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IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- and -

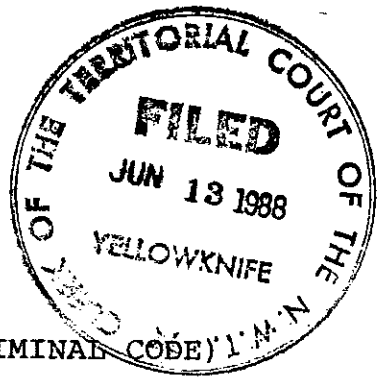
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Transcript of the Reasons for Sentence of His Honour
Judge T. B. Davis, sitting at Yellowknife, in the
Northwest Territories, on Tuesday, March 22nd, 1988,
A.D.

APPEARANCES:

T. HUMPHRIES, ESQ.: On behalf of the Crown

V. FOLDATS, ESQ.: On behalf of the Defence



(A charge under Section 246.1 CRIMINAL CODE)

1 THE COURT: Mr. S , who is a 32 year old resident of Baker
2 Lake, admits that on the 27th of February, 1988, he had
3 pulled down the zipper on a young girl's clothing at 4:30 in
4 the morning when she was asleep. This young 12 year old, who
5 was a niece of the accused, woke when the accused was fondling
6 her or touching her between her legs. She ran into an older
7 brother's room, at which time the accused apologized for what
8 he had done and left the premises.

9 It would be very frightening, of course, for any young
10 person to wake up with an adult, in the middle of the night,
11 fondling her, and the assault in that form of a sexual
12 approach is certainly a serious offence, as was pointed out by
13 Crown counsel, especially considering the problems that do
14 exist in Baker Lake and in the Northwest Territories on these
15 matters.

16 The Crown has suggested a short gaol term, which seems
17 appropriate, in that the accused had been involved with one
18 previous assault in September 1986, for which he served three
19 months in gaol and was placed on probation. That's the only
20 similar offence on his record, although he did at that time
21 have a conviction, as well, for carrying a concealed weapon,
22 for which he was fined two hundred dollars.

23 He has been a productive person with grade ten education.
24 He took additional training in the financial field, as a
25 banker, and also became a producer and technician for
26 developing television programs with the Inuit Broadcasting
27 Society, from which he resigned upon having a conflict with

1 the manager. He had also been Mayor of Baker Lake, on one
2 occasion and was appointed a ranger by the military
3 authorities, which, it appears now, will no longer be an
4 appointment available to him, because of the type of offence
5 that is before the Court. He seems to have made a good
6 impression on the persons involved with that ranger program.

7 It is unfortunate that these matters do occur. And I
8 am influenced substantially in the position the Court must take
9 on sentencing in these matters by the two cases that have
10 been referred to the Court, that being a decision of Justice
11 Marshall, the Supreme Court of the Northwest Territories,
12 reported at 1986 Territorial Reports, at page 69. In that
13 instance, Justice Marshall indicated that the principle of
14 general deterrence in matters of this type requires the
15 imposition of a prison term, especially when children are
16 assaulted sexually. In that case, the person had assaulted
17 two young girls on two occasions. He also was an electronic
18 technician, and a good one, who had regular employment always.

19 Justice Marshall referred to the case of Her Majesty the
20 Queen v. Jaw, in which thirty days imprisonment was imposed
21 for the intention of ensuring that the public know that to
22 touch young children sexually, punishment for some period of
23 time in gaol will be the natural result from a Court sentence.
24 As Justice Marshall found in that case, it's probably not
25 necessary to impose a long term in gaol, but some period does
26 appear to be appropriate.

27 In the case of Her Majesty the Queen v. Mercredi,

1 Mr. Justice Power, who was a visiting judge in the Northwest
2 Territories in May 1987, imposed four months in gaol on a
3 person with a long criminal record. There had been no direct
4 contact with the sexual organs of the child. The three
5 children testified in Court, and they all seemed to be normal
6 healthy children, who were not marked by the assaults and the
7 fondling by Mr. Mercredi. They were, however, of course,
8 scared. The accused was prepared to take psychiatric
9 counselling as a result of the offence, before he was required
10 to do so by the Court. In that case, alcohol was a problem
11 with the accused, as well as it is before the Court today,
12 because Mr. S indicates that in his past when he's been
13 consuming alcohol, it has caused him to get into trouble.
14 And he has vowed that he is going to overcome that problem by
15 not drinking in the future.

16 Mr. Justice Power showed the fondling as an offence that
17 falls in the lower category of sexual offences, but that
18 public denunciation and expression of denunciation by the
19 Courts is still required to satisfy the principles of
20 sentencing.

21 It would seem to me that a period somewhere between the
22 two terms imposed, that being four months by Mr. Justice Power,
23 and thirty days by Mr. Justice Marshall, would be appropriate
24 to consider for the accused before the Court today, who has
25 entered a plea of guilty to avoid the embarrassment of any
26 child having to come before the Court to prove the offence.
27 The accused, himself, acted in an impulsive way as a result of

1 the consumption of alcohol, and feels ashamed for what he had
2 done, especially considering that he had been a productive
3 person before that. He is going to lose respect in the
4 community for a period of time, as well as a job as a ranger,
5 and, therefore, has suffered to some extent in that regard,
6 as well.

7 On the charge, therefore, it would seem to me that the
8 shortest period of time that I could consider appropriate
9 would be sixty days in gaol.

10 I am not going to place the accused on probation,
11 because he has made a declaration to the Court today that he
12 is going to try and overcome his alcohol problem on his own,
13 and I expect him to make every effort to do so, because the
14 sentence of the Court is probably half what it otherwise would
15 have been without that approach.

16 In addition to that, I am not going to make an order
17 under Section 98, because I don't feel that there was any
18 violence involved, in that as soon as the child became
19 awakened by the fondling, he immediately moved himself away
20 and apologized for what he had been doing.

21 (AT WHICH TIME THESE PROCEEDINGS WERE CONCLUDED)

22 -----
23 Certified a correct transcript,

24
25 Debra Chipperfield.
26 Debra Chipperfield,
27 Court Reporter.