to
27 order, and that will be with the probation officer or

1 the supervisor's consent, or if you are taking school
2 or any other course approved by your probation
3 officer. Now, the only other time you will be allowed
4 to absent yourself from your parents' house in the
5 next four months is going to be if something important
6 comes up, important enough that your supervisor thinks
7 that you should do it. Then she will give you written
8 permission, and you will have to carry that written
9 permission with you. If you are found outside and
10 there is no written permission, you will be breached,
11 and off you go to Yellowknife.

12 There will be no contact with the victim, either
13 directly or indirectly. You will take such
14 counselling as may be directed by the supervisor. You
15 are going to perform 200 hours of community service as
16 directed by the probation officer or supervisor and to
17 his or her satisfaction. You will not have in your
18 possession any alcohol or nonprescription drugs, nor
19 you will not consume any during the 18-month period of
20 this sentence.

21 Have I omitted anything, gentlemen?

22 MR. NIBLOCK: I don't think so, Sir.

23 THE COURT: Yes?

24 MR. GORIN: Well, I think this will likely
25 get through. There is, and I am bound to point this
26 out, a DNA order.


27 MR. NIBLOCK: Yes.

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THE COURT: Yes, I will sign a DNA order, it is mandatory. Thank you, Mr. Gorin.

Well, Jonothan, this is your first serious offence in your young life, and I really hope it is your last one. I hope you do your time and you obey the conditions of the order and you finish it and give some serious thought to bettering yourself, becoming a better young man. All right.

Certified to be a true and accurate transcript, pursuant to Rules 723 and 724 of the Supreme Court Rules


Joel Bowker
Court Reporter