

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

NORMAN LLOYD KENDI

Transcript of the Sentencing Hearing held before the Honourable Justice K.M. Shaner, sitting in Aklavik, in the Northwest Territories, on the 18th day of June, 2019.

APPEARANCES:

Mr. T. Johnson: Counsel for the Crown
Mr. L. Moore: Counsel for the Accused

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

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

1 THE COURT: Counsel, thank you very much
2 for your very helpful submissions. Norman, thank
3 you for your words earlier.

4 As I said at the outset, I had an
5 opportunity to read the presentence report that
6 was prepared by Nancy McGinnis, and I also had an
7 opportunity to review the four cases that were
8 submitted by the Crown.

9 On January 19th, 2019, Norman, a jury found
10 you guilty of a sexual assault. The sentencing
11 process in our law is context-specific. That
12 means that I have to consider the nature of the
13 offence, that is; what happened, and the
14 surrounding circumstances, and I have to consider
15 your situation and your background. I also have
16 to apply the principles and objectives of
17 sentencing in our law.

18 Now, the facts in this case are
19 straightforward. The events took place in
20 Aklavik in the Northwest Territories. The victim
21 had been at a party. She was drunk. She left,
22 and then she went to your house, Norman.

23 At some point after she arrived, she fell
24 asleep as you were rubbing her shoulder, and a
25 short time later she awoke. You were rubbing the
26 outside of her vagina with your fingers.

27 This particular case does not fall into the

1 category of what we call a major sexual assault.
2 In saying this, I am mindful of the fact that
3 sexual assault is an all too common occurrence
4 here in the Northwest Territories. I am also
5 mindful that all sexual assaults, regardless of
6 whether or not they are considered "major" sexual
7 assaults, are serious, and our law treats them as
8 such.

9 The fact that the victim was asleep and
10 drunk and, therefore, vulnerable, is aggravating.
11 As well, you have a criminal record, Norman, that
12 contains convictions for two previous sexual
13 assaults, and that is also considered
14 aggravating.

15 As I said, a presentence report was prepared
16 by Nancy McGinnis from Probation Services, and it
17 sets out a detailed account of your background,
18 your childhood, and your adult life. You are an
19 Indigenous person of Gwich'in descent, and you
20 were born here in Aklavik in 1957. You are
21 currently 61 years old.

22 From what I read in the report regarding
23 your childhood, it was nothing short of horrific,
24 and your life has been very hard. You are a
25 victim of pretty well everything that was wrong
26 with the Colonialist policies of the Government
27 of Canada.

1 You were sent to residential school as a
2 young boy. When you were around the age of 11,
3 you were sent to the "Emotionally Disturbed
4 Children's Unit" at the Glenrose Hospital in
5 Edmonton. Your older sister, Mabel, escorted you
6 there, but they would not let her take you back
7 with her. Instead, the next few years were spent
8 in group homes and treatment centres in southern
9 Canada. In these places, you were abused
10 emotionally, physically, and sexually.

11 As a child, you were also diagnosed with
12 significant problems with learning. There is
13 some comment in the report, based on health
14 records and information from relatives, that you
15 also may have a fetal alcohol spectrum disorder.

16 It does not appear that anyone has ever
17 helped you with these issues as a child or as an
18 adult. I think that your childhood and that your
19 problems with thinking and learning are two of
20 the biggest reasons that you have been in the
21 justice system before, and they are two of the
22 biggest reasons that you are here now.

23 Even though you have had such a hard life,
24 Norman, and even though you have issues with
25 learning and thinking, you have demonstrated that
26 you are a productive and contributing member of
27 your community. You supported yourself over the

1 years through hunting and trapping as well as
2 through your landscaping business. This gives me
3 hope that you are capable of learning things that
4 will help you to stay on a lawful path in the
5 future.

6 Norman, what you did was wrong. Even
7 though, as I said, this is not a "major" sexual
8 assault, you caused harm to somebody. Our
9 justice system requires that the harm that you
10 did be recognized and that you receive a sentence
11 that recognizes that harm, as well as your
12 responsibility for it.

13 Our justice system also requires that I take
14 into account the need to protect society and the
15 potential for your rehabilitation.

16 In terms of your responsibility, like I
17 said, you committed a crime that brought harm to
18 your victim. Given that what I learned about
19 your background, specifically your learning and
20 thinking problems, I find that you have less
21 moral responsibility for that crime than you
22 would have if you did not have that problem, and
23 I am taking that into account in considering what
24 is the right sentence to impose.

25 It is necessary for you to spend some time
26 in prison, Norman. I say this for two reasons.
27 First, as I said, what you did was wrong and it

1 is very important that I, as the judge, send a
2 message to you and to other people in this
3 community that what you did was wrong. Second,
4 it is clear that you need help with your thinking
5 and learning problems, and I am not convinced
6 that these have ever been addressed effectively
7 in the past.

8 There will be programs in the correctional
9 facility that can help you with this, and until
10 you get that help, I do not think it is safe for
11 you to be in the community.

12 You should not spend any more time in prison
13 than is necessary. That is also part of our law.
14 That said, I think that you will need to have
15 structure and supervision for a while, even after
16 you get out. That will ensure that the people in
17 your community feel and are safe, and it will
18 also help you to continue to get the resources
19 you need, resources that were not provided to you
20 when you were a child to teach you about
21 controlling your behaviour and staying within the
22 law. So I will also impose a term of probation.)

23 Norman Kendi, can you please stand up.

24 **(EXCHANGE BETWEEN MR. KENDI AND THE JUDGE IS OMITTED)**

25 For the custodial part of the sentence, I am
26 sentencing you to a term of two years, less 234
27 days credit. So you will be sentenced to a term

1 of one year and 131 days. That is going to be
2 followed by two years of probation, and if you
3 will take a seat, I will talk more about what the
4 probation is going to look like. So you can have
5 a seat.

6 In addition to what we call the "statutory
7 conditions", which, Mr. Moore will explain to
8 you, as well as the conditions that I am going to
9 impose, there were some probationary conditions
10 that were recommended by Nancy McGinnis. Those
11 are that you are to have no contact or
12 communication directly or indirectly with the
13 victim; you are not to attend within 50 metres of
14 her residence or work place; you are to actively
15 participate in counselling, programming, and
16 assessments as directed by your probation
17 officer, and that will include sexual offender
18 treatment and counselling to address grief and
19 trauma; you are not to be in the presence of any
20 female alone who is under the age 16, and the
21 only exception will be immediate family members.

22 Now, Mr. Johnson, you had asked for some
23 ancillary orders. So I am going to grant those
24 orders. So there will be a SOIRA order for life.
25 There will be a DNA order. I will impose a
26 Section 109 firearms prohibition for 10 years,
27 but in light of the fact that Mr. Kendi makes his

1 living by hunting and trapping, and in
2 consideration of the fact that this did not
3 involve the use of or threat to use a firearm, I
4 am going to make that subject to any exemption
5 that is granted pursuant to Section 113 of the
6 *Criminal Code*, and that will be in effect for 10
7 years.

8 Is there anything else, counsel, that I have
9 omitted?

10 MR. JOHNSON: Just one small point on that,
11 Your Honour. I believe it's required to be 10
12 years from the expiration of the sentence is the
13 minimum level under 109(1)(a).

14 THE COURT: Yes. Anything further?

15 MR. MOORE: Nothing further.

16 THE COURT: Good luck, Norman. I hope
17 that the resources that are available to you in
18 correctional facilities are helpful to you.
19 There is one other thing that I am going to ask
20 and that is that a copy of the presentence report
21 as well as my reasons be provided to correctional
22 officials so that they can look at some
23 responsive programming to assist Norman Kendi
24 with his. Thank you.

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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 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 12th day of July, 2019.

Certified Pursuant to Rule 723
of the Rules of Court



Colleen Rea
Court Reporter