

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- vs. -

KRISTOPHER JOHN ELIAS

Transcript of the Reasons for Sentence by The Honourable
Justice w. M. Darichuk, at Deline in the Northwest
Territories, on February 3rd A.D., 2012.

APPEARANCES:

Ms. A. Paquin: Counsel for the Crown
Mr. J. Bran: Counsel for the Accused

Charge under s. 271 Criminal Code of Canada

An order has been made banning publication of the identity
of the Complainant/Witness pursuant to Section 486.4 of
the Criminal Code of Canada

1 THE COURT: The accused has been found
2 guilty of a sexual assault. The victim was 22
3 years of age while the accused is 27 years of
4 age.

5 He has an extensive criminal record.

6 The observations of Mr. Justice Vertes in
7 R. v. Kodzin, [2011] N.W.T.J. No. 8, appear to
8 be apt. At paragraph 18 he observes,

9 Sentencing in every criminal case
10 is a difficult process. It
11 requires the balancing of
12 different objectives. If I look
13 at this case strictly with the
14 offender in mind, I might be far
15 more lenient. He made a terrible
16 mistake. He made a terrible
17 decision when he got drunk. He
18 made a terrible mistake when he
19 violated someone else. It was not
20 just a mistake, it was a crime,
21 and he is responsible for the harm
22 he has caused. So I cannot just
23 think about what would be best for
24 this offender and his family. I
25 have to think as well about
26 vindicating the victim, about
27 upholding the law so other women

1 are not victimised and about
2 sending a message to everyone that
3 this type of behaviour is morally
4 wrong and young men who take
5 advantage of vulnerable women will
6 be punished for it.

7 As I indicated, part of these observations
8 are apt in this decision. One other important
9 observation that he makes appears in paragraph
10 10,

11 The crime demands no different a
12 sentence than if it were committed
13 by a non-aboriginal offender in
14 the same circumstances. Serious
15 sexual assaults on women,
16 especially aboriginal women, are a
17 clear and pressing problem in this
18 jurisdiction.

19 The first issue for determination before
20 proceeding with the sentencing is whether or
21 not this is a major sexual assault. For that
22 answer, I need go no further than the decision
23 of the Alberta Court of Appeal in R. v. Arcand
24 2010 ABCA 363. At paragraph 171, this is what
25 the Alberta Court of Appeal said:

26 A sexual assault is a major sexual
27 assault when the sexual assault is

1 of such a nature or character that
2 a reasonable person could foresee
3 that it is likely to cause serious
4 psychological or emotional harm
5 whether or not physical injury
6 occurs.

7 As I look at those words, I recall the
8 evidence of Kayleen Kenny who noted that the
9 victim was crying hysterically and she looked
10 scared; she never saw that look before. That
11 is enough but I do note as well the comments
12 of the learned counsel that she subsequently
13 left this jurisdiction. So I am of the
14 opinion, firstly, that the sexual assault
15 before the Court is encompassed in that
16 definition. It is a major sexual assault.

17 The significance is that according to the
18 decision of R. v. Sandercock 22 C.C.C. (3d)
19 79, the starting-point is three years'
20 imprisonment. The learned Crown attorney
21 submits that a sentence of three and a half to
22 four years would be appropriate. That's a
23 period of 42 to 48 months. Considering the
24 relevancy of the factors that I must duly
25 weigh, that recommendation by her is neither
26 unrealistic nor unreasonable.

27 Accordingly, there is an order of the

1 Court that pursuant to section 490.012 of the
2 Code, an order is granted that the accused
3 comply with the Sex Offender Registration Act.
4 That order will begin today and last for 20
5 years.

6 As sexual assault is a primary designated
7 offence, an order is granted authorizing the
8 taking of bodily substances that are
9 reasonably required for the taking of a DNA
10 analysis pursuant to section 487.051.

11 The mandatory firearms prohibition order
12 under section 109 of the Code is granted for
13 ten years from today's date.

14 The victim surcharge is waived.

15 Bearing in mind that Mr. Elias has already
16 served five and a half months, the sentence of
17 the Court is three years.

18 The Court stands closed.

19 -----

20
21 Certified to be a true and
22 accurate transcript pursuant
23 to Rules 723 and 724 of the
24 Supreme Court Rules,

25
26 _____
27 Lois Hewitt,
Court Reporter