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IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

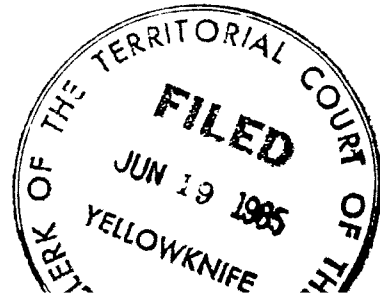
- and -

JONAH APAK

Transcript of the Oral Reasons for Judgment delivered by His Honour Judge R. M. Bourassa, sitting at Clyde River, in the Northwest Territories, on Friday, March 29, A.D. 1985.

APPEARANCES:

MR. J. SUTTON	On behalf of the Crown
MR. J. BOVARD	On behalf of the Defence



1 THE COURT: Jonah Apak is convicted of an offence of sexual
2 assault. It's not as though the circumstances of this
3 offence are totally novel, this court has run into them in
4 the past on a few occasions. In this particular instance,
5 it appears that the accused made up his mind to make a 'pass'
6 as another man's wife, because that man had been apparently
7 making advances to his wife, consisting of flirtation or
8 verbal persuasion. In any event, Jonah Apak decided to
9 go beyond that, perhaps so that the other man would know
10 what it was like to have someone chasing his wife. He went
11 to this woman's house, believing that her husband was out on
12 the land, went into her bedroom, fondled her breasts, at
13 which point she woke up, the children woke up, and the
14 assault was discontinued. It was enough to upset the woman,
15 who didn't want to have him in her bedroom, certainly. It
16 was enough to upset a couple of young children present.

17 Jonah Apak had apparently just been released from
18 jail at the time this offence was committed, and I believe
19 this was as well an occasion when he was drinking. Am I
20 correct there, counsel?

21 MR. SUTTON: Yes, sir.

22 MR. BOVARD: Yes, Your Honour.

23 THE COURT: The accused has been before the courts on many
24 occasions since 1977. He has been convicted of seventeen
25 criminal offences; most of them would appear to be alcohol
26 related. Many of them are for breach of probation. He has
27 served jail sentences for impaired driving, he has served

1 jail sentences for willful damage, jail sentences for breach
2 of probation, and a short term, lastly, in April of 1984 for
3 break, enter and theft. The accused, through his counsel,
4 indicates he has a problem with alcohol and that it was
5 involved in this particular instance.

6 This case, as pointed out by counsel, is close to
7 sixteen months old; that is to say, sixteen months from the
8 date of the offence. That is a long time. The accused has
9 apparently stayed out of trouble for that period, and it
10 would seem as though the sixteen months without getting into
11 further trouble--and again, I ask counsel if I'm correct in
12 assuming the April 1984 offences were committed before this
13 offence that I'm dealing with?

14 MR. BOVARD: The break and enter was committed on the same day,
15 Your Honour, and the assault was committed on November 7th,
16 four days before.

17 THE COURT: So, in fact, since the date of this offence in
18 November of 1983, he hasn't committed any other offences,
19 and that's about the longest stretch he's gone without
20 committing an offence.

21 The accused is married, his wife lives in
22 Frobisher Bay; and he, along with his mother, are respons-
23 ible for the caring of two small children, one of which is
24 handicapped. Apparently, the mother is aged and has some
25 difficulty caring for the children for a long period of time
26 or 'gets tired', I think were the words that were used. The
27 accused is employed in the community. He has recently been

1 promoted from an assistant to the one in charge of garbage
2 operations. He earns a good income of thirty thousand
3 dollars a year.

4 Crown is asking for a jail sentence by way of
5 deterrence.

6 I am going to address the problem of deterrence,
7 or at least, intermittent sentencing. I think an intermit-
8 tent sentence would be proper in all the circumstances. I
9 think a jail sentence is proper; and having regard to this
10 particular offender and his position here, I think an inter-
11 mittent sentence would be proper. The detachment in Clyde
12 River is a small one. While I haven't personally visited
13 the jail, I believe--having simply walked by it and looking
14 at it--it to be a small room. I am advised there is no
15 running water.

16 In some communities, from time to time intermit-
17 tent sentences are imposed, local guards are hired; but it's
18 always a problem to get local guards. In many instances, it
19 means the R.C.M.P. member and his wife are virtually the
20 prisoners, because they have to stay there to guard and feed
21 the prisoner. On the other hand, there is provision in the
22 Criminal Code for the imposition of intermittent sentences
23 when the justice exercises his discretion and the prerequi-
24 sites are complied with, if it's in the interest of the
25 community and in the interest of the accused. That's a
26 right that's available to everyone across Canada, and that
27 means from Grise Fjord to Toronto and Vancouver and Halifax.

1 It doesn't just mean the southern jurisdictions. There is
2 going to be an obligation on the executive to provide the
3 facilities for intermittent sentences.

4 So, what did I do, impose an intermittent sentence
5 without regard to the consequences, or at least impose a
6 sentence that reflects the reality of the situation? I
7 think very shortly the court is simply going to have to
8 impose intermittent sentences where proper, and the execu-
9 tive is just going to have to do something so that it's not
10 an impossible situation for the police that it does become
11 in many instances. Especially on April 17th, I think it is,
12 when Section 15 will be proclaimed, this man is not receiv-
13 ing the full benefit of the law. He is not receiving it,
14 not because of race, colour, creed, he's not receiving it
15 because he is in Clyde River, and that's not right.

16 I agree with Crown Counsel that it's a serious
17 offence. I agree with Crown Counsel that it has to be de-
18 terred. This man is not entitled to any great leniency--he
19 has shown a great inability in the past to control his
20 drinking; although, I give credit to him for at least the
21 last sixteen months he's stayed out of trouble. I presume
22 he's not been drinking--and a jail sentence is proper. I
23 would think that a jail sentence of a few months would be
24 proper. I'm advised that that may very well cause severe
25 difficulties. I have no reason to challenge or disbelieve
26 or view with cynicism that representation. If Crown Counsel
27 wanted to contest that contention, I would certainly hear

1 from him. He may lose his job, he may lose his house because
2 he won't be occupying it, and his wife is not there, and
3 it's going to place a very great burden on the accused's
4 mother.

5 The presentence report speaks highly of this in-
6 dividual. I think a jail sentence out of the community
7 would have too great an impact, too disasterous an impact,
8 and out of proportion to the offence.

9 Mr. Bovard, what is your client's hours of work?
10 Is it a five day week job, or three day, mornings, after-
11 noons?

12 MR. BOVARD: May I have your indulgence? Your Honour, he alter-
13 nates between eight to five and eight to four every other
14 week, and also every other week he works on Saturdays from
15 eight to five.

16 THE COURT: Is there an assistant to take his position?

17 MR. BOVARD: Yes.

18 THE COURT: Well, I'm really unhappy about what is going to
19 happen here, and I'm unhappy because I am constrained in
20 that I cannot order, for practical purposes, the sentence I
21 want to order. I may be in error here. I should perhaps do
22 as has been done in Ontario and simply make the order and
23 let things fall as they may. I have reservations about
24 doing that, because I've seen what has happened in the past.
25 The superintendent of corrections in Yellowknife will desig-
26 nate the local R.C.M.P. member as a 'warden', and thereby
27 authorize the locally designated warden to release an

1 accused on some form of early release. So, in fact, an
2 intermittent sentence becomes no sentence at all, because
3 the member will release him every weekend, if that's when
4 the intermittent sentence is to be served. In Frobisher Bay,
5 this court had just that experience where, for other reasons,
6 intermittent sentencers were signed in Friday night and re-
7 leased the same night; and again, the sentence amounted to
8 nothing. In my view, that makes a mockery of the whole
9 system; people are sentenced to jail, and they don't go to
10 jail. I don't want to take part in that.

11 On the other hand, I have to recognize the real-
12 ities that exist here. I'm not going to make an order and
13 not be concerned with the results; but I want to make it
14 very clear that I think that day is fast coming to a close
15 and the executive are going to have to make their peace with
16 the R.C.M. police and are going to have to do something so
17 that a man is not in a situation such as Jonah Apak, who is
18 being denied the equal benefit of the law simply because he
19 lives in one community.

20 The net result of taking all that into account and
21 taking the position I am into account, the sentence may end
22 up looking inadequate, and I acknowledge that; and it may
23 very well be that I'm making an error in doing what I'm
24 doing in terms of sentence. If that is the case, then I am
25 sure counsel will see that I am corrected.

26 Jonah Apak, stand up, please. You have lived too
27 long, you've got too much history behind you not to make the

1 connection between drinking and trouble. It seems to me I
2 had you in my court once before, and I said the same thing
3 to you. If you can't control your drinking, then no lawyer
4 and no court is going to be able to protect you from the
5 consequences of what you do; and if your children suffer and
6 your mother suffers and your wife suffers, they're just
7 going to have to suffer, because of what you do. You might
8 think of that the next time you sit down with a bottle.

9 Do counsel have any problem in terms of the legal-
10 ity of an intermittent sentence coupled with a fine?

11 MR. BOVARD: No, Your Honour.

12 MR. SUTTON: No, sir.

13 THE COURT: On this matter, I'm going to impose a fine of a
14 thousand dollars. In addition to that, I'm going to sent-
15 ence you to jail for a period of twenty-five days. I'm
16 going to direct that that jail sentence be served intermit-
17 tently. I'm going to direct that you report to the R.C.M.P.
18 detachment here in Clyde River on Saturday, the thirtieth of
19 March, 1985, at 9:00 a.m., to serve your sentence from 9:00
20 a.m. until 5:00 p.m. each and every Saturday until your
21 sentence is served in full. I point out to you that while
22 you are released--that is to say, in the week days between
23 each Saturday--you will be subject to a probation order.
24 That probation order will be to keep the peace and be of
25 good behaviour. I needn't put anything else in there. I
26 was thinking of putting in not to consume alcoholic bever-
27 ages, but if you do that, everything that's being done is

going to fall apart, I'm sure you're aware of that.

I want to point out to counsel, and for purposes of the record, that twenty-five days is going to be twenty-five weeks, that's almost half a year. As I said, the net result looks very unsatisfactory. I can't see this man reporting in and out to the R.C.M.P. for a fifty day or sixty day jail sentence. I have avoided imposing a jail sentence which will go over the night, simply because of what the situation is here and the facilities that aren't available and the burden that that may cause the member here in the community. Again, I believe I have to acknowledge what the situation is on the street.

Do you require time to pay the fine?

MR. BOVARD: Perhaps three months, Your Honour.

THE COURT: All right, three months to pay the fine.

Before we leave this matter, Mr. Sutton, is there any great problem, any other consideration I should be aware of with respect to the serving of the intermittent sentence that would make it impossible?

MR. SUTTON: No, sir.

THE COURT: All right, that is my order.

THE CLERK: Sir, I've missed the default time in default of payment.

THE COURT: I'm sorry, in default of payment, ninety days in jail.

THE CLERK: Thank you, sir.

MR. BOVARD: Thank you, Your Honour.