*R v Rose*, 2018 NWTSC 21 **S-1-CR-2017-000144**

# 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.

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**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
28. important.
29. In his statement to the police, Mr. Rose had
30. said that D. was the one who instigated, who
31. started the sexual contact, that she was sexually
32. aggressive with him. His lawyer says Mr. Rose
33. now understands this is wrong and not true. The
34. comments that Mr. Rose made in his statement to
35. the police are extremely disturbing. I hope it
36. is true that Mr. Rose realizes that, in fact, the
37. things that he said in his statement to the
38. police are not correct. The claim that a 10- or
39. 11-year-old child is sexually aggressive or
40. somehow instigating sexual contact should be
41. rejected as fundamentally flawed in all cases.
42. It should be denounced in all cases. Children
43. cannot be made to bear any kind of responsibility
44. or blame in things of this nature. D. is not in
45. any way, shape, or form responsible for any part
46. of what Mr. Rose did to her. He was at fault
47. completely and without any qualification. People
48. tell themselves all sorts of things to
49. rationalize their own behaviour, but I say again
50. there is no merit, no foundation ever for this
51. type of suggestion. There is no such thing as a
52. 10- or 11-year-old child being a "willing
53. participant" to this kind of activity.
54. 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
55. some length by the Court of Appeal of Alberta in
56. *R v. S.(W.B.)* more than 25 years ago. The Court
57. of Appeal's comments were referred to in
58. *R. v. G.(C.A.) 2013 NWTSC 80* at paragraphs 37 to
59. 42 and also in *R. v. Holman 2014 NWTSC 13*, which
60. were among the cases that counsel filed for this
61. hearing.
62. D.'s young age is an aggravating factor and
63. the repetition, multiple repetition, of assaults
64. is also aggravating. But there are mitigating
65. factors. I agree with counsel that the guilty
66. plea is the most significant mitigating factor.
67. It has spared D. from having to testify about
68. this. It was a very, very early guilty plea,
69. entered before a date for the preliminary hearing
70. was even scheduled. For having seen for many
71. years witnesses testify in court in these types
72. of cases, I know that sparing a child, or an
73. adult for that matter, from having to talk about
74. these things in court is sparing them a lot. So
75. Mr. Rose deserves significant credit for his
76. guilty plea.
77. The other reason a guilty plea is important,
78. aside from having spared her from having to talk
79. about this and having spared her family from
80. having to go through a prolonged court process,
81. is that a guilty plea provides certainty of
82. outcome and it tells everyone what the truth is.
83. It leaves no one able to suspect or say that
84. maybe the story was made up. It makes it very
85. clear who did what. It makes it very clear where
86. the responsibility lies, and although I know it
87. does not remove the harm to families, it may
88. avoid denial on the part of some family members
89. who do not want to believe that the allegations
90. are true. It avoids prolonging rumours and
91. debate about what is true and what is not, and
92. that is very important.
93. Mr. Rose is 78 years old. His lawyer has
94. thoroughly reviewed his personal circumstances,
95. and I am not going to repeat all of that here
96. now. As I mentioned to counsel earlier this
97. afternoon, I think it is important to bring this
98. matter to a close today for everyone's sake, and
99. because of that, I have had very little time to
100. prepare these reasons, and so that is why I am
101. not going to go into all of the details I was
102. told, less than an hour ago, about Mr. Rose's
103. circumstances, but I have taken them into
104. account. I have taken into account his age and
105. the fact that he has never been convicted of any
106. crime until today, which is quite remarkable. I
107. have considered his own medical issues, the fact
108. that he is an aboriginal person, the fact that he
109. attended residential school. I have also, as is
110. my duty, taken judicial notice of systemic and
111. background factors that would have had an impact
112. on him as an aboriginal person.
113. I heard that, as many, he struggled with
114. alcohol and developed a problem with alcohol at a
115. younger age. I heard that he addressed this
116. problem and dealt with that addiction on his own,
117. which is remarkable and to his credit because we
118. see a lot of people, in particular through the
119. criminal justice system, who struggle with this
120. type of addiction and are not able to address it
121. in a meaningful way. So those things are all
122. things that I have taken into consideration.
123. I also heard that a family member assaulted
124. Mr. Rose in retaliation or out of anger because
125. of what had happened. Obviously this Court does
126. not condone violence. No one should ever take
127. the law into their own hands. Mr. Rose wanted
128. his lawyer to tell me about this, and he has, but
129. that is a matter that must be left to be dealt
130. with by the courts in due course.
131. So where does that take me? The bottom
132. line, as I started off saying, is that these
133. offences are profoundly disturbing. What
134. Mr. Rose did and how often he did it over a
135. period of time raises very serious concerns. It
136. is difficult to understand what would lead a
137. person to do this to a child.
138. The Crown's position, as the Crown itself
139. recognized, is at the low end of the scale
140. considering the nature of the conduct and the
141. fact that it was repetitive, but I agree that
142. that position fairly acknowledges the
143. significance of the guilty plea and Mr. Rose's
144. circumstances. Really the question is whether I
145. should keep the sentence at the very low end of
146. that range to allow the making of a probation
147. order that would include things like a no-contact
148. order and possibly other rehabilitative measures.
149. It seems on the facts of what I have heard
150. that it would be a very good idea for Mr. Rose to
151. seek counselling to try to perhaps understand
152. what made him act in this way. He does not have
153. to be on probation to take or access counselling
154. or look into his issues, and although I
155. understand that a no-contact order is something
156. that the family would like, the most that I could
157. do through a probation order is to prohibit
158. contact for a period of three years. There is
159. nothing that can be done to prohibit that
160. permanently. The Court hopes that Mr. Rose,
161. knowing their position, will respect that once he
162. is no longer under conditions not to have
163. contact.
164. I have considered carefully whether I should
165. keep the sentence at the very low end of the
166. range to enable a probation order to be a part of
167. it, but keeping in mind that I am dealing with a
168. very mature adult who has managed to stay out of
169. trouble his whole life, I am not convinced
170. probation is an appropriate sentencing tool in
171. this case, and perhaps more importantly, I think
172. that imposing the two-year sentence would not
173. reflect the seriousness of the conduct in this
174. case.
175. Sexual assault is a very prevalent crime in
176. this jurisdiction, and it has to be deterred. I
177. recognize at the same time that restraint is a
178. very important sentencing principle, so I am not
179. going to impose a sentence at the top end of the
180. range suggested by the Crown. But I do not feel
181. it appropriate to impose a sentence as low as the
182. bottom end of that range.
183. As the Crown has said and as I think I have
184. just said, deterrence and denunciation are the
185. most significant important sentencing principles
186. here because the Court has a duty to do what it
187. can to protect children and to send and resend
188. the message that they must be protected. This is
189. not about revenge. This is about ensuring that
190. everyone knows that the courts in this
191. jurisdiction treat the sexual abuse of children
192. very seriously, and as I have said, the reason
193. that is so important is because of the harm that
194. this conduct causes. What D. is experiencing,
195. according to the victim impact statements that I
196. have heard, are things that we hear all the time
197. in these kinds of cases. It is impossible to
198. overstate the amount of harm that this kind of
199. behaviour causes.
200. I am going to deal with the ancillary orders
201. first. There is no real issue taken with any of
202. them. There will be a DNA order because this is
203. a primary designated offence. The order in
204. relation to the *Sexual Offender Information*
205. *Registration Act* will be made. There will be a
206. Section 109 firearms prohibition order. There
207. will be a Section 161 order for a period of 15
208. years. It is going to include in reference to
209. the paragraphs (a), (a.1), (b), and (c) of
210. Section (1). For the purposes of paragraph (c),
211. the Order will say that there is to be no contact
212. with a person under 16 unless another sober adult
213. is present. And with respect to paragraph (a.1)
214. Mr. Rose will be required to not be within
215. 50 meters from D.'s residence.
216. 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,
217. that you alert the authorities about the fact
218. that a relative of D.'s works at the Fort Smith
219. facility, and that if the authorities decide that
220. Mr. Rose can serve his sentence in the
221. Northwest Territories, it would be preferable
222. that he not be sent to Fort Smith. The
223. authorities should be aware of the situation with
224. that employee if that is still the case when the
225. time comes.
226. Is there anything that I have overlooked
227. from the Crown's perspective?
228. MS. PICHÉ: No. Thank you, Your Honour.
229. THE COURT: Anything from defence?
230. MR. HANSEN: No, Ma'am.
231. THE COURT: Thank you for your work on
232. this case, counsel.

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18 **PROCEEDINGS CONCLUDED**

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# 1 CERTIFICATE OF TRANSCRIPT

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

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1. Certified Pursuant to Rule 723
2. Of the Rules of Court

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1. Kim Proulx
2. Court Reporter

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