

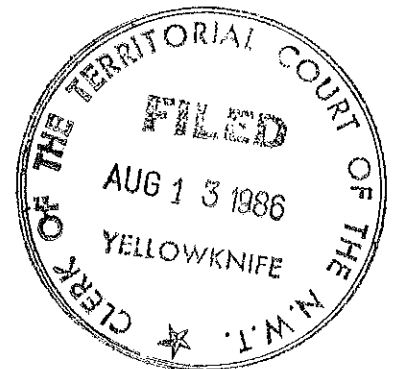
IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- and -

ALLEN HIKOALOK



Transcript of the Oral Reasons for Sentence delivered  
by His Honour Judge R. M. Bourassa, sitting at Cambridge  
Bay, in the Northwest Territories, on Wednesday,  
June 18, A.D. 1986.

APPEARANCES:

MS. S. AITKEN

On behalf of the Crown

MS. L. ERICKSON

On behalf of the Defence

1 THE COURT: In terms of sentencing, looking at the accused's  
2 record, it's obvious he has a problem with alcohol. It's  
3 obvious he has a problem with his temper, and he admits it  
4 himself. Given he knows he has a problem with his temper, he  
5 shouldn't be drinking, because he knows what happens when he  
6 is drinking. He's beaten his wife before, he's beaten his  
7 children, and he chooses on the 13th of April to become what  
8 must have been incredibly drunk--a 40-ounce bottle of rum and  
9 three cases of beer consumed in a one-night drinking binge.  
10 This man has been before the courts before, and he has  
11 been warned before by this Court about beatings administered  
12 to other people when he is drunk, and he has been told  
13 that violence is unacceptable in our society.

14 Unfortunatly, Cambridge Bay seems to be getting  
15 a reputation as being a place where a lot of violence is occurring  
16 because of alcohol abuse; and this man is just a reflection  
17 of that fact. I think the court has to keep in mind a  
18 deterrent sentence--that is to say, a sentence that will  
19 cause this man and other men to fear to do this thing.

20 Now, Mr. Hikoalok on his first time before the  
21 court was given a suspended sentence; second time he was  
22 given a fine, third time he was given a short term of imprison-  
23 ment; and he didn't respond in any positive fashion to any of  
24 those penalties. After listening to counsel carefully and  
25 listening to the facts and taking into account that he is  
26 pleading guilty, that a term of imprisonment from six to eight  
27 months is called for. I think that would be a proper response.

1 Now, I cannot dismiss as unimportant or insignificant the  
2 evidence that was called by Defence counsel. I don't know Mr.  
3 Hikoalok. I suppose I don't need to know him, the laws are  
4 constructed to deal with the facts, and I have those before me.  
5 Of the people that did testify, however, some of them know Mr.  
6 Hikoalok to a significant degree, and each in their own way  
7 have expressed some optimism that as a result of his last  
8 appearance in court, the order of the justice of the peace  
9 and the events that bring him to court today, have brought a  
10 change in his life. He is now attending counselling, he is  
11 now attending a spousal abuse program, and he is also doing  
12 something about his drinking. Hikoalok himself takes the  
13 stand and tells us that his life is becoming better since he  
14 stopped drinking; and all in all, there is an indication from  
15 all of the evidence before me that there is a light or a  
16 flicker at the end of the tunnel, an indication that there  
17 may be a real possibility of rehabilitation and reformation  
18 here. Even his wife takes the stand and confirms the change  
19 since the last event. I have to be careful in listening to  
20 evidence such as that, but we are not dealing with a gallows  
21 reformation. I cannot ignore this evidence.

22 Mr. Hikoalok has had the opportunity to  
23 contemplate this matter for a while. I'm sure he knows he is  
24 in significant trouble, and the risks for him and his liberty  
25 are great.

26 It's obvious if Mr. Hikoalok responds to these  
27 people that are working on his behalf and stays away from liquor,

1 he won't be back before the courts. His wife hopefully won't  
2 be beaten and won't have to put up with being beaten again;  
3 and it's obvious if he responds as he has responded recently,  
4 that will be the case. Society will be protected, his children  
5 will be protected, and Mrs. Hikoalok will be protected, and  
6 this man will be a better person. I don't think that putting  
7 him in jail for six to eight months will bring about a  
8 reformation; although, it might. It might be a shock enough  
9 to him. Obviously, a term of imprisonment of that length,  
10 which I think is proper, it will have some impact on his  
11 family, it will have an impact on his children. It may very  
12 well result in him losing his job. It is speculation,  
13 but one would wonder if a commercial enterprise could  
14 keep a job open that length of time for an employee, valued  
15 or not.

16 It used to be under the Criminal Code, and would  
17 that it were today, that this court could impose the sentence  
18 and then suspend the execution thereof; in other words, make  
19 it very clear to the accused what he is facing and then give  
20 him the opportunity to escape that consequence by obeying a  
21 probation order. That has now for some time been no longer the  
22 case. We are now as courts unable to impose a sentence and  
23 then suspend its execution. We simply suspend the passing.  
24 Further, if there is a breach of a condition of the probation  
25 order, it's up to the Crown Attorney to bring the matter before  
26 the court for sentencing. However, it's never done. In the  
27 five years I've been sitting, it's never been done. I fear

1 this distinction is lost on most accused persons. A suspended  
2 sentence simply becomes "probation", nothing more. I understand  
3 the Yukon brings cases back on--Linklater is perhaps the most  
4 significant one--in Ontario cases are brought back on by the  
5 Crown where there has been a failure. I don't understand why.  
6 I understand some of the reasons that are offered, but they  
7 don't constitute a justifiable reason in my view.

8 Defence counsel argues for an intermittent  
9 sentence, but as I said, I'm of the view a term of imprisonment  
10 longer than 90 days would be the appropriate judicial response  
11 for this assault. It was a vicious, mean, cruel assault,  
12 arguing over who took the liquor. It's typical, nothing surprising  
13 about that. Mr. Hikoalok might argue less about why one son  
14 has been taken away from him and more about why he is drinking.  
15 The two seem to be connected.

16 As I said, I cannot disregard those that have  
17 testified on his behalf, and I cannot disagree with the issue  
18 or the concept put forward by Defence counsel that if he can be  
19 kept away from the bottle and succeed in those courses with  
20 his wife, that may very well be the end of the matter. It's  
21 a question, I suppose, of whether general deterrence requires  
22 the jail sentence that I have indicated is proper or whether  
23 the specific needs of this offence and this offender support  
24 the position taken by Defence.

25 Stand up, Mr. Hikoalok. In my view--and I'll be  
26 quite precise--the more I think about the assault, I am  
27 really of the view that eight months imprisonment is what I

1 should do. I think you should sit in jail. No matter how  
2 sorry you are today, no matter how much your wife wants you  
3 back, that is what I think.

4 Taking into account what your lawyer has said on  
5 your behalf, that you have pleaded guilty and what others have  
6 said on your behalf, what I am going to do is this: I am  
7 going to suspend passing of sentence. I want to make this  
8 very, very clear, and I hope the Crown understands. I'm going  
9 to release you on certain conditions. If you do not comply  
10 with those conditions by a fraction of an inch, I would expect  
11 the Crown to bring you back before this Court and this Court  
12 will impose the sentence of eight months. I'm going to place  
13 you on probation for two years. It's a long time, Mr. Hikoalok.  
14 Throughout that period of two years, you are to absolutely  
15 refrain from the consumption of alcohol. You are not to possess  
16 alcohol or any intoxicants. You are to provide any peace  
17 officer who has reasonable and probable grounds to believe  
18 that you are in breach of these conditions a sample of your  
19 breath on demand. There is an interdict list here, Ms. Aitken,  
20 is that right?

21 MS. AITKEN: Yes, Your Honour.

22 THE COURT: A further condition reinforcing what I've already  
23 ordered, he is to be placed on the interdict list for the  
24 next two years. You are to report to the probation worker  
25 here in Cambridge Bay for the next six months once a week;  
26 six months following that, twice a month; and for the last  
27 year of your probation, once a month. You are to attend every  
counselling session, program, or series of programs that your

1 probation worker arranges for you from time to time or directs  
2 that you attend; and that will include the programs I've heard  
3 of today about living without violence, about alcohol counsel-  
4 ling program at the Katimavik Centre, or anything else that  
5 arises from time to time. I want to point out to you, Mr.  
6 Hikoalok, because I am required by law, if you fail to comply  
7 with any of these conditions, you can be charged with an  
8 offence known as breach of probation. If convicted, there is  
9 a maximum penalty of \$2,000 or six months in jail or both.  
10 If you are convicted of any criminal offence over the next two  
11 years--assault or breach of probation or any other criminal  
12 offence--at the instance of the Crown Attorney you can be  
13 brought back to this Court and I can impose the sentence on  
14 this charge of assault that I think that is proper under all  
15 the circumstances. I've already told you, Mr. Hikoalok, you  
16 should go to jail for eight months, and if you come back before  
17 me as a result of further convictions for criminal offences,  
18 then that is what you are going to have to face. Do you  
19 understand what I am saying?

20 THE ACCUSED: Yes, I understand.

21 THE COURT: For the next two years, you have a jail sentence  
22 hanging over your head. If you respond to what all these  
23 people are telling me and continue to respond the way they have  
24 been saying you have, you need not worry. If you get involved  
25 with liquor again, if you so much as sneeze on your wife, you  
26 are going to be in a lot of difficulty, Mr. Hikoalok. You'll  
27 have to wait and sign the probation order, and then you will

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be free to go.

MS. ERICKSON: Thank you, sir.

(AT WHICH TIME THIS MATTER WAS CONCLUDED.)

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Certified a correct transcript

(Edna Thiessen)

Edna Thiessen, Court Reporter