

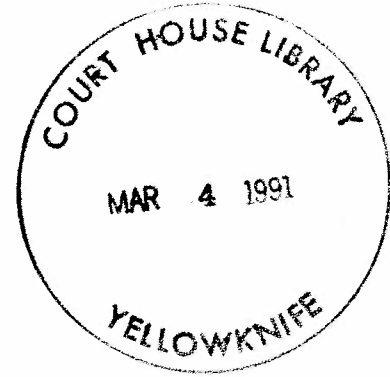
IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF

HER MAJESTY THE QUEEN

VS

WILBERT FRANCIS COOK



Transcript of the Oral Sentencing Delivered by His Honour Judge B. A. Bruser, sitting at Fort Good Hope in the Northwest Territories, on Thursday May 3rd, A.D., 1990

APPEARANCES:

MISS MARY HUMPHRIES

Counsel for the Crown

MR. LEIGH GOWER

Counsel for the Defence

1 THE COURT;

2 Wilbert Francis Cook plead guilty to a charge in which
3 the Crown proceeded by Indictment, that, on or about between
4 the first day of October 1988 and the first day of May 1989,
5 at or near the settlement of Fort Good Hope in the Northwest
6 Territories he did commit a sexual assault on S.T. He
7 plead originally not guilty and then today the plea was
8 changed to guilty. Today being the date set for trial.

9 There has been a ban on any publication on any informa-
10 tion that could reveal the identity of S.T.

11 The charge relates to several incidents which took
12 place in Fort Good Hope in Winter of 1989. In 1988-1989
13 the complainant was 12 years old at that time. The accused
14 was then 23 years of age. I will refer to the circumstances
15 of what occurred later in these reasons.

16 The accused was a life long resident of Fort Good Hope,
17 was living in a common-law relationship during the time when
18 he committed the offence. That relationship has now ended
19 and there are young children of the relationship. Mr. Cook
20 has told the court that he helps to support the family,
21 which is no longer a unit, and that two of the children
22 are dependant upon him for support.

23 In his careful and able submissions Mr. Gower, on
24 behalf of Mr. Cook, argued that a discharge or a suspended
25 sentence should result today. The Crown is opposed to
26 discharge. I will deal with the discharge part of the
27 Defence submissions at the outset.

1 In spite of the numerous good points in your favour, Mr.
2 Cook, I am of the view that given your prior convictions for
3 assault, and further, that in the circumstances of this
4 offence as discharge, whether it be absolute or conditional
5 would not be in the public interest. You must be dealt
6 with more severely than through the imposition of a discharge
7 which in effect the conviction would not be registered.
8 In other words reason for not granting a discharge would
9 be to do so would in the circumstances before me, fail to
10 act as a sufficient deterrent to other people who might
11 be enhanced to commit the serious crime of sexual assault.

12 Let me say this about sexual assault. Every sexual
13 assault is a serious crime. Some sexual assaults are more
14 serious than in the commission than others but every
15 sexual assault is treated seriously by the court. I also
16 believe it would not be in the best interests of yourself,
17 despite what you have told the court personally and through
18 your lawyer, to grant either form of discharge. The reason
19 for this is so that you come before the court with
20 criminal convictions for assault. Assault is a very closely
21 related offence to sexual assault, in that assault is
22 a crime against the person, as is sexual assault. Failing
23 to enter a conviction by you, by granting a discharge would
24 in my view, do little to deter you from committing future
25 offences or rehabilitate you. There will be no discharge
26 from this court.

27 Next, I turn to the question of whether or not it would

1 be appropriate to suspend the passing of sentence. In
2 answering this question I have considered everything your
3 lawyer and the Crown Prosecutor and yourself have told me
4 today. I have also reviewed, during the numerous breaks
5 that we have had, a good number of case authorities dealing
6 with sexual assault.

7 It is particularly noteworthy that the fact of your
8 being charged and coming before the court has embarrassed you
9 very much. I take that into account in your favour. You
10 also have a genuine sense of guilt over the shame that you
11 have brought upon your family, including your children. And
12 I have been told, and accept, that your life has gone
13 downhill since being charged. I believe that it has been a
14 long slide. I say that because you have performed so much
15 good for the community. Any community where you have
16 been you have performed a good amount of assistance for
17 that community.

18 For someone to come down hill from that sort of
19 penacle is upsetting. It is upsetting to you and I can tell
20 you it is distressing to the court. I conclude that a
21 strong measure of compassion and mercy is necessary in
22 dealing with you today. I have to weigh against all of
23 the good things that have been said and I have not reviewed
24 all of them. Some of the negative factors here is what I
25 should the record is one of those. I have
26 referred to it already. The record counts against you more
27 than it would if it were for property offences. I said

1 something about that earlier.

2 While the record is about three years old I cannot
3 overlook that the convictions were about one and a half
4 years old at the time you committed the sexual assault.
5 They were not almost three years old at that time.

6 Secondly, on the negative side there is a noticeable
7 difference between your age and that of S.T. I reject the
8 argument put forward by your lawyer, Mr. Cook, that this is
9 not the case of an adult act being in a predatory manner
10 toward a young girl. I do not accept that. Here is why:
11 You took advantage of what you believed to be her early
12 maturity. You preyed upon that. You did that in a

13 manner. You tried on a number of occasions to seduce
14 her for sexual purposes to do that to satisfy your
15 sexual needs. Every young female has the absolute right
16 in our country to mature at her own pace without this
17 sort of conduct shown towards her.

18 Your lawyer has said that she allowed you to make
19 the advances in the sense that she did not repel you
20 forcefully enough. And that she maybe should have done
21 more. Those are the submissions made by your lawyer.
22 I have to assume that your lawyer made those remarks based
23 upon your instructions. Those remarks tell me that you
24 are not prepared to accept complete responsibility for
25 what you did.

26 In my view S.T. is not in any way to blame, not in the
27 slightest. Yet, despite her clear message to you on the

1 first occasion that she was not interested, you persisted,
2 you kept after her. Those are negative factors I am
3 taking into account. This is not a case of an isolated,
4 spontaneous, minor act which might otherwise justify a
5 suspended sentence.

6 I will now review some of the material facts.

7 In the first incident in February of 1989 'S' was
8 babysitting. You tried to kiss her, but she would not let
9 you do so. The next incident she was lying on the couch,
10 you were lying on the floor and you touched her arm, her
11 hair, her legs and her stomach. You apparently tried to
12 touch her breasts and her vagina, but she pushed you away
13 and you did not persist in that. The events on that date
14 continued for the period of time.

15 On the third occasion about two days later, you
16 kissed her on the mouth, after asking her to babysit in
17 your home. She pushed you away and said, "don't" and you
18 did stop. The stopping is to your credit on each occasion.

19 On the fourth occasion she was babysitting again, you
20 put your hands around her neck, you blew in her ear, you
21 asked her to lie down on the bed. She eventually did, and
22 as I understand it you asked her to lie on top of you, as
23 well as asked her to take off her snow pants, which she
24 did not do. At the end of all that you told her not to tell
25 anyone. During that event I can not speculate what was
26 going through her mind, and I won't do so, but I do not
27 accept that she wanted to do these things with you.

1 I outlined the circumstances of the incidents in
2 detail. I did, because I want to make it clear that the
3 incidents progressed from minor to more serious as time
4 went on. I point to the acts of the person
5 bent upon seducing a much younger person of the opposite
6 sex.

7 Mr. Cook, the circumstances are serious. I already
8 told you that the crime is a serious one. Fortunately
9 at no time did you threaten S.T., nor at any time did
10 you physically hurt her.

11 I do not propose to review the law. None has been
12 submitted by either counsel. I am, however, very familiar
13 with the sentencing decisions at all levels of court in
14 the Northwest Territories regarding sexual assaults.
15 I assure you, Mr. Cook, that I am also very familiar with
16 the sentencing of these types of cases in the South.

17 Given all the circumstances I am of the belief that
18 suspending the passing of sentence would not be appropriate
19 and I am not prepared to do so. Neither do I feel that
20 a fine would be a proper way to deal wit it. A fine or
21 a suspended sentence would not adequately address a
22 very important element of public protection being the
23 main purpose of the criminal law in our country. Public
24 protection includes deterrence to you, deterrence to other
25 people, your rehabilitation, and it also includes public
26 revulsion and public condemnation for what you did.

27 I am of the firm belief that this case cries for

1 imprisonment. You are going to have to find someone else
2 to care for your boy or boys. The period of imprisonment
3 will not be terribly long in the sense that the maximum
4 penalty for this type of offence is ten years imprisonment.
5 Your period of imprisonment will not come anywhere close
6 to that. I believe that a period of imprisonment in the
7 range of 6 or 7 months might have been appropriate but
8 for the many good qualities you have had throughout your
9 life. You will not not be receiving that period of time.

10 The sentence of this court, taking into account
11 everything I have said, and having considered what your
12 lawyers said, and what the Crown has put forward, is
13 four month imprisonment. There will be no victim of
14 crime surcharge.

15 (CONCLUDED)

16 *Certified Correct*
17 *Peggy Leyland*
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