*R. v. Akkak, 2017 NWTSC 30* **S-1-CR-2016-000072**

# IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

**IN THE MATTER OF:**

**HER MAJESTY THE QUEEN**

**- v -**

**DAVID AKKAK**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** 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
28. friend, Christopher Amautinuar. Again, they were
29. drinking. Mr. Amautinuar got into an argument
30. with Mr. Akkak. Mr. Akkak demanded that Mr.
31. Amautinuar leave. Mr. Amautinuar refused to
32. leave, and Mr. Akkak used too much force trying
33. to eject him. Essentially he punched him in the
34. rib cage, and this resulted in some pretty severe
35. bruising to his ribs. I am going to give
36. Mr. Akkak the benefit of the doubt; the surgeons
37. at the hospital were uncertain as to whether or
38. not there was, in fact, a cracked rib. All I
39. need to find is that Mr. Amautinuar suffered from
40. some significant discomfort as a result of the
41. assault to find that it is beyond the threshold
42. for assault causing bodily harm. That is my
43. finding.
44. Although Mr. Akkak has not entered a guilty
45. plea at the first opportunity, he is to be given
46. significant credit for the guilty plea in this
47. case. I am told that he was originally facing
48. far more serious charges, which is something to
49. keep in mind when looking at the timing of the
50. guilty plea. Trials can take many forms, and
51. sometimes the form they take is ongoing
52. discussions between counsel to resolve
53. outstanding issues, and an accused should not be
54. penalized for exercising his rights in this way
55. as opposed to a more formal route of a trial.
56. I am also told that it would have been a
57. difficult case for the complainants, specifically
58. his spouse or former spouse, and I take that into
59. account as well. He has spared her the need to
60. testify about a very unpleasant incident or
61. incidents. And he is to be given credit for
62. that.
63. Mr. Akkak is 47 years old. He is of
64. Inuvialuit descent. When he was 3 years old,
65. because of some ongoing problems with his birth
66. family, he was adopted by an Inuit family in
67. Kugaaruk which is where he grew up. The family
68. also adopted three girls.
69. For some reason, his adoptive mother took a
70. dislike to Mr. Akkak, and we must remember that
71. he was a 3-year-old boy when he was adopted.
72. From what I could glean from the pre-sentence
73. report and the comments of counsel, he was never
74. shown any affection or love by this person. He
75. was beaten regularly. He was locked in his room.
76. And he ended up with sores because he was unable
77. to maintain his own hygiene. He was essentially
78. abused and unloved at a very critical time in his
79. life.
80. He ended up running away from home at
81. various times beginning when he was 11. At 15,
82. he found himself in a youth protection facility.
83. At that point, he indicated that he was first
84. shown some physical affection. I understand that
85. his adoptive father was actually a decent fellow
86. who took him out on the land and who never
87. mistreated him. Both of these parents have since
88. died as well as his birth mother.
89. The amount of damage and trauma suffered as
90. a result of this upbringing is what brings
91. Mr. Akkak before the Court. I do not need to be
92. a psychologist or a psychiatrist to see the
93. obvious link and connection between that sort of
94. abuse and a man who panics at the first sign that
95. he might be abandoned or he might lose love,
96. especially when he has been drinking. This
97. difficulty has plagued Mr. Akkak throughout his
98. intimate relationships. Unless he gets some
99. serious help for it, it is going to continue to
100. plague him. I am not specifically referring to
101. these facts in terms of their *Gladue* or section
102. 718.2(e) indications, but they are taken into
103. account under that umbrella. Mr. Akkak is a
104. person of Aboriginal descent, and he clearly
105. falls into the parameters of somebody whose life
106. has borne some tremendous difficulty, and I take
107. that into account.
108. 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
109. separately. I intend to address that somewhat
110. ambiguous sentiment in the probation order.
111. With respect to the assault on Mr.
112. Amautinuar, while the injury was somewhat
113. significant, the behaviour itself in my view
114. falls at the lower end of the spectrum in terms
115. of culpability. Mr. Akkak used too much force in
116. ejecting someone from his home. He hit Mr.
117. Amautinuar too hard, probably in a delicate part
118. of his body, and an injury ensued.
119. With respect to sentence, the Crown attorney
120. is asking to impose a global sentence of two
121. years less a day, 18 months for the first count,
122. the assault on his common-law spouse; and a
123. further six months for the assault on Mr.
124. Amautinuar. Defence counsel agrees with the
125. 18-month sentence but urges me to impose a
126. sentence of 3 months for the assault on Mr.
127. Amautinuar.
128. I agree that 18 months is an appropriate
129. sentence for the assault on Ms. Porter, and you
130. are therefore sentenced to 18 months. I
131. struggled a little with the difference in the
132. request with respect to Mr. Amautinuar, and I
133. have to concur with the defence. Mr. Akkak had
134. been out of trouble at least in terms of violent
135. offences for about nine years. The assault
136. itself, as I have indicated, while not at the
137. lowest end of the scale, is certainly not even
138. close to the level of seriousness of assault on
139. Ms. Porter, so I will impose a further sentence
140. of 3 months for that assault.
141. Counsel, if you could remind me exactly how
142. many days has he done in custody?
143. MS. PICHE: I had it in months,
144. Your Honour, so I don't have the exact days.
145. THE COURT: How many months is it?
146. MS. PICHE: Ten and a half months of
147. actual pre-sentence custody, which by my
148. calculation was 15 months and three-quarters by 14 1.5.
149. THE COURT: Very well. I will give him 15
150. and three-quarters months' credit. On that
151. basis, having served 10 and a half months of
152. actual pretrial custody, leaving him 5 and a
153. quarter months, I believe. 5 months 8 days. I
154. do not want them to have to start splitting days.
155. Following this period of incarceration, he
156. will be on probation for 18 months. Conditions
157. are to keep the peace and be of good behaviour,
158. report to probation services within three days of
159. his release and after that as directed and that
160. he take whatever counselling is recommended for
161. him. On the warrant of committal -- sorry, I
162. forgot this. On the warrant of committal, I will
163. make a note that he be considered for any
164. in-house treatment facility, if program is
165. available that suits his needs. And should one
166. become available, that he be considered for early
167. release to a treatment program. I would suggest
168. any institution is perfectly capable of coming up
169. with this assessment, that the primary focus of
170. the treatment be for trauma. He is not to
171. consume any alcohol while he is on probation.
172. He is to have no contact directly or
173. indirectly with Ms. Porter unless initiated by
174. her. If contact does resume, he is to have her
175. written consent to that contact on his person at
176. all times. She is able to revoke that consent at
177. any time.
178. And, Crown, I am simply putting that in
179. there because in these situations there is often
180. some ambiguity. I am leaving it in Ms. Porter's
181. hands. He is not to have any contact with her
182. directly or indirectly.
183. MS. PICHE: May I be heard on this,
184. Your Honour.
185. THE COURT: You may.
186. MS. PICHE: There is no indication from
187. Ms. Porter that there is any wish at this point
188. to resume contact. Considering the fact that she
189. was assaulted twice in a short period of time and
190. she returned with him after being hospitalized in
191. Edmonton, I would respectfully submit that it
192. might not be the best solution to put it in her
193. hands at this point.
194. THE COURT: What about in the probation
195. officer's hands?
196. MS. PICHE: I would suggest that that
197. would be more appropriate.
198. THE COURT: Okay. Any comment on that?
199. MS. OJA: No, that's agreeable,
200. Your Honour.
201. THE COURT: I take your point. He is to
202. have no contact directly or indirectly with
203. Ms. Porter unless he has the prior written
204. authorization of his probation officer. And in
205. any event, this is never to be without
206. Ms. Porter's prior consent. Obviously a
207. probation officer would not do that, but I just
208. want that for clarity's sake.
209. That contact, if it is commenced, can be
210. withdrawn at any time by either the probation
211. officer or by Ms. Porter.
212. I place no condition to Mr. Amautinuar. He
213. doesn't seem to want one so there's no need for
214. that.
215. 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**

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1. I, the undersigned, hereby certify that the
2. foregoing pages are a complete and accurate
3. transcript of the proceedings taken down by me in
4. shorthand and transcribed from my shorthand notes
5. to the best of my skill and ability.
6. Dated at the City of Edmonton, Province of
7. Alberta, this 11th day of May, 2017. 20
8. Certified Pursuant to Rule 723
9. of the Rules of Court. 23

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1. Joanne Leah McKenzie
2. RPR, CRR, CRC, RSA, CSR(A)
3. Court Reporter