

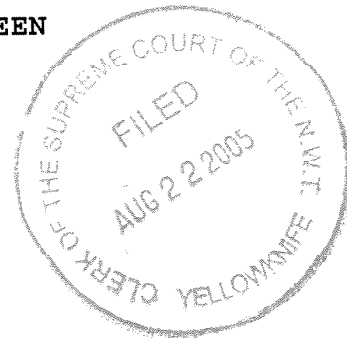
IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

RUSSELL MICHAEL SIKYEA



Transcript of the Oral Reasons for Sentence by The Honourable Justice V. A. Schuler, sitting in Hay River, in the Northwest Territories, on the 11th day of August, A.D., 2005.

APPEARANCES:

Mr. J. Burke:	Counsel for the Crown
Mr. L. Sebert:	Counsel for the Defence

1 THE COURT: I will now impose sentence on
2 Mr. Sikyea, who was found guilty yesterday by the jury
3 of sexual assault. What I am going to do in giving my
4 reasons is I will refer to the victim as "the victim"
5 rather than by name, simply so that her name is not
6 published, because these reasons obviously may be
7 published in the normal course. So I want her to
8 understand that that is why I am simply calling her
9 "the victim" rather than using her name.

10 The jury, obviously, was not satisfied beyond a
11 reasonable doubt that Mr. Sikyea broke and entered
12 into the victim's residence. I do not think anything
13 in particular turns on that. Obviously the jury was
14 satisfied beyond a reasonable doubt that Mr. Sikyea
15 did sexually assault her as she described.

16 Briefly, therefore, for purposes of these
17 reasons, the facts that were before the jury and that
18 the jury obviously accepted were that Mr. Sikyea
19 somehow came to be in the victim's home in Fort Smith.
20 There was no prior relationship and no connection
21 between them. He pulled her from her bed where she
22 was sleeping beside her boyfriend, got her on to the
23 floor, and had sexual intercourse with her as she was
24 waking up. She said in her evidence that he
25 penetrated her twice. She, as she was waking up,
26 realized that he was not her boyfriend, she jumped up,
27 she yelled at him, he ran away, and was found and

1 arrested not too long after that.

2 Constable Patterson testified that when he
3 arrived on the scene the victim was distraught, very
4 upset, and seemed somewhat traumatized. The victim
5 has, in this case, read her victim impact statement
6 here in court, and sadly it reflects the feelings
7 similar to what other victims of sexual assault
8 frequently tell the Court. She described a change
9 from being outgoing and relaxed before the sexual
10 assault, to afterwards being worried about being
11 attacked again, being afraid, and feeling unsafe in
12 her own home, having nightmares and not trusting
13 people.

14 And also what is sometimes overlooked or perhaps
15 just not noted in cases like this, a crime like this
16 affects others close to the victim as well; in this
17 case her boyfriend, who from what she said worries too
18 about whether they are safe in their home, and her
19 ten-year-old daughter, who worries about whether
20 something like this could happen to her. All of that,
21 of course, in turn has an affect on the victim
22 herself, causing more pain to her.

23 It has been noted over and over again that this
24 type of offence, sexual assault on a victim who is
25 sleeping or in some cases passed out, is very
26 prevalent in the Northwest Territories, perhaps more
27 so than elsewhere in Canada. I do not know whether

1 there are statistics that reflect on that, but I can
2 say that this type of sexual assault is probably the
3 kind that most frequently comes before this Court. In
4 this case, as it is in others, the sexual assault is a
5 gross violation of the victim's person, her privacy,
6 her sexual integrity.

7 Mr. Sikyea is a 22-year-old Aboriginal man. I am
8 told that his parents were alcoholics and that he was
9 raised in part by the state, which I take to mean the
10 child welfare authorities, and in part by his
11 grandparents in Fort Smith. He has a grade 9 or 10
12 education, but his counsel notes that he does not read
13 or write very well. He has worked over the years as a
14 carpenter and a firefighter.

15 Tammy Cumming, who was a witness at the trial,
16 was described as his spouse, and they have two
17 children together ages six and three, but from the
18 evidence at trial, it did not sound like a stable or
19 really a committed relationship, and as Mr. Sikyea's
20 counsel has noted, their future together is uncertain.

21 Mr. Sikyea has a criminal record beginning with
22 convictions in Youth Court in the year 2000. On the
23 face of it, the record does not seem all that
24 dissimilar to the records of many other young men who
25 come before this Court. However, the record is very
26 significant because of the facts underlying some of
27 the offences.

1 There are four instances where Mr. Sikyea got
2 into a home without permission, and in each case was
3 found in the bedroom, or the doorway of the bedroom,
4 of a sleeping woman or young girl. In one instance,
5 the mischief conviction in March of 2003, the
6 circumstances were similar to this offence in that the
7 victim was sleeping on a mattress on the floor with
8 her boyfriend on a couch nearby, and she awoke to find
9 Mr. Sikyea on the mattress beside her.

10 In none of those prior instances did Mr. Sikyea
11 sexually assault the victim, but of course, however,
12 that may have been only because she did wake up.
13 Clearly, however, it has to be of concern that
14 Mr. Sikyea has been so often found lurking and
15 watching around sleeping women.

16 Mr. Sikyea has received jail time for those past
17 offences. In January of 2004 he received a total of
18 nine months in jail for four offences, two of which
19 are among those I just described, in other words going
20 into women's bedrooms.

21 From his evidence at trial, Mr. Sikyea would have
22 been released from that sentence on July 5, 2004, and
23 then on July 10 he is right back doing the same thing,
24 but this time did commit a very serious sexual
25 assault. He went farther than he had gone before.

26 It is said that Mr. Sikyea has a problem with
27 alcohol and drugs, and clearly he was using alcohol

1 and drugs on this particular occasion. It seems to me
2 that if he has a problem with alcohol and drugs, he
3 should have learned by now that he commits crimes, and
4 in particular the type of crime I have described,
5 going into women's bedrooms, when he is under the
6 influence, and that he should not take alcohol or
7 drugs knowing that that is the type of behavior it
8 leads to.

9 In any event, in my view, alcohol and drugs
10 cannot be an excuse, obviously, for what happened on
11 this occasion, and I am not sure in the circumstances
12 that they can really be said to be an explanation. It
13 seems to me that this continued behavior indicates
14 something much more deep than just the use of alcohol
15 and drugs.

16 It is clear that Mr. Sikyea has not learned from
17 the previous convictions and sentences. That means
18 that deterring him, stopping him from doing this
19 again, has to be a priority. It has to be a priority
20 so that women in Fort Smith, or any other community
21 where he may live, are protected from Mr. Sikyea. I
22 note as well, in looking at Mr. Sikyea's record, that
23 it contains a number of breaches of undertakings,
24 probation, a conviction for failing to appear, two
25 convictions for escaping lawful custody, all of which
26 suggest that Mr. Sikyea has no regard for the court
27 process, for the rules that we all have to live by in

1 society.

2 Denunciation and deterrence, in other words
3 denunciation of this crime as something that society
4 rejects and looks down on, and deterrence of other
5 people in the hope that they will not commit similar
6 offences, have to be significant factors with sexual
7 assault, and it has been noted many times by the Court
8 that they are significant factors. But in my view,
9 looking at this case, perhaps the more significant
10 factor is protecting people, especially women, from
11 Mr. Sikyea.

12 I do take into account that he is Aboriginal, as
13 the *Criminal Code* says that I must, but no systemic
14 factors have been identified that would make that a
15 significant factor on sentence or explain why he is
16 here before the Court today. It seems to me that
17 Mr. Sikyea has a problem, and he needs to have that
18 problem dealt with very soon.

19 Mr. Sikyea is not to be punished or more harshly
20 treated for exercising his right to a jury trial. The
21 fact that he did that simply means that he does not
22 get the mitigation of a guilty plea. But I do note
23 that there is no indication of any remorse on his
24 part.

25 I take into account the ten months that
26 Mr. Sikyea has spent in pre-trial custody. Pre-trial
27 custody is frequently given double credit, as the

1 Supreme Court of Canada has said in the *Wust* case is
2 appropriate, so I will credit it that way.

3 A sentence in the three- to four-year range would
4 be appropriate for a first offender in a case like
5 this. Although Mr. Sikyea does not have a prior
6 sexual assault on his record, he does have a related
7 record, and for the reasons I have also referred to
8 that record is of great concern. Stand up please,
9 Mr. Sikyea.

10 In my view, in all the circumstances, a jail
11 sentence of five years is appropriate in this case. I
12 will credit the 20 months against that, which means
13 that the sentence I impose today is 40 months; in
14 other words, three years and four months.

15 Now, Mr. Sikyea, that is a long sentence. You
16 had better do a lot of thinking while you are serving
17 this sentence, because if you continue in this
18 behavior, going into women's homes, sexually
19 assaulting women, then I would not be surprised if the
20 Crown brought an application to have you declared a
21 dangerous offender or a long-term offender, and you
22 could be looking at spending the rest of your life in
23 jail. So if it has not somehow sunk in that you
24 cannot do this, it had better sink in now. I hope you
25 understand that and I hope you will do some thinking
26 about that. You can have a seat.

27 I understand that the correctional authorities do

1 generally keep Northern inmates here in the Northwest
2 Territories, even on a penitentiary sentence, but I
3 will nevertheless direct that the warrant be endorsed
4 with the recommendation that Mr. Sikyea be permitted
5 to serve his time in the Northwest Territories. I am
6 also going to direct that the warrant be endorsed with
7 a recommendation that a psychological assessment be
8 performed and that he be given access to counselling
9 as a sexual offender.

10 In the circumstances the victim surcharge will be
11 waived. There will be a firearm prohibition order,
12 which is mandatory in a case like this. It will
13 commence today and expire ten years from his release
14 from imprisonment. Does he need time to surrender any
15 firearms?

16 MR. SEBERT: No, he does not.

17 THE COURT: All right. The term will just be
18 that any such items be surrendered immediately to the
19 RCMP.

20 I have looked at the sections of the *Criminal*
21 *Code*, and I note that this is a designated offence.
22 So under Section 490.012 of the *Criminal Code*, I order
23 that Mr. Sikyea comply with the provisions of the
24 Sexual Offender Information Registration Act for a
25 period of 20 years. Now, have I overlooked anything?

26 MR. BURKE: Not in the Crown's view, Your
27 Honour.

1 MR. SEBERT: No, Your Honour.

2 THE COURT: All right. Thank you very much,
3 counsel, for your presentation of the case, and my
4 thanks to everyone involved with the court
5 proceedings. We will close court.

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8 Certified correct to the best
9 of my skill and ability.

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Joel Bowker, CSR(A)
Court Reporter

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