

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

HER MAJESTY THE QUEEN

- and -

TIMOTHY JOHN COCKNEY



Transcript of the Oral Judgment of His Honour
Judge B. A. Bruser, sitting at Inuvik in
the Northwest Territories, on January 2nd, A.D. 1990.

APPEARANCES:

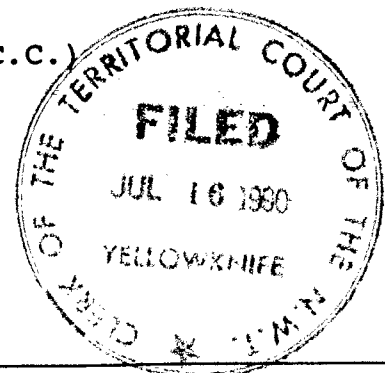
MR. D. AVISON

For the Crown

MS. J. LILLEGAN

For the Defence

(Charge under Section 152 & 740(1) C.C.)



1 THE COURT: The guilty plea is accepted. I may be
2 awhile; I think though that it is important to review
3 what I find to be the material facts. I remind the
4 media who are here that there has been an order
5 protecting the identity of the complainants. No
6 information that can reveal the identity of either
7 complainant may be published or broadcast at any
8 time. I will use their initials only; I see no reason
9 to give the full names.

10 Timothy Cockney was found guilty on November 16,
11 1989, of a charge in Count #2 that, between July 24th,
12 1989 and August 7th, 1989, near the Town of Inuvik, he
13 did for a sexual purpose invite a child named A. S.,
14 under the age of 14 years, to commit fellatio upon
15 him.

16 On the same date he changed his plea from not
17 guilty to guilty on Count #1. The complainant was L.
18 O., and again fellatio is what was involved. There
19 was one act regarding Count #1, and there were three
20 acts regarding Count #2. Here then is what I find to
21 have occurred.

22 A. S., who was the victim in Count #2, was ten
23 years of age at the material time. In the summer of
24 1989, he went to a bush camp to learn Native
25 skills. The camp was about 15 miles away from
26 Inuvik. He slept in a tent, he played when he was
27 there, he worked and he learned certain skills.

1 The person he regarded as the boss at the camp
2 was one Wendy Cockney; the accused, Timothy Cockney,
3 is the son of the lady who was running the camp.

4 MS. LILLEGRAN: Sorry to interrupt, I understand he is
5 the grandson.

6 THE COURT: The grandson, thank you. There were
7 one or two other older people there. A. S. regarded
8 Timothy Cockney as one of the older people who were
9 there.

10 A. S. said that the accused would come in to his
11 tent sometimes when A. S. was in his clothing. The
12 accused said on the three occasions involved words to
13 the effect, "give me head", which I interpret as an
14 invitation to commit fellatio. The general pattern of
15 the incidents involved A. S. going on top of the
16 accused. The accused would unbutton his own pants (or
17 his jeans) and his underpants would be pulled down; in
18 any event, the penis of the accused would be
19 exposed. A. S. would then kneel on his knees in front
20 of Timothy Cockney, who asked A. S. to give him
21 "head", and the event then happened.

22 A. S. recalled seeing the penis. A. S. put his
23 mouth to the penis, sucked on it, and in recalling
24 that the penis was hard, said that a blanket was put
25 over the two of them at the relevant time. A. S.
26 recalled the sucking lasting a couple of minutes. He
27 said that the accused did not say anything other than

1 what I have already mentioned, and that the accused
2 did nothing to him with his hands. There is no
3 suggestion of any physical violence by the accused
4 towards A. S. or, for that matter toward the other
5 victim, nor were there any threats of physical
6 violence toward either victim.

7 A. S. recalled the hands of Timothy Cockney to be
8 by the accused's sides during all the acts. He would
9 tell A. S. when to stop, according to A. S., "he timed
10 me." A. S. retained his clothing at all material
11 times on his person.

12 Tomothy Cockney told A. S. that he would give him
13 money. He told him that he would get money before
14 each particular act. However no money ever did pass
15 from the accused to the child.

16 A. S. said he was scared. He said he did not
17 want to do this; he did it, he said, because he wanted
18 the money.

19 The three acts occurred within the time frame
20 referred to in Count #2, and they did not all occur on
21 the same night; they were spread over the time
22 period.

23 A. S. recalled that on the second occasion when
24 this happened the accused pushed A. S.'s head down
25 towards his penis; that is somewhat in conflict with
26 the other testimony by him that the hands were at his
27 side at all times. I do though accept there was some

1 minimal physical contact of that sort.

2 A. S. said he did not tell anyone right away. He
3 said that others in the camp knew, one of whom was the
4 complainant in Count #1. On one of the occasions it
5 appears it happened in the shack, the actual location,
6 whether it be a shack or a tent, is not terribly
7 important. Those are the material facts relating to
8 Count #2 involving A. S..

9 As I said before, on the 16th of November there
10 was a guilty plea to Count #1, there having been an
11 earlier not guilty plea. The complainant, L. O., was
12 11 at the time. He too was at the camp for the same
13 reason as the other young lad. He was asked to commit
14 fellatio in a similar way that A. S. was asked.

15 The accused undid his own pants, he did not have
16 L. O. undo his. The sucking occurred only on one
17 occasion. Money was transferred from the accused to
18 L. O..

19 L. O., as Ms. Lillegran said today, (and with
20 whom I agree) received a blue bill and a purple
21 bill. That would make it \$15 I could infer, but I
22 need not do that. I accept that money did pass.

23 The Court was not given much more in the way of
24 facts relating to the incident involving L. O.. The
25 Crown counsel at that time, who is not the same Crown
26 before me today, for one reason or another kept the
27 facts to a minimum. I am implying no criticism, all I

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am saying is that those are the facts I have to work with regarding Count #1.

Mr. Cockney, the Crown has proceeded against you by indictment on each count. That means the upper range of sentencing available is far greater than if the Crown had proceeded in a summary conviction manner. If the Crown had proceeded summarily, it would have given The Court a message that it was not treating the matter as seriously as it has.

I want to note as well, before I go any further, that your guilty plea to Count #1 was done at the 11th hour; it was done on the trial date. In doing so you spared L. O. from having to testify; I do take that into account in your favour.

The over-all circumstances relating to what you did to both the young children are serious and alarming. As everyone knows, young children must not fall prey to sexual depravity. What you did to the two boys was wrong. The sentence which I am going to impose must protect the public by stopping you from ever repeating such behaviour. The sentence must also serve to stop others from committing sexual offences against children. I agree with the Crown that there have to be strong sentences to reflect the revulsion of society toward what you did. That means the people in Inuvik, the Delta, throughout the Northwest Territories, and for that matter all of Canada. Any

1 right thinking member of our Canadian society would
2 demand that you be imprisoned, even though you have
3 never been sent to jail before. In my view, our
4 society would demand, quite correctly, that you be
5 imprisoned for a period of longer than 90 days.

6 Your lawyer has sought an intermittent sentence
7 if jail were to be imposed. I can only do that if the
8 sentence were 90 days or less; I can assure you that
9 it is going to be more.

10 In November your lawyer very capably argued that
11 you were not a person in trust at the camp. She said
12 as well that you were not a person in authority at the
13 camp, as I interpret her remarks. I accept as correct
14 her argument in the sense that you were neither in
15 charge of the boys nor were you an employee of those
16 operating the camp; in-so-far as your work involved
17 the children, you did other work - you helped to clean
18 up and so forth. But I have no difficulty in
19 concluding that A. S. viewed you as an authoritative
20 figure. His testimony satisfied me of that beyond a
21 reasonable doubt.

22 In particular there is your age relative to his,
23 your larger size, your unfulfilled promises of money
24 for him, your freedom of access to him and to the
25 buildings in the camp where he slept and otherwise
26 went into. Finally there is your obvious power of
27 command over him. All of these point to his viewing

1 you as being a person of authority. I accept that as
2 being a reasonable way for him to have thought of
3 you.

4 I do not know how L. O. viewed you; I invited the
5 Crown counsel on November 16th to provide more
6 information regarding that; I was not given it, and I
7 will not infer anything further other than what I can
8 do based upon what has been provided by the Crown.

9 I want now to address the aggravating and
10 mitigating factors. Mr. Cockney, this means that I
11 have taken things in your favour, I have taken things
12 against you, and I have balanced them and used them in
13 arriving at the sentence. I want to deal with the
14 matters against you first of all. I mentioned many of
15 them earlier; I want to list them now.

16 There is your older age; A. S. was ten, L. O. was
17 eleven. There was your larger size, which I indicated
18 before. These boys would see you as being more
19 powerful than they are. It would discourage them from
20 reporting promptly what you did and it would also
21 discourage resistance by them toward your activity.

22 Thirdly, there were the promises of money to A.
23 S., and the actual giving of money to L. O. I find
24 that the promises and the use of money made your
25 repulsive acts far easier for you to do, and more
26 difficult to detect by discouraging reporting. After
27 all if A. S. could expect money later on, he might not

1 want to report what happened.

2 Fourthly, there are the acts themselves. I view
3 fellatio as one of the more sexually depraved acts
4 that a young boy can be told to do to an adult. You
5 are an adult. You asked them to suck your penis for
6 selfish sexual gratification - you preyed upon them.

7 Next, I find the effect upon A. S. to be
8 aggravating. I saw him testify; I saw him struggling
9 to tell this Court what you did to him. I saw his
10 mother at the back of the courtroom sobbing silently
11 as her son was put through the ordeal of testifying.
12 I find as a fact that what you did to A. S. deeply
13 affected him, his mother, and therefore the family
14 unit. I do not know what effect your actions will
15 have on his sexual identity as he reaches puberty, but
16 it most certainly will not do him any good; he is not
17 going to forget what you did to him on three separate
18 occasions.

19 As I indicated before, less has been told
20 about the other boy, L. O., but I infer even that one
21 act will be something that he will remember for the
22 rest of his life.

23 Next there is your record. As the Crown counsel
24 today pointed out, you have a record which is rapidly
25 growing; it is becoming increasingly more serious. In
26 particular, in 1989 for the first time we see
27 convictions for violence against people. I view what

1 you did to both boys as a violent act in the sense
2 that they are crimes against the person.

3 You were on probation at the time. You were
4 placed on probation for two years on June 16th, 1989,
5 for crimes against people. The very following month
6 you began to commit the crimes I am now dealing
7 with. It was a term of the order that you keep the
8 peace and be of good behaviour. Obviously that had no
9 effect on you.

10 Finally, as a factor against you, Mr. Cockney, I
11 have concluded that what you did involved a measure of
12 planning and determination. I am not dealing with a
13 momentary loss of control on your part regarding any
14 of the four events.

15 Then I turn to the factors in your favour, and
16 there are a number of them. There is the guilty plea
17 on Count #1, you spared L. O. from having to go
18 through what A. S. went through; that is quite
19 important. In the pre-sentence report I have noted
20 that you feel very ashamed, embarrassed and remorseful
21 over what happened. I accept as accurate that you
22 feel ashamed, embarrassed and remorseful.

23 I take into account your immaturity, and accept
24 what your lawyer said - you are immature in many ways,
25 including being sexually immature.

26 You have never been jailed before; this will be
27 the first time that you have been imprisoned. I do

1 not want the term of imprisonment to take out of you
2 any last hope that society may have to rehabilitate
3 you.

4 I accept that you do intend to leave the
5 community, and that you intend to do so because you
6 can no longer bear living here because of the shame
7 that you feel.

8 In your favour as well is the fact that there was
9 no physical harm to either young boy, nor any threats
10 by you to harm them.

11 Now I turn to what is a fit and proper
12 sentence. I can not overlook the existing law in the
13 Northwest Territories. For a crime of a sexual nature
14 against young children, the sentence can range
15 anywhere from a discharge to penitentiary time,
16 penitentiary time being two years imprisonment or
17 more. It is not easy to determine what is a fit
18 sentence in this case. In 1987 in the Supreme Court,
19 Justice Marshall sentenced a man, whose initials are
20 E. H., to six years imprisonment on each of ten counts
21 involving sexual abuse towards young students of
22 his. He was a teacher and a principal in the school;
23 the terms were all concurrent. E. H. was in a strong
24 position of trust. You are not in that category,
25 fortunately for you. E. H. had pled guilty even
26 before the preliminary inquiry, as a result none of
27 the young boys had to testify at any time.

1 In May of 1988, our Supreme Court sentenced D. J.
2 R. to two years less a day plus probation for two
3 years for sexually assaulting his six-year old
4 son. What he did was to dress his son in girl's
5 clothing and then sexually fondle him. On one
6 occasion he put his penis in the boy's rear end, and
7 there were other more minor acts of sexual fondling
8 too. He had no criminal record, and he had been an
9 active member in the community. He had, like I
10 suspect you do have, some deep-rooted psychological
11 problems.

12 In 1986 our Court of Appeal sentenced a man to
13 two years less a day, plus probation for one year, for
14 having sexual intercourse with his 15 year-old
15 stepdaughter on three occasions. He had no criminal
16 record; he too was a community leader. The name of
17 the case is R vs W. A. A. He pled guilty.

18 At the lower end of the scale there are a number
19 of sentences that are suspended with long periods of
20 probation.

21 Mr. Cockney, there are far too many crimes of a
22 sexual nature in Canada in which adults have preyed
23 upon innocent children. Maybe one day you will have
24 children of your own; think about that for a
25 moment. Only then will you perhaps have the
26 opportunity to understand fully how precious our
27 children are, not only to their parents but also to

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the community.

The Court has been told by your lawyer that at the time you committed the acts, you did not appreciate the long term effects that may have resulted. The reason for that is because of your immaturity. If people recklessly, as you did, want to risk damaging the emotional, psychological and physical health of children, then they will have to pay the price as you will have to do today. The population in the Delta, and for that matter throughout the Northwest Territories, is small. We have a fragile community here; we can not afford to have it destroyed or damaged by people like yourself. The youth of today are the adults of tomorrow.

The sentence that I am now going to impose has been designed to protect the public; after all protection of the public is the ultimate goal of the criminal justice system. Your rehabilitation has been worked into the sentence, preventing you from repeating crimes has been given strong consideration, and I expect that others who will learn of the sentence will seek appropriate counselling if they ever think of doing the sort of thing you did.

Would you stand up please. The sentence on Count #2, which involved the repeated acts, will be imprisonment for a period of 16 months. The sentence

1 on the remaining count will be nine months
2 concurrent. In addition, you will be on probation for
3 two years. The terms are going to be very
4 strict. They are aimed at protecting the public and
5 rehabilitating you. If we can rehabilitate you, then
6 the public will be protected.

7 You will keep the peace and be of good behaviour;
8 you will appear before the Court as required to do so
9 by the Court. You will report in person to the
10 probation officer within seven days of your release,
11 and thereafter you will report when and as directed by
12 your probation officer. At all times you will be
13 under the supervision of the probation officer. You
14 will submit to psychological or psychiatric assessment
15 when and as directed by your probation officer, so
16 long as the Department of Social Services is prepared
17 to pay any costs incurred.

18 You will provide your psychologist or
19 psychiatrist with your written consent to have a
20 report of the assessment released to your probation
21 officer. Such consent is to be provided forthwith
22 upon completion of any assessment.

23 You will take counselling and any necessary
24 treatment, when and as directed by your probation
25 officer, and as deemed appropriate by the officer.

26 For the first year of the probation order, you
27 will not be in the company of any child under the age

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of 18 years without another adult being present. The only exception to that, sir, would be your own children, or your own stepchildren, if any.

There will be a recommendation on the Warrant of Committal that you be assessed by a psychologist or psychiatrist regarding your sexual preferences, immediately upon entering prison. There will be a second recommendation that you will be given the opportunity to begin immediately any counselling or treatment programs as are necessary to insure that you are no longer a danger to the public upon your release.

Does the Crown have anything further that might be incorporated into the probation order?

MR. AVISON: I do not, Your Honour.

THE COURT: Does the Defence?

MS. LILLEGRAN: No, Your Honour.

THE COURT: Then there is the other Information, the breach of probation; I impose a sentence of two months imprisonment to be served concurrently. I have taken into account totality in imposing all the sentences.

(AT WHICH TIME THIS MATTER WAS ADJOURNED)

Certified a correct transcript,

Loretta Mott

Loretta Mott, Court Reporter