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IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

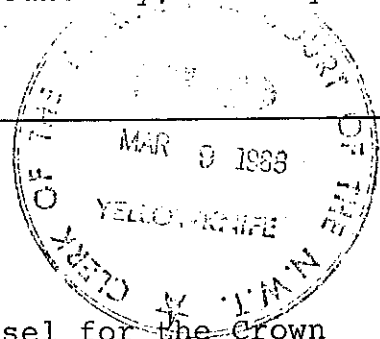
IN THE MATTER OF:

HER MAJESTY THE QUEEN

VS

JAMES EKPAKOHAK

Transcript of the Oral Sentencing Delivered by His Honour Judge R. M. Bourassa, sitting at Cambridge Bay in the Northwest Territories, on Wednesday, January 13, A.D., 1988.



APPEARANCES:

MS. S. AITKEN: Counsel for the Crown

MS. V. SCHULER: Counsel for the Defence

(Charge Under Section 246.1 of the Criminal Code.)

1 THE COURT: Once again the court, and in a larger context
2 the community, is faced with the fruit of drunkenness.
3 This time it is a 16 year old girl who, on the floor of the
4 bathroom, is preyed upon. I think that is the only word
5 that is really accurate. This accused finds a woman apparently
6 passed out on the floor and helps himself sexually as
7 quickly as he can. His actions apparently precipitate a
8 further act of intercourse by another individual. In
9 the ultimate of callousness, the bathroom door opens,
10 and one would presume the 16 year old is there naked on
11 the floor, and this accused figuratively tips his hat and
12 says you are next. I don't mean to say that he said those
13 words, but I agree with the submissions of Crown that his
14 action was the first of the sexual encounters, and his
15 actions and withdrawal in the presence of the second was
16 virtually an invitation for the second individual to become
17 involved. This is on a 16 year old girl. Whether she
18 was drunk or sober, her age is an aggravating factor.
19 Even accepting that she was drunk, and it was a "party",
20 surely to goodness a woman can go to a party and not have
21 to worry about having someone forcibly having intercourse
22 with her if she happens to pass out or fall asleep.

23 This kind of predatory sex is not uncommon. As
24 I mentioned a moment ago in dealing with Akhok, the
25 same thing happend in Coppermine and in Cambridge
26 Bay on previous occasions. The accused, of course, states
27 through the presentence report that this never would have

1 happened if he was sober. Well, that is a familiar
2 refrain.

3 Unfortunately this accused is an alcoholic. He has
4 been involved, as a result of his problems with alcohol,
5 with criminal offences since 1978. He has served time in
6 advance of these proceedings today as a result of an
7 inability to comply with an undertaking or a recognizance,
8 and clearly the abuse this young girl suffered at his hands
9 is related to his alcoholism and his inability to control
10 himself.

11 As I stated before, this court can't do anything about
12 James Ekpakohak's alcoholism. He is the only one who can
13 resolve that. He has been, according to the presentence report,
14 put on the alcohol detox programs on three separate occasions,
15 but to no effect. Until he finds the motivation within
16 himself to do something about his alcohol problem, there is
17 very little reason to expect a change in behavior. His
18 antisocial behavior has been ongoing now for ten years.

19 I am concerned as well with his statement in the
20 presentence report: He knows it was wrong to do, but at
21 the time of the offence he didn't think of what he was
22 doing. When asked if this would happen again in the future,
23 he replied that he didn't know if it would happen again
24 if he was drinking. Really, I suppose in a nutshell that
25 is the problem the court has to face. The community must
26 be protected. Women must be protected. It must be stated
27 in no uncertain terms in this community of Cambridge Bay

1 that sexual abuse of women will not be tolerated. It is
2 not acceptable. It is a criminal offence.

3 In terms of the actual sentence itself, in Sandercock it
4 is stated clearly by the Court of Appeal that the starting
5 point for major sexual offences is three years in a federal
6 penitentiary and that is for someone of previous good character.
7 I don't think that James Ekpakohak has demonstrated a
8 past of good behavior. He has floated in and out of the
9 courts and been involved heavily in the alcohol subculture
10 for the past many years.

11 In this particular case the age of the victim,
12 notwithstanding that she was at a party -so called -
13 is an aggravating factor. For a sixteen year old to
14 undergo this, whether or not she has liberal attitudes
15 towards sex, is degrading. It is degrading to treat someone,
16 anyone like this.

17 I take into account what has been said on his behalf.
18 I think from this court's perspective the biggest mitigating
19 factor that has to be given the most weight is the fact
20 that he pleaded guilty at virtually the first instance. As
21 I understand the record, the first appearance was December
22 3rd. The Crown elected to proceed by way of indictment.
23 This accused elected trial by Territorial Court on December
24 15, 1987, and he is being sentenced today. So I take that
25 in significant mitigation.

26 In trying to balance the aggravating factors and the
27 few mitigating factors, in my view a sentence of three years

1 in a federal penitentiary reflects an acequate balance.

2
3 (AT WHICH TIME THESE PROCEEDINGS WERE CONCLUDED.)

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5 Certified a correct transcript

6
7 Laurie Ann Young

8 Laurie Ann Young

9 Court Reporter

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