

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

**IN THE MATTER OF:**

**HER MAJESTY THE QUEEN**

**- v -**

**DAVID AKKAK**

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S1 delivered by The Honourable Justice A.M. Mahar, sitting in Yellowknife, in the Northwest Territories, on the 29th day of March, 2017.

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**APPEARANCES:**

Ms. A. Piche: Counsel for the Crown  
Ms. K. Oja: Counsel for the Accused

(Charges under s. 267(b) of the *Criminal Code of Canada*)

1 THE COURT: Mr. Akkak, you can be seated  
2 beside your lawyer. Thank you.

3 Mr. Akkak is here today for sentencing on  
4 two counts of assault causing bodily harm,  
5 proceeded by indictment. The guilty plea was  
6 entered some time ago. There was a pre-sentence  
7 report prepared.

8 With respect to the facts, towards the end  
9 of April of 2016, Mr. Akkak and his common-law  
10 partner were drinking. He became very drunk and  
11 very jealous. He assaulted his partner by  
12 striking her repeatedly, choking her and biting  
13 her. It was a vicious assault, and it resulted  
14 in a broken jaw for which she required surgery in  
15 Edmonton by a plastic surgeon.

16 Approximately two weeks later, again  
17 drinking with his common-law spouse, Mr. Akkak  
18 became intoxicated and jealous. He punched his  
19 spouse, Ms. Porter, in the face once and choked  
20 her. At the time, she was still recovering from  
21 surgery. Those are essentially the facts in  
22 relation to the first count.

23 There is an agreed statement of facts filed,  
24 and I would suggest that it be made an appendix  
25 to my decision with the transcript.

26 Sometime in between the two assaults on  
27 Ms. Porter, Mr. Akkak was being visited by his

1 friend, Christopher Amautinar. Again, they were  
2 drinking. Mr. Amautinar got into an argument  
3 with Mr. Akkak. Mr. Akkak demanded that Mr.  
4 Amautinar leave. Mr. Amautinar refused to  
5 leave, and Mr. Akkak used too much force trying  
6 to eject him. Essentially he punched him in the  
7 rib cage, and this resulted in some pretty severe  
8 bruising to his ribs. I am going to give  
9 Mr. Akkak the benefit of the doubt; the surgeons  
10 at the hospital were uncertain as to whether or  
11 not there was, in fact, a cracked rib. All I  
12 need to find is that Mr. Amautinar suffered from  
13 some significant discomfort as a result of the  
14 assault to find that it is beyond the threshold  
15 for assault causing bodily harm. That is my  
16 finding.

17 Although Mr. Akkak has not entered a guilty  
18 plea at the first opportunity, he is to be given  
19 significant credit for the guilty plea in this  
20 case. I am told that he was originally facing  
21 far more serious charges, which is something to  
22 keep in mind when looking at the timing of the  
23 guilty plea. Trials can take many forms, and  
24 sometimes the form they take is ongoing  
25 discussions between counsel to resolve  
26 outstanding issues, and an accused should not be  
27 penalized for exercising his rights in this way

1 as opposed to a more formal route of a trial.

2 I am also told that it would have been a  
3 difficult case for the complainants, specifically  
4 his spouse or former spouse, and I take that into  
5 account as well. He has spared her the need to  
6 testify about a very unpleasant incident or  
7 incidents. And he is to be given credit for  
8 that.

9 Mr. Akkak is 47 years old. He is of  
10 Inuvialuit descent. When he was 3 years old,  
11 because of some ongoing problems with his birth  
12 family, he was adopted by an Inuit family in  
13 Kugaaruk which is where he grew up. The family  
14 also adopted three girls.

15 For some reason, his adoptive mother took a  
16 dislike to Mr. Akkak, and we must remember that  
17 he was a 3-year-old boy when he was adopted.  
18 From what I could glean from the pre-sentence  
19 report and the comments of counsel, he was never  
20 shown any affection or love by this person. He  
21 was beaten regularly. He was locked in his room.  
22 And he ended up with sores because he was unable  
23 to maintain his own hygiene. He was essentially  
24 abused and unloved at a very critical time in his  
25 life.

26 He ended up running away from home at  
27 various times beginning when he was 11. At 15,

1 he found himself in a youth protection facility.  
2 At that point, he indicated that he was first  
3 shown some physical affection. I understand that  
4 his adoptive father was actually a decent fellow  
5 who took him out on the land and who never  
6 mistreated him. Both of these parents have since  
7 died as well as his birth mother.

8 The amount of damage and trauma suffered as  
9 a result of this upbringing is what brings  
10 Mr. Akkak before the Court. I do not need to be  
11 a psychologist or a psychiatrist to see the  
12 obvious link and connection between that sort of  
13 abuse and a man who panics at the first sign that  
14 he might be abandoned or he might lose love,  
15 especially when he has been drinking. This  
16 difficulty has plagued Mr. Akkak throughout his  
17 intimate relationships. Unless he gets some  
18 serious help for it, it is going to continue to  
19 plague him. I am not specifically referring to  
20 these facts in terms of their *Gladue* or section  
21 718.2(e) indications, but they are taken into  
22 account under that umbrella. Mr. Akkak is a  
23 person of Aboriginal descent, and he clearly  
24 falls into the parameters of somebody whose life  
25 has borne some tremendous difficulty, and I take  
26 that into account.

27 The courts end up sentencing people for

1 purely predictable behaviours resulting from  
2 trauma, loss, and a lack of proper upbringing,  
3 for lack of a better way of expressing it. It is  
4 unfortunate. He has taken responsibility for his  
5 actions and he must be sentenced accordingly, but  
6 I cannot help but be sympathetic to Mr. Akkak's  
7 circumstances. It is to his credit that he has  
8 taken responsibility for this, and I can only  
9 hope that his journey through the correctional  
10 system this time allows him to access some help.

11 He has a number of children primarily in  
12 Kugaaruk. His plans upon release, if he cannot  
13 resume a relationship with the complainant, is to  
14 return to Kugaaruk and live with his daughter and  
15 his grandkids where he intends to find work. He  
16 has a Grade 9 education. His upbringing  
17 interfered with his ability to finish his high  
18 school education, and he has been involved in a  
19 number of menial or relatively low-level  
20 employment opportunities since then.

21 I have reviewed as well the victim impact  
22 statement, which was very sad. The complainant  
23 or victim obviously still cares for Mr. Akkak.  
24 She simply cannot deal with this sort of  
25 behaviour anymore. From what I can glean from  
26 that document, they both require some healing,  
27 and she feels it best that they do that healing

1           separately. I intend to address that somewhat  
2           ambiguous sentiment in the probation order.

3           With respect to the assault on Mr.  
4           Amautinuvar, while the injury was somewhat  
5           significant, the behaviour itself in my view  
6           falls at the lower end of the spectrum in terms  
7           of culpability. Mr. Akkak used too much force in  
8           ejecting someone from his home. He hit Mr.  
9           Amautinuvar too hard, probably in a delicate part  
10          of his body, and an injury ensued.

11          With respect to sentence, the Crown attorney  
12          is asking to impose a global sentence of two  
13          years less a day, 18 months for the first count,  
14          the assault on his common-law spouse; and a  
15          further six months for the assault on Mr.  
16          Amautinuvar. Defence counsel agrees with the  
17          18-month sentence but urges me to impose a  
18          sentence of 3 months for the assault on Mr.  
19          Amautinuvar.

20          I agree that 18 months is an appropriate  
21          sentence for the assault on Ms. Porter, and you  
22          are therefore sentenced to 18 months. I  
23          struggled a little with the difference in the  
24          request with respect to Mr. Amautinuvar, and I  
25          have to concur with the defence. Mr. Akkak had  
26          been out of trouble at least in terms of violent  
27          offences for about nine years. The assault

1           itself, as I have indicated, while not at the  
2           lowest end of the scale, is certainly not even  
3           close to the level of seriousness of assault on  
4           Ms. Porter, so I will impose a further sentence  
5           of 3 months for that assault.

6           Counsel, if you could remind me exactly how  
7           many days has he done in custody?

8           MS. PICHE:                    I had it in months,  
9           Your Honour, so I don't have the exact days.

10          THE COURT:                   How many months is it?

11          MS. PICHE:                   Ten and a half months of  
12          actual pre-sentence custody, which by my  
13          calculation was 15 months and three-quarters by  
14          1.5.

15          THE COURT:                   Very well. I will give him 15  
16          and three-quarters months' credit. On that  
17          basis, having served 10 and a half months of  
18          actual pretrial custody, leaving him 5 and a  
19          quarter months, I believe. 5 months 8 days. I  
20          do not want them to have to start splitting days.

21                 Following this period of incarceration, he  
22                 will be on probation for 18 months. Conditions  
23                 are to keep the peace and be of good behaviour,  
24                 report to probation services within three days of  
25                 his release and after that as directed and that  
26                 he take whatever counselling is recommended for  
27                 him. On the warrant of committal -- sorry, I



1 forgot this. On the warrant of committal, I will  
2 make a note that he be considered for any  
3 in-house treatment facility, if program is  
4 available that suits his needs. And should one  
5 become available, that he be considered for early  
6 release to a treatment program. I would suggest  
7 any institution is perfectly capable of coming up  
8 with this assessment, that the primary focus of  
9 the treatment be for trauma. He is not to  
10 consume any alcohol while he is on probation.

11 He is to have no contact directly or  
12 indirectly with Ms. Porter unless initiated by  
13 her. If contact does resume, he is to have her  
14 written consent to that contact on his person at  
15 all times. She is able to revoke that consent at  
16 any time.

17 And, Crown, I am simply putting that in  
18 there because in these situations there is often  
19 some ambiguity. I am leaving it in Ms. Porter's  
20 hands. He is not to have any contact with her  
21 directly or indirectly.

22 MS. PICHE: May I be heard on this,  
23 Your Honour.

24 THE COURT: You may.

25 MS. PICHE: There is no indication from  
26 Ms. Porter that there is any wish at this point  
27 to resume contact. Considering the fact that she

1           was assaulted twice in a short period of time and  
2           she returned with him after being hospitalized in  
3           Edmonton, I would respectfully submit that it  
4           might not be the best solution to put it in her  
5           hands at this point.

6           THE COURT:                    What about in the probation  
7           officer's hands?

8           MS. PICHE:                    I would suggest that that  
9           would be more appropriate.

10          THE COURT:                    Okay. Any comment on that?

11          MS. OJA:                     No, that's agreeable,  
12          Your Honour.

13          THE COURT:                    I take your point. He is to  
14          have no contact directly or indirectly with  
15          Ms. Porter unless he has the prior written  
16          authorization of his probation officer. And in  
17          any event, this is never to be without  
18          Ms. Porter's prior consent. Obviously a  
19          probation officer would not do that, but I just  
20          want that for clarity's sake.

21                 That contact, if it is commenced, can be  
22                 withdrawn at any time by either the probation  
23                 officer or by Ms. Porter.

24                 I place no condition to Mr. Amautinuar. He  
25                 doesn't seem to want one so there's no need for  
26                 that.

27                 There is a mandatory order. There will be a

1 DNA order, a firearms order for a period of 10  
2 years. I'll make an exemption under section 113  
3 allowing Mr. Akkak to apply for a limited  
4 subsistence permit to the relevant authority in  
5 his community.

6 Is there anything I've forgotten, Crown?

7 MS. PICHE: No, thank you.

8 MS. OJA: No, Your Honour.

9 THE COURT: Good luck, Mr. Akkak.

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11 **CERTIFICATE OF TRANSCRIPT**

12

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

18 Dated at the City of Edmonton, Province of  
19 Alberta, this 11th day of May, 2017.

20

21 Certified Pursuant to Rule 723  
22 of the Rules of Court.

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Joanne Leah McKenzie

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RPR, CRR, CRC, RSA, CSR(A)

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Court Reporter