

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

JONATHAN WILLIAM YAKELEYA



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Transcript of the Reasons for Sentence delivered by The Honourable Justice J.E. Richard, sitting in Yellowknife, in the Northwest Territories, on the 20th day of January, A.D. 2006.

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APPEARANCES:

Ms. S. Tkatch: Counsel for the Crown

Ms. M. Engley: Counsel for the Accused

(Charge under s. 271 of the Criminal Code of Canada)

1 THE COURT:

The 21-year-old offender

2 before the Court is Jonathan William Yakeleya,  
3 who is from Tulita and who has pleaded guilty to  
4 sexual assault contrary to Section 271 of the  
5 *Criminal Code*.

6 The circumstances of his crime are that in  
7 October 2004, at a time when Mr. Yakeleya was 20  
8 years old, he engaged in sexual contact with a  
9 12-year-old girl in his home community of Tulita.  
10 He and the girl were obviously friends, had spent  
11 some time together on the evening in question,  
12 and then went to his home where he lived with his  
13 parents, and went into his bedroom where they lay  
14 on the bed watching TV and started kissing. They  
15 removed some of their clothing and lay on the  
16 bed. The sexual contact occurred when the  
17 offender touched and fondled the girl's genitals  
18 over her panties.

19 The fact of this sexual contact only came to  
20 light a few days later when the girl's mother  
21 extracted an admission from the girl. There was  
22 no force used. It seems this was consensual  
23 activity between a 20-year-old young man and a  
24 12-year-old girl. However, the law says that the  
25 fact that the girl may have consented is neither  
26 here nor there. Sexual activity with a girl  
27 under the age of 14 is a criminal offence.

1           The evidence before me on this sentencing  
2 hearing is that the young girl, in giving her  
3 statement to the investigating police officers,  
4 reluctantly, was unable to articulate the details  
5 of the sexual contact, and at the preliminary  
6 inquiry, the girl testified with some difficulty  
7 and was again unable to fully articulate what the  
8 sexual contact consisted of.

9           The offender and his counsel have provided  
10 an explanation why it is only now that he is  
11 entering his guilty plea. The offender had to  
12 change counsel following his preliminary inquiry  
13 through no fault of his own.

14           I am satisfied that in entering his guilty  
15 plea now and in speaking to the Court,  
16 Mr. Yakeleya displays genuine remorse for what he  
17 did and is now fully aware that sexual contact  
18 with an under-age girl is inappropriate and  
19 amounts to criminal conduct.

20           Mr. Yakeleya has unrelated criminal  
21 convictions from a court appearance in May 2003;  
22 convictions for which he received fines.

23           I acknowledge that the primary sentencing  
24 principles in a case like this one are general  
25 deterrence, specific deterrence, and  
26 denunciation.

27           I agree with the statement made in one of

1 the cases cited by counsel that a conviction for  
2 sexual assault in a case like this has in itself  
3 a deterrent effect. It goes without saying that  
4 in our society, there is a certain stigma  
5 attached to a conviction for sexual assault.

6 Mr. Yakeleya has provided to the Court  
7 letters of support from members of his community  
8 and from a former employer, and these show that  
9 he is otherwise held in good regard by his  
10 community.

11 In all of the circumstances, including the  
12 offender's age, I am satisfied that the purpose  
13 and principles of sentencing and the ends of  
14 justice can be served if I suspend the passing of  
15 sentence and place Mr. Yakeleya under the terms  
16 of a probation order. Before I do that, I wish  
17 to address briefly the issue of the DNA order  
18 sought by the Crown under Section 487.051 of the  
19 *Criminal Code* and the exception pursued by the  
20 offender pursuant to subsection (2) of that  
21 section of the Code.

22 The law requires that the Court make the DNA  
23 order following a Section 271 conviction unless  
24 the offender establishes, under subsection (2),  
25 that if the order was made, the impact on the  
26 offender's "privacy and security of the person  
27 would be grossly disproportionate to the public

1 interest in the protection of society and the  
2 proper administration of justice, to be achieved  
3 through the early detection, arrest and  
4 conviction of offenders."

5 Although I have some sympathy for the  
6 offender's position, having regard in particular  
7 to the circumstances of this particular Section  
8 271 offence, I cannot say that the offender has  
9 discharged the onus as described in subsection  
10 (2). Accordingly, the usual DNA order will  
11 issue.

12 Please stand, Mr. Yakeleya.

13 Jonathan William Yakeleya, for the crime  
14 that you have committed, the crime of sexual  
15 assault contrary to Section 271 of the *Criminal*  
16 *Code*, I suspend the passing of sentence for a  
17 period of 12 months, and I direct that you be  
18 released on the following conditions prescribed  
19 in a probation order which will be for a duration  
20 of 12 months: that you keep the peace and be of  
21 good behaviour; that you appear before this Court  
22 when required to do so; that you notify your  
23 probation officer in advance of any change of  
24 name or address, and promptly notify your  
25 probation officer of any change of employment or  
26 occupation; that you report to your probation  
27 officer within seven days, and thereafter as

1 required by the probation officer; that you  
2 abstain from the consumption of drugs except in  
3 accordance with a medical prescription; that you  
4 perform 100 hours of community service work, 50  
5 hours in the first two months of your probation  
6 and 50 hours in the second two months of your  
7 probation; and that you have no contact directly  
8 or indirectly with Sherry Cecile McCauley.

9 Now Mr. Yakeleya, do you understand those  
10 conditions?

11 THE ACCUSED: Yes.

12 THE COURT: You are going to have to stay  
13 here and sign the probation order after it is  
14 prepared by the clerk before you will be free to  
15 go. And I am going to ask your lawyer,  
16 Ms. Engley, to explain carefully to you the  
17 provisions of Section 732.2, subsections (3) and  
18 (5) and, also, Section 733.1. But the most  
19 important part of that, Mr. Yakeleya, for you to  
20 know and to remember is that if you breach this  
21 probation order or if you get into any other kind  
22 of trouble during those 12 months, you can be  
23 brought back here to this courtroom and this  
24 order can be revoked and you can be sentenced to  
25 a jail term for the sexual assault instead of the  
26 probation order. Do you understand that?

27 THE ACCUSED: Yes, Your Honour.

1 THE COURT: Fine. Then you can just take  
2 a seat in the courtroom and wait for Ms. Engley  
3 to be free, and the clerk as well.


4 MS. ENGLE: Thank you Your Honour.

5 MS. TKATCH: Thank you, Your Honour.

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Certified Pursuant to Rule 723  
of the Rules of Court

  
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Jane Romanowich, CSR(A), RPR  
Court Reporter