

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES
IN THE MATTER OF:

HER MAJESTY THE QUEEN

- and -

JAMES TUTCHO

Transcript of the Reasons for Sentence delivered by
The Honourable Justice S. H. Smallwood, in Yellowknife,
in the Northwest Territories, on April 1, 2015.

APPEARANCES:

Ms. J. Scott: Counsel on behalf of the Crown
Ms. A. Duckett: Counsel on behalf of the Crown
Mr. S. Petitpas: Counsel on behalf of the Accused

Charges under s. 271 C.C. x 7

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pursuant to Section 486.4 of the Criminal Code

1 THE COURT: James Tutcho was convicted by
2 a jury on February 12th, 2015, of seven counts of
3 sexual assault in relation to sexual acts he
4 committed against his daughter C.T. and his
5 step-daughters R.K. and S.K. over an 18 year
6 period from 1995 to 2013. Mr. Tutcho was
7 convicted of seven out of nine counts on the
8 Indictment. Based on the jury's guilty verdicts
9 on Counts 1 through 7, I find the following facts
10 form the basis of the convictions for each of
11 those counts:

12 Count 1: In 1995 or 1996, R.K. was eight
13 years old when she was watching television in her
14 parents' bedroom alone. She fell asleep. When
15 she woke up she was laying on her side and Mr.
16 Tutcho was behind her. His hands were in her
17 shirt and he was rubbing her chest underneath her
18 clothes on her skin around her breast area. This
19 incident lasted five to ten minutes. When it was
20 over, Mr. Tutcho left the room. R.K. was scared
21 during the incident and just laid there.

22 Count 2: R.K. was 18 or 19 years old and
23 four to five months pregnant in 2006. When she
24 was sleeping in her sister S.K.'s bedroom at the
25 house that she and S.K. lived in, she woke up and
26 James Tutcho was on top of her, his pants were
27 down and her pants were down and he was having

1 sexual intercourse with her. His penis was
2 inside her vagina. When she awoke he got off her
3 and pulled up his pants and ran for the door. He
4 went to his own house. She testified in the
5 trial that he later apologized to her when he was
6 drinking and said he was sorry.

7 Count 3 was witnessed by C.T. She witnessed
8 James Tutcho sexually assaulting R.K., who was
9 passed out on the floor at the time. C.T. was 14
10 at the time in 2005 or 2006, and R.K. was
11 approximately 18 years old. C.T. looked through
12 the window beside the door at her house and she
13 saw her sister R.K. passed out, facing the
14 window. Mr. Tutcho was behind R.K. with his hand
15 in her pants at the back and he was rubbing his
16 private parts against R.K.'s bum.

17 Count 4: In 2013, R.K. went to sleep on a
18 mattress in the living room next to James Tutcho.
19 When she woke up he was digging in her pants, his
20 hand was in her pants and he was touching her bum
21 and rubbing her. He was touching her under her
22 clothes on her skin. Following this incident,
23 R.K. went to the police and provided a statement,
24 and that led to this charge and the other charges
25 that Mr. Tutcho faced at trial.

26 Count 5: C.T. was 11 years old when she was
27 sleeping on her stomach in her bedroom. James

1 Tutcho came into the bedroom, sat on the bed, and
2 put his hand on her leg right below her bum over
3 the covers. She asked him what he was doing. He
4 said "nothing" and told her to go back to bed.
5 He left the room. Five to ten minutes later, he
6 came back into the room and did the same thing –
7 put his hand on her leg below her bum.

8 Count 6: C.T. was 16 years old and laying
9 on a bed in the living room of her house on her
10 back with her feet on the floor. She awoke to
11 feel someone digging in her pants. James Tutcho
12 was leaning over her with his hand in her pants
13 on her skin. He touched her vagina, rubbing it.
14 She woke up, and she kicked him in the chest and
15 asked "what the fuck" he was doing. Mr. Tutcho
16 then fled the residence.

17 Count 7: S.K. was 12 years old when she was
18 sleeping in her mom's room, and when she woke up
19 she was on her side under the blankets and James
20 Tutcho was there lying beside her. His hand was
21 in her pants touching her private areas – her
22 vagina – under her panties.

23 Those are the facts which form the basis for
24 the convictions for the seven counts.

25 Two victim impact statements were filed at
26 the sentencing, one from C.T. and another from
27 S.K. R.K. did not provide a victim impact

1 statement, but she participated in the
2 preparation of the presentence report which was
3 ordered prepared for the sentencing.

4 It is clear from the victim impact
5 statements filed that the actions of Mr. Tutcho
6 have had a profound effect on the victims, and
7 that is not surprising. C.T. wrote of feeling
8 anger, of feeling disgusted and violated. She
9 felt suicidal at times and made several suicide
10 attempts, starting when she was 12. Her feelings
11 led her to abuse alcohol to numb the pain.

12 S.K. wrote about how when the abuse started
13 that her whole world changed. She said, "It was
14 as though I just stepped into an unknown dark
15 place and I felt that I was totally alone." The
16 actions of James Tutcho changed her life forever.
17 The abuse took its toll on her mentally and
18 physically, and it resulted in her feeling
19 unworthy, abusing alcohol, and taking a
20 self-destructive road.

21 R.K. also reported that she has been
22 profoundly affected by James Tutcho's actions.
23 In the presentence report, she told the writer
24 that she does not trust men as a result. She has
25 abused alcohol as a means of dealing with what
26 happened to her. So this has had a great effect
27 on R.K. as well.

1 Despite this, both C.T. and S.K. wrote of
2 happier times with James Tutcho. It is clear
3 that they value him as a father and a stepfather,
4 and that they also had happy times. For S.K. and
5 R.K., he was their stepfather and he was the only
6 father that they had ever known, as they do not
7 have contact with their biological father.

8 C.T. and S.K. wrote about how Mr. Tutcho,
9 when he was sober, how good he was as a father
10 and a provider, about the happy memories they
11 shared as a family out on the land at the cabin.
12 It is clear that when sober, James Tutcho was a
13 father that C.T. and S.K. valued and respected;
14 however, when he consumed alcohol he became the
15 person that preyed upon them.

16 The actions of James Tutcho in abusing R.K.,
17 S.K. and C.T. have had a devastating impact on
18 the victims and on their family. Despite this,
19 both C.T. and S.K. want to continue to have a
20 relationship with him, R.K. is unsure if she
21 wants a continued relationship, but all three
22 victims want him to seek help for his problems.

23 James Tutcho has a prior criminal record
24 which has several convictions on it. Many of
25 them are dated. Of significance is a conviction
26 entered on July 27th, 1994, for sexual
27 interference for which Mr. Tutcho received 60

1 days' imprisonment and one year probation. This
2 conviction arose from two incidents where he
3 touched S.K., when she was ten years old,
4 underneath her clothing on her skin. This
5 conviction is aggravating because it is a prior
6 sexual conviction and because it occurred on
7 S.K., who is also a victim in this case. It is a
8 similar offence, and it occurred approximately a
9 year before his next sexual assault which was
10 also committed upon S.K.

11 Mr. Tutcho is of North Slavey descent. This
12 requires me to consider section 718.2(e) of the
13 Criminal Code and whether there are sanctions
14 other than imprisonment that should be considered
15 for this aboriginal offender.

16 I have had the benefit of a thorough
17 presentence report and of counsel's submissions
18 which delve into Mr. Tutcho's background and his
19 circumstances as an aboriginal offender before
20 this court. I do not intend to cover all of what
21 was written in the presentence report or what was
22 said by counsel, but I have considered all of
23 those circumstances as they apply to section
24 718.2(e).

25 I have heard that Mr. Tutcho was raised in a
26 traditional lifestyle, one that he continued as
27 an adult, which involved hunting and trapping and

1 living on the land. He speaks Slavey fluently.
2 His traditional lifestyle is one that he has
3 passed along to his children and taught them
4 traditional ways as well.

5 Mr. Tutcho was also raised in an environment
6 where there was the abuse of alcohol and domestic
7 violence. His mother attended a residential
8 school for many years, while his father did not
9 attend school but was raised traditionally.
10 Other members of his extended family also
11 attended residential schools and Mr. Tutcho
12 himself attended Grollier Hall for a year.

13 As a child, Mr. Tutcho was also subjected to
14 sexual abuse. This was inflicted by two women.
15 The incidents occurred when he was five or six
16 years old and also 11. These incidents have had
17 a great effect upon him and he has not really
18 dealt with the resulting trauma over the years.

19 Mr. Tutcho has also abused alcohol for many
20 years, attempting treatment programs twice in the
21 past. His problems, he says, began with alcohol
22 when he first started consuming alcohol at 12
23 years old. He has made attempts to stop drinking
24 but has not been successful in the long term.

25 The abuse of alcohol has had a significant
26 effect on his life, not least of which is that
27 alcohol played a factor in each of these

1 incidents before the court today. Despite his
2 problems and the difficult upbringing he
3 suffered, Mr. Tutcho has been employed over the
4 years and has had consistently-held jobs. He has
5 also been able to hunt and trap successfully for
6 years. He has been productive, while at the same
7 time bottling up his problems and continued to
8 drink.

9 I am hopeful that Mr. Tutcho can use the
10 strength that he has, and the commitment that he
11 has shown to a traditional lifestyle, to forge a
12 new path to deal with his problems and become a
13 better person.

14 I have given consideration to the Gladue
15 factors, but I am of the view that the
16 appropriate range of sentence in this case
17 includes a period of incarceration and that there
18 is no reasonable alternative to imprisonment.
19 Indeed, defence counsel, in making submissions on
20 sentence, sought a period of imprisonment.

21 As noted in Gladue, the more violent and
22 serious the offence the more likely, as a
23 practical reality, the term of imprisonment for
24 an aboriginal and a non-aboriginal will be close
25 to each other or the same, even taking into
26 account different views on sentencing by each
27 group.

1 In my view, these offences are all serious
2 offences for which a period of imprisonment is
3 required, and the practical reality is that the
4 term of imprisonment would be the same or close
5 to the same regardless of the ethnicity of the
6 offender.

7 The Crown has filed several cases on
8 sentencing. I do not intend to go through them,
9 but they are helpful in providing a range of
10 sentence as well as the applicable sentencing
11 principles in situations like this.

12 It is clear from the cases that the
13 paramount sentencing principles in cases
14 involving sexual abuse by an adult on a child are
15 general deterrence and denunciation. Other
16 sentencing principles, like rehabilitation, are
17 still to be considered, but the focus must be on
18 general deterrence and denunciation by the Court.

19 Denunciation involves expressing society's
20 disapproval of the conduct of the offender; that
21 is to say, that the people of Canada, of the
22 Northwest Territories, of Colville Lake, do not
23 approve of what Mr. Tutcho has done. The
24 sentence I impose today will reflect that
25 disapproval.

26 General deterrence means that the sentence
27 must be one that will send a message to other

1 people that this type of sentence is one that you
2 will receive if you sexually abuse another
3 person.

4 As well, some of the offences involved a
5 sexual assault on R.K. when she was an adult or
6 may have been an adult. The cases are also clear
7 that in those situations, denunciation and
8 deterrence are also the paramount sentencing
9 principles.

10 In this jurisdiction there are far too many
11 sexual assaults which occur, and there are far
12 too many which occur in circumstances where the
13 victim is vulnerable because they are sleeping or
14 unconscious. It is well known that the incidence
15 of sexual assault in the Northwest Territories is
16 well above the national average, and it is for
17 those reasons that the court continues to
18 emphasize deterrence and denunciation and has
19 done so for years.

20 There are a number of aggravating factors
21 which are applicable in this case. First, as I
22 have already mentioned, Mr. Tutcho has a prior
23 related criminal record. While his record
24 overall is dated, these offences that are before
25 the court today occurred over a period of 18
26 years and follow his previous conviction for
27 sexual interference on S.K. It is aggravating

1 that the first incident and following incidents
2 were not the first time he has sexually abused a
3 child and done so while in a position of trust.
4 And for the offence on S.K., it is aggravating
5 that that was not the first time he had sexually
6 abused her. While it is not certain the date of
7 the offence on S.K., it is apparent that it would
8 have occurred at some time when he would have
9 either been on probation or would have recently
10 ended probation for the offence that he has on
11 his criminal record.

12 As well, all of the offences are said to
13 have occurred while Mr. Tutcho was under the
14 influence of alcohol, which is also an
15 aggravating factor. Mr. Tutcho was, by all
16 accounts, a good father and a good provider, but
17 while under the influence of alcohol things were
18 different. His children and stepchildren became
19 fearful and wary when he consumed alcohol. The
20 environment they lived in became unsafe because
21 of what he would do to them or what they feared
22 he might do while he was intoxicated and they
23 were asleep or passed out.

24 It is also aggravating that Mr. Tutcho was
25 in a position of trust when these offences
26 occurred. He was the father of C.T. and the
27 stepfather of S.K. and R.K. He is the only

1 father that the victims knew. He was responsible
2 for caring and protecting them as children.

3 As well, it is aggravating that most of the
4 offences occurred while the victims were
5 children. Children are vulnerable to sexual
6 abuse by others. The cases talk about the
7 long-lasting impact that these types of crimes
8 have on children. They can create long-lasting
9 and life-long problems for victims. Damage that
10 is inflicted upon children many times leaves
11 lasting scars and cannot be undone.

12 What you have done, Mr. Tutcho, is taken
13 these children, your three daughters, and forever
14 changed who they are and who they might have
15 been. You set them on a path that they should
16 never have taken and we will never know how their
17 lives would have been had you not sexually abused
18 them. It is truly sad that this is something
19 that you know about yourself as you were sexually
20 abused as a child. The cases also refer to that
21 phenomenon not being uncommon – for a victim of
22 abuse to grow up and become an abuser. It is a
23 terrible cycle to perpetuate.

24 It is also aggravating that each of these
25 offences occurred while the victim was either
26 sleeping or passed out. They were vulnerable in
27 so many ways: They were vulnerable because they

1 deserved your protection; they were vulnerable
2 because, in most cases, they were children; and,
3 they were vulnerable because they were sleeping
4 and could not protect themselves.

5 There are few mitigating factors. This
6 sentencing occurs after trial so there is no
7 mitigating effect of a guilty plea, and this is
8 not an aggravating factor as Mr. Tutcho exercised
9 his right to a trial. However, the court often
10 gives significant weight to a guilty plea.

11 There is the expression of remorse, to Mr.
12 Tutcho's credit. Mr. Tutcho, in the presentence
13 report, expressed his remorse for having
14 committed the offences and accepted
15 responsibility for what he did.

16 As well, in his comments to the Court
17 yesterday, he accepted responsibility for his
18 actions and said that he was not going to use
19 alcohol as an excuse for what he did.

20 In terms of presentence custody, the only
21 period of custody that I am aware of is the
22 period following trial, so from February 12th,
23 2015, until today, some 48 days. I have not
24 heard any arguments respecting enhanced credit in
25 the circumstance.

26 Section 718.2(c) also requires me to
27 consider that where consecutive sentences are

1 imposed, that the combined sentence should not be
2 unduly long or harsh. In considering the
3 sentences to impose, I have given serious
4 consideration to the principles of totality, both
5 on the individual counts and the overall
6 sentence.

7 The offences themselves range in terms of
8 seriousness, from a touching of the leg below the
9 bum, over clothing, to full intercourse. There
10 are seven separate incidents involving three
11 victims over a period of 18 years, all of which
12 occurred when the accused was in a position of
13 trust with the victims, and when the victims were
14 vulnerable because they were asleep or passed
15 out. In most cases, the victims were young,
16 although the last offence occurred when R.K. was
17 26. As well, all of the offences occurred
18 following Mr. Tutcho's conviction for sexually
19 interfering with S.K.

20 In imposing sentence, I am of the view that
21 an appropriate sentence for each count following
22 trial would be as follows:

23 For Count 1, 18 months' imprisonment.

24 For Count 2, three-and-a-half years'
25 imprisonment.

26 For Count 3, two years' imprisonment.

27 For Count 4, two-and-a-half years'

1 imprisonment.

2 For Count 5, six months' imprisonment.

3 For Count 6, two years' imprisonment.

4 And for Count 7, two-and-a-half years'
5 imprisonment.

6 As these were all separate incidents they
7 should be sentenced consecutively, but, in my
8 view, that would impose an unduly harsh sentence,
9 one totalling 14-and-a-half years. Therefore,
10 taking into account totality, both individually
11 and in the total sentence, I am going to impose
12 the following sentence:

13 Please stand, Mr. Tutcho.

14 For Count 1, I sentence you to a period of
15 18 months' imprisonment concurrent.

16 For Count 2, I sentence you to three and a
17 half years' imprisonment concurrent.

18 For Count 3, I impose a sentence of two
19 years' imprisonment concurrent.

20 For Count 4, I sentence you to a period of
21 two years' imprisonment concurrent.

22 For Count 5, I impose a sentence of six
23 months' imprisonment concurrent.

24 For Count 6, I impose a sentence of two
25 years' imprisonment consecutive.

26 And for Count 7, I impose a period of two
27 years' imprisonment consecutive.

1 Therefore, the total period of imprisonment
2 is seven years.

3 There will be credit granted for two months'
4 incarceration for the 48 days of presentence
5 custody so that will be deducted from the seven
6 years.

7 There will be a judicial recommendation that
8 Mr. Tutcho be permitted to serve his sentence in
9 the North.

10 With respect to the ancillary orders that
11 have been sought by the Crown, pursuant to
12 section 490.013, there will be a SOIRA order for
13 life.

14 There will be a section 109 firearms
15 prohibition order which will begin today and end
16 ten years following your release from
17 imprisonment.

18 These are primary designated offences so
19 there will be a DNA order.

20 As well, the Crown has sought an order,
21 pursuant to section 161 of the Criminal Code,
22 where an order has to be necessary to protect
23 children. In my view, given the circumstances of
24 this offence and that there are young
25 grandchildren in the family who may be in need of
26 protection following your release from
27 imprisonment, and given the history of abuse that

1 has been perpetuated by Mr. Tutcho on the
2 children in his family, I am of the view there is
3 a risk of serious harm to children if this order
4 is not made. So there will be an order, pursuant
5 to section 161(1)(b), prohibiting Mr. Tutcho from
6 seeking or continuing employment or volunteering
7 in any capacity that involves being in a position
8 of trust towards a person under the age of 16
9 years. As well, there will be an order pursuant
10 to section 161(1)(c) prohibiting you from having
11 any contact with a person under the age of 16
12 years unless he does so under the supervision of
13 another sober adult. Those prohibitions will be
14 in effect for a period of 20 years.

15 As well, the victim of crime surcharge under
16 section 737 is mandatory to impose. These
17 changes came into effect in October 2013. In
18 this case, Mr. Tutcho has been charged with these
19 offences after the amendments came in force. In
20 my view, it is based upon when the offender was
21 charged with the offences and not the dates of
22 the offences themselves, therefore it is
23 mandatory for me to impose a \$200 victim of crime
24 surcharge on each count. Mr. Tutcho will have
25 one year to pay.

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

Annette Wright
Court Reporter