

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

ERIC ROBERT JAMES KIKTORAK

Transcript of the Reasons for Sentence of The
Honourable Justice L.A. Charbonneau, sitting in
Yellowknife, in the Northwest Territories, on the 1st day
of May, 2019.

APPEARANCES:

Mr. M. Fane: Counsel for the Crown
Mr. P. Harte: Counsel for the Accused

(Charges under s. 267(b) and 271 of the *Criminal Code*)

There is a ban on the publication , broadcast or transmission of any
information that could identify the complainants pursuant to s . 486 . 4 of
the *Criminal Code* .

1 THE COURT: I want to remind everyone that
2 there is an order in place prohibiting the
3 publication and broadcast of the identity of the
4 complainant on the Section 271 charge. But
5 because of the relationship between the parties,
6 this would extend to the identity of the
7 complainant on the other charge. I am going to
8 use initials in giving my decision this
9 afternoon.

10 Eric Kiktorak has pleaded
11 guilty to a charge of assault causing bodily harm
12 on T.J., who he was in a relationship with at the
13 time. And he has also pleaded guilty to having
14 sexually assaulted C.T., who is T.J.'s mother,
15 later the same night. I heard sentencing
16 submissions earlier this week, and now I must
17 sentence Mr. Kiktorak for those two offenses.

18 These events happened on
19 March 8th, 2018. Mr. Kiktorak and the two women
20 had been drinking together at C.T.'s house on the
21 night of these events. C.T. decided she wanted
22 to go to sleep, and did so, on a mattress in the
23 living room. Mr. Kiktorak and T.J. left her
24 house. They went to Mr. Kiktorak's house and
25 continued drinking there. They began to argue.
26 Mr. Kiktorak accused T.J. of cheating on him.
27 She got up to leave, and then he assaulted her.

1 He hit her in the face. As a result of this
2 assault her face was swollen and she had a black
3 eye. Both of them left the house and went their
4 separate ways. T.J. went to a friend's, and
5 Mr. Kiktorak returned to C.T.'s house. He went
6 in and laid beside her. He pulled her pants down
7 and attempted to have anal intercourse with her.
8 She woke up and confronted him. He tried to calm
9 her down by saying he was making love to her.
10 She chased him out of the house with a bat, and
11 he left.

12 Mr. Kiktorak is an indigenous
13 offender. This places special responsibilities
14 on the Court as far as the approach to
15 determining what the sentence should be for these
16 crimes. I will not repeat here all the
17 principles and guidelines that the Supreme Court
18 of Canada has given sentencing judges in this
19 area. I will just refer to them briefly. But I
20 am mindful of them. I am required to take
21 judicial notice of the systemic and background
22 factors that have had an impact on indigenous
23 people in this country. Factors that, as
24 explained in the cases of *R v Gladue* and *R v*
25 *Ipeelee* have lead to considerable distress and
26 dysfunction and contributed to the
27 overrepresentation of indigenous persons in

1 Canadian jails.

2 I also have to take into
3 account Mr. Kiktorak's own circumstances, the
4 challenges and struggles he faced as an
5 indigenous person. These things are relevant to
6 his level of blameworthiness for these offenses,
7 which, in turn, is relevant to the fundamental
8 sentencing principle of proportionality.

9 I am required to exercise as
10 much restraint as is possible while still
11 achieving the purposes of sentencing. Among
12 other things, it means considering whether any
13 sanctions short of imprisonment could achieve
14 those objectives. And if I decide that a term of
15 imprisonment is unavoidable, I must carefully
16 consider whether under all circumstances that
17 period of imprisonment should be reduced from
18 what would otherwise be a fit sentence.

19 Here the Defence is not
20 suggesting that any sanction other than
21 imprisonment is available in law. Moreover,
22 Defence agrees that a term of incarceration of
23 some significance must be imposed.

24 The Crown has argued that the
25 jail term should be in the range of
26 two-and-a-half to three and a half years, minus
27 the credit to be given for remand time. Defence

1 suggests the objectives of sentencing can be
2 achieved through the imposition of a sentence
3 shorter than that, and that I should impose a
4 jail term of two years, minus remand time. So,
5 really, Crown and Defence are not that far apart
6 in this case. They agree that a significant jail
7 term must be imposed. The only question to be
8 decided by me is whether that jail term can be as
9 short as what the Defence argues, or whether it
10 should be in the range proposed by the Crown,
11 and, if so, where in that range.

12 I have the benefit of a
13 thorough presentence report that includes a lot
14 of information about Mr. Kiktorak: the
15 circumstances of his upbringing; the challenges
16 and struggles he has faced, and there have been
17 many. That information is supplemented by the
18 very thorough submissions of his lawyer. Still,
19 I know that I do not know Mr. Kiktorak, and I
20 cannot possibly truly understand him, what he has
21 lived through, where it has left him, and what
22 his path forward needs to include for him to
23 succeed. I am grateful I have the information I
24 have about him, but I also know that it is not
25 possible to sum up a person's life in a 12 page
26 report or even in the most thorough of
27 submissions.

1 In any sentencing the Court
2 has to take into account the crimes the person
3 has committed, the circumstances of that person,
4 and the sentencing principles that are set out in
5 the *Criminal Code*, including the principle that I
6 already referred to briefly, that governs the
7 sentencing of indigenous offenders.

8 I have taken judicial notice
9 of the things I am required to take judicial
10 notice of. In many, many sentencing hearings in
11 this jurisdiction, these principles are engaged
12 and this Court is regularly required to take
13 judicial notice of those things in sentencing
14 indigenous offenders.

15 As for Mr. Kiktorak's own
16 circumstances, as I said, the presentence report
17 is thorough. Counsel referred to that report
18 during their submissions. It would not do
19 justice to the presentence report, or to
20 Mr. Kiktorak, for me to try to summarize it now.
21 It has been marked as an Exhibit, it is part of
22 the record of these proceedings, and it can, and
23 should, be reviewed by anyone who seeks to better
24 understand where Mr. Kiktorak is coming from and
25 how he got to the point he is at today. I will
26 simply say that it is clear that sadly, like so
27 many in this jurisdiction, he grew up in an

1 environment marred by alcohol abuse and
2 dysfunction. Through no fault of his own,
3 obviously, he was apprehended at a young age by
4 the department of Social Services. Based on the
5 presentence report, he had some difficulties
6 during the time he was in foster care. And,
7 sadly, that is also a story we often here about
8 at sentencing hearings.

9 Eventually he went back to
10 live with his step-father, who at that point had
11 stopped drinking. Unfortunately, his mother
12 continued to struggle with alcohol.

13 It came out during
14 submissions that Mr. Kiktorak has disclosed to
15 his counsel that some things happened to him at
16 the hands of a family member who was a few years
17 older than him at some point during his
18 childhood. I did not hear any details about
19 this, and I do not need to. I can fill in the
20 blanks. These are not issues that he has
21 addressed until now. For sure he will have to
22 address them, and he will need help doing so. He
23 recognizes that. It is one of the things he told
24 his lawyer when asked what he would like to say
25 to the Court if he were to speak to the Court
26 directly. In the end he did not speak to the
27 Court directly, but his lawyer did tell me some

1 of the things he would have said.

2 Mr. Kiktorak also experienced
3 significant loss in more recent times. One of
4 his friends drowned in 2009. Another committed
5 suicide in 2012. His step-father, who he admired
6 much, passed away in 2016. The presentence
7 report notes that Mr. Kiktorak's way of coping
8 with these losses has been through the
9 consumption of alcohol and crack cocaine.
10 Sometimes for long stretches of time. Again,
11 like for so many others, that bad spiralling just
12 continued and continued and continued. This,
13 too, is something we frequently hear about. And
14 we know it almost inevitably just leads to more
15 and more problems, and increasingly serious
16 problems. This is very much the cycle that
17 somehow has to be broken.

18 I heard that at this point
19 Mr. Kiktorak wants to change his life. He wants
20 to turn the page. He knows Inuvik may not be the
21 best place for him to do so, because most of the
22 people he associates with do not have healthy
23 lifestyles. These are decisions he is going to
24 have to make when he is released. They will not
25 be easy decisions, and staying the course will
26 not be easy, because these are big changes to
27 make. I heard that he has taken some of the

1 programs offered at the jail during his time on
2 remand. It certainly sounds like he has
3 developed some insights and awareness about the
4 issues that he has to address in order to get out
5 of this cycle and have a good life. I sincerely
6 hope he will follow through, because we only get
7 one life, and time and time again in this Court
8 we see so much waste of potential. People who
9 would have the ability to be a positive force in
10 their community, but who, in order to do so need
11 to break out of that destructive cycle.

12 I have to take into account a
13 lot of things in deciding what Mr. Kiktorak's
14 sentence will be. I do have to give serious
15 consideration to his circumstances and all the
16 struggles he has faced. Those do reduce his
17 blameworthiness. Because we can all ask
18 ourselves, "if I had grown up in these
19 circumstances, if I had been exposed to that kind
20 of hardship, how would I have turned out?"

21 At the same time the past
22 cannot be an excuse or justification for behavior
23 that causes harm to others. The victims of these
24 offenses are also indigenous persons. I do not
25 have a lot of information about their background,
26 but they too grew up facing the same systemic and
27 background factors that Mr. Kiktorak faced, and

1 quite possibly some similar specific
2 circumstances in their own lives. Now, on top of
3 whatever challenges they lived with already, they
4 have to deal with the additional trauma and harm
5 arising from what happened to them.

6 C.T. has lost a sense of
7 personal safety. She suffers from extreme
8 anxiety. As heartbreaking as it is to read about
9 Mr. Kiktorak's circumstances in the presentence
10 report, it is also very heartbreaking to read
11 C.T.'s description of the effect that this crime
12 had on her.

13 I do not have information
14 about the effects that the assault had on T.J.,
15 but the Court deals with enough cases involving
16 crimes of violence in general, and crimes of
17 violence in the domestic context in particular,
18 to have a good sense of how this type of violence
19 erodes a person's sense of personal security and
20 self-worth. Being assaulted by a loved one, a
21 person who should be a trusted person and a
22 protector, leaves deep wounds that often have a
23 lasting effect that stretches long after the
24 black eyes and the swelling has subsided. Courts
25 have recognized this for years.

26 The sexual assault on C.T.
27 happened in the place where she should have been

1 able to feel the safest, her own home, and at a
2 time when she was at her most vulnerable, asleep.
3 Thankfully she woke up and she was able to put an
4 end to this and chased Mr. Kiktorak out. But
5 this was a serious violation of a personal and
6 sexual integrity.

7 So as much as I have
8 compassion for Mr. Kiktorak and the difficult
9 circumstances he has faced, the sentence I impose
10 today must also reflect the seriousness of what
11 he has done and the harm he has caused.

12 I want to address briefly
13 some of the specific issues that arose during
14 submissions on Monday. The first has to do with
15 the significance of the criminal record. Defence
16 counsel has asked me to place very little weight
17 on the criminal record because under the
18 circumstances, he argues, it was highly
19 predictable that Mr. Kiktorak would get into
20 trouble. Counsel also spoke at length about the
21 shortcomings of the correctional system, in that
22 despite the best efforts of those who work within
23 that system, there simply are not adequate
24 resources to address the issues of trauma,
25 intergenerational trauma, FASD, substance abuse,
26 and the overall psychological needs of the people
27 who are sentenced to prison terms. That being

1 so, as I understand the argument, people who end
2 up in and out of jail and committing the same
3 offenses over and over again cannot really be
4 punished for that, because the system is simply
5 not doing what it is supposed to do to help them
6 rehabilitate.

7 I will say at the outset that
8 Crown counsel during his submissions did not
9 emphasize Mr. Kiktorak's criminal record. And
10 while the record is a factor and part of
11 Mr. Kiktorak's circumstances, I do not see it as
12 particularly significant to the decision I must
13 make today. The most serious charge I have to
14 sentence him on today is a charge of sexual
15 assault. There are no prior convictions for
16 sexual offenses on his criminal record. And
17 while there are some assault convictions and a
18 few uttering threats convictions, those did not
19 lead to the imposition of lengthy sentences.
20 There are many convictions for drinking and
21 driving, and many convictions for breach of
22 probation, and I note for most of those breach of
23 probation convictions, the sentences imposed were
24 concurrent. So the record is, more than anything
25 else, a symptom of Mr. Kiktorak's problems with
26 substance abuse and overall dysfunction.

27 As far as the general

1 proposition that the shortcomings of the
2 correctional system remove the relevance of a
3 criminal record, I really think that depends.

4 As predictable as a criminal
5 record might be, if it discloses that a person
6 presents a serious threat to the safety of
7 others, what is the Court to do? If, for
8 example, the person who has been sexually abused
9 as a youth becomes a sexual predator, and we see
10 this sometimes, and the person is repeatedly
11 convicted of sexual assault, does the fact that
12 we understand how and why the offender came to do
13 these things change anything or mitigate the
14 sentence to be imposed and the need to protect
15 the public from further harm? Understanding
16 where the behavior comes from does not eliminate
17 the Court's responsibility to impose sentences
18 that protect the public. And that, very often,
19 is very much the challenge that Courts face in
20 trying to decide what a fit sentence is.

21 So in that sense, I do not
22 agree that whatever shortcomings exist and
23 shortages of resources in the correctional system
24 necessarily mean that an accumulating criminal
25 record should carry no weight on sentencings. As
26 said, it depends on each case. It depends on
27 what the convictions are for. It depends, in

1 fact, on what the record says about the extent to
2 which a person presents a threat to the safety of
3 the public. But in this particular case, I
4 certainly do agree with Defence counsel that the
5 record is not a significant factor in the
6 decision I must make.

7 The second area I want to
8 touch on briefly is somewhat connected, and is
9 the submission related to the lack of resources
10 in the correctional facilities. And, more
11 specifically, counsel's submissions about a
12 report by the Auditor General in 2015. Counsel
13 referred to this report and said that it states
14 that there are serious deficiencies in the case
15 management system at corrections. Counsel said
16 the report states that for inmates serving short
17 sentences, nothing was being done to identify
18 their rehabilitative needs. And that for persons
19 serving longer sentences needs were identified
20 but they were not met. This report was referred
21 to, but it was not filed. It is not before me.
22 The only information before me about it comes
23 from counsel's submissions.

24 If counsel's description of
25 the situation is accurate, it goes without saying
26 that it is a concern. If people who are
27 sentenced to jail are simply held in custody,

1 "warehoused", essentially, and released back into
2 the community, that is a major concern. That
3 does not do anything to foster rehabilitation,
4 and it does not protect the public. I do not
5 know if that is actually the case, but if it is,
6 then it is a concern. But even if that is the
7 case, those are not things that the Court has any
8 control over.

9 The context of those
10 submissions was in relation to the minimum weight
11 that should be placed on the criminal record, and
12 I have already made comments about that. But as
13 far as how the executive branch of government
14 organizes its budgets and its resources and its
15 programs, that is not something the Courts
16 control or direct.

17 In this case, as I have
18 already noted, Mr. Kiktorak has been able to take
19 some programs while in custody, and it appears
20 this has helped him make progress and gain
21 insight into his situation. I am sure that he
22 and others in the correctional system need a lot
23 more. Psychological help, for example, is
24 something we often hear in sentencing hearings is
25 needed and wanted by detainees, but is not easily
26 available. Again, if what counsel stated is
27 accurate, it is disheartening, to say the least,

1 to hear that NSCC is down to "one half
2 psychologist". But as I said, this Auditor
3 General report is not before me, and in fact,
4 there is no evidence at all before me about what
5 is or is not available in the correctional
6 system.

7 The last topic I want to
8 touch briefly on has to do with submissions made
9 about the relevance of deterrence. Defence
10 counsel has made the point that jail terms do not
11 achieve deterrence. To use the example of sexual
12 offenses, they are very prevalent in this
13 jurisdiction, the Court has commented on that
14 regularly. For years now Courts have imposed
15 fairly significant jail terms for serious sexual
16 assaults in this jurisdiction, yet these crimes
17 are continuing to be committed. And counsel says
18 that the statistics are that in terms of
19 frequency of these crimes we are well above the
20 national average.

21 It is probably beyond dispute
22 that when an intoxicated person is about to
23 sexually assault another person, the sentences
24 that are imposed for these types of offenses is
25 probably not what the person is thinking about at
26 the time. Sentences, even if they were very
27 harsh, would probably not stop most intoxicated

1 and dysfunctional people from acting in certain
2 ways. It is difficult to imagine that such a
3 person would think about the potential sentence,
4 and because of that refrain from committing the
5 offense. So, to that extent, it may be that the
6 concept of general deterrence has limitations,
7 especially with certain types of offenses. But
8 that being said, general deterrence remains a
9 sentencing objective set out in the *Criminal Code*
10 and it has to be taken into account. How to
11 achieve it is another matter.

12 But, as well, another
13 important sentencing objective is denunciation.
14 Sentencing is the only way the Court has to send
15 a clear message about how society views certain
16 types of conduct. That is distinct from
17 deterrence. It has to do with reinforcing
18 continually the message that this is serious,
19 harmful conduct. The need for denunciation of
20 this type of sexual assault and violence remains
21 very real. And as everyone knows, the Court has
22 very limited tools through which these sentencing
23 objectives can be achieved. The Court has, in
24 fact, very limited means.

25 All that being said, I turn
26 back to the analysis of what is a fit sentence in
27 this case. As always, I must take into account

1 aggravating and mitigating factors. The
2 aggravating factors on the assault causing bodily
3 harm are that it occurred in the context of a
4 spousal relationship, and to a lesser extent, the
5 fact that Mr. Kiktorak has other assault
6 convictions on his record.

7 The main aggravating factors
8 on the sexual assault, I have already talked
9 about. It occurred in a victim's home where she
10 should have been able to feel the safest. It
11 occurred when she was asleep, circumstances where
12 she was particularly vulnerable. And, also,
13 there was an element of breach of trust in that
14 offense because she and Mr. Kiktorak knew each
15 other well.

16 But there are mitigating
17 factors as well. Aside from what I have already
18 said about Mr. Kiktorak being an indigenous
19 offender and the requirement for maximum
20 restraint, a very important mitigating factor is
21 the fact that he has pleaded guilty.

22 I heard from Crown counsel
23 that C.T. was extremely relieved to hear that
24 there would not be a need for a trial in this
25 matter. I am not surprised at all to hear that.
26 Trials are very difficult experiences for
27 witnesses. Especially for victims of crimes like

1 these. Not having to go through that, knowing
2 that a person admits what they did, provides some
3 help with closure and it provides a certainty of
4 outcome. That is worth a lot. Testifying about
5 an assault at the hands of a spouse or former
6 spouse is also very difficult. I heard that
7 there was a preliminary hearing in this matter,
8 but it was very focused. T.J. testified, but in
9 a limited way. C.T. did not have to testify at
10 all.

11 The Crown took the position on
12 Monday that these guilty pleas, because of that,
13 should be treated as early guilty pleas. And I
14 take that to mean that the Crown agrees that they
15 should be given very significant mitigating
16 value. I accept that. There is the question of
17 the saved resources and court time that would
18 have been needed, if this had gone to trial, but
19 much more importantly, the guilty pleas have
20 spared these two victims a lot.

21 Everyone also agrees that the
22 further jail term I impose today must take into
23 account the time that Mr. Kiktorak has already
24 spent in custody. I am advised he spent a total
25 of 244 days in pretrial custody, and I will give
26 him credit for that at a ratio of one and a half
27 days credit for each day in remand.

1 Having given this matter much
2 thought since I heard the submissions earlier
3 this week, I have concluded that to achieve the
4 objectives of sentencing what I must do is impose
5 a jail term of some significance, which is
6 something everyone agrees with, but keep that
7 part of the sentence at the lowest end of the
8 range possible and supplement it with a period of
9 probation designed to help and support
10 Mr. Kiktorak in his own rehabilitative efforts.
11 He has already started making some progress. He
12 will have more time in custody to hopefully
13 access other assistance. But then he will regain
14 his freedom and that is probably when he will
15 need the most support.

16 I am mindful that he has a
17 number of convictions for breach of probation on
18 his record, and that always makes a judge
19 cautious about imposing more probation, because
20 we do not want to set people up for more charges.
21 On the other hand, through his counsel,
22 Mr. Kiktorak has said he wants to change his
23 life, he wants to break this cycle, and he needs
24 help to do that. To break the cycle he is going
25 to need support and treatment, and I heard him
26 acknowledge that through the words of his
27 counsel. I think being on supervised probation

1 for a period of time after his release may be of
2 assistance to him, not only to stay in line, but
3 also to access various programs that may be of
4 assistance to him in dealing with the issues he
5 has faced in his life, including what happened to
6 him when he was young, and that he has apparently
7 never talked about until recently.

8 These are two charges for two
9 distinct offenses against two separate people.
10 Normally under circumstances like that the Court
11 would impose consecutive sentences. But I also
12 am required to take into account the principle of
13 totality. If I were to make these jail terms
14 consecutive I would have to reduce the sentence
15 on each count to ensure that the global sentence
16 is not crushing. And that, in my view, would
17 show a distorted picture of the seriousness of
18 each of these individual offenses. And so for
19 that reason, I am going to exercise my discretion
20 and make those two jail terms concurrent.

21 The ancillary orders that
22 were sought by the Crown are not opposed. There
23 will be an order requiring Mr. Kiktorak to comply
24 with the *Sex Offender Information Registration*
25 *Act* for a period of 20 years. There will be a
26 firearms prohibition pursuant to Section 109 of
27 the *Code* commencing today and ending ten years

1 from his release of imprisonment. And there will
2 be a DNA order as the sexual assault is a primary
3 and designated offense.

4 The jail term that I will
5 impose will be followed by a period of probation,
6 and this will be for a period of two years. That
7 is a long time, I realize that, but I also think
8 everyone has to realize that this is going to be
9 a long process and a long journey for
10 Mr. Kiktorak and part of the tools the Court has
11 to support him through those efforts is a period
12 of probation.

13 The conditions of the order
14 will be that this will be a supervised probation
15 order and he will be required to report to a
16 probation officer within 24 hours of his release.
17 The second condition is that he is to have no
18 contact with T.J. and C.T. except if they consent
19 to it in writing and in advance. I am putting
20 this condition in in the event that at some point
21 one or both of them is willing and ready to
22 receive the apology that Mr. Kiktorak would like
23 to extend to them. He has said he would like to
24 apologize to them. Apologies can be an important
25 part of healing and of getting closure, but it
26 should never be imposed on a victim to have
27 someone apologize to them. So they will have the

1 final word on this, and if and when they are
2 ready, then I am sure something could be
3 arranged, perhaps through the probation officer
4 or someone else, to give Mr. Kiktorak an
5 opportunity to apologize to them.

6 The other condition will be
7 that he is to take counselling and treatment,
8 including residential treatment, as recommended
9 and as can be arranged by the probation officer.
10 Including, but not limited to, substance abuse
11 and trauma. I am hopeful that these convictions
12 will support Mr. Kiktorak in his efforts once he
13 regains his freedom.

14 I also, for the reasons I have
15 been talking about, have to impose a jail term
16 for these crimes because they were serious and
17 harmful and because the Court does have to
18 continue sending a clear message about this type
19 of conduct.

20 Can you stand up, please,
21 Mr. Kiktorak.

22 Mr. Kiktorak, on the count of
23 sexual assault, if you had not spent time in
24 pretrial custody I would have imposed a sentence
25 of two years. For the 244 days you have spent in
26 custody, I will give you credit for one year. So
27 there will be a further jail term of one year on

1 that count.

2 On the assault causing bodily
3 harm, I am going to impose a sentence of six
4 months, but I am going to make that concurrent,
5 which means it is served at the same time as the
6 other sentence, for the reasons I have explained.
7 So in total, the further jail term will be one
8 year followed by the probation order that I have
9 been talking about.

10 You can sit down now.

11 There are just a few more
12 things I want to say. I do want to make sure you
13 understand that it would have been well within
14 the range to impose a sentence of the kind the
15 Crown was seeking. Mr. Godfrey, who was the
16 Crown at the sentencing hearing, was very, very
17 fair to you. He acknowledged all the
18 difficulties you have had, and he really did not
19 ask for an unreasonable sentence at all. Because
20 the fact that you have suffered does not reduce
21 the harm that your actions can cause to other
22 people. Because that just leads to more trauma
23 and more damage and more harm in the community.
24 It makes the problems just grow bigger and bigger
25 and bigger. So I, today, have decided to
26 exercise a lot of restraint, and I have imposed a
27 jail term shorter, much shorter, than what I was

1 originally thinking. But I have made the
2 probation period longer because I am hoping that
3 will be a better mix for you and for your
4 community, wherever you choose to live.

5 It will be very hard for
6 another judge to exercise as much restraint if
7 you get into trouble again, especially if you
8 commit a further crime of violence or a further
9 crime of sexual nature. So this is your chance.
10 I hope you can find some supportive people to
11 help you. There are probably some people you
12 will not be able to hang out with anymore when
13 you are released because they have their own
14 problems, and as you recognize, I think you need
15 to be surrounded by people who want a healthy
16 lifestyle and want to help you out.

17 It is possible that you will
18 have to relocate from Inuvik. Those are all
19 decisions that you will have to make when you are
20 released. And I encourage you to speak to your
21 sister and speak to people you trust and try to
22 get their advice and their support, because very
23 soon you will be free to make all your decisions
24 again. It will happen fast, so you will have to
25 be ready for making those tough, tough choices.

26 Any exhibits that were seized
27 in this investigation will be returned to their

1 rightful owner if that is appropriate, otherwise
2 they can be destroyed at the expiration of the
3 appeal period.

4 Counsel, is there anything I
5 have overlooked, and in particular, are there any
6 other conditions that counsel feel would be
7 useful to add to the probation period?

8 Mr. Fane, I know you were not
9 counsel at the sentencing hearing, but if you
10 have anything to say I would love to hear it.

11 MR. FANE: No, Your Honour, except to the
12 extent that if Mr. Kiktorak intends to return to
13 Inuvik or, frankly, anywhere in the Northwest
14 Territories, perhaps not to attend residences as
15 well as may be known to him from time to time or
16 places of employment or schooling to support the
17 no contact order.

18 THE COURT: You mean for the two
19 complainants?

20 MR. FANE: Yes, Your Honour.

21 THE COURT: Well, if he is on a no contact
22 order and it happens to be somewhere where they
23 are, whether it is their residence or somewhere
24 else, he would be required to leave. So I am
25 just -- I think that could be vague because they
26 might move and it could be --

27 MR. FANE: Yes, Your Honour.

1 THE COURT: Thank you. I think I will
2 leave that as a no contact.

3 You understand the idea,
4 Mr. Kiktorak, right? Okay.

5 Mr. Harte, do you have any
6 suggestions?

7 MR. HARTE: Could I make this suggestion,
8 Your Honour, with respect to permission in
9 writing, it is always difficult to make sure it
10 gets where it is supposed to go, and for the
11 request to be made for permission is also
12 potentially problematic. Could I ask -- or ask
13 the Court to consider making permission in
14 writing from your probation officer in
15 consultation with the victims. That way it is
16 clear who the permission is to come from and it
17 does not have to be so big of a reach leading up
18 to the request.

19 THE COURT: Yes, I think that is a good
20 suggestion. Permission in writing from the
21 probation officer after consultation with C.T.
22 and T.J. If there is any confusion about this,
23 if an issue ever arises, my intention is not for
24 the probation officer to have any say in the
25 permission given. C.T. and T.J. have to be the
26 ones wanting this apology to happen. Because
27 from the point of view of trying to support

1 Mr. Kiktorak, the probation officer may sincerely
2 think that this would be a good thing for his
3 process. My concern is that it has to be
4 something that is good for the complainants and
5 that they want as well. So hopefully that will
6 be clear.

7 MR. HARTE: I had understood that that was
8 the case here.

9 THE COURT: Maybe what we will do is break
10 down that in two. So the condition should
11 read -- Mr. Clerk, sorry about these changes, but
12 the condition should read a no contact with C.T.
13 or -- no contact direct or indirect with C.T. or
14 T.J. as whatever the number is that will be A.
15 And then no contact subject to condition 3(b).
16 And then 3(b) will be that if either C.T. or T.J.
17 are willing to have contact for the purpose of
18 Mr. Kiktorak -- are willing to have contact with
19 Mr. Kiktorak, they can communicate that to the
20 probation officer and the probation officer can
21 grant written permission for that specified
22 contact. It is a bit cumbersome, but I do want
23 to make sure there is no confusion on this.

24 Anything else?

25 MR. FANE: No. Thank you, Your Honour.

26 THE COURT: All right. Well, before
27 closing court, I want to thank counsel for your

1 submissions.

2 You can pass on my thanks to
3 Mr. Godfrey, Mr. Fane.

4 And Mr. Kiktorak, I hope
5 things work out for you. Good luck.

6 THE ACCUSED: Thank you.

7 MR. HARTE: Thank you, Your Honour.

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PROCEEDINGS CONCLUDED

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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 produced and transcribed from audio recording to the best of my skill and ability.

Dated at the City of Edmonton, Province of Alberta, this 3rd day of May, 2019.

Certified Pursuant to Rule 723
Of the Rules of Court



Allison Willard
Court Reporter