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IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

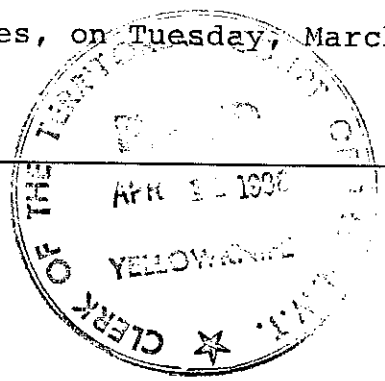
IN THE MATTER OF:

HER MAJESTY THE QUEEN

VS

D A

Transcript of the Oral Sentencing Delivered by His Honour Judge R. M. Bourassa, sitting at Rankin Inlet in the Northwest Territories, on Tuesday, March 15th, A.D., 1988.



APPEARANCES:

MR. R. PEACH: Counsel for the Crown

MR. D. MILLER: Counsel for the Defence

(CHARGE UNDER SECTION 153 OF THE CRIMINAL CODE.)

1 THE COURT: D A is convicted of an offence of
2 sexual intercourse with his stepdaughter. There is no
3 issue of consent here. That is to say, I infer from what
4 is before me that the victim involved acquiesced or went along
5 with the conduct, the act of intercourse by A . That
6 removes it from the category of rape, or as it is now known,
7 sexual assault. Rape or sexual assault is intercourse without
8 consent. The difference in penalty is that on the offence
9 that he has pleaded guilty to, it is a maximum of two years
10 in jail. On an offence of sexual assault it is a maximum of 14.

11 Section 153, illicit intercourse with a stepdaughter,
12 recognizes the fundamental fact that any sexual activity with
13 a daughter or stepdaughter is morally wrong. Even having said
14 that, one has to question the quality of the consent or
15 acquiescence of the victim in this case, who is mentally
16 retarded. Even the accused's wife recognizes that the
17 daughter cannot recognize the difference between filial love
18 and sexual love. Whatever the niceties of the distinctions
19 the act remains - an abuse of a handicapped individual,
20 the sexual abuse of another woman. It is sexual exploitation
21 of the worse kind. It is like the fellow who bumps into
22 the girl passed out in the bathroom, and has intercourse with
23 her or the fellow that walks into a room and finds a woman
24 passed out and has intercourse with her.

25 I find the explanation offered by Mr. A for this
26 conduct as being pretty farfetched. At best, it is a
27 rationalization. I have no evidence of previous abuse.

1 I am asked to take into account that he has been
2 depressed from time to time as a result of this offence.
3 I don't think the court can do much with that really. I
4 am asked to take into account the length of time from the
5 offence to today's date, the 4th of September to the 15th
6 of March. I appreciate that the matter is hanging over his
7 head over that period of time, but I want to point out to Mr.
8 A and others that lawyers advise, they don't run your
9 case. This matter could have been disposed of a long time ago.

10 I have read the presentence report over a couple of
11 times, and I take into account the positive contents of it.
12 I take into account that he has no criminal record, and
13 that he has, as on that date in any event, pleaded guilty
14 to the offence.

15 I don't think there can be any question that a jail
16 sentence must be imposed. The abuse of women is distressing
17 and all too common. As painful as it may be for individuals
18 and for communities, people are going to have to learn
19 that they can't just abuse women like this, exploit them
20 sexually and do what they wish.

21 I would speculate, perhaps with some justification,
22 that imprisonment in Yellowknife will be of significant
23 hardship to this accused. I am told he is not in the best
24 of health, and at his age I don't envy him being in a prison
25 full of teenagers and 20 year olds.

26 This case reminds me of the William Ukpakitu case from
27 Baker Lake who was an older man, I think in his late 50's or

1 early 60's who was convicted of sexual assault on a family
2 member. He was given six months imprisonment. That was a
3 lenient sentence given that sentences for offences such as
4 that were usually around three years. Unfortunately, William
5 Ukpakitu didn't learn his lesson because within a year of
6 his release from jail he was doing the same thing again only
7 the next time he went to jail for a much longer period of
8 time. I say that because I want D A to clearly
9 understand that whatever mistakes he has made, if they are
10 repeated, there will be very little between him and a lengthy
11 term of imprisonment.

12 The offence is not the worst example in my view,
13 or the worst scenario within the offence.
14 In my view, while it may be on the lenient side, and I suspect
15 it probably is, a sentence served in the community where he
16 will be seen by the community, and see himself within the
17 context of the community as serving his term of imprisonment
18 would be appropriate. It will hopefully serve to reinforce
19 and point out to others what happens to people who get involved
20 in this kind of thing. It will be a reminder to this accused
21 about the wrongfulness of what he has done, and at the same
22 time, not be totally destructive to him in the years he has
23 left.

24 Stand up, please, Mr. A. Is there anything you
25 wish to say before the court imposes sentence?

26 THE ACCUSED: No.

27 THE COURT: On this matter I am going to sentence you to

1 a term of imprisonment of 90 days. I direct that you serve
2 the term intermittently. I ask for your assistance, Mr.
3 Peach. I realize it is going to be a difficulty for the
4 local detachment, but the Charter of Rights provides that
5 all persons are entitled to equal benefit under the law.
6 In Yellowknife, were he working, it would be served on
7 weekends. There is no magic to the weekend here in Rankin.
8 I am looking to impose a term to be served intermittently
9 of four days a week. In order to be the least disruptive
10 to the busy detachment, I am prepared to make that at any
11 time during the week or weekend whenever is most reasonable
12 from your perspective.

13 MR. PEACH: I can indicate, Your Honour, that the guards
14 are usually most easiest to obtain and most frequently
15 required on weekends in any case.

16 THE COURT: You are to surrender yourself into custody at
17 the R.C.M.P. detachment in Rankin Inlet on the 18th of March,
18 that is this Friday, at 8 p.m. You will be released from
19 custody on Monday, the 21st, at 7:00 in the morning, and
20 thereafter each Friday to each Monday until your sentence
21 is served in full. While you are at liberty during the
22 week you will be subject to a probation order to keep the
23 peace and be of good behavior. You will have your client
24 wait and sign the probation order.

25 MR. MILLER: Yes, sir.

26 THE COURT: That's all.

27 (AT WHICH TIME THESE PROCEEDINGS WERE CONCLUDED.)

Certified a correct transcript,

L. Young
Laurie Ann Young
Court Reporter

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