

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

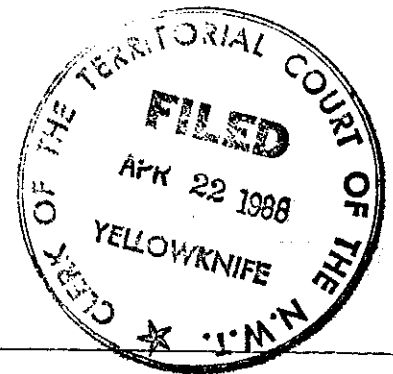
IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- and -

DAVID ROY YALLEE



Transcript of the Reasons for Sentence delivered by His Honour Judge R.M. Bourassa, sitting at Yellowknife, in the Northwest Territories, on Tuesday, March 29, A.D. 1988.

APPEARANCES:

MS. B. KOTHE	On behalf of the Crown
MR. G. MC LAREN	On behalf of the Defence

(CHARGE UNDER SECTIONS 246.1 and 306(1)b)

1 THE COURT: Thank you, Mr. Mc Laren. Well, as best as I
2 can distill from the pre-sentence report, and from the facts
3 read in by the Crown, and agreed to by the Defence, four
4 individuals were searching for adventure; some liquor was
5 stolen, a house was broken into to be a meeting place for
6 drinking. At that time, from the perspective of the 13-year
7 old and the 11-year old, things got out of hand - to their
8 detriment.

9 There is an element of 'consent' here to some
10 activity. It is difficult to say whether it is the sexual
11 activity, or just the drinking, or whether there was fear
12 involved when the victim said, "Okay", to Yallee who said,
13 "Let's fool around", given his age and size, and her age.
14 In any event, there is no consent sufficient to constitute
15 a defense. I just say there is an element of 'consent',
16 and I accept what defence says that this was not a planned,
17 premeditated kind of thing.

18 On the other hand, the accused is aware, on
19 his own, of his inappropriate and indiscriminate sexual
20 appetite, and to his credit, on his own in the past, he has
21 made an effort to resolve that appetite and to deal with it.
22 Apparently, for one reason or another, he withdrew from the
23 Northern Lights Treatment Home in Inuvik, did not continue
24 with the counselling, and with his problems with alcohol,
25 self-admitted, the events of the 24th of May unfolded.

26 Clearly the two girls involved were not
27 willing participants. I can't, and I don't make much of

1 the fact that they did not fight, struggle, or defend them-
2 selves. I do not understand the law to require a woman to
3 try and beat off an attacker to manifest her lack of consent.
4 An 11-year old, in my view, would clearly be intimidated by
5 a 19-year old.

6 The intercourse was casual and predatory.
7 That the second victim was intoxicated makes it even more
8 predatory. It is so common in this jurisdiction for
9 intoxicated women to find themselves subjected to unwanted
10 sexual attentions.

11 As I indicated, the accused knew he had a
12 problem, and I infer from that that he knew better. With
13 the consumption of alcohol, he just did what he knew ought
14 not to be done.

15 The Crown suggests a range of two years. The
16 law, as I understand it, indicates to the Court that on a
17 major sexual assault the starting point for sentence
18 consideration is three years, and that the Court ought to
19 move from that consideration, up or down, taking into
20 account the various mitigating and aggravating factors.

21 In aggravation I find the fact that, first of
22 all, the accused was aware of his inappropriate and
23 indiscriminate sexual appetite, had chosen to do something
24 about it, and then abandoned those efforts and submitted,
25 surrendered himself to a known pre-existing proclivity that
26 he had. I take in aggravation that he was drinking, knowing
27 that drinking causes him problems. I take in aggravation

1 that both these girls were young, 11-years old and 13-years
2 old. Notwithstanding their voluntary attendance at this
3 place, in my view it is an aggravating factor. The age
4 disparity is too great. Mr. Yallee ought to have known
5 better, I am sure he did know better. Those are the
6 aggravating factors.

7 In mitigation he has pleaded guilty at the
8 first instance - virtually the first instance - saving
9 these two young girls from having to testify in both a
10 preliminary inquiry and at a trial. I take in mitigation
11 the fact that apparently he has, on his own, tried to cope
12 with the problems that he has, and that gives the Court some
13 reason to hope for rehabilitation. The Court can have no
14 confidence that the programs described and recommended in
15 the pre-sentence report will in fact be carried out; it is
16 a real lottery in that regard. But I would hope that the
17 accused pursues the course of conduct that will lead him to
18 some rehabilitation and some re-channeling of his energies
19 that will not be to the detriment of other people.

20 Trying to balance those factors as best I can,
21 and taking into account totality as well: addressing the
22 break and enter, I can't make much of the break and enter.
23 I accept that it is a serious problem, except that it was
24 again for liquor which seems to be at the root of so many
25 problems here, and that it was following and unconnected to
26 the sexual assaults.

27 But notwithstanding that, totality has to be

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

taken into account. Stand up please, Mr. Yallee.

I believe K W was the first victim,
is that right, Ms. Kothe?

MS. KOTHE: Yes, sir.

THE COURT: On the charge of sexual assault of K
W, there will be a term of imprisonment of three
years. With respect to the charge of sexual assault on
S M C, there will be a term of imprisonment of
two years. With respect to the charge of break, enter and
theft, there will be a term of imprisonment of six months.
All sentences will be concurrent.

I will make the recommendation, for what it
is worth, that the accused be exposed to the counselling as
recommended in the pre-sentence report. I will also direct
that a copy of the pre-sentence report be attached to the
warrant of committal.

(AT WHICH TIME THIS MATTER WAS CONCLUDED)

Certified a correct transcript,

Loretta Mott, Court Reporter