

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

MATTHEW JAMES KUPTANA

Transcript of the Reasons for Sentence delivered by The Honourable Justice L. A. Charbonneau, sitting in Inuvik, in the Northwest Territories, on 19th day of January, 2017.

APPEARANCES:

Mr. A. P. Godfrey: Counsel for the Crown

Mr. J. K. Bran: Counsel for the Accused

(Charge under s. 271 of the 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

1 THE COURT: This morning I have to impose
2 a sentence on Matthew Kuptana for the sexual
3 assault that he committed on M. K. on April 26,
4 2015. This is following a sentencing hearing
5 that occurred this week in Inuvik. The
6 procedural history of this case is unusual and it
7 raised unusual issues in the context of this
8 hearing. I am going to refer to those briefly
9 this morning, but as I said yesterday, given the
10 very limited amount of time I had to prepare
11 these Reasons, I am going to file written Reasons
12 later on addressing these issues in more detail.
13 In those Reasons I will also outline in more
14 detail the reasons for the credibility findings
15 that I made after hearing the evidence presented
16 at the sentencing hearing.

17 The events leading to the charge occurred in
18 the early morning hours on April 26, 2015.
19 Ms. K reported the matter to the authorities the
20 same day during the evening. Mr. Kuptana was
21 charged that same night. Although his initial
22 choice as to mode of trial was to be tried by a
23 court composed of a judge and a jury and to have
24 a preliminary hearing, he eventually waived that
25 preliminary hearing and re-elected to be tried by
26 a judge of this Court sitting alone. The waiver
27 of the preliminary hearing and the re-election

1 occurred in October 2015.

2 On December 4, 2015, Michael Martin, who was
3 Mr. Kuptana's counsel at the time, wrote to this
4 court indicating that Mr. Kuptana wished to plead
5 guilty to this charge in another unrelated sexual
6 assault charge. On December 14, 2015 Mr. Kuptana
7 appeared before this Court in Yellowknife and
8 entered guilty pleas to those charges. At the
9 time the pleas were entered Mr. Martin confirmed
10 that they were voluntary and met the requirements
11 of Section 606(1.1) of the *Criminal Code*. The
12 sentencing hearing for both matters was scheduled
13 to proceed here in Inuvik at Mr. Kuptana's
14 request.

15 Some time before the date scheduled for the
16 sentencing the Court received a request to have
17 the matter spoken to on a regular Criminal
18 Chambers date in Yellowknife. On April 13th
19 Mr. Kuptana appeared again in Yellowknife, and on
20 that date Mr. Martin applied to be removed as
21 counsel of record. That application was granted.
22 Mr. Kuptana's current counsel, Mr. Jay Bran, was
23 also in attendance and indicated he was taking
24 over the representation of Mr. Kuptana. There
25 was reference at that time to the possibility of
26 an application to strike the guilty pleas.

27 Counsel agreed that the scheduled Inuvik

1 sentencing date should be cancelled given the
2 change of counsel and the time new counsel needed
3 to get instructions and determine what the next
4 steps should be. Counsel eventually confirmed
5 that there would be an application to withdraw
6 the guilty plea with respect to the charge
7 involving Ms. K.

8 That application proceeded on August 8,
9 2016. The Court dismissed the application on
10 August 23, 2016. The reasons for decision are
11 now reported at 2017 NWTSC 4. Counsel later
12 advised that a sentencing hearing with *viva voce*
13 testimony would have to take place because they
14 had not been able to reach an agreement on an
15 Agreed Statement of Facts on either matter.

16 The sentencing hearing on the charge
17 involving Ms. K was scheduled to proceed this
18 week. The sentencing hearing on the other matter
19 where facts are also disputed is currently
20 scheduled to proceed next month in Inuvik. The
21 hearings were scheduled to proceed on different
22 weeks at the request of counsel, given that there
23 was going to be contested evidence, and there was
24 a strong prospect that the Court would have to
25 make findings of credibility of the witnesses,
26 including the credibility of Mr. Kuptana.

27 The sentencing hearing proceeded this week

1 as scheduled. Ordinarily, when *viva voce*
2 evidence is called at a sentencing hearing, it is
3 because there is a dispute about some of the
4 alleged facts and that those facts are considered
5 sufficiently important by Crown, by Defence or
6 both, to be the subject of testimony. The rules
7 of evidence that govern a sentencing hearing are
8 somewhat relaxed. The party that wishes to rely
9 on a disputed fact has the burden of proving it
10 on a balance of probabilities. An aggravating
11 fact, or a prior conviction that is disputed by
12 Defence, must be proven by the Crown beyond a
13 reasonable doubt. These things are provided
14 for in the Criminal Code at Sections 723 and
15 724 and the principles were also outlined in
16 *R. v. Gardiner*, 1982 2 S.C.R. 368.

17 What was very unusual in this case was this:
18 The issue at the sentencing hearing was not
19 merely about a disputed fact or a disputed
20 aggravating factor, it was actually a disputed
21 element of the offence. Mr. Kuptana admitted
22 sexual contact with Ms. K but claimed it was
23 consensual. In other words, he claimed at his
24 sentencing hearing that he was not guilty of this
25 charge notwithstanding his guilty plea.

26 This gave rise to a number of issues and
27 many potential problems depending on what the

1 Court's assessment of the evidence would be.

2 For today's purposes, as I said at the
3 outset, I want to focus on the matters that are
4 relevant to the sentence that should be imposed
5 on Mr. Kuptana.

6 I will simply reiterate now what I said
7 briefly yesterday before I heard sentencing
8 submissions. My assessment of the evidence has
9 led me to reject Mr. Kuptana's version of how the
10 sexual contact came to happen and his claim that
11 it was consensual. I accept Ms. K's version of
12 how the sexual contact occurred, and it is on
13 that basis that I will sentence Mr. Kuptana.

14 Mr. Kuptana, of course, is entitled to know
15 why I rejected his evidence and accepted Ms. K's
16 testimony. I want to take the time to write
17 these reasons out to explain properly how I came
18 to this conclusion. I simply did not have
19 sufficient time last night or this morning to do
20 so. I will file written Reasons about this and
21 they should be treated as a supplement to what I
22 am saying this morning. Otherwise I would have
23 had to adjourn this matter and I did not want to
24 do that. I think it is in Mr. Kuptana's interest
25 to be sentenced today and perhaps have better
26 access to programs that might assist him with his
27 rehabilitation because we frequently are told

1 that although prisoners on remand have access to
2 programs in the jails, they are considered to be
3 a lower priority than serving prisoners.

4 I will now summarize the circumstances of
5 the offence based on the findings that I have
6 made.

7 At the time of these events Ms. K lived in
8 Ulukhaktok. Mr. Kuptana, who is also originally
9 from that community, lived in Inuvik with his
10 common-law spouse of some thirty years. Their
11 daughter Sandy, who was in her early twenties at
12 the time, also lived with them. Mr. Kuptana's
13 spouse is Ms. K's aunt, and Ms. K considered
14 Mr. Kuptana as her uncle. She had a good
15 relationship with them.

16 Ms. K came to Inuvik for a visit. The
17 initial plan was for her to stay with some other
18 people in Inuvik but in the end she stayed at the
19 Kuptana residence. On the Saturday night Ms. K,
20 Mr. Kuptana and Mr. Kuptana's spouse played TV
21 bingo for a while at the residence. They drank
22 beer while they did this.

23 After the beer ran out Ms. K suggested that
24 they go out to the Trappers bar. The three of
25 them went to the Trappers at around midnight and
26 stayed there until closing time. They then
27 returned to the residence. Although it is clear

1 that everyone was drinking, it is not entirely
2 clear how much beer everyone had, and that is not
3 surprising. However, there is no suggestion of
4 anyone having become grossly intoxicated that
5 night, and it appears everyone had a good time
6 throughout the evening and that there were no
7 problems or anything unusual about the evening.

8 A short time after they returned to their
9 residence it appears everyone retired to their
10 bedrooms. Mr. Kuptana and his spouse went to
11 their room, and Ms. K went to the spare room
12 where she had been staying. All the rooms are in
13 the upstairs portion of the house, as is the
14 bathroom.

15 Ms. K went to sleep on a mattress on the
16 floor. She was wearing clothes on the upper part
17 of her body. Although her evidence-in-chief was
18 that she was also wearing clothes on the lower
19 part of her body, she acknowledged in
20 cross-examination that it was possible that she
21 removed those clothes when she went to the
22 bathroom before going to sleep and that she went
23 back to bed without putting them back on. On the
24 whole I was left with a reasonable doubt as to
25 whether she actually still was wearing those
26 clothes when she laid down and went to sleep. To
27 the extent that the Crown's allegation is that

1 Mr. Kuptana removed part of her clothing before
2 sexually assaulting her and to the extent that
3 this could be characterized as an aggravating
4 fact, I do not find that fact has been
5 established beyond a reasonable doubt.

6 Ms. K woke up to Mr. Kuptana lying on top of
7 her. He was having sexual intercourse with her.
8 She told him to get out of her room. She tried
9 pushing him off but he was too heavy. He
10 continued having intercourse with her.
11 Eventually she stopped trying to push him off.
12 All he said to her during all of this was "you're
13 so tight nobody fuck you, you're so tight nobody
14 fuck you". When he was finished he got up and
15 left the room. She stayed in the bedroom, curled
16 up and went to sleep.

17 In the morning Ms. K left the house and went
18 walking around. She did not tell anyone right
19 away about this. She returned to the Kuptana
20 residence a few times during the day. Later on
21 in the evening she went to see a friend and told
22 her what happened. That same night she reported
23 the matter to the police. Mr. Kuptana was
24 arrested the same evening. He was initially
25 released but he was arrested in September of 2015
26 in relation to an unrelated matter. He has been
27 in custody since, a total of 488 days, roughly

1 16 months. Crown and Defence are in agreement
2 that he should be credited for this remand time
3 as part of this sentencing proceeding and that
4 the credit should be granted to him on a ratio of
5 one and a half day credit for each day of remand.

6 I will turn now to the circumstances of
7 Mr. Kuptana. He is 46 years old and is
8 Inuvialuit. He is comfortable speaking English
9 but his first language is Inuvialuktun. He was
10 born in Ulukhaktok. He has been in a
11 relationship with his spouse for almost 30 years
12 and they have four children. They got together
13 when they were teenagers, and Mr. Kuptana was in
14 fact still a teenager when they had their first
15 child. He has lived in Inuvik since around 2007,
16 2008 but returns to Ulukhaktok regularly. He
17 learned to hunt and trap at a young age and since
18 a young age has carried out traditional
19 activities out on the land. He has been going
20 back to Ulukhaktok to pursue those activities,
21 and he said he hopes to be able to continue those
22 activities in the future.

23 Alcohol and drugs have been a problem for
24 Mr. Kuptana. He has a criminal record which
25 spans from 1992 to 2014. There are gaps of a few
26 years here and there on his record. His lawyer
27 advised that those gaps correspond to periods of

1 time where Mr. Kuptana's drinking was under
2 control. The periods where there are clusters of
3 convictions correspond to periods of time where
4 he was drinking more heavily and also using
5 drugs.

6 Mr. Kuptana's parents abused alcohol when he
7 was growing up. As a child he often saw his
8 parents drunk. There was a considerable amount
9 of domestic violence in the home. Mr. Kuptana's
10 father beat his mother up on a regular basis.
11 Mr. Kuptana often saw his mother with black eyes.
12 He told his counsel that his father used his
13 mother as a punching bag. This appears to have
14 continued for years up until she was diagnosed
15 with cancer in the early eighties. Like so many
16 victims of domestic violence, his mother never
17 reported the abuse she was suffering to the
18 authorities, and Mr. Kuptana's father was never
19 held accountable for the way he treated her.

20 I have no doubt that growing up in this kind
21 of environment had an impact on Mr. Kuptana and
22 may have contributed to his own violence. I note
23 that he has one conviction for an assault that is
24 identified on his criminal record as a spousal
25 assault. Sadly, we know that many children who
26 grow up with violence repeat the pattern when
27 they are adults. This is particularly so with

1 domestic violence.

2 Mr. Kuptana started drinking when he was 13
3 or 14 years old, and he identifies this as having
4 been a problem for him pretty much from the
5 start.

6 Mr. Kuptana stopped going to school in Grade
7 5. In his evidence at the hearing he explained
8 that he was bullied in school and that made him
9 not want to go. I gather that his parents tried
10 to convince him and make him go back, but the
11 bullying continued and eventually he did not go
12 back, and his parents stopped trying to make him
13 go back. Although he stopped going to school at
14 a young age and does not have a lot of formal
15 education, it is noteworthy that Mr. Kuptana was
16 still able to hold various forms of employment
17 both in Ulukhaktok and in Inuvik. It is obvious
18 that he has skills and is able to be a productive
19 member of this community when his drinking is
20 under control.

21 Mr. Kuptana is an Aboriginal offender and I
22 have taken judicial notice of systemic and
23 background factors that have affected Aboriginal
24 people in this country and have contributed to
25 the over-representation of the Aboriginal
26 population in Canadian jails. I have also taken
27 into account the factors specific to

1 Mr. Kuptana's upbringing and background, the
2 things that his counsel talked about, including
3 his early exposure to a dysfunctional home
4 environment where there was considerable alcohol
5 abuse and violence.

6 Mr. Kuptana's counsel conceded that given
7 the nature of the offence there is no realistic
8 alternative to imprisonment in terms of
9 sentencing options, but he asks that I take into
10 account Mr. Kuptana's circumstances in assessing
11 his level of blameworthiness for this crime. I
12 have done so and I have taken all of this into
13 account, while at the same time recognizing, as
14 the Crown noted, that the victim of this crime is
15 an Aboriginal woman who was exposed to the same
16 systemic factors and disadvantages that Mr.
17 Kuptana was exposed to. Aboriginal people and
18 Aboriginal communities are entitled to the same
19 protection from the law as non-Aboriginal persons
20 in non-aboriginal communities.

21 Sexual assault is a serious crime and it is
22 unfortunately very prevalent in our communities;
23 it causes profound harm. That harm is felt no
24 less by Aboriginal victims in Aboriginal
25 communities than anywhere else. That harm has to
26 be recognized and reflected on sentencing through
27 sentences that make it clear that this conduct is

1 not tolerable. The court obviously does not have
2 the power to address and resolve the root causes
3 of these crimes but it has a duty, through its
4 sentences, to continue, relentlessly, to send a
5 message about how serious it is to take advantage
6 of someone and violate their personal and sexual
7 integrity for one's own sexual gratification.

8 This case is no different. This sexual
9 assault caused great harm to this victim. M. K.
10 prepared a Victim Impact Statement back in
11 October 2015. In that statement she describes
12 the effect that this crime had on her. The
13 things she writes about, the effect that this
14 crime had on her, is similar to what we often see
15 in Victim Impact Statements in sexual assault
16 cases. She talks about not ever being able to
17 trust again, how she feels damaged, broken. She
18 also talks about having lost her relationship
19 with her aunt and cousin who she was close to
20 before all of this. Beyond the harm the assault
21 itself caused, she has suffered other losses.

22 Counsel noted that the Victim Impact
23 Statement was completed more than a year ago and
24 has not been updated. Counsel commented that it
25 would have been helpful to have an update to know
26 whether the feelings she expressed in the Victim
27 Impact Statement might have changed or evolved or

1 whether there has been any change or beginning of
2 restoration of her relationship with her aunt and
3 cousin for instance. Ms. K was told by the Crown
4 of the possibility of updating her Victim Impact
5 Statement and she chose not to do so. She knows
6 what she wrote, and she chose not to add to it or
7 change it. I infer from this that what she wrote
8 in the Victim Impact Statement is still current.

9 Counsel also noted the evidence that Ms. K
10 returned to the Kuptana house a few times after
11 the incident before she reported it to police.
12 On the day in question, she did return and she
13 interacted with Mr. Kuptana. If this submission
14 was intended to suggest that Mr. Kuptana's
15 actions had perhaps less impact on Ms. K than one
16 might expect, I reject that suggestion
17 categorically.

18 Under the circumstances, given her
19 connection with these people and that she had
20 been staying there, her return to the residence
21 does not belie her assertion in the Victim Impact
22 Statement that the sexual assault affected her
23 profoundly. As was noted by the Supreme Court of
24 Canada and by many other courts, there is no
25 "standard reaction" or "normal reaction" to being
26 sexually assaulted. Continued contact with the
27 abuser is not unheard of; quite the contrary.

1 Some victims are in contact with their abuser for
2 years before they speak out, and some never speak
3 out. Ms. K's conduct after the day this
4 happened, her return to the Kuptana house, and
5 the fact that she did not report this immediately
6 that night or the next morning say nothing, in my
7 view, about the impact that this crime had on
8 her.

9 Besides, if there is any question about
10 whether the sexual assault still affects Ms. K
11 the answer came in the clearest of ways during
12 her testimony this week, almost two years after
13 these events. I observed her and heard her when
14 she testified. Because of the configuration of
15 this courtroom she was a few feet away from me
16 when she testified. When she got to the point of
17 describing what Mr. Kuptana did to her she became
18 extremely upset. She started to shake, she
19 cried, she had difficulty speaking. On several
20 occasions she heaved and it appeared to me she
21 was about to throw up on the witness stand. It
22 was abundantly clear to me during her evidence
23 that these events continue to have a severe
24 impact on Ms. K.

25 The sexual assault committed by Mr. Kuptana
26 was a major sexual assault as defined in the case
27 of *R. v. Arcand*, 2010 ABCA 363, which was adopted

1 by our Court of Appeal in *R. v. A.J.P.J.*, 2011
2 NWTCA 02. This means that the starting point on
3 sentencing is three years. From this starting
4 point the sentence must be adjusted to reflect
5 any aggravating and mitigating features that
6 exist in the case. A starting point is not a
7 minimum sentence and it is not a mandatory
8 sentence. It is simply a gauge that assists the
9 court in crafting an appropriate sentence that
10 meets the objectives of sentencing and reflects
11 the seriousness of the conduct.

12 Here there are aggravating features. The
13 first is that Mr. Kuptana is Ms. K's uncle. She
14 was a guest in his house and had been a guest in
15 his house before. She had every reason to trust
16 and no reason to expect this to happen when she
17 went to sleep that night. This offence involved
18 a terrible breach of the trust between them.

19 The second aggravating factor is that she
20 was in a particularly vulnerable position when
21 this happened because she was sleeping. Our
22 Court of Appeal has expressly recognized this as
23 an aggravating factor in *A.J.P.J.* at
24 paragraph 12.

25 Mr. Kuptana's criminal record is also
26 aggravating. There are a number of convictions
27 for crimes of violence on that record, although

1 in fairness, he has no conviction for a sexual
2 offence and has never received lengthy jail terms
3 for any of the convictions on his record. This
4 offence is by far the most he has been convicted
5 of. Still, he has been in trouble over the years
6 as a result of his abuse of alcohol.

7 There is no evidence, as I have already
8 mentioned, that he or anyone else were grossly
9 intoxicated the night of these events. During
10 his testimony he said that he did not think the
11 alcohol he had that night had any effect on him.
12 I do not accept that Mr. Kuptana's actions that
13 night were completely unrelated to his
14 consumption of alcohol. I think alcohol played a
15 part in his conduct that night, and I think he
16 needs to think very seriously about the damage
17 that alcohol has caused in his life up to now,
18 the damage that he has caused to others,
19 including those he loves, while under the
20 influence of alcohol.

21 I am required to take into account any
22 mitigating factors that exist and in this case I
23 find there are none. I accept counsel's
24 submission that this sexual assault was an
25 opportunistic and impulsive act as opposed to
26 something that was planned or premeditated. I
27 have no difficulty with that submission, but the

1 spontaneity of an act is not a mitigating factor.
2 It simply underscores the absence of
3 premeditation which would, if it was present, be
4 an aggravating factor. The difference between a
5 mitigating factor and the absence of an
6 aggravating factor was also something that was
7 underscored by the Court of Appeal in *A.J.P.J.*

8 Defence counsel did not ask me to take
9 Mr. Kuptana's guilty plea into account in
10 mitigation, and rightfully so. Mr. Kuptana made
11 every attempt to resile from that plea, and as a
12 result of his position Ms. K had to testify at
13 this hearing, something that as I have already
14 noted, appeared exceedingly difficult for her.
15 The guilty plea has no mitigating value in this
16 case. Defence counsel noted that for at least a
17 short period of time after Mr. Kuptana entered
18 his plea, Ms. K may have had some relief from the
19 stress that she might be experiencing about the
20 prospect of having to testify about this. What
21 I think is that it must have been very difficult
22 for her to be told roughly a year ago that
23 Mr. Kuptana had pleaded guilty in this matter,
24 that he was accepting responsibility and that
25 there would be no trial, that she would not have
26 to testify, only to find out months later that in
27 fact he was no longer admitting the facts and she

1 would have to testify. Whatever comfort she
2 might have had for the period of time where she
3 thought she would not have to testify is by far
4 outweighed by having had to go through this
5 process and have it drag on until this week.

6 When he was given a chance to speak
7 yesterday Mr. Kuptana said he does not blame
8 Ms. K, that he takes responsibility for what
9 happened, and he hopes that she recovers from it.
10 He apologized and I understood him to say that he
11 hoped there could be healing from all of this and
12 that he would have the opportunity to be a better
13 uncle to her.

14 Of course one always hopes that there can be
15 healing. But Mr. Kuptana's expression of remorse
16 is at odds with his testimony, just hours before.
17 In his evidence he did not accept responsibility,
18 in the sense that he admitted sexual contact but
19 he portrayed his victim as having been the
20 initiator in all of this; he portrayed her as
21 having been quite provocative in the way she
22 initiated all of this. Mr. Kuptana's trial
23 testimony was that when he peeked into her room
24 after having gone to the washroom, when she saw
25 him she lifted both her legs up in the air,
26 spread them and exposed her vagina to him without
27 saying a word. He also said that she appeared to

1 enjoy the sexual contact, and that after he was
2 finished and got up she turned around, placed
3 herself on all fours facing away from him with
4 her buttocks facing him, which could only be
5 interpreted, I think, as an invitation by her to
6 continue the sexual activity.

7 The clear implication of Mr. Kuptana's
8 evidence and his position at this hearing was
9 that his niece falsely accused him of this
10 terrible crime to avoid potential consequences to
11 herself if her aunt found out about their
12 encounter; that she lied under oath and faked her
13 emotions on the witness stand, all of this to
14 shift responsibility from herself. I find it
15 very contradictory that he would paint his victim
16 with that brush and hours later claim to take
17 responsibility and be sorry for what he did. It
18 is not as though Mr. Kuptana had a lot of time to
19 reflect and gain insight into this matter between
20 the time he testified and the time he offered
21 those comments: all of this happened within the
22 span of a few hours. All this to say it is
23 difficult for me to reconcile his expression of
24 sorrow and apology with his sworn testimony.

25 I certainly hope that Mr. Kuptana will at
26 one point come to terms with what he has done and
27 take full responsibility for it, but it is

1 difficult for me to be convinced that he is
2 remorseful or has any insight into his conduct at
3 this point. Again, absence of remorse is not an
4 aggravating factor but genuine remorse is a
5 mitigating factor. I am unable to find any
6 indication of genuine remorse in this case.

7 I do accept that applying the principles set
8 out by the Supreme Court of Canada in *Gladue* and
9 *Ipeelee*, there are things in Mr. Kuptana's
10 background as an Aboriginal offender that reduce
11 his blameworthiness somewhat. But as I have
12 already noted, this has to be balanced against
13 the seriousness of the offence, its prevalence in
14 this jurisdiction, parity and the other
15 sentencing principles and objectives.

16 The Crown is asking me to impose a jail term
17 between three and four years. Defence is asking
18 me to impose a jail term of two and a half years.
19 Those positions are not as drastically far apart
20 as we sometimes see.

21 In light of the aggravating factors I cannot
22 see a basis for imposing a sentence below the
23 three-year starting point. The presence of
24 aggravating factors, in particular the breach of
25 trust and the added vulnerability of the victim,
26 require the imposition of a sentence that is
27 higher than the starting point, even taking into

1 account the need for particular restraint when
2 dealing with the sentencing of Aboriginal
3 offenders.

4 On the whole, in my view, the sentence has
5 to be in excess of the starting point in order to
6 properly reflect the seriousness of this crime
7 and the harm done to the victim.

8 The Crown has asked for a number of
9 ancillary orders and we will deal with those
10 first. This is a primary designated offence so
11 there will be a DNA order. It is also mandatory
12 that I make an order that Mr. Kuptana comply with
13 the Sexual Offender Information Registration Act
14 for a period of 20 years. It is mandatory that I
15 impose a victim of crime surcharge because I do
16 not have any discretion to waive it under the
17 present state of the law, so I make that order as
18 well. I will also order that any exhibits seized
19 in this matter will be disposed of or returned to
20 their rightful owner, whichever is most
21 appropriate, at the expiration of the appeal
22 period. There will also be a Section 109
23 firearms prohibition order commencing today and
24 expiring ten years after release.

25 Having heard the positions of counsel and
26 having heard evidence about Mr. Kuptana's
27 involvement with traditional activities, work

1 activities and sustenance activities out on the
2 land, I will grant him an exemption pursuant to
3 Section 113 of the *Criminal Code* for both
4 employment and sustenance purposes. I have taken
5 into account the factors that I am required to
6 consider in such matters including the fact that
7 Mr. Kuptana's criminal record does not include
8 convictions involving the use of firearms, the
9 fact that there were no firearms used in this
10 particular offence and the fact that there was no
11 extraneous violence in the commission of this
12 offence. A sexual assault is an inherently
13 violent offence but in this case there was no
14 additional physical violence used during the
15 commission of the act.

16 In imposing sentence I will also, of course,
17 take into consideration the time that Mr. Kuptana
18 has spent on remand.

19 Mr. Kuptana, I will ask you to stand please.
20 Mr. Kuptana, for the sexual assault on M. K., but
21 for the time that you spent on remand I would
22 have sentenced you to a term of imprisonment of
23 44 months, that is three years and eight months.
24 For the 488 days that you have spent on remand I
25 will give you credit for 24 months. That is the
26 maximum credit I am allowed to give you under the
27 law. So there will be a further term of

1 imprisonment of 20 months. You can sit down.

2 Mr. Kuptana, it is clear you have skills,
3 you have traditional land skills, you have work
4 skills, and you have been able to stay out of
5 trouble for periods of time in your life. I hope
6 that you recognize you also have it in you to do
7 very bad things when you consume alcohol. I know
8 this is the longest time you will ever have spent
9 in jail, and I really hope that you are able to
10 use that time to help you overcome the issues in
11 your past and your issues with alcohol and drugs,
12 so that when you are released you can contribute
13 to your community in the way I know you can and
14 that we never see you back again before the
15 courts.

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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 from my shorthand notes to the best of my skill and ability.

Dated at the City of Edmonton, Province of Alberta, this 29th day of January, 2017.

Certified Pursuant to Rule 723
of the Rules of Court



Darlene Sirman, CSR(A)
Court Reporter/Examiner