

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- and -

MARK RICHARD BELAND



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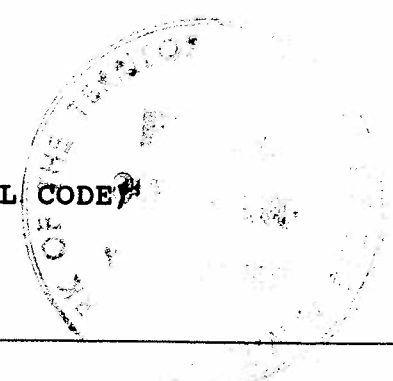
Transcript of Reasons for Sentencing and Sentencing held  
before His Honour, Judge B.B. Bruser sitting at Yellowknife  
in the Northwest Territories on Friday, July 27th, A.D.,  
1990.

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APPEARANCES:

MR. M. DALE	Counsel for the Crown
MR. R. PEACH	Counsel for the Defence

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(CHARGES UNDER SECTION 271 OF THE CRIMINAL CODE)



1 THE CLERK: Mark Beland.

2 THE COURT: Before I sentence Mr. Beland, do  
3 Counsel have anything further?

4 MR. DALE: No, sir.

5 MR. PEACH: No, Your Honour.

6 THE COURT: Mr. Beland, do you now want to say  
7 anything to the Court?

8 THE ACCUSED: No, sir.

9 THE COURT: Mark Richard Beland is charged that on  
10 or about July 14th of this year near the city of  
11 Yellowknife he committed a sexual assault on R.J.R.  
12 that caused bodily harm to her. The Court accepted a  
13 guilty plea to the offence of sexual assault. The  
14 Crown consented to such a plea after it was offered by  
15 the accused. The accused is therefore found guilty of  
16 committing a sexual assault that caused bodily harm.  
17 An order was made earlier directing that the identity  
18 of the complainant and any information that could  
19 disclose her identity not be published in any document  
20 or broadcast in any way.

21 The circumstances before the Court are  
22 shocking. They reflect a period of terror for the  
23 victim. Throughout the incident, Mr. Beland, you  
24 showed a contemptuous disregard for the feelings and  
25 personal integrity of the 24 year old  
26 complainant. You attacked her in a residence in an  
27 isolated location. She was entitled to feel safe

1           there. You were an invited guest at the cabin. She  
2           trusted you. You violated that trust. As her  
3           brother-in-law you abused the relationship that  
4           existed between the two of you.

5           The facts show that throughout the incident you  
6           were persistent in your determination to force  
7           yourself upon her. Despite her struggles, you managed  
8           two acts of sexual intercourse at two locations. To  
9           help yourself succeed in your selfish and cruel  
10          pursuit, you choked the complainant, stuffed a sock in  
11          her mouth, forced her out of the home and to a latrine  
12          where, when she continued to resist, you punched her  
13          in the face. Sometime after the sock had been  
14          removed, R.J.R. told you that you were killing  
15          her. She became exhausted and she couldn't fight  
16          anymore and the second act of sexual intercourse then  
17          occurred.

18          After you had accomplished your purposes, you  
19          left her wet, muddy and frightened and alone for a  
20          short period of time. When it was all over you  
21          threatened to kill yourself. The complainant was  
22          bruised, cut and emotionally upset throughout the  
23          incident and for awhile afterwards. Crown Counsel  
24          says that she has not been emotionally scarred. Quite  
25          properly Crown Counsel chose not to call upon R.J.R.  
26          to testify. He made that decision out of respect for  
27          her feelings.

1 Crown Counsel has characterized this as a major  
2 sexual assault. Defence Counsel says that it is not a  
3 major sexual assault. I agree with the Crown. This  
4 was a major sexual assault.

5 The key to a major sexual assault lies in the  
6 blameworthiness of the offender. There is a large  
7 measure of blameworthiness in this case. I have  
8 already referred to your contemptuous disregard for  
9 the feelings and personal integrity of your  
10 victim. As well, there is a strong sense of violation  
11 and outrage in what you did.

12 As stated in the *Sandercock* decision of the  
13 Alberta Court of Appeal,

14 "...to experience a sudden and real  
15 threat to one's well-being, a threat  
16 so intense that one must beg to be spared,  
17 tends to destroy that sense of personal  
18 security which modern society strives to  
19 offer and humanity so obviously wants".

20 The complainant has not yet completely forgiven  
21 you. I do not know why she would have to. She still  
22 harbours strong feelings about what happened. While  
23 it is true that she feels sympathetic toward you, and  
24 has helped you which shows her humanity and her  
25 compassion, I conclude that there has been and still  
26 is a degree of emotional or psychological harm that  
27 you caused. I interpret those terms in a broad way,

1 not in a clinical way.

2 The starting point for a major sexual assault is  
3 three years imprisonment, assuming a mature accused  
4 with previous good character and no criminal  
5 record. A consideration of the aggravating and  
6 mitigating factors must be weighed to arrive at a fit  
7 sentence. The sentence may, after doing this, be  
8 three years, it may be less than three years or it may  
9 be more than three years.

10 The following are some of the factors in your  
11 favour that I have taken into account. The list is  
12 not necessarily exhaustive. There is the prompt  
13 guilty plea. By this you have spared R.J.R. from  
14 having to testify. You are being given substantial  
15 credit for doing so. The guilty plea also supports  
16 the remorse that you have shown and which this Court  
17 accepts as being genuine.

18 You have no record. It is apparent that what you  
19 did was not part of your usually mature  
20 character. The physical injuries to the victim were  
21 less severe than might have been expected given the  
22 considerable and prolonged violence which was  
23 used. She was lucky and so are you for that matter.

24 The complainant still accepts you as part of the  
25 extended family. Once again her attitude is  
26 commendable. The punishment which is about to result  
27 will reach past you and be felt by your wife and your

1 two young children. This will likely never leave  
2 them. It is a pity though that you did not think  
3 about them before you began your brutal attack.

4 Also in your favour is the fact that you have  
5 been hard working and until July 14th were a  
6 productive member of the community. You surrendered  
7 yourself into custody several days after the crime,  
8 however, I do note that before then you had fled the  
9 Northwest Territories for Alberta. Your lawyer says  
10 your flight was due to the emotional strain of the  
11 situation. I cannot help but note that the victim did  
12 not flee. She suffered emotional strain.

13 Your flight I find was a weak attempt to escape  
14 the legal and emotional consequences of what you  
15 did. Those are some of the factors I have taken into  
16 account in your favour. On the other end of the scale  
17 are the many aggravating factors of the act  
18 itself. They have already been reviewed.

19 Mr. Peach has outlined the goals of  
20 sentencing. I will approach this somewhat differently  
21 than he did. In my view, the primary purpose of the  
22 criminal law is protection of the public and there are  
23 many ways to do this and these include discouraging  
24 you from committing further crimes. It is unlikely  
25 that you will be a repeat offender. Discouraging  
26 others from committing similar offences is another  
27 method of protecting the public.

1           The sentence must reflect the readiness of the  
2           Courts to imprison those who force themselves upon  
3           women. Giving effect to public denunciation, Mr.  
4           Beland, and condemnation of what you did, is another  
5           factor in the sentencing process. The sentence must  
6           reflect the general revulsion of the community to  
7           those who commit sexual assaults and reflect the need  
8           to protect women from those men who want to commit  
9           such crimes.

10           Another factor is your rehabilitation. The  
11           sentence must not be so harsh as to crush your hopes  
12           of renewing your life both in the community and with  
13           your family.

14           Your lawyer has informed the Court that for six  
15           of the days while you were in custody, the authorities  
16           deprived you of the opportunity to take proper care of  
17           your personal hygiene. That period will count for  
18           considerably more than six days. Having decided to  
19           approach this period of time in such a manner, it is  
20           not necessary to resolve the question of whether the  
21           conduct of the authorities amounts to infringement or  
22           denial of your Charter rights. Even if I were to  
23           conclude that Section 24(1) of the Charter applied,  
24           the sentence I have arrived at would have been the  
25           same, given the significant credit being allowed for  
26           the uncomfortable six day period.

27           Having balanced all the factors for and against

1           you and having taken into account all the other  
2           principles of sentencing, I am of the view that a fit  
3           sentence in the circumstances of this case is one of  
4           two years less a day and that is the sentence of the  
5           Court. In addition I prohibit you from having in your  
6           possession any firearms, ammunition or explosive  
7           materials for a period of time beginning on today's  
8           date and ending five years after you are released.

9                    Do you own anything of that nature?

10       THE ACCUSED:            Yes, sir.

11       THE COURT:             How long would you need to surrender  
12           it in a lawful manner, any firearms, ammunition or  
13           explosives? Mr. Peach?

14       MR. PEACH:             Yes, I can indicate, Your Honour, that  
15           Mrs. Beland will of necessity have to deal with those  
16           firearms. I suspect that ultimately they will be  
17           disposed of by way of sale, however, Mr. Beland for  
18           the next two years less a day will be denied access so  
19           perhaps a month.

20       THE COURT:             30 days then.

21       MR. PEACH:             Thank you.

22       THE COURT:             I see no reason not to make the  
23           mandatory \$35 victim of crime surcharge or in default  
24           three days consecutive. How long would your client  
25           need to pay \$35?

26       MR. PEACH:             Perhaps if we can ask again for 30  
27           days, Your Honour. Mrs. Beland will deal with that.



1 THE COURT: 30 days. Is there anything further,  
2 Counsel?

3 MR. PEACH: Yes, one other thing I would ask of  
4 the Court, Your Honour. Mr. Beland has indicated to  
5 me that in the past he has had a substance abuse  
6 problem which he's had largely under control for  
7 sometime, however, alcohol was involved in this  
8 incident as well and I wonder if the warrant might be  
9 endorsed simply with a recommendation as to substance  
10 abuse counselling while serving?

11 THE COURT: I make that recommendation.

12 MR. PEACH: Thank you, sir.

13 THE COURT: There will be a recommendation that  
14 alcohol and substance abuse counselling be made  
15 available to you at the first reasonable opportunity.

16 MR. PEACH: Thank you, Your Honour.

17 THE COURT: I might also make it clear since I did  
18 not elaborate upon it that the use of alcohol in cases  
19 such as this, Mr. Beland, does not excuse the  
20 conduct. It helps to explain what may have been going  
21 through your mind but it does not excuse it.

22 MR. PEACH: Thank you, Your Honour.

23 THE COURT: Is that everything, Counsel?

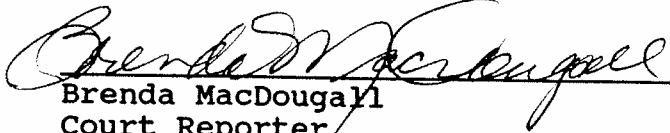
24 MR. DALE: Yes, sir.

25 THE COURT: Thank you for your help, Counsel. We  
26 will close Court.

27 (AT WHICH TIME THIS MATTER WAS CONCLUDED)

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Certified a correct transcript,

  
Brenda MacDougall  
Court Reporter