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IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

VS

PITSEOLAK MITSIMA



Transcript of the Oral Sentencing Delivered by
Honour Judge T. B. Davis, sitting at Frobisher Bay in
the Northwest Territories, on Wednesday, September 24th,
A.D., 1986.

APPEARANCES:

MS. N. BOILLAT: Counsel for the Crown
MR. N. SHARKEY: Counsel for the Defence



ADJUDICATION & DISPOSITION

INFORMATION (ON BEHALF OF HER MAJESTY THE QUEEN)

CHARGE READ: 4 Apr 86 DATE, P.B.S. JUDGE OR JUSTICE

COURT NUMBER 122323

CROWN ELECTION: Summary Conviction: [X] Indictment: [] ACCUSED ELECTION: Magistrate: [X] Judge & Jury: [] Judge: [] DATE: 1986 JUDGE OR JUSTICE: T.B. Davis

J.P. or Judge's Number: 635160, 122161, 870163 THIS IS THE INFORMATION OF KENNETH WILLIAMS DALEY (Insert full name, residence and occupation of informant) a member of the Royal Canadian Mounted Police

PLEA: Guilty: [X] Not Guilty: [] DATE: apr 11, 1986 JUDGE OR JUSTICE: T.B. Davis

of Town of Frobisher Bay, Northwest Territories a peace officer HEREINAFTER CALLED THE INFORMANT THE INFORMANT SAYS THAT he has reasonable and probable grounds to believe and does believe that

FAILURE TO APPEAR: T.B. DAVIS, JUDGE Bench Warrant Issued: [] DATE: JUDGE OR JUSTICE:

Pitsiulaq MITSIMA Count 1.

EVERY TIME THIS INFORMATION IS DEALT WITH APPROPRIATE ENTRIES SHALL BE MADE ON THE REVERSE

DISPOSITION Convicted: [X] Dismissed: [] Withdrawn: [] FINE: J.P. COSTS: POLICE COSTS: RESTITUTION: TOTAL: DEFAULT: TIME TO PAY: SUSPENDED SENTENCE: [] CONDITIONAL DISCH: [] ABSOLUTE DISCH: [] PROBATION FOR: #21M Caucur IMPRISONMENT FOR: #6/12M Caucur DATE: SEP 24 1986 JUDGE OR JUSTICE: T.B. Davis

On or about the 4th day of April, 1986, at or near the Town of Frobisher Bay in the Northwest Territories did break and enter a certain place, namely dwelling house 551, situate at Frobisher Bay in the Northwest Territories and did commit therein the indictable offence of theft contrary to section 306(1)(b) of the criminal code.

Count 2. On or about the 4th day of April, 1986, at or near the Town of Frobisher Bay in the Northwest Territories, while at large on an undertaking entered before Justice of the Peace Jim TAYLOR at Frobisher Bay in the Northwest Territories on the 17th day of December, 1985, and being bound to comply with the condition of that undertaking, did fail without lawful excuse to comply with that condition, namely, keep the peace and be of good behaviour, contrary to section 133(3) of the criminal code.

CARD O/S [] T.T.P. [] D.B.S. [] J.P. [] M.V.B. []

STATISTICS DATE OF BIRTH: 67/1/20 M [X] F [] DRIVER'S LICENCE: MARITAL STATUS: single

Sworn before me this 4th day of April A.D. 1986 at Frobisher Bay, N.W.T. P.B.S. JUDGE OR JUSTICE:

Signature of Informant: K. Daley

A Judge or Justice of the Peace in and for the Northwest Territories Appearance Notice [] Promise to Appear [] Recognizance [] confirmed 19 Justice of the Peace



INFORMATION
(ON BEHALF OF HER MAJESTY THE QUEEN)

ADJUDICATION
& DISPOSITION

COURT NUMBER

CHARGE READ:
A.M. ADUT 19 1986
DATE JUDGE OR JUSTICE

122324

CROWN ELECTION:
Summary Conviction: Indictment:

J.P. or Judge's Number 9126/B 13476/D

ACCUSED ELECTION:
Magistrate: Judge & Jury: Judge:

THIS IS THE INFORMATION OF Kenneth William DALEY
(Insert full name, residence and occupation of informant)

A Member of the Royal Canadian Mounted Police

A.M. ADUT 19 1986
DATE JUDGE OR JUSTICE

OF the Town of Frobisher Bay in the Northwest Territories,

PLEA: Guilty: Not Guilty:

a Peace Officer HEREINAFTER CALLED THE INFORMANT

A.M. ADUT 19 1986
DATE JUDGE OR JUSTICE

THE INFORMANT SAYS THAT he has reasonable and probable grounds to believe and does believe that

FAILURE TO APPEAR:
Bench Warrant Issued:

Pitseolak MITSIMA

DATE JUDGE OR JUSTICE

Between the first day of December, A.D., 1985 and the sixteenth day of December, A.D., 1985, at or near the Town of Frobisher Bay in the Northwest Territories, did commit a sexual assault on Nala ALAINGA, contrary to Section 246.1 of the Criminal Code.

EVERY TIME THIS INFORMATION IS DEALT WITH APPROPRIATE ENTRIES SHALL BE MADE ON THE REVERSE

DISPOSITION
Convicted: Dismissed: Withdrawn:

CARD
O/S
T.T.P.
D.B.S.
J.P.
M.V.B.

FINE: _____

J.P. COSTS: _____

POLICE COSTS: _____

RESTITUTION: _____

TOTAL: _____

DEFAULT: _____

TIME TO PAY: _____

SUSPENDED SENTENCE:

CONDITIONAL DISCH: ABSOLUTE DISCH:

PROBATION FOR: 2 years

IMPRISONMENT FOR: 6 months

SEP 21 1986
DATE JUDGE OR JUSTICE

STATISTICS
DATE OF BIRTH: 67-JAN-20 M F

DRIVER'S LICENCE: _____

MARITAL STATUS: _____

Sworn before me this 19 day of August

A.D. 19 86
at Frobisher Bay, Northwest Territories

Signature of Informant *K. Daley*

A Judge or Justice of the Peace in and for the Northwest Territories

Appearance Notice Promise to Appear Recognizance

_____, 19____ confirmed Justice of the Peace



ADJUDICATION & DISPOSITION

INFORMATION (ON BEHALF OF HER MAJESTY THE QUEEN)

COURT NUMBER

CHARGE READ:

17 DEC 85
DATE

JUDGE OR JUSTICE

122525

CROWN ELECTION:

Summary Conviction: Indictment:

J.P. or Judge's Number

250/6/D 1216/R 869dB

ACCUSED ELECTION:

Magistrate: Judge & Jury: Judge:

THIS IS THE INFORMATION OF Eric Russel STREETER
(Insert full name, residence and occupation of informant)

A Member of the Royal Canadian Mounted Police

OF the Town of Frobisher Bay in the Northwest Territories,

a Peace Officer HEREINAFTER CALLED THE INFORMANT

DATE

JUDGE OR JUSTICE

PLEA:

Guilty:

Not Guilty:

19 1986
DATE

JUDGE OR JUSTICE

THE INFORMANT SAYS THAT he has reasonable and probable
(If the informant has not personal knowledge, state that he has reasonable and probable grounds to believe and does believe and state the offence)
grounds to believe and does believe that

FAILURE TO APPEAR:

Bench Warrant Issued:

Pitseolak MITSIMA

EVERY TIME THIS INFORMATION IS DEALT WITH APPROPRIATE ENTRIES SHALL BE MADE ON THE REVERSE

Between the first day of December, A.D., 1985 and the sixteenth day of December, A.D., 1985, at or near the Town of Frobisher Bay in the Northwest Territories, did, while bound by a probation order made by Judge J.R. SLAVEN, on the sixteenth day of July, A.D., 1985, wilfully fail to comply with such order, to wit: keep the peace and be of good behaviour, contrary to Section 666(1) of the Criminal Code.

DISPOSITION

Convicted: Dismissed: Withdrawn:

FINE: _____

J.P. COSTS: _____

POLICE COSTS: _____

RESTITUTION: _____

TOTAL: _____

DEFAULT: _____

TIME TO PAY: _____

SUSPENDED SENTENCE:

CONDITIONAL DISCH: ABSOLUTE DISCH:

PROBATION FOR: _____

IMPRISONMENT FOR: 2 Weeks Concurrent

Sept 24 1986 J.R. Slaven

DATE JUDGE OR JUSTICE

CARD

O/S

T.T.P.

D.B.S.

J.P.

M.V.B.

STATISTICS

DATE OF BIRTH: 67-JAN-20 M F

DRIVER'S LICENCE: _____

MARITAL STATUS: _____

Sworn before me this 17th day of December

A.D. 19 85

at Frobisher Bay, Northwest Territories

A Judge or Justice of the Peace in and for the Northwest Territories

Signature of Informant

Eric Street

Appearance Notice

Promise to Appear

Recognizance

confirmed

19

Justice of the Peace

1 THE COURT: Pitseolak Mitsima is a 19 year old
2 resident of Frobisher Bay in the Northwest Territories.
3 He comes before the court for sentencing on four charges.
4 He admits that some time in the early part of December,
5 1985, he lay on top of a three year old female child and
6 partially removed her pants and ejaculated. The child
7 later reported the incident to a probation officer and
8 said that she had some pain near her vagina. There was
9 no penetration, however, and after the accused had ejaculated,
10 he left the child and went to his own bedroom in the same
11 house where he and the child lived. At the time
12 of the offence he was on probation, and he admits that
13 in addition to that sexual assault he violated a probation
14 order.

15 He is also charged and is convicted tonight of breaking
16 and entering a residence at Frobisher Bay on the 4th of
17 April, 1986, when on that occasion he was found to be in
18 the property along with others, and they had gathered up
19 some jewelry and trinkets. The co-accused in that same
20 offence, with a substantial criminal record, although still
21 very young in age, was sentenced to four months in jail
22 for a similar offence. At the time of the break and enter,
23 he admits that he was on an undertaking, and therefore,
24 violated the undertaking by committing the break and enter.

25 Crown counsel has properly pointed out to the court
26 that the appeal courts, and courts in general, have indicated
27 that they must protect the public by being severe in the

1 penalties imposed for sexual assaults, and that young
2 children must be protected by ensuring that generally the
3 courts impose a sentence that is considered as a deterrent
4 to others, so that they will not commit the same offence.

5 In this instance the child was very young, and it
6 appears that although there was ejaculation that had occurred,
7 I can classify it still as a minor sexual assault because
8 there was no penetration and no injury, and really not
9 much violence, although there certainly was an intrusion
10 with force on another person.

11 The Crown has properly pointed out that the public
12 expects the courts to be very concerned and serious in
13 the determination of what is appropriate in sentencing
14 for this type of offence, especially when a child is defence-
15 less and is in a relationship physically at least by living
16 in the same house as an adult who breaks the law.

17 A similar offence occurred in Lake Harbour for which
18 Mr. Michael, who was also a young man, had assaulted an
19 infant child and recieved six months in jail, and because
20 he had some psychological problems and was to take counselling
21 as part of the penalty imposed, the Appeal Court did not
22 overrule the six month jail term that was imposed at that
23 time. I am of the opinion that the six months imposed,
24 which was not changed by the Appeal Court, still would be
25 probably the minimum that the court could consider on this
26 type of offence.

27 In this instance, however, I do feel that it was

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of a minor nature and one deserving of a sentence not to any extent in excess of what Mr. Michael received when he appeared before this court on April the 11th, 1986. So on the sexual assault charge in this instance, I am prepared to give Pitseolak the benefit of being in similar circumstances to the other person, and only impose six months in jail for this offence, recognizing by doing so, however, that it must be a minimum that the court could consider. Pitseolak, are you hearing me?

THE ACCUSED: Mm'hmm.

THE COURT: Alright. Have you heard what I have been saying?

THE ACCUSED: Yes.

THE COURT: Alright. In imposing the minimum sentence, I am also taking into account the fact that Pitseolak has not had any effective socialization and is a person who over the years has been bandied about from home to home, and really does not much more than wander throughout the community on his own.

I think, therefore, that because the presentence report by the probation officer indicates that Pitseolak might be a good candidate for probation, it would seem appropriate that on this charge Pitseolak also be placed on probation for a period of two years. He will be required to report to the probation officer when and as directed. Since there are no similar offences in the past, I am not going to require any specific type of counselling. I will presume

1 that the probation officer can take care of that matter.

2 With regard to the break and enter offence, I notice
3 that Pitseolak had two break and enter offences in the
4 past, one in 1984 and one in 1985. On both he received
5 periods of probation, and on one was required to do
6 community service work. Unfortunately, Pitseolak did not
7 really learn from that that he must refrain from participating
8 in that offence, and I feel it is proper that a short term
9 in jail can be imposed this time so as to emphasize to
10 not only Pitseolak but others that if they repeat in break
11 and enters they probably will end up in jail. On that
12 I am going to therefore impose one month in jail to run
13 consecutively.

14 On the violation of the undertaking that was in effect
15 at the time, I am going to impose one month in jail, but
16 I am going to allow that to be served concurrently. Do
17 you understand what concurrently means, Pitseolak? You
18 will be in jail, but it is not additional time. It is
19 being served at the same time, but it will be on your record
20 that you are in jail for violating the undertaking, and
21 if you were to do it in the future, if you were to break
22 any laws in the future, you will probably be expected to
23 go to jail for a long time.

24 On the charge under Section 666 which related to the
25 1st of Decenber and was a violation of a probation order,
26 I am going to impose also two weeks in jail, and I will
27 allow that also to be served concurrently. Is there anything

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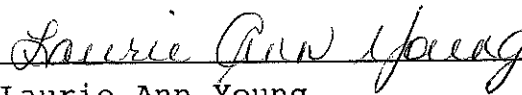
else in the probation order that might be appropriate for the court to consider since we have all had an opportunity to read the presentence report? If there is something that you know should be included, I will hear from counsel. If not, it will just remain as it is.

MS. BOILLAT: Sir, I have no submissions.

THE COURT: Thank you.

(AT WHICH TIME THESE PROCEEDINGS WERE CONCLUDED.)

Certified a correct transcript,


Laurie Ann Young
Court Reporter