

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- and -

PATRICK LLOYD ALEEKUK

Transcript of the Oral Reasons for Sentence delivered
by the Honourable Justice V.A. Schuler, sitting at
Yellowknife, in the Northwest Territories, on August
26th, A.D. 2010.

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

APPEARANCES:

Mr. D. Praught: Counsel for the Crown

Mr. S. Shabala: Counsel for the Accused

(Charge under s. 271 Criminal Code)

1 THE COURT: Good afternoon. Do counsel
2 have anything they wish to raise before I
3 sentence Mr. Aleekuk?

4 MR. SHABALA: Nothing further from the
5 Defence, Your Honour.

6 MR. PRAUGHT: No, Your Honour.

7 THE COURT: All right. Before I do
8 sentence Mr. Aleekuk, I want to remind everyone
9 present that there is a ban in place on
10 publication or broadcast of the name of the
11 victim and any information that might identify
12 her.

13 Patrick Lloyd Willard Aleekuk has pleaded
14 guilty to and has been convicted of sexual
15 assault. The facts that he has admitted are that
16 in January, 2009 the victim had travelled from
17 Inuvik to Tuktoyaktuk to attend the funeral of a
18 friend, who was also an aunt of Mr. Aleekuk.
19 Both Mr. Aleekuk and the victim attended a party
20 and became intoxicated. While the victim was
21 passed out on a couch, Mr. Aleekuk had sexual
22 intercourse with her. He did not use a condom.

23 Although the victim has no memory of what
24 happened, it appears that when she came to and
25 seeing that the clothing on her lower body had
26 been removed, she realized that she had been
27 sexually assaulted and, presumably, soon

1 thereafter went to the police and/or hospital
2 where DNA samples were taken, which were, many
3 months later, matched to the DNA of Mr. Aleekuk.
4 On the evening in question when the victim left
5 the house where she had been assaulted, Mr.
6 Aleekuk was standing outside having a cigarette.

7 The Agreed Statement of Facts indicates that
8 the victim did not know Mr. Aleekuk, although it
9 appears that they may have grown up in the same
10 community as young children.

11 The victim, who is in her late 40s, has been
12 traumatized by the sexual assault, as is clear
13 from her victim impact statement and the report
14 of her interview with the author of the
15 pre-sentence report. She has bad dreams about
16 Mr. Aleekuk and wakes up afraid. She thinks
17 about what happened daily and continually washes
18 her hands or showers in hot water to try to rid
19 herself of a dirty feeling, so much so that she
20 sometimes burns herself with the water.

21 She is ashamed and does not want people to
22 know what happened. She does not go out or work.
23 Her relationship with her spouse has also been
24 affected. In her own words, she feels that she
25 is going crazy from what happened and she is
26 planning to seek medical advice.

27 Sadly, these are consequences that are not

1 unusual for victims of sexual assault, and I hope
2 that the Victim Assistance Program will provide
3 her with information and assistance about what
4 counselling and help is available for her. I
5 also hope that the conclusion of the court
6 proceedings will mean one less obstacle for the
7 victim to face in dealing with this terrible
8 event.

9 In this case, I have the benefit of a very
10 thorough pre-sentence report. Mr. Aleekuk is 54
11 years old, an Inuvialuit man who was born and
12 raised in the Delta region of the Northwest
13 Territories. Although the circumstances of his
14 birth were difficult and not auspicious, he was
15 adopted while still an infant into a family where
16 it appears the seven adopted children were well
17 cared for and education was encouraged. However,
18 by his teens and around the time his adoptive
19 father died, Mr. Aleekuk dropped out of school
20 and started to get into trouble with the law, in
21 particular by stealing.

22 Unfortunately, his actions and behaviour
23 have resulted in him losing the support of some
24 family members; for example, the sister who
25 related that he is not allowed in her home and
26 that he does not accept responsibility for his
27 actions and blames alcohol instead. He basically

1 has no contact with the rest of his siblings. He
2 has been homeless from time to time.

3 Mr. Aleekuk did, in later years, upgrade his
4 education to grade nine while incarcerated. He
5 does some artwork and, according to his sister,
6 is good at it, although there is no information
7 as to whether he has tried to make a living at
8 it.

9 His work history appears to be sporadic and
10 has consisted of labour type jobs. He last
11 worked two years ago for three weeks cleaning the
12 graveyard in Tuktoyaktuk. He had a job last year
13 at the hospital in Inuvik, but was fired only
14 hours after beginning work when he was found to
15 have a locker full of shoes stolen from one of
16 the hospital wards.

17 Mr. Aleekuk has one child, who, in turn, has
18 three children of her own, but he and his
19 daughter are not close, and, indeed, she told the
20 author of the pre-sentence report that he is not
21 allowed in her home and she does not want
22 anything to do with him.

23 It is very sad when an individual has no or
24 very little contact with his or her family, but
25 it is clear from the pre-sentence report that Mr.
26 Aleekuk's own actions have resulted in this
27 situation. On the other hand, the report does

1 indicate that there are some people who do
2 consider Mr. Aleekuk to be a friend.

3 Mr. Aleekuk has a lengthy criminal record
4 going back to 1972 when he would have been still
5 in his teens. There are many theft related
6 offences on the record, about 24 in all, from
7 1972 to 2007. In total, there are 43 convictions
8 for various offences. The ones that have to
9 concern me the most today are the offences of
10 violence. In 1984, common assault; in 1987,
11 common assault; in 1989, a sexual assault for
12 which on appeal Mr. Aleekuk was sentenced to
13 three years' imprisonment; in 1993, common
14 assault; in 1997, a sexual assault for which he
15 was sentenced to six years' imprisonment.

16 I was not given information about the
17 circumstances of that sexual assault other than
18 it involved a home invasion, which may account,
19 at least in part, for the length of the sentence.
20 I am told that Mr. Aleekuk served the entire six
21 years of that sentence because he was not
22 cooperative and refused to accept counselling.

23 In the pre-sentence report, the author
24 relates that he indicated to her that he did not
25 wish to participate in any counselling, as he was
26 sure that he would not be involved with the court
27 system ever again. I note that Mr. Aleekuk would

1 have finished serving the six-year sentence in
2 2003 and he was not convicted again until
3 October, 2007 when he was convicted for theft
4 under and received a fine. So there is a
5 four-year gap in his record. Then one and a half
6 years after the theft conviction he committed the
7 sexual assault now before the Court.

8 So based on that part of the criminal
9 record, it does appear that, whether or not he
10 continued drinking, Mr. Aleekuk was able to stay
11 out of trouble for fairly lengthy periods of time
12 since serving the six-year sentence, but,
13 obviously, that did not last.

14 From the information in the pre-sentence
15 report, it is clear that Mr. Aleekuk attributes
16 his difficulties and his behaviour to alcohol and
17 that he has been abusing alcohol for many, many
18 years. He has, however, had some treatment for
19 alcohol abuse and he has expressed an interest in
20 having more.

21 I am sure that he has been told repeatedly
22 by the courts and others that he needs to stop
23 drinking, and I am also pretty sure that he has
24 promised over the years to do something about his
25 drinking. But from the circumstances of this
26 sexual assault, we see that even now in his 50s
27 he still gets intoxicated and commits a crime.

1 During his six-year sentence for the last sexual
2 assault he would have had both time and
3 opportunity to address his alcohol abuse, but he
4 refused the counselling he could have had.

5 The pre-sentence report quotes Mr. Aleekuk
6 as saying that he is not violent to anyone. Mr.
7 Aleekuk needs to be aware, however, that the
8 courts do consider sexual assault a crime of
9 violence. It has serious and often long-lasting
10 consequences for the person assaulted,
11 consequences that are often much harder to live
12 with than a punch or a non-sexual assault.

13 If Mr. Aleekuk listened closely to the
14 victim impact statement of his victim when it was
15 read out in court, he heard how devastating his
16 sexual assault was for his victim. The fact that
17 he has committed sexual assault three times now
18 means that he has to be regarded as a violent
19 person, a person who is dangerous to others.

20 For the crime of sexual assault, the
21 Criminal Code provides for a maximum sentence of
22 ten years' imprisonment. In this case, based
23 mainly on the guilty plea and the fact that Mr.
24 Aleekuk waived his Preliminary Hearing on the
25 date it was scheduled, the Crown seeks a sentence
26 of three to four years less any credit for remand
27 time. The Defence does not take issue with that

1 position.

2 There are a number of things I must consider
3 in deciding on Mr. Aleekuk's sentence. First,
4 the aggravating factors, which are as follows:
5 The victim, who was passed out, was defenceless
6 and vulnerable, which Mr. Aleekuk took advantage
7 of. As in any sexual assault, he showed
8 disregard for the victim's privacy and integrity.
9 In this case, he also showed disregard for her
10 health and well-being by not wearing a condom.

11 Second, I must consider any mitigating
12 factors. The only mitigation in this case comes
13 from the fact that Mr. Aleekuk has pleaded guilty
14 and also waived the Preliminary Inquiry. These
15 are significant circumstances that weigh in his
16 favour. It means that the victim did not have to
17 testify at all in court, which saved her from
18 further distress and embarrassment.

19 I do take note of the information in the
20 pre-sentence report suggesting that Mr. Aleekuk
21 has shown a lack of remorse. However, I think
22 Defence counsel made a good point when he said
23 that a lack of remorse may be confused with an
24 inability to express remorse due to poor
25 communication skills. I also take note of Mr.
26 Aleekuk's apology to the victim that he expressed
27 here in court.

1 As a result, I am not going to consider lack
2 of remorse as an aggravating factor, as I find
3 that, in any event, it is outweighed by the
4 remorse inherent in the guilty plea, which
5 ultimately means that Mr. Aleekuk is taking
6 responsibility for the terrible thing he did to
7 the victim and the trauma he has caused her. I
8 can only hope that he understands that he has
9 done something that has changed her life and
10 caused her a great deal of pain and distress.

11 I must also take into account the time that
12 Mr. Aleekuk has been in remand in pre-trial
13 custody. The DNA testing took some time to
14 complete, and so Mr. Aleekuk was not actually
15 charged with this offence until January of 2010.
16 He was arrested February 27, 2010 and has been in
17 custody since then, which is six months. Crown
18 counsel advises that the new Truth in Sentencing
19 Act does not apply in this case, so credit for
20 the remand time is within my discretion.

21 This Court has often said - and I am sure
22 that Mr. Aleekuk has heard this before - that the
23 principles, the goals of sentencing that are of
24 paramount importance in cases of sexual assault
25 are denunciation, in other words, the sentence
26 should show that society and the community reject
27 and condemn Mr. Aleekuk's behaviour; also

1 deterrence, meaning that the sentence should be
2 significant enough to discourage others from
3 committing sexual assault.

4 Because of Mr. Aleekuk's past record of
5 sexual assault, the sentence I impose should also
6 be aimed at discouraging him from repeating this
7 behaviour. I must also bear in mind the
8 principle of proportionality, which is that a
9 sentence should reflect the seriousness of the
10 offence and the degree of responsibility of the
11 offender. Here, the offence is very serious and
12 Mr. Aleekuk bears full responsibility, especially
13 since he has been sentenced twice before for
14 similar behaviour.

15 Also, because Mr. Aleekuk is aboriginal,
16 section 718.2(e) of the Criminal Code requires
17 that I give particular consideration to whether a
18 sanction other than imprisonment would be
19 reasonable in the circumstances. In light of Mr.
20 Aleekuk's previous record for sexual assault, his
21 inability to obey the law for many years, the
22 fact that even lengthy sentences of three and six
23 years have not stopped him, and his failure to
24 take steps to deal with his alcohol abuse, I am
25 convinced that society needs protection from Mr.
26 Aleekuk and that protection can only come from
27 separating him from society, and, therefore, no

1 sanction other than imprisonment is reasonable in
2 the circumstances, nor, indeed, was it suggested
3 by counsel that some other sanction should be
4 considered.

5 The position taken by the Crown is quite
6 lenient. The range suggested is at the low end
7 of the scale for a third sexual assault. In
8 fact, it is close to a range that is usually
9 considered appropriate on a first sexual assault
10 conviction. I think that, had there not been a
11 guilty plea, a sentence of six to eight years in
12 jail might be appropriate in light of Mr.
13 Aleekuk's prior record. So the question is
14 really whether the guilty plea is a sufficiently
15 mitigating factor to reduce the sentence to three
16 or four years.

17 I have already referred to the fact that the
18 guilty plea and also the waiver of the
19 Preliminary Inquiry have saved the victim the
20 trauma, embarrassment and stress of having to
21 testify. Those of us who sit in court and listen
22 to testimony about sexual assault are able to see
23 regularly how difficult the court process is for
24 witnesses, how stressful and upsetting it is for
25 them to testify and repeat yet again what
26 happened, especially in front of a jury of 12
27 people, knowing that those people are deciding

1 whether to believe them or not.

2 So not having to testify does benefit the
3 victim. By pleading guilty and giving up his
4 right to a trial, Mr. Aleekuk has also saved
5 considerable court time that can be allocated to
6 other cases. So the guilty plea and waiver of
7 the Preliminary Inquiry do justify a substantial
8 reduction of sentence, as was stated by Justice
9 Richard in the case of R. v. Lafferty, 2004 NWTSC
10 32. For the reasons that I have just referred
11 to, the Court wants to encourage offenders who
12 have committed an offence to plead guilty by
13 giving significant credit for a guilty plea.

14 At the same time, I have to bear in mind
15 that this type of sexual assault perpetrated on a
16 sleeping or passed out victim who cannot defend
17 herself and does not even know what is being done
18 to her is all too common in the Northwest
19 Territories.

20 I have to take into account also that Mr.
21 Aleekuk does pose a danger to the community,
22 because this is the third time he has sexually
23 assaulted someone. The fact that even in his 50s
24 he continues to disobey the law and disrespect
25 other people means, sadly, that the Court can see
26 little hope that he will change.

27 There are some ancillary orders that I must

1 deal with, so I will do that now. No reason has
2 been presented by Mr. Aleekuk as to why any of
3 the following orders should not be made. So I
4 first make an order that Mr. Aleekuk comply with
5 the Sex Offender Information Registry Act for a
6 period of 20 years pursuant to section 490.012 of
7 the Criminal Code.

8 Secondly, I make an order for the taking of
9 Mr. Aleekuk's DNA, if it is not already in the
10 databank, pursuant to section 487.051 of the
11 Criminal Code.

12 Third, I make an order in the usual terms
13 prohibiting Mr. Aleekuk from the possession of
14 firearms, ammunition and other items referred to
15 in section 109 of the Criminal Code for a period
16 of time that begins today and will expire 10
17 years after his release from imprisonment.

18 Stand, please, Mr. Aleekuk. Mr. Aleekuk,
19 your criminal record consists of many offences of
20 theft, and it is clear from the pre-sentence
21 report that there are people in your community
22 and in your own family who brand you as a thief.
23 Theft is one thing. Sexual assault is an even
24 more serious thing. With three sexual assaults
25 on your record now, you may find that people
26 start calling you a rapist. That is not the term
27 that is used legally for the offence of sexual

1 assault anymore, but that is a term that a lot of
2 people often use.

3 You should be aware that the Crown has the
4 option, if you commit another sexual assault, or
5 may have the option, of applying to have you
6 declared a dangerous or a long-term offender; in
7 other words, of asking that you be sent to prison
8 indefinitely without a definite release date.

9 You are 54 years old. You need to think
10 about how you want to spend the rest of your
11 years; whether you want to spend them in jail or
12 whether you want to find a way to live in your
13 community without committing crimes. It is up to
14 you to find a way to do that.

15 I accept the range of sentence suggested by
16 Crown counsel in the circumstances, despite it
17 being at the lower end of the scale, but, in my
18 view, this case has to come at the top of that
19 range. So although Mr. Aleekuk will be given
20 credit for the remand time, I think it has to be
21 minimal credit so as to ensure that he is
22 separated from society for a significant period
23 of time. So after giving credit for the remand
24 time, the sentence I impose today is three and a
25 half years in jail. You may sit, Mr. Aleekuk.

26 The victim surcharge, in the circumstances,
27 will be waived.

1 As to Defence counsel's suggestion that I
2 recommend that Mr. Aleekuk not be considered for
3 parole until he completes any and all sex
4 offender counselling programs that are available,
5 I do acknowledge and I want to emphasize that
6 this can only be done by way of a recommendation,
7 not an order of the type provided for in section
8 743.6 of the Criminal Code. There may, in fact,
9 be no need for such a recommendation in light of
10 the fact that Mr. Aleekuk was required to serve
11 his entire sentence on his last conviction of
12 sexual assault at least in part because of his
13 refusal to take counselling. However, I see no
14 harm in making the recommendation, which, if
15 followed, would serve as a measure for the
16 public's protection.

17 At the same time, I recognize that it is the
18 responsibility of and within the jurisdiction of
19 the Parole Board to determine when Mr. Aleekuk
20 can safely be released into society. But I will,
21 then, direct the Clerk to endorse the warrant
22 with the Court's recommendation that Mr. Aleekuk
23 not be considered for parole until he completes
24 all sex offender counselling and programs that
25 are available to him and appropriate for him.

26 Is there anything further, counsel, that I
27 should address?

1 MR. SHABALA: Not from the Defence, Your
2 Honour.

3 MR. PRAUGHT: No, Your Honour.

4 MR. SHABALA: Thank you.

5 THE COURT: All right. Thank you very
6 much, counsel, for your presentation of the case
7 and for dealing with it so efficiently. We will
8 close court.

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12 Certified to be a true and
13 accurate transcript pursuant
14 to Rules 723 and 724 of the
Supreme Court Rules.

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Jill MacDonald, RMR
Court Reporter

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