

R. V. Kakfwi, 2004 NWTSC 58

S-1-CR2004/000081

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

CANADA)

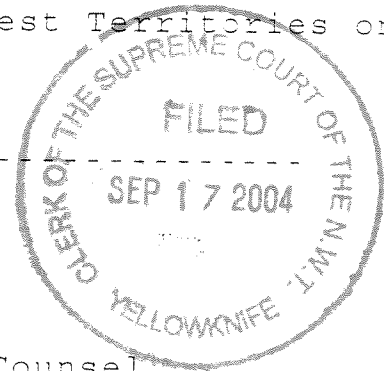
NORTHWEST TERRITORIES)

HER MAJESTY THE QUEEN

- and -

DARNELL NOEL KAKFWI

Transcript of Reasons for Sentencing held before
The Honourable Mr. Justice J.E. Richard sitting
at Fort Good Hope in the Northwest Territories on
August 31, 2004



APPEARANCES

C. Carrasco, Ms., Crown Counsel
R. Gorin, Esq., Defense Counsel
Cathy Gingras, Ms., Court Reporter

(Charged under Section 236(b) Criminal Code)

1 **THE COURT:** This morning it is the
2 Court's responsibility to impose an appropriate
3 sentence upon a 19-year-old member of this
4 community who, by his unlawful act, has taken the
5 life of another member of the community.

6 Firstly, I want to thank both counsel for
7 their helpful submissions on the matter of an
8 appropriate sentence and for referring me to some
9 other cases where a sentence was imposed by this
10 Court following a conviction for manslaughter.

11 To those members of the family of Jeffery
12 Kelly who are present, I want to express the
13 Court's sympathies and condolences on your tragic
14 loss. I have carefully read the Victim Impact
15 Statements that have been filed with the Court,
16 and it is clear to me that you are experiencing a
17 great deal of pain and suffering.

18 No sentence that the Court could impose this
19 morning can adequately reflect your personal loss
20 that you have suffered nor bring him back.
21 However, now that the Court process regarding
22 Jeffrey's tragic death is coming to an end and
23 that some of you have participated in that
24 process by describing the harm done to you and
25 the pain and the loss suffered by you, I
26 sincerely hope that your healing process can
27 commence.

1 Both the deceased, Jeffrey Kelly, and this
2 offender, Darnell Kakfwi, come from large,
3 well-known families in this community of Fort
4 Good Hope.

5 At the time of the commission of the offence
6 on December 28th of '03, Darnell Kakfwi was 18
7 years of age and Jeffery Kelly was 37 years of
8 age. Both were highly intoxicated and were
9 drinking in the early morning hours at the
10 residence of Beatrice Kakfwi. A drunken argument
11 developed, which led to a physical altercation
12 between the two, which led to Darnell Kakfwi
13 introducing a knife into the altercation.

14 The deceased received two stab wounds; one
15 to his forearm. The other, the fatal stab wound,
16 was to his chest; a stab wound which penetrated
17 Mr. Kelly's heart and which caused him to die
18 within minutes.

19 This type of drunken altercation with tragic
20 circumstances and tragic consequences is not
21 something new to this Court. Sadly -- sadly --
22 it has happened all too often in this small
23 jurisdiction, as indicated by counsels'
24 references to some other cases from other
25 communities.

26 Violent crime invariably associated with
27 excessive alcohol consumption has continued and

1 continued for many years in our communities. In
2 each of the last three or four years, the rate of
3 violent crime in this jurisdiction has been five
4 or six times the national average. It is clear,
5 then, that a meaningful deterrent sentence is
6 required in a case such as this one.

7 The Court can do little else but to impose a
8 significant sentence of imprisonment upon Mr.
9 Kakfwi; a sentence that reflects the gravity of
10 the crime he has committed and the degree of his
11 moral culpability for this crime.

12 But is there anything else that the
13 community can do?

14 Is there anything else that can be done here
15 in the community of Fort Good Hope in an effort
16 to ensure that such a tragedy does not occur
17 again here?

18 Or is it the case that in a few months the
19 circumstances which led to Jeffery Kelly's tragic
20 death and Darnell Kakfwi's lengthy incarceration
21 will be forgotten? And by circumstances, I am
22 referring to the excessive consumption of alcohol
23 by young men in this community.

24 Will any lessons be learned by this
25 tragedy? Will anything change?

26 I leave those questions with the community,
27 and particularly with the community leaders. The

1 primary purpose of the sentence to be imposed by
2 the Court today is the protection of the members
3 of the community, but in my respectful view, the
4 Court alone cannot achieve this goal. In my
5 respectful view, there is a large role for the
6 community itself and the community leaders.

7 The offender to be sentenced today, Darnell
8 Kakfwi, is now 19 years of age. He is described
9 by his counsel as intelligent and artistic and
10 who has a grade 10 formal education. He is
11 described in letters of support from family
12 members and community members as a caring and
13 considerate person. At this sentencing hearing,
14 he has accepted responsibility for his crime and
15 he has expressed genuine remorse.

16 Yet his past is not without its blemishes.
17 As a teenager, over a three-year period, he
18 accumulated 20 convictions in Youth Court, almost
19 all of which were for property offences. He
20 received four successive custodial sentences
21 ranging from three months to nine months.

22 From reviewing Exhibit 2, it appears that he
23 would have completed his last youth sentence in
24 June 2003, just prior to his 18th birthday on
25 July 28th, '03 and just six months prior to
26 unlawfully causing the death of Jeffery Kelly on
27 December 28th, '03.

1 I do acknowledge, however, that this is his
2 first crime of violence and his first offence as
3 an adult under the criminal law.

4 I am told that Mr. Kakfwi has himself no
5 memory of the commission of his crime, presumably
6 because of his heavy intoxication. He accepts,
7 however, the Crown's version of the
8 circumstances, most of which comes from the
9 13-year-old son of the deceased who sadly was a
10 witness to this homicide.

11 Mr. Kakfwi was arrested at the scene of the
12 crime and charged with murder. He has been held
13 in custody since that time; a period of eight
14 months. The preliminary inquiry was concluded
15 just two months ago. Mr. Kakfwi was committed to
16 stand trial in this Court on a charge of murder.
17 He offered a plea of guilty to manslaughter, and
18 the Crown accepts that plea.

19 I am satisfied that his plea of guilty was
20 made within a reasonable time, given that he was
21 charged with murder and that his preliminary did
22 not conclude until two months ago.

23 Here at his sentencing hearing, he expresses
24 what I take to be genuine remorse and he
25 apologizes to the deceased's family and to the
26 community. His plea and his remorse acts to
27 mitigate the sentence which would otherwise be

1 imposed.

2 Crown counsel and defence counsel appear to
3 be in general agreement that in all of the
4 circumstances of this case, a proper sentence
5 would lie in the range from three to five years;
6 and, further, that that sentence be reduced to
7 allow credit for the remand time in accordance
8 with the practice of this Court and binding case
9 law.

10 In making these submissions, counsel have
11 referred me to other decisions of this Court
12 where sentence had been imposed for the crime of
13 manslaughter, drawing distinctions where
14 appropriate.

15 Crown counsel has fairly conceded, for
16 example, that Mr. Kakfwi's moral culpability is
17 not as high as that of the young accused in the
18 Sangris case in Yellowknife last year, even
19 though both cases involved a drunken physical
20 altercation in which the offender introduced a
21 knife into the altercation.

22 In all of the circumstances, I determine
23 that the appropriate sentence for the commission
24 of this homicide by this offender is a
25 penitentiary term of four to four and-a-half
26 years. I reduce that sentence to three years on
27 account of the length of time that Mr. Kakfwi has

1 already spent in custody as a remand inmate.

2 Please stand now, Mr. Kakfwi.

3 Darnell Noel Kakfwi, for the crime that you
4 have committed, the crime of manslaughter, it is
5 the sentence of this Court that you be imprisoned
6 for a period of three years.

7 There will be the mandatory Firearms Order
8 pursuant to Section 109 of the Criminal Code for
9 a period of ten years following your release from
10 jail. Any such items in your possession at this
11 time will be surrendered to a police officer
12 within 30 days of today's date.

13 Pursuant to Section 113 of the Criminal
14 Code, I order that notwithstanding the Section
15 109 Order, the firearms officer may authorize you
16 to possess firearms for sustenance purposes after
17 your release from jail.

18 The DNA Order sought by the Crown is
19 granted. There will be no victim fine surcharge
20 in the circumstances.

21 Although it is my understanding that it is
22 the usual practice of Correction Services of
23 Canada to allow a northern offender such as
24 yourself to serve his sentence at a facility
25 within the Northwest Territories, I will
26 nevertheless have the clerk endorse the Warrant
27 of Committal with this Court's recommendation to

1 that effect.

2 You may be seated.

3 Counsel, is there anything further with this
4 case?

5 **MS. CARRASCO:** Your Honour, there is the
6 second degree indictment which is still on the
7 Court file. I can stay that charge at this time
8 if the Court --

9 **THE COURT:** It just falls by the wayside,
10 I believe.

11 **MS. CARRASCO:** Thank you. As well, Your
12 Honour, will the Warrant of Committal indicate
13 the total sentence?

14 **THE COURT:** It's the practice of this
15 Court that a transcript of the reasons for
16 sentencing are sent automatically to Correction
17 Services of Canada, so they will see how the
18 sentence was arrived at.

19 **MS. CARRASCO:** Thank you, sir.

20 **THE COURT:** Anything further, Mr. Gorin?

21 **MR. GORIN:** No, sir.

22 **THE COURT:** Fine, we will close Court.

23 (PROCEEDINGS CONCLUDED)

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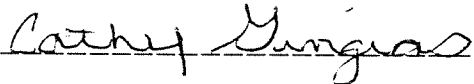
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1 I, Cathy Gingras, Court Reporter, hereby
2 certify that I attended the above-mentioned
3 Proceedings and took faithful and accurate
4 shorthand notes and the foregoing is a true and
5 accurate transcript of my shorthand notes to the
6 best of my skill and ability.

7 Dated at the City of Calgary, Province of
8 Alberta this 1st day of September A.D. 2004.

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10  _____

11 Cathy Gingras, C.S.R. (A)

12 Court Reporter.
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