

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

JAMES CAESAR

Transcript of the Reasons for Sentence delivered by The Honourable Justice K. Shaner, sitting in Yellowknife, in the Northwest Territories, on the 28th day of October, A.D. 2013.

APPEARANCES:

Mr. A. Godfrey: Counsel for the Crown

Mr. M. Martin: Counsel for the Accused

(Charges under s. 149 and 246.1 Criminal Code of Canada)

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

1 THE COURT: Well, I have had an
2 opportunity, Counsel, to consider your
3 submissions, and I did have an opportunity to
4 review the cases that you provided me this
5 morning as well as those which you filed earlier
6 last week, Mr. Martin, and so I am now in a
7 position to impose sentence on Mr. Caesar who was
8 convicted by a jury on September 10th, 2013, of
9 one count of indecent assault and one count of
10 sexual assault following a jury trial that was
11 held in Norman Wells.

12 The victim described the two events that
13 resulted in the two charges on the Indictment
14 when she gave her testimony.

15 She moved with her mother to Fort Good Hope
16 in 1980. They lived with her grandmother in a
17 small, two-bedroom house. It had no running
18 water and no electricity. Mr. Caesar, who is the
19 victim's uncle, lived there as well. The
20 quarters were described as being very cramped and
21 the victim typically slept on a foamy on the
22 floor of the room that she shared with her mother
23 and grandmother. Mr. Caesar had the other
24 bedroom, and that was where the honey bucket was
25 located. The victim testified that due in large
26 part to the cramped quarters, she slept where she
27 could.

1 On the night that the first assault
2 occurred, she said she had fallen asleep in
3 Mr. Caesar's room. She testified that she woke
4 up because Mr. Caesar had taken her pants down
5 and lifted her off of the bed. He sat her on top
6 of him on the honey bucket. She said his pants
7 were down and she was not wearing any underwear
8 and he was rubbing his penis against her. There
9 were no lights in the house, but she saw him as
10 he lifted her off the bed, and she said she could
11 smell alcohol on him. This lasted a few minutes
12 after which he nudged her to get off of him. She
13 laid down on the bed on her stomach, not knowing
14 what to do. Mr. Caesar left.

15 The incident forming the second charge on
16 the Indictment occurred when the victim was 12 or
17 13 years old. Again, she was in Fort Good Hope.
18 She said everyone in the house where she normally
19 stayed was drinking and they had barred the door.
20 She was locked out, it was cold, and she needed a
21 place to stay. It was for that reason that she
22 went to Mr. Caesar's home. He allowed her to
23 come in, and eventually they both went to bed,
24 both of them fully dressed, and although they
25 were sleeping on the same bed (there was only one
26 in the house), they were under separate blankets.
27 Subsequently, the victim woke up. She found her

1 pants were off and so were Mr. Caesar's.
2 Mr. Caesar was on top of her, trying to put his
3 penis inside of her. She told him to get off and
4 she put her pants on and she left. She walked
5 around for a while, trying to find someone who
6 would take her in for the night and finally an
7 aunt let her in.

8 Mr. Caesar is a long-time resident of Fort
9 Good Hope. He is an aboriginal man, and like
10 many aboriginal people in the Northwest
11 Territories, he attended residential school, and
12 through his counsel this morning, the Court
13 learned that like so many others, he was sexually
14 abused while he was there. Nevertheless, he
15 managed to lead a largely successful and
16 accomplished professional life as reflected in
17 the two letters of support that this counsel
18 tendered here this morning.

19 The Criminal Code of Canada sets out the
20 principles and objectives of sentencing that
21 provide a framework for judges in imposing a
22 sentence that is just and appropriate.

23 Sentencing is a highly individualized
24 process. The objectives of sentencing are set
25 out in Section 718 of the Criminal Code. They
26 are: Denunciation of unlawful conduct, which is
27 an expression of society's abhorrence for a

1 particular act; deterrence, which is aimed both
2 at society in general, which is general
3 deterrence, and deterrence specific to the
4 offender; separating offenders from society where
5 that is necessary; rehabilitation; reparation;
6 and promoting a sense of responsibility in
7 offenders and an acknowledgment of the harm that
8 is done to the victim and to the community at
9 large.

10 The emphasis placed on any one of these
11 factors of course depends on what the offence is,
12 the circumstances under which it was committed,
13 and the circumstances of the offender. Where an
14 offence involves abuse of a person under 18 years
15 of age, as is the case here, the Criminal Code
16 requires the sentencing judge to give primary
17 consideration to the objectives of denunciation
18 and deterrence.

19 Courts are also guided by a number of
20 principles in applying these objectives that I
21 just talked about, and the most important of
22 these is proportionality. This takes into
23 account the moral blameworthiness of the
24 offender, and it is stated in the Criminal Code
25 as follows:

26 A sentence must be proportionate
27 to the gravity of the offence and
the degree of responsibility of
the offender.

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In other words, the punishment has to fit the crime.

Judges also have to consider the aggravating and mitigating circumstance and reduce or increase a sentence accordingly.

Judges are guided by the principles of restraint and similarity of sentence. Similarity of sentence means simply that there should be similar treatment for like offences and offenders, and the principle of restraint means that imprisonment should be a measure of last resort. That requires consideration of all available sanctions other than imprisonment that are reasonable in the circumstances, with particular attention to the circumstances of aboriginal offenders, and the importance of that principle was recently reaffirmed by the Supreme Court of Canada in the R. v. Ipeelee.

There are a number of gravely aggravating factors in this case. Mr. Caesar is the victim's uncle. He was an adult, she was a child. In both cases, she was asleep when the assaults began. In the second case, she was extremely vulnerable. She sought refuge from the cold when her mother and grandmother locked her out of a drinking party. She had nowhere to go and

1 Mr. Caesar took her in, but instead of protecting
2 and sheltering this young girl, he seized the
3 opportunity to take full advantage of her
4 vulnerability.

5 Mr. Caesar has one criminal conviction which
6 arose after these charges were laid for impaired
7 driving. That record has no impact on the
8 sentencing in this case, so it is not an
9 aggravating factor.

10 There really are no mitigating factors.
11 There was no guilty plea, there was no expression
12 of remorse, and while I emphasize that these are
13 not aggravating, their absence simply means that
14 there is nothing mitigating.

15 The Crown seeks a custodial sentence of two
16 to two-and-a-half years' incarceration. It is
17 the Crown's position that a custodial sentence in
18 this range is necessary to achieve the objectives
19 of sentencing, particularly denunciation and
20 deterrence, which, as I noted earlier, have to be
21 given primary consideration. The defence submits
22 that I should impose a conditional sentence of
23 twelve months or, alternatively, a period of
24 incarceration of eight to ten months.

25 Up until recently, a conditional sentence,
26 which is acknowledged to be a more lenient
27 sentence than incarceration, would have been

1 available, and so in accordance with Section
2 11(i) of the Charter, because of the time that
3 these offences were committed, this is something
4 that is available to Mr. Caesar for my
5 consideration. In my view, however, it is not
6 appropriate that there be a conditional sentence
7 in this case. In particular, I am wholly
8 unconvinced that a conditional sentence would
9 send the right message about denunciation and
10 deterrence to either Mr. Caesar or the community
11 at large. It would also fail to recognize the
12 very high degree of moral blameworthiness borne
13 by Mr. Caesar and the impact that his actions
14 have had on the victim.

15 Children trust adults. They have to be able
16 to do that. They are children and with that
17 comes an inherent vulnerability. They have to be
18 able to rely on adults and on their family
19 members to help and protect them. They have the
20 right to go to sleep at night and not fear
21 falling prey to the perversions of older,
22 stronger people. If they need help because their
23 own parents have failed them, they should not
24 have to choose between freezing and bearing the
25 risk of being sexually assaulted.

26 Sexual assault is all too common in the
27 Northwest Territories and, tragically, sexual

1 crimes against children are not uncommon. They
2 are so serious and it is absolutely imperative
3 that the Court send a message that it is a crime
4 and it is a serious one with real consequences.

5 In her Victim Impact Statement, Mr. Caesar's
6 niece describes her loss of innocence as well as
7 the price she has paid for coming forward. She
8 does not feel she can return to her home
9 community of Fort Good Hope, and her
10 relationships with other family members have been
11 negatively affected. Mr. Caesar, in the
12 meantime, has been able to live his life until
13 now with success and without bearing that kind of
14 burden.

15 Crown counsel submitted two cases, both of
16 which address the appropriate length of sentence
17 as well as sentencing principles and objectives
18 involving child victims. These are R. v. K.R.,
19 2001 Carswell NWT 14 and R. v. M.C.F., 2006
20 Carswell NWT 90, and both of these are from the
21 Supreme Court of the Northwest Territories.

22 In the K.R. case, the accused was sentenced
23 to three years' incarceration for what was
24 characterized as a major sexual assault, and in
25 M.C.F., the accused received nine months'
26 incarceration followed by twelve months of
27 probation. Now, I note that in both of these

1 cases, the accused had previous records for
2 similar offences, which makes them somewhat
3 distinguishable from the case at bar.

4 Defence counsel also submitted a number of
5 cases in support of a more lenient jail sentence
6 than what the Crown is seeking. Many of these
7 cases, however, predate the decision in R. v.
8 Arcand from Alberta which has been applied by
9 both the Supreme Court and the Court of Appeal of
10 the Northwest Territories.

11 Although I have concluded that incarceration
12 is necessary in this case, I do not think that a
13 sentence of the length requested by the Crown is
14 necessary to achieve the goals of denunciation
15 and deterrence, and I also think that a
16 combination of a shorter period of incarceration
17 than what is sought by the Crown followed by a
18 period of probation would achieve these.
19 Moreover, I think that approach would honour the
20 reasoning in Gladue and Ipeelee.

21 The Crown has also asked that I impose a
22 firearms prohibition under Section 109 of the
23 Criminal Code, and that section provides for a
24 mandatory prohibition where a person is convicted
25 of an indictable offence in the commission of
26 which violence against a person is used,
27 threatened, or attempted, and for which the

1 person may be sentenced for ten years or more.

2 The question here is whether there was
3 actual threatened violence as that term is used
4 in Section 109, and I find that in this case
5 there was. In the first event, Mr. Caesar took
6 the victim out of bed and held her on his lap.
7 He restrained her. He did not slap or hit her,
8 but she could not leave. The second time, the
9 victim awoke to find her pants off and Mr. Caesar
10 attempting to put his penis in her vagina and
11 that, in my view, is violence as that term is
12 used in Section 109.

13 Mr. Caesar, can you please stand. Mr. Caesar,
14 upon being convicted of indecent assault and
15 sexual assault and upon consideration of the
16 circumstances and the nature of these offences as
17 well as your personal circumstances, I sentence
18 you as follows: For the charge of sexual
19 assault, which is Count 2 on the Indictment, you
20 are sentenced to a term of 18 months'
21 imprisonment. This will be followed by a term of
22 12 months' probation. For the charge of indecent
23 assault, which is Count 1 on the Indictment, you
24 are sentenced to a term of one-year imprisonment
25 to be served concurrently with the time served
26 for Count 2. This term will be reduced by the
27 amount of time that you spent in custody awaiting

1 this sentencing on a one-to-one basis, which is,
2 as of today, 49 days.

3 During your probationary period, you would
4 be subject to the following conditions: You will
5 keep the peace and be of good behaviour; you will
6 appear before the Court when required to do so by
7 the Court; you will notify the Court or your
8 probation officer in advance of any change of
9 name, address, change of employment or change of
10 occupation; you will report to a probation
11 officer within two working days of your release
12 from custody and thereafter as required by the
13 probation officer; and you will remain in the
14 Northwest Territories unless you have written
15 permission from either the Court or the probation
16 officer to leave.

17 There will also be some ancillary orders.
18 There will be an order for bodily fluids to be
19 taken from Mr. Caesar for DNA analysis and an
20 order requiring him to comply with the Sex
21 Offender Information Registration Act pursuant to
22 Section 490.012 of the Criminal Code. The
23 duration of that order will be for 20 years.
24 Finally, there will be a mandatory ten-year
25 firearms prohibition, but given that Mr. Caesar
26 hunts for sustenance, the Chief Firearms Officer
27 or Registrar, as the case may be, are both

1 authorized to issue an authorization to you for
2 sustenance purposes under the terms and
3 conditions deemed appropriate.

4 Given the circumstances and the fact that
5 these offences predate the recent amendments to
6 Section 737 of the Criminal Code, the victims of
7 crime surcharge in this case is waived.

8 Counsel, is there anything else?

9 MR. GODFREY: Your Honour, just in relation
10 to the probation order, I'm wondering if it would
11 be appropriate to order a no contact condition
12 with respect to the complainant.

13 THE COURT: That will be a term of your
14 probation, Mr. Caesar, that you cannot have any
15 contact with Ms. H.

16 MR. GODFREY: Thank you, Your Honour.

17 MR. MARTIN: Nothing further from defence,
18 Your Honour.

19 THE COURT: Is there anything else?

20 MR. GODFREY: I don't believe so, Your
21 Honour. Thank you.

22 THE COURT: Mr. Caesar, good luck to you.
23 Thank you. We will adjourn.

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Certified Pursuant to Rule 723
of the Rules of Court

Jane Romanowich, CSR(A)
Court Reporter