

**IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES**

**IN THE MATTER OF:**

**HER MAJESTY THE QUEEN**

**- v -**

**BOBBY ALIKAMIK**

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Transcript of the Reasons for Sentence by The Honourable  
Justice K. Shaner, at Yellowknife in the Northwest  
Territories, on the 5th day of June, 2013.

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**APPEARANCES:**

Mr. K. Onyskevitch: Counsel for the Crown

Mr. P. Fuglsang: Counsel for the Accused

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Charge under s. 271 Criminal Code of Canada

1 Proceedings taken in the Supreme Court of  
2 Yellowknife, Northwest Territories

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4 THE COURT:                   The first thing I would like  
5 to do is to thank both counsel and Mr. Alikamik,  
6 and you, officer, for accommodating the court's  
7 need to reschedule this from Friday to today. It  
8 came up rather suddenly, and I do appreciate  
9 everyone making the effort to be here.

10                   Today I have to impose sentence on  
11 Mr. Alikamik, who was convicted of sexual assault  
12 following a jury trial in Inuvik in April of  
13 2013.

14                   The first issue is with respect to enhanced  
15 credit for time spent awaiting sentencing, and  
16 it's my view that Mr. Alikamik should be granted  
17 enhanced credit at the maximum rate of one and a  
18 half days for every day served.

19                   The Criminal Code provides in section 719(3)  
20 that credit for time spent in custody awaiting  
21 trial, and also time spent awaiting sentence, is  
22 limited to a maximum of one day to each day spent  
23 in custody. But section 719(3.1), provides that  
24 the court can grant up to one and a half days for  
25 each day spent in custody if the circumstances  
26 justify it.

27                   The Manitoba Court of Appeal, in a decision

1           called *R. v. Stonefish*, 2012 MBCA 116, examined  
2           the circumstances that need to exist in order to  
3           grant the enhanced credit, and among other cases,  
4           it cited Chief Judge Gorin's decision in *R. v.*  
5           *Desjarlais* from the Territorial Court of the  
6           Northwest Territories, and it found that the  
7           circumstances do not need to be exceptional to  
8           justify granting more generous credit, but there  
9           have to be circumstances that justify it and  
10          those have to be individual to the accused.

11           One of the circumstances that has in other  
12          cases justified granting enhanced credit is delay  
13          in sentencing that is due to having to wait for a  
14          presentence report, and examples of that come  
15          from throughout the country: *R. v. Sharkey*, 2011  
16          BCSC 1541; *R. v. Mozumdar*, 2012 ONCJ 151; *R. v.*  
17          *Dingwell*, 2012 PESC 13; *R. v. Moase*, 2012 PESC  
18          36; and recently from this court, *R. v. Lepine*,  
19          2013 NWTSC 19.

20           The presentence report that was tendered  
21          here was extremely helpful in helping me to  
22          understand Mr. Alikamik's background so that I  
23          could determine what an appropriate sentence  
24          would be. These reports do take time, however,  
25          and during that time, Mr. Alikamik was remanded  
26          in custody awaiting sentence and not earning  
27          remission.

1           In my view, he should not be penalized for  
2           that legitimate delay. He was taken into custody  
3           on April 10th, 2013, and as of today, he has  
4           spent 57 days in remand. So he will be given  
5           credit at 1.5 to one, and that credit will be two  
6           months and two weeks, and that will be deducted  
7           from the custodial portion of his sentence.

8           Turning to the offence itself, the  
9           indictment upon which Mr. Alikamik went to trial  
10          contained two counts. The first alleged a sexual  
11          assault by Mr. Alikamik between February 17th and  
12          February 23rd, 2008. The second alleged a sexual  
13          assault between March 31st, 2005, and  
14          February 17th, 2008.

15          The jury found Mr. Alikamik guilty on the  
16          second charge but was unable to reach a verdict  
17          on the first. A mistrial was declared with  
18          respect to the first and the Crown subsequently  
19          stayed that first charge.

20          So the facts surrounding the second charge  
21          are relevant today, and they came out in the  
22          evidence as follows: The victim is  
23          Mr. Alikamik's biological daughter, and she had  
24          learned of that fact relatively recently in  
25          relation to the time of the offence. She was  
26          living with Mr. Alikamik in a house in Ulukhaktok  
27          along with his wife and her half brothers. She

1 had just turned 16.

2 Her brothers were asleep in the house one  
3 night and Mr. Alikamik's wife was out of town.  
4 Mr. Alikamik and the victim were still awake. He  
5 told her he was "horny" and he tried to get her  
6 to touch his genitals. He grabbed her hand and  
7 placed it in his crotch area over his pants and  
8 he repeated again that he was horny.

9 Mr. Alikamik touched the victim's breasts.  
10 She told him to stop but he continued. He then  
11 forced her face down onto to a couch and tried to  
12 put his penis into her vagina. She tried to get  
13 up, but he pushed her back down. She was finally  
14 able to get away from him without the sexual  
15 assault going any further.

16 The victim also described a second sexual  
17 assault that happened some time later but during  
18 the same time period described in count 2 of the  
19 indictment. The two were in the laundry room.  
20 Her brothers were in the living room awake.  
21 Again, Mr. Alikamik's wife was out of town.

22 The victim and Mr. Alikamik had just smoked  
23 a marijuana cigarette. He told her again he was  
24 horny and he proceeded to touch her breasts and  
25 her vagina underneath her clothing. He told her  
26 to be quiet. She told him to stop and he did.  
27 She said she was about 17 when that happened.

1           At trial, Mr. Alikamik denied all of these  
2 charges. Obviously, however, the jury either did  
3 not believe him or his evidence did not raise a  
4 reasonable doubt.

5           Mr. Fuglsang provided some information to  
6 the court about Mr. Alikamik's background and  
7 circumstances, and I also had the benefit of  
8 reading a presentence report that was prepared by  
9 Probation Services. It was extremely helpful, as  
10 I said earlier.

11           Mr. Alikamik is a 47-year-old Inuvialuit man  
12 who was raised in Ulukhaktok. He went to school  
13 and he stayed there until Grade 8, and this was  
14 largely a positive experience for him and he was  
15 a strong student. He never returned to school,  
16 however, as he had to work to support his family.

17           According to the presentence report,  
18 Mr. Alikamik's early childhood was also very  
19 positive. His parents were described as  
20 traditional people. They spent a lot of time on  
21 the land with their children teaching them  
22 traditional skills.

23           Unfortunately, however, things went way off  
24 the rails when Mr. Alikamik was in his early  
25 teens. It was then that his parents began to  
26 consume alcohol regularly. This coincided with  
27 the opening of the hotel in Ulukhaktok and his

1 parents entering the wage economy.

2 His father would inflict physical abuse on  
3 his mother, and more tragically, Mr. Alikamik and  
4 his siblings were left with a babysitter, a man  
5 from the community, when his parents went out to  
6 parties. The man sexually abused Mr. Alikamik  
7 and he sexually abused Mr. Alikamik's brother.  
8 This went on for several years.

9 When he was 17, Mr. Alikamik left his  
10 parents' home and moved in with his aunt. In his  
11 20s, Mr. Alikamik consumed alcohol as a binge  
12 drinker, often drinking for a week at a time to  
13 the point of blacking out. To his credit, he  
14 recognized the adverse effect that this was  
15 having on his life and on his family and he  
16 stopped drinking.

17 He told the probation officer who wrote the  
18 presentence report that he has not consumed  
19 alcohol for 10 years, and indeed, there was  
20 evidence given at the trial that Mr. Alikamik  
21 does not use alcohol, and certainly there was no  
22 suggestion that either the victim or Mr. Alikamik  
23 were under the influence of alcohol when the  
24 victim was sexually assaulted.

25 The Crown also tendered Mr. Alikamik's  
26 criminal record, which I will return to later.

27 The principles and objectives of sentencing

1 are set out in the Criminal Code. It is a highly  
2 individualized process, and the emphasis that is  
3 placed on any particular objective or set of  
4 objectives will vary with the nature of the  
5 offence and the circumstances of the individual  
6 offender.

7 Where the offence involves the abuse of a  
8 person under 18 years of age, as is the case  
9 here, the judge, by the provisions of the  
10 Criminal Code, has to give primary consideration  
11 to the objectives of denunciation and deterrence.  
12 However, that is not to say that the other  
13 objectives, such as rehabilitation, do not factor  
14 in to the consideration also very strongly.

15 There are also a number of principles that  
16 guide judges in imposing sentence. The primary  
17 one is proportionality, which means quite simply  
18 that the sentence has to be proportional to the  
19 degree of moral blameworthiness of the offender.  
20 In other words, the sentence has to fit the  
21 crime.

22 Mitigating and aggravating circumstances  
23 also have to be considered, and the sentence has  
24 to be increased or reduced to reflect these.

25 Evidence that the offender abused a person  
26 under the age of 18 years and that the offender  
27 was in a position of trust in relation to the

1 victim are specifically noted in the Criminal  
2 Code as aggravating factors, and sadly, both of  
3 those are present here.

4 Judges are also bound to recognize that  
5 there should be similar treatment for like  
6 offences and offenders, and as well, that prison  
7 is a last resort.

8 In the case of aboriginal offenders in  
9 particular, judges are required to consider all  
10 available sanctions other than imprisonment that  
11 are reasonable in the circumstances, and the  
12 purpose of this is to recognize and address the  
13 over-representation of aboriginal people in our  
14 correctional system.

15 The fact that this is something to which we  
16 must pay more than just lip service was recently  
17 affirmed by the Supreme Court of Canada in the  
18 case of *R. v. Ipeelee*.

19 There are, as I indicated earlier, some  
20 aggravating factors that arise out of the  
21 circumstances of that particular offence.  
22 Mr. Alikamik is the victim's father, and when  
23 this occurred, the victim was living with him and  
24 she had just turned 16. He sexually assaulted  
25 her twice, blatantly, while her brothers were  
26 present in the home, once when they were asleep  
27 and once when they were awake.

1           Mr. Alikamik has a criminal record which  
2           contains two convictions for sexual assault, two  
3           convictions for assault and one conviction for  
4           assault causing bodily harm. It also contains  
5           two convictions for drug possession. The sexual  
6           assaults I'm told by the prosecutor involved  
7           women under the age of 18.

8           I do note, however, that the record is a  
9           very old one. The last conviction which was for  
10          assault dates back to 1999. Moreover, if one  
11          compares it to the presentence report, it appears  
12          that these convictions were sustained during that  
13          period of time when Mr. Alikamik was using  
14          alcohol extensively. This does not remove the  
15          criminal record from the list of aggravating  
16          factors, but in my view, it certainly diminishes  
17          its effect.

18          There are not any mitigating factors. I  
19          pause here to note that the fact that  
20          Mr. Alikamik did not plead guilty is not  
21          aggravating. It doesn't count against him.  
22          Everyone has the right to a trial, and he was  
23          entitled to have this matter determined by a  
24          jury. However, the fact that there is no guilty  
25          plea and there has been no expression of remorse,  
26          while not aggravating, means that there is  
27          nothing that is mitigating.

1           The Crown is seeking a custodial sentence of  
2           four to five years, less time spent awaiting  
3           sentence, and defence counsel suggests that a  
4           custodial sentence of 10 months to a year, again  
5           less presentence custody, is appropriate.

6           Now, the Crown is not characterizing this as  
7           a major sexual assault such that there is a  
8           three-year starting point for sentencing with  
9           which I have to work. I agree with this, and  
10          defence counsel emphasized this point as well.

11          While I in no way want to diminish the  
12          seriousness of what happened here, nor do I want  
13          to diminish the adverse impact it must have had  
14          on the victim, it does not fall into the category  
15          of a major sexual assault as that term was  
16          articulated by the Alberta Court of Appeal in *R.*  
17          *v. Arcand*, 2010 ABCA 363, specifically at  
18          paragraph 171.

19          As I understand the Crown's position,  
20          however, it is of the view that a custodial  
21          sentence in the range it suggests, being four to  
22          five years, is necessary to achieve the objective  
23          of sentencing, particularly denunciation and  
24          specific and general deterrence, which, as I  
25          noted earlier, have to be given primary  
26          consideration.

27          Sexual crimes against children are

1 particularly serious, and even more so when that  
2 crime is perpetrated by a parent. Children need  
3 their parents to teach them, to care for them, to  
4 love them and to protect them. They need to be  
5 able to trust their parents, and when a parent  
6 violates a child sexually, that is among the most  
7 grave betrayals of trust. Where that happens,  
8 the offender bears an extremely high degree of  
9 moral blameworthiness.

10 Defence urged me to consider that although  
11 Mr. Alikamik is the victim's father, their  
12 relationship had only begun recently in relation  
13 to the time when these events occurred, and he  
14 suggested that the two had not really bonded in a  
15 father-daughter or parent-child relationship  
16 because someone else had raised the victim until  
17 she was 16.

18 I just cannot accept that. The fact is that  
19 Mr. Alikamik is the victim's father. He knew  
20 this at the time. She knew it at the time, and  
21 she was living with him as a child. He was  
22 responsible for her.

23 I have considered Mr. Alikamik's aboriginal  
24 status and his history. His life was  
25 significantly affected with the advent of  
26 economic development in his home community. His  
27 parents went from being almost wholly traditional

1 in their lifestyle to straddling between the  
2 opportunities of the wage economy, including the  
3 opportunity to buy and consume alcohol, and a  
4 traditional lifestyle.

5 With his parents' changed lifestyle came  
6 grave consequences for Mr. Alikamik. The time he  
7 is reported to have dropped out of school in  
8 Grade 8 and when he started using alcohol himself  
9 coincides very closely with the opening of the  
10 hotel in town and when his parents started using  
11 alcohol. That coincided as well with when his  
12 parents started to leave the children with the  
13 babysitter while they drank, and that is when  
14 Mr. Alikamik himself was sexually abused.

15 Crown counsel submitted two cases, both  
16 decisions of this court, being *R. v. Mannilaq*,  
17 which is reported at 2012 NWTSC 48, and *R. v.*  
18 *T.(P.S.)*, 2012, NWTSC 86.

19 The *Mannilaq* case is somewhat helpful, but  
20 on the whole, it is of limited value here because  
21 it did involve a major sexual assault, so the  
22 length of the sentence is approached somewhat  
23 differently than the approach I have to take in  
24 this case.

25 In the *T.(P.S.)* case, the offender was  
26 sentenced to a prison term of three years  
27 following a guilty plea for a sexual assault

1           against his daughter. She was passed out at the  
2           time and the offence consisted of multiple sexual  
3           touchings.

4           There are some similarities in fact between  
5           that case and the one before me now. The  
6           offender was the victim's father and the offence  
7           was not characterized as a major sexual assault.  
8           As well, in that case, the offender was  
9           aboriginal. In that case, the offender entered a  
10          guilty plea, which was not the case here.

11          A significant difference is that the  
12          offender in *T.(P.S.)* had a lengthy criminal  
13          record which contained relatively recent  
14          convictions for sexual crimes against his other  
15          daughters and for which he had served a  
16          significant period of incarceration.

17          As I noted earlier, Mr. Alikamik's record is  
18          very old and coincided with the time in which his  
19          life was in upheaval, in particular when he used  
20          alcohol excessively.

21          I agree that the sentence in this case has  
22          to give priority to the objectives of  
23          denunciation and deterrence, but it is my view  
24          that those objectives can be readily achieved  
25          with a shorter period of incarceration than what  
26          the Crown proposes, combined with a  
27          community-based sentence.

1           As well, it bears repeating that all  
2           sentencing objectives and principles remain  
3           important, even if priority is required to be  
4           placed on certain ones. That means, of course,  
5           that the objective of rehabilitation must still  
6           be considered, and the principle of restraint,  
7           particularly with respect to aboriginal  
8           offenders, must still be respected.

9           One of the things that strikes me about  
10          Mr. Alikamik's record, especially when it's  
11          viewed side by side with the presentence report  
12          and all the information about his background, is  
13          that Mr. Alikamik is capable of learning from his  
14          mistakes and he is capable of motivating himself  
15          to make changes and choices on his own.

16          The author of the presentence report is of  
17          the view that Mr. Alikamik would benefit from a  
18          community-based sentence. A community-based  
19          sentence would, in my view, have meaning for  
20          Mr. Alikamik. He should be given the opportunity  
21          for rehabilitation in the community to the extent  
22          that that is possible.

23          Thus I am of the view that it is appropriate  
24          for there to be a sentence that combines a period  
25          of custody with a longer period of probation.

26          I now want to turn to the issue of the  
27          firearms prohibition under section 109 of the

1 Criminal Code. Section 109 provides for a  
2 mandatory prohibition when a person is convicted  
3 of an indictable offence in the commission of  
4 which violence against a person is used,  
5 threatened or attempted, or for which the person  
6 may be sentenced for 10 years or more.

7 The facts in this case readily lead to the  
8 conclusion that the sexual assault here involved  
9 violence. The victim was forced down on the  
10 couch and held there while she was assaulted.  
11 When she tried to get up, she was restrained.  
12 That is violence, and accordingly, in my view,  
13 there's a sound basis for the mandatory firearms  
14 prohibition.

15 Mr. Alikamik, please stand. Mr. Alikamik,  
16 upon being convicted of sexual assault and upon  
17 consideration of the circumstances and the nature  
18 of the offence, as well as your own personal  
19 circumstances and your past, I sentence you to a  
20 term of 15 months in prison, and that will be  
21 followed by two years probation.

22 The time that you will be required to serve  
23 in prison will be reduced by a credit on a  
24 1.5-to-one basis for the time you spent awaiting  
25 the sentencing. As of today, as I indicated  
26 earlier, that enhanced credit is two months and  
27 two weeks, so your sentence of 15 months will be

1 reduced by that amount of time.

2 The terms of the probation order that will  
3 be in effect in addition to the mandatory  
4 conditions that are set out in the Criminal Code  
5 will be as follows: You will report to a  
6 probation officer forthwith upon being released  
7 and thereafter as directed by your probation  
8 officer; you will remain in the Northwest  
9 Territories unless you have written permission to  
10 go outside of the Northwest Territories from your  
11 probation officer; and you will abstain from the  
12 consumption of drugs except at the direction of a  
13 licensed medical practitioner.

14 Mr. Alikamik, I am not going to order you to  
15 go to counselling, although that was recommended  
16 by the author of the presentence report, and the  
17 reason I will not order that is because I think  
18 that is something that you have to decide to do  
19 on your own, and I think it's something that you  
20 are capable of deciding to do on your own.

21 You can sit down.

22 That said, I do hope that you seek  
23 counselling, because you are still a young man  
24 and you have proven in the past that you can make  
25 the right choices and you can change.

26 There will also be an order for bodily  
27 fluids to be taken from Mr. Alikamik for DNA

1 analysis and an order requiring compliance with  
2 the Sex Offender Information Registration Act  
3 pursuant to section 490.012 of the Criminal Code,  
4 and that order will be in effect for lif.

5 Finally, there will be a firearms  
6 prohibition order in accordance with section 109  
7 of the Criminal Code for a duration of 10 years.  
8 In the circumstances, however, and having read in  
9 the presentence report and heard from your  
10 counsel about the fact that you have lived a  
11 fairly traditional lifestyle and you do do a lot  
12 of sustenance hunting, I will also make an order  
13 at this time under section 113(1) of the Criminal  
14 Code authorizing the firearms authority to issue  
15 a licence to you to possess a firearm for the  
16 purpose of sustenance hunting upon your  
17 application.

18 Counsel, is there anything else?

19 MR. ONYSKEVITCH: Your Honour, I think this is  
20 fairly academic, given that Mr. Alikamik has been  
21 in custody and pursuant to your sentence will  
22 continue to be in custody, but there is the issue  
23 of the victim of crime surcharge, which I imagine  
24 should be waived.

25 THE COURT: Mr. Fuglsang, I assume you  
26 agree with that?

27 MR. FUGLSANG: Yes, I do, Your Honour.

1 THE COURT: I think that's a reasonable  
2 submission. Thank you.

3 And if it hasn't been done through the  
4 removal order -- I just want to check. I will  
5 also make an order just vacating the form 19  
6 requiring Mr. Alikamik to be here on Friday, in  
7 the circumstances.

8 Does that conclude everything for you,  
9 counsel?

10 MR. ONYSKEVITCH: I believe so, yes, Your  
11 Honour.

12 THE COURT: Thank you. Mr. Fuglsang, is  
13 there anything else?

14 MR. FUGLSANG: No, that's fine, Your Honour.  
15 Everything is good.

16 THE COURT: All right. Then we will  
17 adjourn.

18 Thank you Mr. Onyskevitch, thank you  
19 Mr. Fuglsang, Mr. Alikamik, officer.

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21 PROCEEDINGS CONCLUDED

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**CERTIFICATE OF TRANSCRIPT**

I, the undersigned, hereby  
certify that the foregoing pages are a complete  
and accurate transcript of the proceedings taken  
down by me in shorthand and transcribed to the  
best of my skill and ability.

Dated at the City of Edmonton,  
Province of Alberta, this 22nd day of June, 2013.

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D. J. Halvorsen, CSR(A), RPR  
Court Reporter/Examiner