*R v Kendi*, 2019 NWTSC 29 **S-1-CR-2017-000148**

# 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.

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**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
28. years through hunting and trapping as well as
29. through your landscaping business. This gives me
30. hope that you are capable of learning things that
31. will help you to stay on a lawful path in the
32. future.
33. Norman, what you did was wrong. Even
34. though, as I said, this is not a "major" sexual
35. assault, you caused harm to somebody. Our
36. justice system requires that the harm that you
37. did be recognized and that you receive a sentence
38. that recognizes that harm, as well as your
39. responsibility for it.
40. Our justice system also requires that I take
41. into account the need to protect society and the
42. potential for your rehabilitation.
43. In terms of your responsibility, like I
44. said, you committed a crime that brought harm to
45. your victim. Given that what I learned about
46. your background, specifically your learning and
47. thinking problems, I find that you have less
48. moral responsibility for that crime than you
49. would have if you did not have that problem, and
50. I am taking that into account in considering what
51. is the right sentence to impose.
52. It is necessary for you to spend some time
53. in prison, Norman. I say this for two reasons.
54. First, as I said, what you did was wrong and it
55. is very important that I, as the judge, send a
56. message to you and to other people in this
57. community that what you did was wrong. Second,
58. it is clear that you need help with your thinking
59. and learning problems, and I am not convinced
60. that these have ever been addressed effectively
61. in the past.
62. There will be programs in the correctional
63. facility that can help you with this, and until
64. you get that help, I do not think it is safe for
65. you to be in the community.
66. You should not spend any more time in prison
67. than is necessary. That is also part of our law.
68. That said, I think that you will need to have
69. structure and supervision for a while, even after
70. you get out. That will ensure that the people in
71. your community feel and are safe, and it will
72. also help you to continue to get the resources
73. you need, resources that were not provided to you
74. when you were a child to teach you about
75. controlling your behaviour and staying within the
76. law. So I will also impose a term of probation.)
77. Norman Kendi, can you please stand up.

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

1. For the custodial part of the sentence, I am
2. sentencing you to a term of two years, less 234
3. days credit. So you will be sentenced to a term
4. of one year and 131 days. That is going to be
5. followed by two years of probation, and if you
6. will take a seat, I will talk more about what the
7. probation is going to look like. So you can have
8. a seat.
9. In addition to what we call the "statutory
10. conditions", which, Mr. Moore will explain to
11. you, as well as the conditions that I am going to
12. impose, there were some probationary conditions
13. that were recommended by Nancy McGinnis. Those
14. are that you are to have no contact or
15. communication directly or indirectly with the
16. victim; you are not to attend within 50 metres of
17. her residence or work place; you are to actively
18. participate in counselling, programming, and
19. assessments as directed by your probation
20. officer, and that will include sexual offender
21. treatment and counselling to address grief and
22. trauma; you are not to be in the presence of any
23. female alone who is under the age 16, and the
24. only exception will be immediate family members.
25. Now, Mr. Johnson, you had asked for some
26. ancillary orders. So I am going to grant those
27. orders. So there will be a SOIRA order for life.
28. There will be a DNA order. I will impose a
29. Section 109 firearms prohibition for 10 years,
30. but in light of the fact that Mr. Kendi makes his
31. living by hunting and trapping, and in
32. consideration of the fact that this did not
33. involve the use of or threat to use a firearm, I
34. am going to make that subject to any exemption
35. that is granted pursuant to Section 113 of the
36. *Criminal Code*, and that will be in effect for 10
37. years.
38. Is there anything else, counsel, that I have
39. omitted?
40. MR. JOHNSON: Just one small point on that,
41. Your Honour. I believe it's required to be 10
42. years from the expiration of the sentence is the
43. minimum level under 109(1)(a).
44. THE COURT: Yes. Anything further?
45. MR. MOORE: Nothing further.
46. THE COURT: Good luck, Norman. I hope
47. that the resources that are available to you in
48. correctional facilities are helpful to you.
49. There is one other thing that I am going to ask
50. and that is that a copy of the presentence report
51. as well as my reasons be provided to correctional
52. officials so that they can look at some
53. responsive programming to assist Norman Kendi
54. with his. Thank you.

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# 2 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 12th day of July, 2019.
8. Certified Pursuant to Rule 723
9. of the Rules of Court

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1. Colleen Rea
2. Court Reporter

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