Tc CR 89 033

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- and -

LUKE ARNGNA'NAAQ

Transcript of the Oral Sentencing of His Honour Judge T. B. Davis, sitting at Baker Lake, in the Northwest Territories, on Wednesday, November 16th, A.D., 1988.

APPEARANCES:

R. PEACH, ESQ.: On behalf of the Crown

A. REGEL, ESQ.: On behalf of the Defence

(Two charges under Section 150 CRIMINAL CODE)

THE COURT: Luke Arngna'naaq comes before the Court as a 57-year old who is pleading guilty to two charges of incest, one being that between January 1976 and September 1983, at Baker Lake, he had sexual intercourse with Jennie Arngna'naaq, while knowing that Jennie was his daughter, contrary to Section 150, and in addition thereto, pleads guilty to the charge that between January 1977 and September 1983, that being one year less, at Baker Lake in the Northwest Territories, he had sexual intercourse with Rhoda Arngna'naaq while knowing that Rhoda was his daughter, in violation of Section 150 of the Criminal Code.

We have before us tonight a man who was in a very unsuitable situation resulting from an arranged marriage, where he was repudiated by his wife from the first meeting and still appears not to be accepted by her to the full extent. He had been refused contact over a number of years, and it developed into the very unfortunate set of circumstances, where for a number of years, while knowing it was wrong to do so, sexually he became involved with two of his daughters while he was the responsible adult in the home and, therefore, was in a relationship of trust and responsibility to them.

As part of the finding of the Court, I am including an agreed statement of facts that has been filed as part of this decision. I will summarize them by indicating that the family, including the two daughters mentioned in the charges, lived in Baker Lake, and that when Jennie was between nine

and 17 years of age, the defendant had numerous occasions where he indulged in sexual intercourse with her on a frequent basis. He would go to her room at night and complete sexual intercourse, which activities continued until Jennie departed the community for high school in a different community.

Am I speaking too long and too fast? I didn't think of having you interpret that, but have you made some notes that maybe you could explain what I've said so far?

INTERPRETOR: Yes, I am, plus the fact we have been through that already, so I remember most of it.

THE COURT: So, he is familiar enough with it?

INTERPRETOR: Yes.

THE COURT: I'll take breaks then, so the interpretor can actually summarize what I'm saying as we proceed.

THE COURT: When Rhoda, another daughter, was between nine and 15 years of age, sexual intercourse and fondling also had taken place on a regular basis without consent. The sexual intercourse was at night in the family home, when everyone was asleep. The accused had made no threats on either of the girls, but did ask Rhoda not to say anything about their relationship. Some sexual contact was made while the family were on camping trips and while travelling on skidoos, and the contact continued with Rhoda until such time as she warned the accused that if he continued to touch her, she would kill him. When confronted by the police after the complainants had reported these events in 1987, the accused gave a statement and admitted to the activities

in a warned statement to the police.

Defence counsel has properly pointed out that it has been five years since the offences had taken place. It would seem, therefore, that the Court must recognize that five years have passed by and that the deterrent effect on the accused is not as substantial as it might be if he were to have been arrested in 1983, when the offences were being carried on, and then dealt with and sentenced. I am going to reduce what I think would be an appropriate sentence, because there has been a five-year delay in having the matter come before the Courts.

I am also taking into account the fact that there was no actual violence, but I must recognize that any person who is a father of children or is in a position of being in authority over children, has an influence on them that puts them in a position of trust, and that breach of that trust makes this type of offence of a very serious nature.

The accused has had a traditional life-style, yet it would appear from the pre-disposition report that he has always attempted to care for his family. He has had no education, but has participated in some community activities and has, in fact, attempted to preserve the Inuit culture by teaching the language in the local school for a number of years. He does part-time jobs when he can obtain them. And in recent years, he has become involved with religion. There are usually large numbers of people living in the residence, and he admits openly that sexual abuse of children

is not something allowed by the law, nor accepted by society.

For a period of time, he tried to overcome abuse of alcohol that he became involved with, and after 1981 was attempting to improve his way of life. The children are now older, of course, and they hope that the Courts can deal fairly with their father and arrange for counselling, because I think they recognize what Courts have often noted, and that is that people need counselling more than punishment, often, when they become involved with abuse of their own children.

The Courts however, have recognized the seriousness of this type of offence and, generally speaking, have indicated that to show society's abhorrence of this type of offence that a jail term is ordinarily required. It is only in very exceptional circumstances that a relatively long jail term is not imposed for this type of offence.

Crown counsel has suggested that the accused has not fully accepted the responsibility, because he still partially blames his wife, who was not available to him sexually to the extent expected of the wife, and that as a result of that, he is not showing remorse.

Defence counsel has said that he is remorseful and sorry that these activities had occurred and that he did make efforts to improve himself, although it's difficult for the Court to interpret what had happened as efforts that would be suitably recognized as such.

I must recognize the fact that the children either

moved away or refused involvement with the father before the acts actually ceased.

The children were of a young age, and the offences occurred over a number of years, and it would seem to me that I have no alternative but to impose some period of time in jail. Because of what I have said and because of the age of the accused at the present time, now being fifty-seven, and since the offence occurred some period of time ago, I feel that a term in jail is appropriate, and because the accused is of the Inuit culture, that it would be appropriate for me to keep the term to less than a substantial penitentiary term, so that he will not be required to serve that period out of the Northwest Territories.

As I understand it, however, it could be possible that even with a penitentiary term, on special requests, he would be allowed to serve it in the North, but in this instance, recognizing that his major language is Inuktitut, I am going to impose a jail term of two years less one day, and hope that that will be sufficient to act as a deterrent to the public, generally, and to inform the public that offences by parents against their children will almost automatically result in a jail term. I feel that that is the shortest possible period of time that the Court could consider, because many of the cases for similar circumstances by the appeal Courts have been approved as a much longer period of time in jail.

Following the two-year jail term, I'm going to require

that the accused be placed on probation for a period of one year, the purpose of that being that he will have somebody to whom he's required to report and to whom he can talk, if he either has continuing marital problems or any inclination to become involved with matters of the nature before the Court. So, during the one-year period he will be required to report as directed by the probation officer.

The intention, of course, of the Court was that on the second offence the same penalty would be imposed, but to run concurrently.

(AT WHICH TIME THESE PROCEEDINGS WERE CONCLUDED)

Certified a correct transcript,

Debora Chipperfield.

Debora Chipperfield,
Court Reporter.