

R. v. Packham, 2008 NWTSC 97 S-1-CR-2008000053

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- and -

DAVID JOHN PACKHAM

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Transcript of the Oral Reasons for Sentence delivered

by the Honourable Justice J.E. Richard, sitting at

Yellowknife, in the Northwest Territories, on

December 10th, A.D. 2008.

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BAN ON PUBLICATION OF COMPLAINANT/WITNESS  
PURSUANT TO SECTION 486.4 OF THE CRIMINAL CODE

APPEARANCES:

Ms. S. Tkatch: Counsel for the Crown

Mr. P. Falvo: Counsel for the Accused

(Charge under s. 280 Criminal Code)

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1 THE COURT: Firstly, I am just going to  
2 reiterate that there is an order in this case  
3 prohibiting the publication or broadcasting of  
4 the identity of the young person, Sarah Illasiak.

5 This 32-year-old offender has pleaded guilty  
6 to the criminal offence of taking an underage  
7 girl out of the possession of her parents against  
8 the will of the parents.

9 The Criminal Code section pursuant to which  
10 this offender has been convicted is section 280.

11 That section reads as follows:

12 Every one who, without lawful  
13 authority, takes or causes to be  
14 taken an unmarried person under the  
15 age of sixteen years out of the  
16 possession of and against the will  
17 of the parent or guardian of that  
18 person or of any other person who  
19 has the lawful care or charge of  
20 that person is guilty of an  
21 indictable offence and liable to  
22 imprisonment for a term not  
23 exceeding five years."

24       The factual circumstances leading to this  
25       charge are a little unusual, but they do fit  
26       within the parameters of criminal conduct to  
27       which section 280 is addressed.

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1       In 2005 the offender and his wife moved from  
2       southern Canada to take employment in the small  
3       Inuvialuit community of Paulatuk. They lived in  
4       Paulatuk for approximately two years.

5       In early 2007 this offender developed a  
6       relationship with Sarah Illasiak, who was then 15  
7       years old. At one point the offender had a  
8       conversation with Sarah's father in which he told  
9       Sarah's father that he was in love with his  
10      15-year-old daughter, Sarah. Sarah's father told  
11      the offender to stay away from his daughter and  
12      the offender promised he would do so. Shortly  
13      thereafter, however, the offender and Sarah made  
14      plans to go south together where they planned on  
15      having a future together, but the offender and  
16      Sarah did not tell Sarah's parents of these  
17      plans.

18      In March, 2007 the offender left Paulatuk  
19      and travelled to Alberta. Before leaving

20 Paulatuk he gave \$1,500 to Sarah for her to buy a  
21 plane ticket to Edmonton so that she could join  
22 him there. A few days later, Sarah travelled to  
23 Inuvik with her parents' permission in order to  
24 attend a school program in Inuvik. When she  
25 arrived in Inuvik, she, instead, purchased a  
26 plane ticket and flew to Edmonton and was met at  
27 the Edmonton airport by the offender. They drove

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1 to Fort McMurray and then to Winnipeg.  
2 Meanwhile, Sarah's parents were very upset  
3 and worried that their daughter was missing and  
4 did not know where she was and they called the  
5 police for assistance. The RCMP eventually  
6 tracked down the offender in Winnipeg, Manitoba,  
7 and, when they located him, 15-year-old Sarah was  
8 with him.

9 As a result of Mr. Packham's conduct, he was  
10 charged with an offence contrary to section 280  
11 of the Criminal Code.

12 The court record indicates that he elected  
13 to be tried by a Judge and jury and requested a  
14 Preliminary Inquiry. In June, 2008 he withdrew

15 his request for a Preliminary Inquiry. In  
16 August, 2008 he re-elected to be tried by a Judge  
17 of this court and his trial was set for a two-day  
18 period, December 9th and 10th, here in  
19 Yellowknife. Several witnesses were subpoenaed  
20 and attended from places like Paulatuk and  
21 Winnipeg to testify at the trial here in  
22 Yellowknife.

23 When Mr. Packham was arraigned yesterday, he  
24 pleaded guilty to the charge. Although his  
25 guilty plea acts in mitigation of sentence, this  
26 is not an early guilty plea.

27 One of the reasons that a guilty plea

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1 usually operates to mitigate a sentence that  
2 would otherwise be imposed - and I stress, one of  
3 the reasons - is the saving of public resources  
4 that are expended in the holding of a trial,  
5 including travel expenditures for witnesses,  
6 court facility and staff arrangements, et cetera,  
7 and also avoiding inconvenience to witnesses.

8 I mention this merely to point out that not  
9 every guilty plea operates to mitigate sentence  
10 to the same extent as another guilty plea.

11 Put another way, this offender does not  
12 receive the same mitigation of sentence today  
13 pleading guilty at the commencement of his trial,  
14 some 20 months after the offence date, as he  
15 might have received for a plea of guilty on his  
16 first or his second or his third or his fourth  
17 appearance before a court in answer to the  
18 charge.

19 In any event, the guilty plea, nonetheless,  
20 does mitigate sentence, as it indicates that this  
21 offender does today, if not before today, accept  
22 responsibility for the crime that he has  
23 committed. He states in court today, in  
24 particular, that he is sorry for the harm that he  
25 has caused to Sarah's parents.

26 The offender, as stated, is 32 years of age.  
27 From the evidence before the Court, he has

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1 maintained fairly steady employment before he  
2 went to Paulatuk, while he was in Paulatuk and  
3 after he returned to southern Canada. Recently  
4 he obtained well-paid employment as a heavy  
5 equipment operator in Fort McMurray, Alberta.

6 Presently he lives with his wife in Edmonton and,  
7 presumably, he commutes to Fort McMurray for his  
8 employment.

9 Mr. Packham has a previous criminal record  
10 as a result of crimes committed by him when he  
11 was a younger man. Specifically, as a youth he  
12 was given a one-year probationary term for a  
13 break and enter with intent. In October, 1994,  
14 when he was 18 years old, he received a sentence  
15 of three and a half years' imprisonment for a  
16 series of thefts and robbery. In January, 1998,  
17 when he would have been 22 years old, he received  
18 a sentence of five years' imprisonment for two  
19 violent assaults and three other offences.

20 The offender's counsel has presented to the  
21 Court several letters of support from members of  
22 the offender's family and also from long-time  
23 friends, all of whom attest to his otherwise good  
24 character. In addition, his wife and one of his  
25 close friends testified at the sentencing hearing  
26 about his otherwise good character. I have taken  
27 note of this character evidence in the

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1 determination of sentence.

2 Mr. Packham is fortunate to have such  
3 personal support from friends and family and, in  
4 particular, that his wife is prepared to stand by  
5 him even in these trying circumstances. Having  
6 heard Mr. Packham himself speak in court this  
7 morning, I am satisfied that he is genuinely  
8 grateful to have such a supportive spouse.

9 Although we do not see many section 280  
10 offences before the courts in this jurisdiction,  
11 it is obvious that in the imposition of a fit and  
12 proper sentence the dominant principles are  
13 denunciation and deterrence and proportionality.

14 This is a serious offence. Parliament proscribes  
15 it as an indictable offence punishable by up to  
16 five years' imprisonment.

17 This is not a victimless crime. The facts  
18 before the Court do not indicate that 15-year-old  
19 Sarah was coerced to do anything against her  
20 will, nor is there any evidence that subsequent  
21 to the events of March, 2007 that Sarah suffered  
22 any trauma or today suffers any trauma. However,  
23 there is evidence that her parents suffered, at  
24 least for a period of several days, with the  
25 anguish and fear that naturally existed when they  
26 did not know where their daughter was, or whether  
27 she was in danger, or worse. Any parent would



1 understand the real harm caused to Mr. and  
2 Mrs. Illasiak by the criminal conduct of this  
3 offender.

4 A submission is made to the Court on behalf  
5 of the offender that he be permitted to serve his  
6 sentence in the community pursuant to the  
7 provisions of section 742.1 of the Criminal Code.

8 After giving careful consideration to that  
9 submission, I find that I am unable to accede to  
10 it. Given Mr. Packham's previous criminal record  
11 and given the particular deliberate actions of  
12 Mr. Packham in committing this offence, I find  
13 that I cannot exercise my discretion in this case  
14 by ordering a conditional sentence. In  
15 particular, I find that a community based  
16 sentence in this case would be inconsistent with  
17 the important sentencing principles of  
18 denunciation and deterrence. Instead, in my  
19 view, a short custodial sentence is appropriate.

20 I find that the circumstances of  
21 Mr. Packham's offence in total place that offence  
22 at the lower end of the range of sentences  
23 available to the Court. It is an aggravating  
24 circumstance that this offence was a planned,  
25 deliberate act of the offender that followed a

26 conversation with the girl's father, during which  
27 conversation the father specifically told the

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1 offender to stay away from his 15-year-old  
2 daughter. The evidence is that Mr. Packham  
3 promised Mr. Illasiak, who was a friend, that he  
4 would stay away from her, and yet, shortly  
5 afterwards, he and the girl made plans for a  
6 future together, Mr. Packham gives the girl the  
7 money for airfare and takes her away from her  
8 parents against their wishes, causing those  
9 parents the anguish and trauma that Mr. Illasiak  
10 eloquently spoke about.

11 There are no mitigating circumstances, other  
12 than the late guilty plea.

13 I want to address briefly the assertion  
14 which was made to the effect that a custodial  
15 sentence may result in Mr. Packham losing his  
16 recently acquired employment with Suncor in Fort  
17 McMurray, resulting in dire financial  
18 consequences for he and his wife. I am unable to  
19 place much weight on this assertion for the  
20 reason that Mr. Packham entered into this

21 employment contract just a few months ago knowing  
22 full well that he had an outstanding serious  
23 criminal charge to respond to here in the  
24 Northwest Territories.  
25 Indeed, I have to say, it is my impression,  
26 having heard submissions yesterday and today and  
27 considering the steps in the judicial process in

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1 this case and the passage of time since  
2 Mr. Packham was charged with this offence, that  
3 he has been putting off or avoiding his eventual  
4 day in court to accept the consequences of his  
5 actions. It is obvious now, and, perhaps, in  
6 fairness, with the benefit of hindsight only,  
7 that he ought to have firstly addressed his  
8 outstanding criminal charge on a timely basis and  
9 then taken steps to obtain ongoing or permanent  
10 employment.

11 In any event, today is the day of taking  
12 responsibility for one's actions. After  
13 Mr. Packham serves his sentence and obtains his  
14 release, hopefully he can then put all of this  
15 behind him and he and his wife can get on with a  
16 productive life.

17 Please stand, Mr. Packham. Mr. Packham, for  
18 the crime that you have committed contrary to  
19 section 280 of the Criminal Code, it is the  
20 sentence of this Court that you serve a term of  
21 imprisonment of five months. In addition, there  
22 will be a victim fine surcharge in the amount of  
23 \$100 pursuant to the provisions of section 737 of  
24 the Criminal Code. You may be seated.

25 Counsel, is there anything further on this  
26 case?

27 MS. TKATCH: No. Thank you, sir.

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1 MR. FALVO: No, Your Honour.

2 THE COURT: Thank you. We will close  
3 court. Good luck to you, sir.

4 THE ACCUSED: Thank you.

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6 Certified to be a true and  
7 accurate transcript pursuant  
8 to Rules 723 and 724 of the  
9 Supreme Court Rules.

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11 Jill MacDonald, RMR  
Court Reporter

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