

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

DONALD ROSE

Transcript of the Reasons for Sentence delivered by The Honourable Justice L.A. Charbonneau, sitting in Hay River, in the Northwest Territories, on the 15th day of March, 2018.

APPEARANCES:

Ms. A. Piché: Counsel for the Crown
Mr. M.E. Hansen: Counsel for the Accused

(Charges under s. 271 of the *Criminal Code*)

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: Before I begin, I just want to
2 reiterate that there is a publication ban in
3 effect prohibiting the publication or broadcast
4 of any information that could identify the victim
5 in this matter. I am going to direct that a
6 transcript of my decision be prepared and that
7 she be referred only with the initial of her
8 first name, even though I will refer to her by
9 name in the brief remarks I will make this
10 afternoon.

11 MR. HANSEN: Excuse me, ma'am. You were
12 just going over administrative details, but I
13 know that Mr. Rose could not hear you speak.

14 THE COURT: Okay. Sorry about that.

15 MR. HANSEN: Not a problem.

16 THE COURT: I will try to speak louder,
17 Mr. Rose. Can you hear me now? Yes. Okay. I
18 was just talking about the fact that there is a
19 publication ban that prevents anyone from
20 publishing D.'s name. I was telling the court
21 reporter that I want a transcript of what I am
22 about to say and asking her to use an initial and
23 not her name in the transcript. That is as far
24 as I got, and I will keep my voice up from this
25 point on, and interrupt me, Mr. Hansen, if you
26 get any indication that Mr. Rose is not hearing
27 me. All right.

1 Donald Rose admits that over a period of two
2 years, he sexually assaulted D., his great niece.
3 She was 10 and 11 at the time. He was a trusted
4 family member, and D. and her mother often
5 visited him. When he was alone with her, he took
6 advantage of the situation. He now admits that
7 on multiple occasions, he touched her genital
8 area above her clothing and under her clothing.
9 In a statement he gave to police in June 2017, he
10 also admitted digitally penetrating her vagina on
11 multiple occasions.

12 These were very serious sexual assaults.
13 They had a serious impact on D. herself and on
14 her family. Not surprisingly, this has caused
15 immense and possibly irreparable damage to the
16 family relationships. The proceedings in court
17 cannot repair those relationships, but I hope
18 that at least the fact that these proceedings
19 will conclude today and the fact that Mr. Rose
20 now admits his full responsibility for what he
21 did can perhaps be a first step towards some form
22 of healing in the future.

23 Mr. Rose through his lawyer this afternoon
24 resiled, or I would say went back, on some of the
25 things he had told the police when he gave his
26 statement about this. I just want to say a few
27 words about that because I think it is very

1 important.

2 In his statement to the police, Mr. Rose had
3 said that D. was the one who instigated, who
4 started the sexual contact, that she was sexually
5 aggressive with him. His lawyer says Mr. Rose
6 now understands this is wrong and not true. The
7 comments that Mr. Rose made in his statement to
8 the police are extremely disturbing. I hope it
9 is true that Mr. Rose realizes that, in fact, the
10 things that he said in his statement to the
11 police are not correct. The claim that a 10- or
12 11-year-old child is sexually aggressive or
13 somehow instigating sexual contact should be
14 rejected as fundamentally flawed in all cases.
15 It should be denounced in all cases. Children
16 cannot be made to bear any kind of responsibility
17 or blame in things of this nature. D. is not in
18 any way, shape, or form responsible for any part
19 of what Mr. Rose did to her. He was at fault
20 completely and without any qualification. People
21 tell themselves all sorts of things to
22 rationalize their own behaviour, but I say again
23 there is no merit, no foundation ever for this
24 type of suggestion. There is no such thing as a
25 10- or 11-year-old child being a "willing
26 participant" to this kind of activity.

27 Having heard from family members today, it

1 is especially unfair that this happened to D.
2 considering the other health issues that she has
3 already faced in her young life. How unfair can
4 it be that a little girl who has been through
5 cancer treatment at this very young age then had
6 to be subjected to this kind of abuse, live with
7 it for two years, and would now have to live with
8 the aftermath of all this. It is not fair at
9 all, and I sincerely hope that Mr. Rose truly
10 does realize all of this now. I hope it is
11 something that he knows in his head but also
12 feels in his heart.

13 The sexual assaults that Mr. Rose committed
14 were major sexual assaults as we define them in
15 law, at least in the case law in this
16 jurisdiction. These kinds of assaults committed
17 by a person in a position of trust, which was the
18 case here, usually bring sentences that have a
19 starting point of four years for one single act.
20 The reason that sentences are so severe is
21 because we know and we have known for many years
22 now that this type of assault leaves devastating
23 impacts on children. These impacts can be
24 long-lasting, way longer than any physical
25 injuries when there are physical injuries.

26 I will not read from those cases here this
27 afternoon, but those impacts were discussed at

1 some length by the Court of Appeal of Alberta in
2 *R v. S. (W.B.)* more than 25 years ago. The Court
3 of Appeal's comments were referred to in
4 *R. v. G. (C.A.) 2013 NWTSC 80* at paragraphs 37 to
5 42 and also in *R. v. Holman 2014 NWTSC 13*, which
6 were among the cases that counsel filed for this
7 hearing.

8 D.'s young age is an aggravating factor and
9 the repetition, multiple repetition, of assaults
10 is also aggravating. But there are mitigating
11 factors. I agree with counsel that the guilty
12 plea is the most significant mitigating factor.
13 It has spared D. from having to testify about
14 this. It was a very, very early guilty plea,
15 entered before a date for the preliminary hearing
16 was even scheduled. For having seen for many
17 years witnesses testify in court in these types
18 of cases, I know that sparing a child, or an
19 adult for that matter, from having to talk about
20 these things in court is sparing them a lot. So
21 Mr. Rose deserves significant credit for his
22 guilty plea.

23 The other reason a guilty plea is important,
24 aside from having spared her from having to talk
25 about this and having spared her family from
26 having to go through a prolonged court process,
27 is that a guilty plea provides certainty of

1 outcome and it tells everyone what the truth is.
2 It leaves no one able to suspect or say that
3 maybe the story was made up. It makes it very
4 clear who did what. It makes it very clear where
5 the responsibility lies, and although I know it
6 does not remove the harm to families, it may
7 avoid denial on the part of some family members
8 who do not want to believe that the allegations
9 are true. It avoids prolonging rumours and
10 debate about what is true and what is not, and
11 that is very important.

12 Mr. Rose is 78 years old. His lawyer has
13 thoroughly reviewed his personal circumstances,
14 and I am not going to repeat all of that here
15 now. As I mentioned to counsel earlier this
16 afternoon, I think it is important to bring this
17 matter to a close today for everyone's sake, and
18 because of that, I have had very little time to
19 prepare these reasons, and so that is why I am
20 not going to go into all of the details I was
21 told, less than an hour ago, about Mr. Rose's
22 circumstances, but I have taken them into
23 account. I have taken into account his age and
24 the fact that he has never been convicted of any
25 crime until today, which is quite remarkable. I
26 have considered his own medical issues, the fact
27 that he is an aboriginal person, the fact that he

1 attended residential school. I have also, as is
2 my duty, taken judicial notice of systemic and
3 background factors that would have had an impact
4 on him as an aboriginal person.

5 I heard that, as many, he struggled with
6 alcohol and developed a problem with alcohol at a
7 younger age. I heard that he addressed this
8 problem and dealt with that addiction on his own,
9 which is remarkable and to his credit because we
10 see a lot of people, in particular through the
11 criminal justice system, who struggle with this
12 type of addiction and are not able to address it
13 in a meaningful way. So those things are all
14 things that I have taken into consideration.

15 I also heard that a family member assaulted
16 Mr. Rose in retaliation or out of anger because
17 of what had happened. Obviously this Court does
18 not condone violence. No one should ever take
19 the law into their own hands. Mr. Rose wanted
20 his lawyer to tell me about this, and he has, but
21 that is a matter that must be left to be dealt
22 with by the courts in due course.

23 So where does that take me? The bottom
24 line, as I started off saying, is that these
25 offences are profoundly disturbing. What
26 Mr. Rose did and how often he did it over a
27 period of time raises very serious concerns. It

1 is difficult to understand what would lead a
2 person to do this to a child.

3 The Crown's position, as the Crown itself
4 recognized, is at the low end of the scale
5 considering the nature of the conduct and the
6 fact that it was repetitive, but I agree that
7 that position fairly acknowledges the
8 significance of the guilty plea and Mr. Rose's
9 circumstances. Really the question is whether I
10 should keep the sentence at the very low end of
11 that range to allow the making of a probation
12 order that would include things like a no-contact
13 order and possibly other rehabilitative measures.

14 It seems on the facts of what I have heard
15 that it would be a very good idea for Mr. Rose to
16 seek counselling to try to perhaps understand
17 what made him act in this way. He does not have
18 to be on probation to take or access counselling
19 or look into his issues, and although I
20 understand that a no-contact order is something
21 that the family would like, the most that I could
22 do through a probation order is to prohibit
23 contact for a period of three years. There is
24 nothing that can be done to prohibit that
25 permanently. The Court hopes that Mr. Rose,
26 knowing their position, will respect that once he
27 is no longer under conditions not to have

1 contact.

2 I have considered carefully whether I should
3 keep the sentence at the very low end of the
4 range to enable a probation order to be a part of
5 it, but keeping in mind that I am dealing with a
6 very mature adult who has managed to stay out of
7 trouble his whole life, I am not convinced
8 probation is an appropriate sentencing tool in
9 this case, and perhaps more importantly, I think
10 that imposing the two-year sentence would not
11 reflect the seriousness of the conduct in this
12 case.

13 Sexual assault is a very prevalent crime in
14 this jurisdiction, and it has to be deterred. I
15 recognize at the same time that restraint is a
16 very important sentencing principle, so I am not
17 going to impose a sentence at the top end of the
18 range suggested by the Crown. But I do not feel
19 it appropriate to impose a sentence as low as the
20 bottom end of that range.

21 As the Crown has said and as I think I have
22 just said, deterrence and denunciation are the
23 most significant important sentencing principles
24 here because the Court has a duty to do what it
25 can to protect children and to send and resend
26 the message that they must be protected. This is
27 not about revenge. This is about ensuring that

1 everyone knows that the courts in this
2 jurisdiction treat the sexual abuse of children
3 very seriously, and as I have said, the reason
4 that is so important is because of the harm that
5 this conduct causes. What D. is experiencing,
6 according to the victim impact statements that I
7 have heard, are things that we hear all the time
8 in these kinds of cases. It is impossible to
9 overstate the amount of harm that this kind of
10 behaviour causes.

11 I am going to deal with the ancillary orders
12 first. There is no real issue taken with any of
13 them. There will be a DNA order because this is
14 a primary designated offence. The order in
15 relation to the *Sexual Offender Information*
16 *Registration Act* will be made. There will be a
17 Section 109 firearms prohibition order. There
18 will be a Section 161 order for a period of 15
19 years. It is going to include in reference to
20 the paragraphs (a), (a.1), (b), and (c) of
21 Section (1). For the purposes of paragraph (c),
22 the Order will say that there is to be no contact
23 with a person under 16 unless another sober adult
24 is present. And with respect to paragraph (a.1)
25 Mr. Rose will be required to not be within
26 50 meters from D.'s residence.

27 I am going to make an order under

1 Section 743.2 that there is to be no contact with
2 D. while Mr. Rose is in custody. The section
3 contemplates other people, and because I am not
4 sure that I have all the correct names, I am just
5 going to ask when we stand down, Ms. Piché, if
6 you need to consult with the family members that
7 are here just to give the clerk the names, and,
8 of course, we are not talking the entire extended
9 family but the immediate family who should be
10 included in that order. I would ask that you
11 give those names to the clerk.

12 The victim of crime surcharge is mandatory,
13 so I will make an order for the payment of that,
14 and the time to pay and the default time are
15 statutorily provided.

16 Mr. Rose, can you stand up, please.
17 Mr. Rose, for the sexual assaults that you have
18 pleaded guilty to, I sentence you to a term of
19 imprisonment of two and a half years in custody.
20 You can sit down.

21 Under the circumstances, given Mr. Rose's
22 age, given his health conditions, and given his
23 ties to the community, I am going to direct that
24 the clerk endorse the warrant of committal with
25 the strongest possible recommendation that he be
26 permitted to serve his sentence in the Northwest
27 Territories, and I am going to ask, Mr. Clerk,

1 that you alert the authorities about the fact
2 that a relative of D.'s works at the Fort Smith
3 facility, and that if the authorities decide that
4 Mr. Rose can serve his sentence in the
5 Northwest Territories, it would be preferable
6 that he not be sent to Fort Smith. The
7 authorities should be aware of the situation with
8 that employee if that is still the case when the
9 time comes.

10 Is there anything that I have overlooked
11 from the Crown's perspective?

12 MS. PICHÉ: No. Thank you, Your Honour.

13 THE COURT: Anything from defence?

14 MR. HANSEN: No, Ma'am.

15 THE COURT: Thank you for your work on
16 this case, counsel.

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18 **PROCEEDINGS CONCLUDED**

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CERTIFICATE OF TRANSCRIPT

I, Kim Proulx, 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 28th day of March, 2018.

Certified Pursuant to Rule 723
Of the Rules of Court



Kim Proulx
Court Reporter