

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

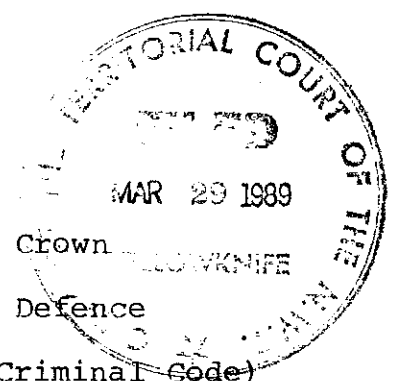
- and -

KENNY ARNGNA'NAAQ

Transcript of the Oral Sentencing delivered by His Honour Judge T.B. Davis, sitting at Baker Lake, in the Northwest Territories, Monday, January 23rd, A.D. 1989.

APPEARANCES:

MR. B. PURDY, Counsel for the Crown
MS. S. MacPHERSON Counsel for the Defence
(Charge under Section 246.1(1) of the Criminal Code)



1 THE COURT: Kenny Arngna'naaq is charged with committing
2 a sexual assault on his sister, Rhoda, between January, 1982
3 and December, 1984. On two occasions he went into her room,
4 and while she was asleep, or pretending to be asleep, he had
5 sexual intercourse with her. He was around twenty-one
6 years of age. She was around fourteen or fifteen
7 years of age. There was no violence, no threats, and the
8 accused had been under the influence of alcohol at the time
9 that he committed the offences, knowing that the acts were
10 things that he was not entitled to do under the law.

11 He has no criminal record. For a few years he
12 had been in the military services, realized that he had had
13 a drinking problem and took counselling and for a year
14 and a half, has not been consuming any alcohol. His sister,
15 who was the victim of the offence, has indicated that she
16 wants the matter to be forgotten, and that she has suffered
17 no permanent injury, although at the time she might have
18 ended up with venereal disease as a result of one of the
19 contacts. The accused had himself not carried on further
20 in his assaults on his sister, and they were isolated
21 incidents. It would appear that the accused has returned
22 to live with his family and that there is no major concern
23 for specific deterrence in that the accused has not been
24 before the Courts or is not charged with any other offence
25 and seems to have no requirement to restrict him, since he
26 is restricting himself in his actions at the present time.

27 Although the accused has not attended when

1 requested to by the Social Services Department for the
2 preparation of a pre-sentence report, I do note that he did
3 take counselling for his alcohol problem, and that it would
4 appear to me, therefore, that if the accused is directed to
5 take counselling now in a probation order and is required
6 to report to the probation officer, that he will be able to
7 do so and has through his counsel indicated that he is
8 prepared to do so.

9 Crown counsel has properly pointed out that the
10 type of offences are very serious and must be dealt with
11 seriously by the Court, but it is also necessary to impose
12 a sentence on the actual facts of the charge before the
13 Court in relation to the persons involved and the need for
14 deterrence to ensure that the offences do not continue. Mr.
15 Justice de Weerd in 1982 in a case of The Queen v. G.B.,
16 reported in the 1984 Northwest Territories Reports at page
17 205, dealt with a thirty-four year old accused who had incest
18 with his twenty-four year old sister who had been intoxicated
19 and was lying naked on a bed when he went in and was having
20 sexual intercourse with her when she woke up and resisted.
21 There was no violence used, and there was no previous criminal
22 record. The accused had before appearing in Court then been
23 married, and Mr. Justice de Weerd felt that it was an
24 isolated incident and very little likelihood of repetition
25 of the offence. Under those circumstances, the Court
26 imposed a suspended sentence and two years probation requiring
27 the accused to perform two hundred hours of community service

1 within the first year of the two year term.

2 That case was followed substantially by Mr.
3 Justice Boilard in the case of The Queen v. J.A., also in the
4 1984 Reports at page 219, when an accused who was twenty-two
5 years of age had incest with his sister while she was
6 severely intoxicated and about sixteen years of age. Upon
7 demand by the brother to have her undress, she did so out of
8 fear. In that instance the accused had no previous criminal
9 record, but he did indicate, as was pointed out by Defence
10 counsel, that incest between brothers and sisters is not
11 as serious as it might be from the point of view of penalties
12 that are required to be imposed by the Courts as the incest
13 between a father or a mother and a child, because there is
14 not the same degree of control and authority. In that
15 instance the Justice also imposed a suspended sentence and
16 two years probation.

17 The accused's brother was before this Court on
18 a similar charge a few months ago and was given a suspended
19 sentence and placed on probation and required to perform
20 two hundred hours of community service work, and I expect
21 that that sentence would have been imposed by myself, although
22 I don't have a reference or notes on the specific case.
23 Crown counsel has indicated that the decision has been
24 appealed and is presently before the Appeal Court and may be
25 changed substantially or it may be confirmed if the Court
26 feels that it was unnecessary to impose any further punish-
27 ment than a suspended sentence and two years probation with

1 community service work to be done.

2 It would appear to me that under the circumstances
3 before the Court today it would be appropriate for me to
4 suspend the passing of sentence and place the accused on
5 probation for a two-year period and require him also to
6 perform some community service work so that he will be
7 reminded and the other members of the community and the
8 public will be reminded that incest between a brother and
9 sister is still a serious consequence and in violation of
10 the criminal law.

11 I am, however, going to follow the cases that
12 have been referred to me and that I mentioned and suspend
13 the passing of sentence. The accused will be on probation
14 for two years during which time he will be required to report
15 to the probation officer when and as directed, and he will
16 also be required to take any counselling or participate in
17 any counselling directed by the probation officer. In
18 addition thereto, he will be required to perform two hundred
19 hours community service work when and as directed by the
20 probation officer. The other statutory terms of the
21 probation order, of course, are in effect, that he will be
22 required to keep the peace and be of good behaviour and to
23 report to the Court if required to do so in the future.
24 Because this is a suspended sentence, it is necessary that
25 you know that if you were to at any time break the law during
26 the two-year period or disobey the terms of the probation
27 order that you could be called back to the Court and sentenced

1 on the charge before the Court today. When the probation
2 order is prepared, you will be required to read over the
3 probation order and sign it acknowledging that you are
4 familiar with the terms therein. Do you wish to come back
5 sometime tonight, or do you wish to have that tomorrow, Madam
6 Clerk? Would it be more convenient to have the probation
7 order prepared and signed tomorrow?

8 THE CLERK: Perhaps tomorrow.

9 THE COURT: Just come back sometime before noon hour tomorrow,
10 then, and sign your probation order. You understand your
11 position, then. Anything else, counsel, in regard to the
12 matter?

13 (AT WHICH TIME THIS MATTER WAS ADJOURNED)

14

15

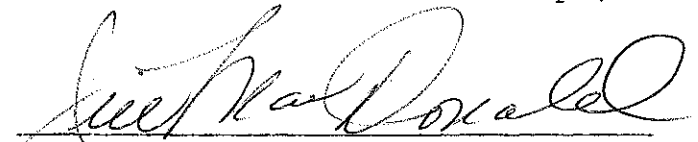
16

17

Certified a correct transcript,

18

19



20

Jill MacDonald, Court Reporter.

21

22

23

24

25

26

27