IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

NOAH AKHIATAK

Transcript of the Reasons for Sentence delivered by The Honourable Justice L. A. Charbonneau, sitting in Yellowknife, in the Northwest Territories, on the 24th day of May, 2016.

APPEARANCES:

Ms. J. Andrews:	Counsel for the Crown
Mr. J. Bran:	Counsel for the Accused

(Charges under s. 271 and 279(2) Criminal Code of Canada)

No information shall be published in any document or broadcast or transmitted in any way which could identify the victim or a witness in these proceedings pursuant to s. 486.4 of the Criminal Code

This transcript has been altered to protect the identity of the victim/young person pursuant to the direction of the presiding Judge

THE COURT: Noah Akhiatak was found guilty by me, after trial, of having sexually assaulted L.N. back in November 2012, and of having unlawfully confined her.

As I said when I delivered my reasons for judgment, I found Mr. Akhiatak guilty of these offences because I accepted as true, and was satisfied beyond a reasonable doubt by, L.N.'s account of happened to her one night in November 2012. I also accepted the evidence of the other Crown witness, Koral Kudlak, as to observations she made of her friend L. that night and about the circumstances that led to these events being disclosed to the police.

To put my sentencing reasons in context, it is necessary for me to refer once again to the events that were described by these witnesses in their testimonies.

L.N. was born in 1996. She was 15 years old in November 2012. Although she is not Mr. Akhiatak's granddaughter by blood, she considered him to be her grandfather and she called him "grandpa". She often went to his apartment to visit with friends and play cards. As well, one of the reasons she went there was that it was a place she knew she could smoke pot safely with her friends and her Aunt E.

One night in November 2012, Ms. N. had made a plan with a friend to meet at Mr. Akhiatak's place. She went to Mr. Akhiatak's house. She walked in the house, first going through the small porch at the entrance and then into the apartment. She yelled, "Hello." No one answered. She heard coughing behind her and realized Mr. Akhiatak was there. He was standing right behind her in the doorway to the porch. She asked him where her friend was and he told her her friend had left. L. was going to leave but Mr. Akhiatak was blocking her way. He asked her to have sex with him. She refused. He offered her money to have sex with him. She still refused. He started getting mad and kept asking her to have sex and she kept saying no.

Eventually, Mr. Akhiatak used force. He pushed L. She pushed him back. He punched her. This caused her to black out briefly. The next thing she remembers happening was him coming at her. He was trying to touch her everywhere. She continued to try to push him away. He punched her on her temple and she lost consciousness again.

When she woke up, she was lying on his bed on her back. He pulled her pants down and then took down his own pants and had intercourse with

her. She begged him to stop, but he continued. This went on for 15, 20 minutes. When he was finished having sex with her, he got off her. She put her clothes back on and ran out. Before she left, he told her not to tell anyone.

From the time L. learned her friend was not there, she wanted to leave the apartment, but Mr. Akhiatak prevented her from doing so. At one point she tried getting out the back door, but it was locked. She told him several times she wanted to leave, but he would not let her and he blocked her way. He later used force, as I already described, to overcome her resistance to what he was wanting to do.

When all this was finally over and she was able to leave, she ran home. She was crying.

Koral Kudlak, who was and still is a close friend of L., saw her running home and asked her what was wrong. L. was crying a lot and Koral had trouble understanding what she was saying, but L. conveyed to her what had happened to her. Koral tried to get L. to stay with her, but L. just wanted to go home and that is what she did. About a week later, she and Koral talked about what had happened again. L. did not want to report this to police. When she was asked in her testimony why she did not tell police about this

right away, she said she was afraid.

It was only ten or eleven months later, in October 2013, that L. did disclose these events to the police. That happened, apparently, at the strong encouragement of Koral. Koral could see how much what had happened was still affecting L. Koral told her they needed to go to the police and they went. At trial when L. was asked why she told the police about this, she said that she could not keep it inside of her anymore.

Those are the circumstances of the offences that I must now sentence Mr. Akhiatak for.

Mr. Akhiatak is 69 years old. Sadly, he has been before the Court on several occasions over the years for crimes similar to this one. For two of those earlier sentencings, in 1985 and 1994, pre-sentence reports were prepared. These reports were filed at the sentencing hearing and I have reviewed them carefully. The reports obviously are very dated, but they are useful because they include a lot of information about Mr. Akhiatak's personal history and background. That type of information is always relevant, but it is especially important and relevant for the Court when imposing sentence on an aboriginal offender.

I have also have the benefit of the Reasons

for Sentence given by a judge of this court in September 2014 when sentencing Mr. Akhiatak. That decision is reported at 2015 NWTSC 2. The decision includes a lot of information about Mr. Akhiatak's background and personal circumstances, which are as relevant today as they were for that sentence. I have taken all of this information into account.

In sentencing aboriginal offenders, the Court has special responsibilities which were outlined and explained by the Supreme Court of Canada in the cases of R. v. Gladue and R. v. Ipeelee. To discharge those responsibilities, the Court needs to take into account systemic factors that have impacted the lives of aboriginal people in this country, case-specific information about the circumstances and challenges that the offender before the Court faced as an aboriginal person, and how those challenges and circumstances might have contributed to that person coming into conflict with the law.

The Court is required to examine whether, in light of those circumstances, sanctions other than imprisonment ought to be considered on sentencing. If imprisonment is unavoidable, the courts must consider whether it is appropriate to

exercise particular restraint and reduce the jail term that might otherwise have been appropriate.

The two pre-sentence reports that have been filed as exhibits at this sentencing hearing provide me with a lot of information about circumstances relevant to the Gladue analysis in this case. So does the 2014 sentencing decision, in particular paragraphs 47 to 56. I have taken all of this information into consideration in arriving at my decision today.

One of the things the Court noted in the 2014 sentencing, and that I note as well, is that in paragraph 55 of Gladue, the Supreme Court of Canada said that sentencing of aboriginal offenders must, as all sentencings, proceed on a case-by-case basis. The question always is: For this offence committed by this offender, harming this victim in this community, what is the appropriate sanction?

The Supreme Court of Canada also noted that although the sentencing of aboriginal offenders must be approached using a specific lens, the more serious the offence is, the more likely the appropriate sentence for aboriginal offenders will be similar to the appropriate sentence for a non-aboriginal offender having committed the same offence.

This does not mean that the Gladue analysis does not apply for sentencing for serious offences. It does. What this part of Gladue represents is a recognition that in very serious cases, even taking into account the specific and unique considerations that apply to the sentencing of aboriginal offenders, in the end, the Court may conclude that the sentence that is required to achieve the overall goals and purposes of sentencing is the same as it would be for a non-aboriginal offender.

In this case, the offences were committed in a very small aboriginal community, one of the most isolated and possibly one of the most tight-knitted community in this jurisdiction. The victim was an aboriginal teenager. Mr. Akhiatak committed a very serious offence against her.

Young persons in aboriginal communities are entitled to the same protection under the law as young persons in non-aboriginal communities, and aboriginal communities have as much of a strong interest in having the sexual abuse of young persons by adults denounced and deterred as any other community would.

I conclude, as did the sentencing judge who sentenced Mr. Akhiatak in 2014, that even taking

into account the fact that he is an aboriginal offender, a significant term of imprisonment is the only appropriate and fit response that the Court can have to these offences. And while restraint is a particularly important consideration, having regard to the many challenges that this offender faced at a young age as an aboriginal person, that can only go so far in mitigating the sentence that must be imposed in response to the very serious crimes he committed against L.N.

In the 2014 sentencing decision, at paragraphs 55 and 56, the Court referred to Mr. Akhiatak's health issues. The Court referred to his heart surgery in the early 2000s and the fact that a pacemaker was installed at that time. There is also reference to the fact that he suffers from vertigo. These things came up at this trial as well.

During the trial and again at the sentencing hearing a few weeks ago, Mr. Akhiatak said that in recent years he has been diagnosed with an inoperable brain tumor. At the sentencing hearing, I inquired about the prognosis on that matter and was advised by Mr. Akhiatak, through his counsel, that Mr. Akhiatak was told three years ago that he had one year to live. Three

years ago would place the diagnosis sometime in 2013, but I note there was no mention of this in the 2014 decision. I expect that if the sentencing judge was told about this, it would be mentioned in the decision. So perhaps Mr. Akhiatak is a bit off on his timelines and the diagnosis is more recent than what he told his counsel, or perhaps this just was not mentioned at the 2014 sentencing hearing. In any event, the Crown did not take issue with this assertion and I have no reason not to accept the information that I have been given about this development in Mr. Akhiatak's health issues. In fact, he said that one of the effects of the tumor is that it causes him to stutter on occasion, and I was able to observe during the trial that Mr. Akhiatak did stutter at certain points in his testimony. So even without medical records that could confirm or clarify Mr. Akhiatak's condition or prognosis, I accept that his health has declined in recent years and I understand the concern expressed by his counsel that a further lengthy jail term imposed on him at this point could effectively mean that he will spend the rest of his life incarcerated, subject to any decisions that the correctional authorities may be able to make based on the

evolution of his condition.

I also accept that since 2012 when these offences were committed, Mr. Akhiatak's mobility has become somewhat reduced. I was also able to observe this during the proceedings in Inuvik.

The deterioration of his health is a factor that I have considered in arriving at my decision from the point of view of the impact that whatever sentence I impose on him will have, but also from the point of view of assessing the danger he poses to others at this point.

Mr. Akhiatak has an extensive criminal record for sexual offences. The pre-sentence report includes information about these past offences and Crown counsel provided additional particulars about other offences. None of the information provided was disputed by defence at the sentencing hearing.

The crimes Mr. Akhiatak has been convicted of, if considered in chronological order of their commission, are the following:

- Between 1980 and 1985, he had anal intercourse multiple times with his very young son. These were very serious sexual assaults. They involved numerous instances of anal intercourse that started occurring

when the victim was three or four years old and continued for several years after that. The sentencing judge found as a fact that on some occasions Mr. Akhiatak gave his son home brew beforehand and this caused the young child to fall asleep. Mr. Akhiatak would then sexually assault him. For those offences, Mr. Akhiatak was sentenced to five and a half years in jail in September 2014 and he is still serving that sentence.

- In January 1985, Mr. Akhiatak raped his stepsister on two occasions. She was 14 years old at the time. The first time, he had asked her to come with him to get some ice at a lake. Once at the lake, he forced himself on her. He became rough with her when she tried to resist him. The second sexual assault happened a few days later. the victim was sleeping. Mr. Akhiatak went to her room, woke her up, and had forced intercourse with her. For those two offences, Mr. Akhiatak was sentenced to one year in jail.

  (I think it is fair to say that by today's standards that was an extremely lenient sentence in light of those facts.

Today, a person found guilty of this type of sexual assault would be facing a significant jail term in the penitentiary range.)

- Between May 1993 and February 1994, Mr. Akhiatak sexually assaulted his stepdaughter. His marriage to his first wife had ended in 1985, apparently largely because of his abuse of alcohol. He got into a relationship with another woman who had two daughters. They relocated to Kugluktuk, which was then known as Coppermine, and lived there together as a family. Between May '93 and February '94, Mr. Akhiatak sexually assaulted the youngest of his stepdaughters. She was 14 years old. This too was an act of full sexual intercourse.

  In the pre-sentence report prepared for that sentencing, the author of the report recounts that Mr. Akhiatak said during his interview that it had felt like Satan had told him to have sex with the victim even though she was his stepdaughter. Mr. Akhiatak was reported saying that he had "a problem of a sexual nature, controlled by "Satan's

demands". The author of the report, not surprisingly, concluded that Mr. Akhiatak is "a very troubled person" and that he "affected lives of others in a very destructive way".

For the sexual assault of his stepdaughter, Mr. Akhiatak was sentenced to five and a half years in jail on April 15th, 1994. He was released from that sentence in October 1999 and returned to live with the family in Kugluktuk.

- On August 21st, 2000, he committed a sexual assault against his other stepdaughter who was older than the other one. Crown was not able to determine her age but alleges that she was an adult. That sexual assault did not involve an act of full intercourse. Mr. Akhiatak was arrested on that charge in September 2000 and remained in custody until his sentence on March 31st, 2001. He had spent seven month in remand by the time he appeared in court to be sentenced and he received a sentence of time served.

Mr. Akhiatak's son, the victim in the most dated of these offences, disclosed what happened

to him in 2012. Mr. Akhiatak was charged and served with a summons to appear on that offence. Exhibit 4 is a copy of the summons and affidavit of service related to that offence, and it shows that Mr. Akhiatak was served with a summons on September 21st, 2012, with a requirement that he appear in court on December 6th, 2012. He sexually assaulted L.N. after he was served with his summons and while he was awaiting his first appearance on those charges.

Mr. Akhiatak must not today be punished a second time for the past crimes that he has already been sentenced for. That is not why I have referred to his criminal history in such detail. I have referred to his criminal history in such detail because it demonstrates a consistent pattern of highly disturbing and highly destructive behaviour on Mr. Akhiatak's part; a pattern that has caused immense harm to several young people who were in his close family circle. These were young people, vulnerable people, and people who should have been able to count on him for protection.

This pattern shows that Mr. Akhiatak has been, and continued to be as of November 2012, a very dangerous man for the young persons who are in his life. He has forced himself on several of

them for his own selfish sexual gratification. He has used physical force and other means to do what he wanted to do. He was caught and sentenced for such crimes on several occasions. He has received jail terms, some of them very lengthy jail terms for this conduct, yet he has continued to behave in this appalling way.

The reason that the criminal history of this offender is significant is that it makes clear that at this point, above anything else, this court has a duty to ensure that no other young person ever suffers this kind of harm at the hands of Mr. Akhiatak.

The Criminal Code sets out the objectives of sentencing and several principles that must be followed to achieve that objective.

The fundamental principle of sentencing is proportionality. A sentence should be proportionate to the seriousness of the offence and to the level of blameworthiness of the offender. Here, the crime is very serious and, in my view, Mr. Akhiatak's level of blameworthiness for it is very high, as it is any time an adult abuses a child or young person.

Aside from that fundamental principle of proportionality, the Criminal Code sets out a number of other more specific sentencing

principles. One is the principle of restraint and its specific application when sentencing aboriginal offenders as I have already referred to.

Another is the principle of totality, which means that the global effect of a sentence should always be considered by a sentencing judge when imposing sentences that are to be served consecutively to one another or before ordering that a sentence be served consecutively to an existing sentence.

The Criminal Code also provides that certain things are aggravating factors. Many of those are present in this case.

As I already said, the Criminal Code sets out what the objectives of sentencing are and they are set out at Section 718 of the Criminal Code. These objectives are to denounce unlawful conduct and the harm done to victims or to the community that is caused by unlawful conduct; to deter the offender and other persons from committing offences; to separate offenders from society when necessary; to assist in rehabilitating offenders; to provide reparations for harm done to victims or to the community; and to promote a sense of responsibility in offenders and acknowledgement of the harm done to victims

and to the community.

In dealing with the sexual abuse of children, the paramount sentencing objectives are denunciation and general deterrence. This was explained very well in Mr. Akhiatak's 2014 sentencing, and I agree with everything that the sentencing judge said in that case on that topic.

One of the things I want to refer to in some detail is something that the judge in that case did talk about in referring to the case of R. v. W.B.S.; R. v. Powderface [1992], A.J. No. 601 (Alta. CA). This was a case decided by the Alberta Court of Appeal more than 20 years ago and it has been applied consistently in this jurisdiction ever since. The principles enunciated in that case are as relevant today as they were then. Nothing has changed in the last 20 years that dilutes or reduces the relevance and importance of the strong statements made by the Court then about the devastating impact that sexual abuse of young persons has; in particular, when the abuse comes from a person in a position of trust. Some of what was said in that case is worth repeating. The Court said, at page 4:

> The psychological trauma suffered by rape victims has been well documented. It involves symptoms of depression, sleeplessness, a sense of defilement, the loss of sexual desire, fear and distrust of others,

> strong feelings of guilt, shame and loss of self-esteem.

The Court also said:

> When the victim of a major sexual assault is a child, it is also no doubt true that such an assault frequently results in serious psychological harm to the victim.
>
> When a man has assaulted a child for his sexual gratification, then, even if no long-lasting physical trauma is suffered by the child, it is reasonable to assume that the child may have suffered emotional trauma, the effects of which may survive longer than bruises or broken bones, and may even be permanent.

The Court of Appeal went on to talk about two consequences that being abused sexually as a child may have. One is that the child may never be able to form a loving, caring relationship with another adult, being always fearful, even unconsciously, that such a partner will use the sexual acts to hurt that person rather than as an intimate expression of caring and affection. The Court noted there was no scientific way of proving this, but the Court had the recorded experiences of men and women who attribute their difficulties as adults in forming mature and fulfilling relationships to the fact that they were sexually abused then they were children.

A second consequence the Court talked about was that a child who has been sexually assaulted

may well, when he or she becomes an adult, treat children the way that he or she had been treated as a child. Again, the Court said there was no empirical way of measuring this but that what the courts had was the recorded experience of accused persons coming before the Court, being sentenced for sexual assault, and saying that they themselves were abused as children.

The Court also said that adult women victimized as children were more likely to manifest symptoms like depression, self-destructive behaviour, anxiety, feelings of isolation and stigma, poor self-esteem, substance abuse and a tendency toward re-victimization.

After referring to these various things, the Court concluded:

> From this information it is abundantly clear there is one salient fact which must govern the approach to be taken by the courts to sentencing in cases of sexual abuse of children: that in every case of sexual abuse of a child there is a very real risk of very real harm to the child. This cardinal fact can be relied upon even when there is no expert or non-expert [evidence] called in the particular case to establish that the particular child who is the victim has suffered some specific traumatic effect or effects.

There is no reason, in my view, to not continue to follow and apply the principles that

this case stands for and to apply a four-year starting point to the case involving a serious sexual assault perpetrated by an adult on a child when that adult was in a position of trust. In this case, defence argued that this position of trust did not exist.

Defence noted, and correctly so, that there was no evidence that L.N. ever lived with Mr. Akhiatak or any evidence that he ever looked after her. I do understand counsel's point, but, in my view, the notion of breach of trust, like many other things, is not necessarily an all-or-nothing. The issue of a trust relationship between two people is something that is somewhere on a range and often a question of degree.

This Court examined this issue in R. v. Larsen, 2011 NWTSC 36. The Court said in that case that for there to be a position of trust, there has to be some ongoing relationship, some status, between the offender and the child that is more than merely occasional or transitory. In that case, the offender had occasionally baby-sat the victim. He was a friend of the parents of the victim. But there was no evidence that the sexual abuse had occurred while the offender was baby-sitting and there was really very little

information about the frequency of the visits of the offender at the child's parents' home.

I agree with defence counsel to this extent: The level of breach of trust here was not as significant as what it was in the 2014 sentencing when the victim was Mr. Akhiatak's young son, or when it was in the cases that involved the abuse of his stepdaughters who were living with him. And it is not as high as would have been the case if the evidence had been that L.N. was raised by Mr. Akhiatak or lived with him for any period of time or was under his care for a period of time. If that were the case, the element of breach of trust would be greater and would be more aggravating. But the evidence was, and he agreed with this, that she considered him to be her grandfather and she called him "grandpa". The evidence was that she spent time at his house. It was a safe, familiar place for her to go and, because of that, the relationship between them, in my view, was more than merely occasional or transitory. There was a situation of trust between the two of them.

L.'s age is an aggravating factor. The younger the child is, the more aggravating that factor is. L. was under 18 and, statutorily, this is an aggravating factor pursuant to Section

718.2(a)(ii) of the Criminal Code. And even before that provision was added to the Criminal Code, courts in this jurisdiction and others treated that as an aggravating factor.

It is also an aggravating factor statutorily if the Court finds evidence that a crime has had a significant impact on the victim, taking into account the victim's age and other personal circumstances.

L.N. chose not to prepare a Victim Impact Statement. Crown counsel advised at the sentencing hearing that L. said that she "did not think she could put her anger and pain down on paper." But even without a formal Victim Impact Statement, there are other things that provide information and insight into the impact that these events had on her. First, I was able to observe her during her testimony. The emotion she showed, her demeanour, her whole body language as she was testifying, particularly when we got to the point in her evidence where she had to describe what Mr. Akhiatak did to her, demonstrated vividly and unequivocally that even all those years later, she is still very affected by what happened.

But my observations at trial are not all there is. Some of the trial evidence itself

speaks volumes about the impact this had on her. In particular, the evidence of Koral Kudlak was also quite compelling in this regard.

Koral described what she saw the very night this happened. L. was her close friend. Koral's description of what she says happened were consistent with what L. told Crown counsel more recently. Koral said she saw L. running home, which is consistent with her being afraid. More importantly, Koral described L.'s state by saying she looked "angry and sad all at the same time", like "it was her but it was not even her." L. was crying so hard that Koral could not quite tell what she was saying. Koral also said that it was apparent to her months later that this was still affecting L. a lot. That is why she encouraged her to go to the police, and this was almost a year later.

Finally, quite apart from all of this, R. v. W.B.S., which I referred to at length, stands for the proposition that when a major sexual assault of a young person by an adult in the position of authority takes place, it can be assumed that the assault will have a traumatic effect on that young person. Here, the evidence at trial and my own observations very much confirm that this is the case.

Another aggravating factor is that Mr. Akhiatak's conduct was persistent. He asked L. to have sex with him several times. He persisted when she refused. He tried to bribe her with money. When that did not work, he used force. There is no evidence to suggest that this was a premeditated offence. It was opportunistic. But certainly once Mr. Akhiatak saw the opportunity and decided what he wanted to do, he was very persistent.

The next aggravating factor is that Mr. Akhiatak used considerable force well beyond what is inherent in an act of sexual intercourse to do what he was doing. She struggled and tried to resist him. He punched her on two occasions hard enough that she lost consciousness, although briefly. This is highly aggravating.

The element of confinement, which in this case forms the subject matter of a separate charge, must also be considered. Whether that is considered in a global way with the sentences for the two counts being concurrent to one other or whether a separate consecutive sentence is to be imposed for the unlawful confinement count, the point is that the overall sentence must reflect that there was an element of confinement. I have kept in mind, however, that this was not an

extensive confinement and that it is inherent in most sexual assault cases that the victim's movements will be restricted at least to some extent while the offence is being committed. So this is not as significant an aggravating factor as some of the others that I have mentioned.

Finally, Mr. Akhiatak's criminal record, which I have already referred to, is also an aggravating factor because it underscores the risk that he presents to the safety of the public and it makes his separation from society a compelling sentencing objective.

There are no mitigating factors to consider here.

In addition to what I have already said, I have to take into account the prevalence of sexual assault in this jurisdiction. Sexual assault is a crime that is committed alarmingly frequently, in almost epidemic proportions. It is a crime committed by offenders of a wide range of ages against victims of a wide range of ages. It is a crime that causes immeasurable harm to its victims, and although it is difficult to compare the harm caused in different sexual abuse cases, it can be said that even greater harm results when the victims are children or young persons.

The sexual assault of a child represents the most abhorrent breach of every adult's duty to assist, protect, and care for children. The Court has a duty to restate and reaffirm this in each and every case that involves the abuse of children or young people.

The Court does not have the tools to address the root causes of the problem. The Court does not have the authority to control what budgets government will devote to addressing those root causes or addressing the treatment needs that exist for those involved. All the Court can do is continue to reaffirm the same deterrent and denunciatory message.

I do accept that unlike some of Mr. Akhiatak's earlier offences, the sexual assault of L.N. was more opportunistic than predatory. The fact remains, it was a very serious offence.

This was a major sexual assault on a young person committed by someone who was in a position of trust towards her and, as I have already noted, the four-year starting point arising from the case of R. v. W.B.S. applies. From this starting point, the Court must adjust a sentence to reflect any mitigating and aggravating factors that are present. Here, there are no mitigating

factors and there are several significant aggravating factors.

The Crown seeks a term of imprisonment of seven to eight years' imprisonment, consecutive to the term of imprisonment Mr. Akhiatak is presently serving. Defence counsel does not dispute that the range sought by the Crown is appropriate in light of all the circumstances, but he asks, nonetheless, that I impose a sentence well below that range and make it concurrent to the sentence Mr. Akhiatak is currently serving.

The defence argues that Mr. Akhiatak's age and medical situation makes this case an exceptional one that call for exceptional restraint, largely to avoid the sentence I impose being, effectively, a life sentence.

There is no question that Mr. Akhiatak's age and current health issues are part of the circumstances that I must consider on this matter. Those factors take nothing away from the seriousness of his conduct, but they are relevant to the issue of what is relevant to protect the public, and particularly young persons, from his actions. At the same time, I am not sentencing Mr. Akhiatak for something that happened decades ago. He committed this sexual assault three and

a half years ago, and while his health may have deteriorated since then, that does not mean that he no longer poses a threat to anyone. There is still the risk that he could find himself in the presence of vulnerable persons, and history has shown, unfortunately, that he has taken advantage of vulnerable people in the past.

Clearly, the sentences Mr. Akhiatak received in the '80s and '90s, contrary to what he asserted at the sentencing hearing, have not achieved the goals of rehabilitation and has not been sufficient to protect the public from further offending on his part. At this point, not only deterrence and denunciation but protection of the public are paramount. In my view, this Court's duty is to separate Mr. Akhiatak from society and protect members of the community, especially young members of the community, from him.

The understandable concerns that he has about the deterioration of his health and the prospect of spending the rest of his life in jail are things that may be addressed, if his condition does deteriorate significantly, by the correctional authority; but it must be remembered, and Mr. Akhiatak must remember, that the victims of this crime have to live the rest

of their lives with the consequences of what he has done.

Having regard to the starting point that applies in these types of cases, the many aggravating factors that are present, the absence of mitigating factors, and in even exercising as much restraint as I can in this matter and taking totality into account, I am of the view that a jail term in the range sought by the Crown is appropriate.

As for whether the sentence should be ordered to be served consecutively or concurrently, while the principle of totality is important, it cannot have the effect of obliterating the consequences for Mr. Akhiatak of having committed this serious crime against L.N. relatively recently, despite the many times he has been before the Court for sexual offences and despite the fact he had just been placed on process for the serious sexual assaults committed against his son all those year ago.

The sexual assault on L.N. happened over 30 years after the events that led to the sentence that he is currently serving. I do think that it would be appropriate to order that the sentence I impose today be served concurrently with that sentence.

Mr. Akhiatak, I am not going to ask you to stand given your vertigo and your other health issues.

For the sexual assault on L.N., I sentence you to a term of imprisonment of seven years and I direct that this term of imprisonment is to be served consecutively to the sentence you are currently serving. For the unlawful confinement of L.N., I sentence you to a term of imprisonment of one year, but I will direct that that be served concurrently, at the same time. The resulting global sentence is seven years' imprisonment, consecutive to the sentence you are currently serving.

The ancillary orders sought by the Crown will issue as they are all mandatory on this matter. All these orders were made in 2014. They will be duplications, but my understanding is I am required to make them. There will be a DNA order because this is a primary designated offence. There will a Firearms Prohibition Order under Section 109 of the Criminal Code. There will be an Order that Mr. Akhiatak comply with the requirements of the Sexual Offender Information Registration Act for life. Given the date of this offence, however, I have the discretion to waive the victim of crime surcharge

and, in light of the global jail term that Mr. Akhiatak is serving, I am waiving the imposition of a surcharge.

Is there anything else that I have overlooked from your point of view, Ms. Andrews?

MS. ANDREWS: No. Thank you, Your Honour.

THE COURT: Anything I have overlooked from your point of view, Mr. Bran?

MR. BRAN: Just the possibility of a judicial recommendation that he be allowed to serve his sentence here in the North.

THE COURT: Do you know where he has been serving?

MR. BRAN: He's been serving in Alberta, just out of Red Deer. I'm not sure what the plan is going to be, but he may be sent back to that facility. But he is asking that there be some sort of recommendation that he be allowed to stay in the North.

THE COURT: All right. Well, I will have the clerk endorse the Warrant of Committal to ask the authorities to give serious consideration to maintaining a northern placement for him. I do not know why they decided on the placement they did after the 2014 sentencing. They may have information I do not have. But there will be an endorsement recommending that they revisit that

issue and determine whether it would be possible for him to serve his sentence in the North given his health issues and the distance between Yellowknife and his home community.

I did not address the duration of the firearms prohibition. It would be ten years from the time of release, I believe, Ms. Andrews, because I do not think -- for the lifetime prohibition, there has to be a Notice of Intention, I think, served and that was not raised at the hearing. Am I missing something on this?

MS. ANDREWS: No, Your Honour. That's my understanding as well.

THE COURT: So it will be commencing today and expiring ten years from his release. Anything further?

MS. ANDREWS: No thank you.

THE COURT: Nothing from you, Mr. Bran?

MR. BRAN: No thank you.

THE COURT: Thank you for your submissions, counsel. We will close court.

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Certified Pursuant to Rule 723
of the Rules of Court

Jane Romanowich, CSR(A)
Court Reporter