

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

KIERON PAUL TAKAZO

Transcript of the Reasons for Sentence delivered by The Honourable Justice V.A. Schuler, sitting in Yellowknife, in the Northwest Territories, on the 12th day of April, A.D. 2006.

APPEARANCES:

Mr. S. Hinkley:	Counsel for the Crown
Mr. J. Mahon:	Counsel for the Accused

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

BAN ON PUBLICATION OF COMPLAINANT/WITNESS
PURSUANT TO SECTION 486 OF THE CRIMINAL CODE

THE COURT: I will now sentence Mr. Takazo.

A jury found Mr. Kieron Takazo guilty of sexual assault, which it is now my duty to sentence him for.

On the night in question, the 18-year-old victim was drinking at various places in Deline with Kieron Takazo, whom she had known all her life. Also with them was his common-law wife who is the victim's cousin. The victim asked to stay overnight at the Takazo residence. My recollection of her evidence is that she did not want to go home and disturb her own family. She fell asleep in a room upstairs at the Takazo residence and, at one point, woke up when Mr. Takazo brought her a blanket. She fell asleep again and then awoke to find him having sex with her. She pushed him off and he left. She soon went to her sister's home where the police were called. The sister testified that the victim cried throughout the time she was at her home.

The Victim Impact Statement describes quite eloquently the impact of this offence on the victim. She describes in it emotions and effects from the offence that are very similar to what the Court hears from other victims in like circumstances. She obviously considered the

Victim Impact Statement carefully. And I note that she does say that she still intends to pursue her education, to pursue her normal life despite what has happened to her; but as she says in the statement, she has lost a lot and she feels that she is now not the real her, that her life has been interrupted. That is something that I hope Mr. Takazo will think about. I often wonder if the young men who commit this type of crime ever think of the fact that what they do, quite apart from the violation in the physical sense, affects the victim's life forever, that it will always be there, it will always be something that she does not want to think about but cannot forget. So it is something that lasts forever as far as the victim is concerned.

I have to consider the aggravating and mitigating factors in this case, and, first of all, in my view, there really are no mitigating factors. I do take into account that Mr. Takazo did agree that certain evidence be admitted at trial. But as I noted in the W.(K). case, and this case is quite similar, when DNA evidence is admitted as it was in this case, although that is -- it certainly helped streamline the court process, the witnesses who would testify to that type of evidence are not normally the type of

witnesses who are traumatized by testifying. So it certainly does not have the impact that a guilty plea would have where it is the victim who then does not have to testify. On the other hand, Mr. Takazo is not to be treated more harshly simply because he exercised his right to a jury trial.

It is aggravating that Mr. Takazo took advantage of the victim's vulnerability as a young woman asleep in his home. She was asleep obviously. She had no chance of resisting him or stopping him because she was not even aware of what was happening at the beginning. And certainly she was entitled to feel secure in her cousin's home, especially, I would say, with the cousin and the cousin's young child there. And, again, I hope Mr. Takazo will think about the fact that he did commit this crime while his spouse was in the home and that his spouse had to come to testify in court. My recollection, my observation, was that was very difficult for her to do.

Mr. Takazo is now 26 years old and so was 25 or 26 at the time of the offence. He is a young aboriginal man from Deline, and he has been living common-law with his spouse for five or six years and they have a young daughter. He has

worked seasonally with the local housing association and was attending upgrading at Aurora College in Deline so that he could go on to qualify as a journeyman welder, and it is to his credit that he has been making those efforts to support himself and his family through education and through employment.

The letter from his pre-trades instructor at Aurora College speaks very highly of him and it calls him responsible, motivated, and mature. Also, the other letters from Mr. Takazo's family and friends speak very highly of him as a family member and as a contributing member of the community. So, again, this is the kind of case where I have to ask myself: Why and how does a young man with these very good qualities commit a crime like this - sexually assault a young girl who is sleeping over in his house? And the answer, at least from the point of view of people who wrote the letters that have been filed -- and I will refer to the letter from Margaret McDonald. According to her, "the only barrier that is preventing this highly intelligent, energetic, caring and kind young man from taking his rightful place in society is the alcohol." And the other letters refer to alcohol as well. The only way in which I would disagree with what

they are saying is that it is not the alcohol that is the barrier, it is Mr. Takazo's failure to control himself, his failure to stop himself from drinking.

It is probably one of the most difficult and perhaps the saddest part of my job that I see so many young aboriginal men come before me to be sentenced for very serious crimes which probably would never have happened if only they had controlled the amount of alcohol they drank or just had not drank any alcohol at all.

From the evidence, this was a few minutes on one night, and now the victim's life has changed forever, Mr. Takazo's life is being changed because he is looking at a lengthy term of incarceration, and obviously his family's life has changed as well because he is not going to be there for some time to help them as they have described in the letters that he has done in the past. So it seems to me that all of these people recognize that Mr. Takazo has a problem with alcohol, and Mr. Takazo has to do something about it, because otherwise all of the good things that he has done will just get lost in this haze of alcohol.

Mr. Takazo does have a lengthy criminal record. There are no sexual offences on it and

most of it consists of unrelated property offences, but there are two assaults in 1998 and 1999 that are related although they are somewhat dated, and I do take into account that Mr. Takazo has been sentenced to several terms of incarceration, albeit relatively short ones. The real significance, I think, of the record is that I have -- I have no real doubt that alcohol was involved in a number of those offences. So Mr. Takazo knows what happens when he drinks and he knows that he does things when he drinks that are against the law, and, again, that is something that only he can control.

The crime of sexual assault, it is trite to say but it is far too common in the Northwest Territories, and sexual assault on a victim who is defenceless - in other words, sleeping or passed out - is one of the most common types of sexual assault that comes before this court. That issue was made very clear in the Bird case that has been filed and that I have reviewed. And as a result of all that, as has been said over and over again, denunciation of the offence and deterring others who would commit this type of offence are the most important considerations in sentencing for sexual assault.

I have considered the submissions of counsel

about the length of sentence that should be imposed. There is remand time to be taken into account, which counsel have advised is 110 days, relevant to this offence or this charge, and Crown counsel agrees that that amount should be credited on a two-for-one basis. Crown counsel asks me to impose -- or to consider that a term of three years would be appropriate and then to reduce that to two and a half years because of the remand time. Defence counsel suggests that I should start at two and a half years and then reduce that to two years less a day because of the remand time and, also, in order to ensure that the accused, Mr. Takazo, serves his sentence in the Northwest Territories. Both counsel seem to be agreed that the range is somewhere around three years, although defence counsel going a little bit lower than that and Crown counsel going a little bit higher. In any event, the three-year range certainly originated from the Sandercock case in Alberta, which, as I recall, said that that sentence would be appropriate for someone with no criminal record. As I have said, Mr. Takazo does have a criminal record. I have already made comments about it. Sadly, it is not a record that is particularly unusual for young men of his age in the Northwest Territories.

I do take into account, as defence counsel urged me to, that Mr. Takazo is aboriginal; but I note that there are no systemic or background factors that have been presented that would explain why he committed this crime. In other words, how he has ended up before the Court. And, again, it seems to me that the only real explanation is that he simply does not control his drinking and did not control his drinking on this occasion and that he likely would not have committed this crime if he had been sober given all the good things that his family and friends have to say about him. At the same time, and although I do take into account that Mr. Takazo is aboriginal, I do not see that in itself as a reason to sentence him differently than I would if he was not aboriginal; but I also note that this type of offence is far too prevalent, especially in the smaller communities in the Northwest Territories, and the sentence that I impose has to be one that should protect, whether it is by aiming directly at Mr. Takazo and discouraging him from committing this type of offence again or discouraging others from committing this type of offence. It does have to be aimed at protecting young women, all women in the communities, aboriginal and non-aboriginal.

What I consider in the end is that where Mr. Takazo serves his sentence is something that should be left up to the correctional authorities and not -- in this case, there are not grounds, in my view, to change what I think would otherwise be a fit sentence simply to ensure that he stays in the Northwest Territories.

Would you stand, please, Mr. Takazo.

In all the circumstances, in my view, a sentence of three years is appropriate in this case. I am going to reduce it by giving you credit for the remand time and, in doing that, reducing it to 29 months in jail. The warrant will be endorsed with the Court's recommendation that you be permitted to serve your sentence in the Northwest Territories; but it will be up to the correctional authorities, in the end, whether they can or will do that. There will be a DNA order as it is mandatory with the sexual assault offence. There will be a firearm prohibition order in the usual terms for a period of ten years. Actually, the order will start today and it will continue for ten years following your release from imprisonment. But because of the evidence that you do hunt for the purposes of obtaining food, under Section 113, I will authorize -- I do authorize the authorities

referred to therein to issue the necessary permits and licences to you so that you can hunt for sustenance. And there has not been any argument made that registration under the Sex Offender Information Registration Act would not be appropriate in this case and, accordingly, I order that Mr. Takazo register and report under that act for the 20-year period required for this offence. The victim of crime surcharge will also be waived in the circumstances.

You can have a seat, Mr. Takazo.

Is there anything --

MR. MAHON: Your Honour, I do have a copy of the DNA order for the Court.

THE COURT: All right.

MR. MAHON: It's been endorsed with my consent as to the form and content. Your Honour, that was done in anticipation of the order.

THE COURT: That is fine. I will sign it when we close court and the clerk can distribute it. The other orders, then, you will file, I take it?

MR. HINKLEY: Yes, Your Honour. I'll file the firearms prohibition in due course. I believe the SOIRA order is drafted by court staff, but I will consult with the clerk after court closes to be sure.

THE COURT: All right.

MR. MAHON Those are all my matters, Your Honour. Thank you.

THE COURT: I want to thank you both very much for your conduct of the case. I thought the trial went very well, and -- in terms of the way it was conducted. And we will close court then.

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Certified Pursuant to Rule 723
of the Rules of Court

Jane Romanowich, CSR(A), RPR
Court Reporter