

TC 00233
TC CR 86 045

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

HER MAJESTY THE QUEEN

VS

P.A.

Transcript of the Oral Sentencing delivered by
His Honour Judge T.B. Davis, sitting at Frobisher
Bay in the Northwest Territories on February 19,
1986.

APPEARANCES:

T. Humphries, Esq.,	Counsel for the Crown
N. Sharkey, Esq.,	Counsel for the Defence
Sandra Haslett,	Court Reporter

1 JUDGE DAVIS: P.A. was an 18-year-old resident of
2 Frobisher Bay and admits that at 2:00 in the afternoon July
3 17th, 1985 he was in a residence where he went to the bedroom
4 of a 12-year-old girl, and while others were sleeping in the
5 residence he, with the use of force, took off her pants and
6 panties, and while she was struggling and crying and trying
7 to resist he sexually assaulted her by ejaculating on her
8 abdomen and in addition thereto actually tried to have sex
9 with her, but it appears that there was no penetration
10 completed. By using this force in the circumstances he
11 violated Section 246.1 of the Criminal Code.

12 P. comes before the Court with a number of convictions
13 in 1984 and '85 but none of them are of a similar nature
14 in that they were not assault offences or sexual offences,
15 and, therefore, I feel that it is possible for the Court
16 to deal with this matter and have little regard to the other
17 offences on his record because this is a different form of
18 activity altogether. The property offences that he
19 was involved with in the past I still have to note however;
20 he has been involved with the Courts process and certainly
21 knows he can be penalized if he breaks the law.

22 P. now finds himself to be under the Young Offenders
23 Act and the Youth Court because at the time of the offence
24 he was under 18 years of age. The major factors must be
25 that of individual deterrence and the rehabilitation of the
26 accused taking into account the responsibility for any young
27 person to take responsibility for their own offences, which

1 in the end is intended that that should protect society by
2 having young people acknowledge the responsibility but at
3 the same time attempt to do what is best for them for their
4 rehabilitation into society.

5 There was no physical injury, as pointed out by counsel,
6 and although there may be possible psychological
7 repercussions or some psychological damage to this young
8 girl, the Court is not allowed to put a substantial emphasis
9 on that possibility unless there is some evidence adduced
10 before the Court.

11 Counsel has suggested that a combination of secure and
12 open custody might be appropriate for the Court to consider
13 in the sentencing of Mr. A., and has suggested because of the
14 seriousness of the offence that a secure custody of up to
15 eight months and open custody following that within the
16 vicinity of one year might be appropriate. Defence
17 counsel has pointed out that although a combination of forms
18 of custody might be appropriate, that it would not be
19 necessary to impose such a long term on the accused in order
20 to accomplish the end of justice, especially considering the
21 possibility that the balance or some of the balance of the
22 term might be served in an adult facility because Mr. A.
23 is presently serving a period of time in gaol.

24 Section 24 Subsection 15 of the Young Offenders Act
25 indicates that where a person is committed to custody and
26 is currently under sentence of imprisonment imposed in an
27 adult court, that the person may serve his disposition for

1 the new sentence or of any portion thereof in a provincial
2 facility, which means an ordinary provincial gaol which is
3 available for adults, or may serve it in a place of custody
4 for young persons.

5 I interpret that to mean that only during the time that
6 there is concurrent serving of the two gaol terms, that is
7 the two terms, that is the adult gaol sentence and the Youth
8 Court disposition for custody, would it be that he would
9 serve in either facility, and immediately upon the completion
10 of the adult term it would no longer be concurrently being
11 served. Therefore, I expect the disposition under the
12 Youth Court would then require that he be put in a place of
13 custody for young persons. There is, however, the further
14 complication that under Section 24 Subsection 14 the
15 Director may apply to a Court for the serving of sentence
16 in the adult facility.

17 I, therefore, must seriously consider the suggestion
18 by Defence counsel that a shorter time period might be more
19 appropriate than that being recommended because of the
20 possible consequences that might arise, and that would be
21 the possibility that P. would have to serve his time in
22 adult facility and, therefore, miss the benefits of an open
23 custody arrangement which is available under the Youth Court
24 or under the Young Offenders Act.

25 On a case heard by Mr. Justice DeWeerd in the Supreme
26 Court of the Northwest Territories, 1982, Noocasey (phonetics)
27 Ekidlek appeared before the Court on an indecent assault



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1 charge on a 13-year-old girl at Sanakilwaq by touching
2 her genitals and almost having intercourse but in fact not
3 having penetration. That particular case registers as
4 number Supreme Court 24477. The accused was placed in gaol
5 for a period of six months and it was recommended that
6 counselling be available to him.

7 He also was charged with a second offence where there
8 was no violence used on a different girl and was given a
9 15-month gaol term to run consecutively for the second
10 offence of a similar nature. The Alberta Court of Appeal
11 heard a case Queen Vs. Beere in 1982. It is reported in
12 3 Canadian Criminal Cases 3rd Edition at Page 304. A 7-year-
13 old girl, being a daughter of a commonlaw wife of the accused,
14 the accused had sexually assaulted the young girl but
15 stopped before ejaculating when he realized what he was
16 doing. The child appears not to have been penetrated, and
17 the act appears to have been out of character for this
18 person.

19 The Court considered that it was a serious enough
20 matter that he was given one year in gaol just to show that
21 society had been so strongly opposed to this type of
22 activity.

23 Justice Tallis of the Supreme Court of the Northwest
24 Territories in 1979 on Supreme Court Number 1787 case of
25 the Queen Vs. Aselamio had found that a 41-year-old uncle
26 of a niece, who was also a young adult, had come to
27 Aklavik from the bush and had tried to force her to allow

1 him to fondle her, put his hand in her pants and to put her
2 hand on his penis. He tried to pull her into bed and tried
3 to take off her pants and did force her to fondle him.

4 He had no record, but liquor had been involved in that
5 incidence, and the Court took into account the native custom
6 of living on the land and coming in from the land, and it
7 seemed to have had some effect on this man's attitude. But
8 at the time the Court felt that it was suitable to impose a
9 \$200 fine, and because of this man's lack of knowledge of
10 the circumstances of society as required at the time he
11 was also placed on two years probation and directed to keep
12 the peace and be of good behavior.

13 I refer to those two cases because I do feel that there
14 has been a wide variance in the decisions and judgments of
15 the Courts on various matters and that I can probably
16 consider a lesser sentence on the accused as requested by
17 Defence counsel than has been recommended by Crown counsel
18 because it is the first offence of this nature, although
19 I realize it is serious for any person to sexually assault
20 a young girl. I feel that I can deal with it taking into
21 account more substantially his rehabilitation and the
22 benefits of counselling while he is in the young offenders
23 facility and in custody under the Young Offenders Act than
24 might be available if he were in gaol as an adult.

25 On that basis, therefore, I do feel that the offence
26 is extremely serious, and I am going to impose a period of
27 two months in closed or secure custody to be followed by a



1 period of 12 months in open custody which will, therefore,
 2 run consecutively to the two-month secured term. My
 3 expectation is that upon the expiry of the adult term that
 4 Mr. A. is serving that he then would be transferred to Youth
 5 Court facilities or facilities as directed under the Young
 6 Offenders Act to serve the balance of the term or to serve
 7 the term that we are imposing here today.

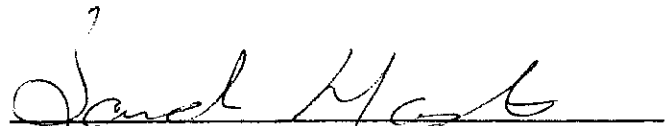
8 MR. HUMPHRIES: Do I understand he will be admitted
 9 to an adult facility in the first instance?

10 JUDGE DAVIS: Yes. I think he is serving at the
 11 present time in an adult institution and will remain there
 12 until that term is served. I don't know the Youth Court
 13 has any control over the balance of that term whatsoever.

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15 I, Sandra Haslett, C.S.R. (A), Court Reporter, hereby
 16 certify that I attended the above Sentencing and took faithful
 17 and accurate shorthand notes and the foregoing is a true and
 18 accurate transcript of my shorthand notes to the best of my skill
 19 and ability.

20 Dated at the City of Calgary, in the Province of Alberta,
 21 this 3rd day of March, A.D. 1986.

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 23 

24 Sandra Haslett, C.S.R., (A).
 25 Court Reporter

26 SH/sms
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