

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

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IN THE MATTER OF:

HER MAJESTY THE QUEEN

- and -

W A. A.

Transcript of the oral sentencing delivered by His Honour Judge T.B. Davis, sitting at Coral Harbour, in the Northwest Territories, Thursday, June 27th, A.D. 1985.

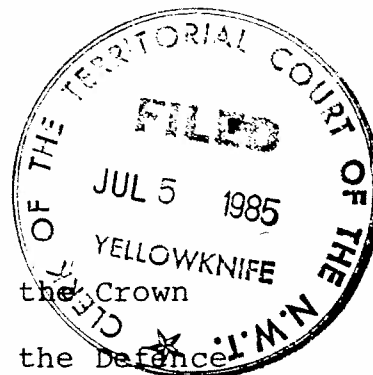
APPEARANCES:

MR. M. BLANCHFLOWER

Counsel for the Crown

MS. L. ERICKSON

Counsel for the Defence



1 THE COURT: W. A. A admits that between the 15th
2 day of December, 1984 and the 28th day of February, 1985, at
3 Coral Harbour, in the Northwest Territories, he committed
4 sexual assault on E. A., his step-daughter, and therefore
5 violated Section 246.1 of the Criminal Code.

6 The accused admits that sometime in December,
7 again in January and again in February of 1985, December being
8 of 1984, of course, he had been drinking and was alone with
9 his fifteen year old step-daughter when he asked her if she
10 would participate in sexual activities with him, at all times
11 in his residence. The first time she took off her panties.
12 There was no force used, and the accused did not believe he
13 used any threats. The second time he pulled off her pants,
14 and she did resist and pushed him away. And the third time
15 she again resisted by trying to push him away after he had
16 had relations.

17 MS. ERICKSON: Sir, with respect, I believe the resistance only
18 occurred on that last time.

19 MR. BLANCHFLOWER: For the pushing away.

20 THE COURT: I'm sorry. Yes, the pushing away had only
21 occurred on the third occasion. The second occasion she had
22 indicated that she wanted him to stop.

23 The accused has been somewhat hesitant to discuss
24 the matter with anybody, other than the social worker and the
25 Police, to whom he gave a statement, and therefore is, I
26 presume, a rather quiet person about his own attitudes and
27 beliefs. However, he did today in public at this Court apologize

1 for having committed these offences, both to the public and
2 to his family, and I take his apologies to be sincere and
3 note that that would indicate to me that there is remorse
4 shown by the accused.

5 Counsel has pointed out that the acts all occurred
6 when the accused had been drinking and that he recognizes that
7 it is wrong to assault any other person. The accused comes
8 before the Court as a person who has a very active background
9 of good employment and has has a high level of income for a
10 period of years, which he used to support his family. He is
11 well thought of within the community, being the Chairman of
12 the local Co-op, a Justice of the Peace and a Coroner in the
13 community and has had until recently had a job as manager of
14 the Housing Association, from which he was released from his job
15 for other reasons.

16 Because of his hesitancy in discussing the
17 matters, the pre-sentence report indicates that Mr. A
18 may not be a very suitable person to be placed on probation
19 and to be directed to take counselling. But he has expressed
20 through counsel that he is interested in taking counselling
21 and that he would be interested, therefore, in being placed
22 on probation. The report also indicates that Mr. A is
23 probably feeling some guilt and that he recognizes the
24 seriousness of the matter and is concerned about his appearance
25 in Court today and the penalties that could be imposed.

26 It is very natural that Mr. A would be
27 concerned about the penalty to be imposed, because sentencing

1 for sexual assaults are some of the most difficult cases that the
2 Court must consider. The sentences range from a suspended
3 sentence in special circumstances, as we dealt with this morning
4 in Coral Harbour, to a number of years in jail.

5 The Nova Scotia Court of Appeal recently confirmed
6 a sever year jail term for a sexual assault. The Territorial Court
7 in the Northwest Territories within the last two months had
8 sentenced one man to nine months in jail on one sexual assault on
9 a person in his care as a parent, because it was a step-daughter,
10 and nine further months for a second similar offence that occurred
11 within a relatively short period of time, and then one further
12 period of jail for one year on a similar offence on the same
13 thirteen year old step-daughter when the matter came before the
14 Court in Hay River. This case has now been upheld by the N.W.T. Appeal Court.

15 Other cases that have been referred to me by
16 counsel today have shown that the Appeal Court in Alberta
17 indicates that ordinarily sexual assaults and incest offences
18 require a period of time in jail so as to express the community
19 and society's abhorrence for these matters and to denounce the
20 acts. The Court also has suggested that in addition to a
21 jail term there should be some consideration for the rehabili-
22 tation of the accused so as to avoid offences in the
23 future. Many of the other cases that have been decided
24 by the Appeal Court in Alberta and by trial Courts in Alberta
25 and the Northwest Territories have referred to the Alberta
26 Court of Appeal decision and recognize that the policy being
27 expressed therein of a jail term plus some rehabilitative

1 sentence is an appropriate thing in most instances.

2 In the case of The Queen v. Richardson,
3 reported in 6 Nova Scotia Reports, the Nova Scotia Court of
4 Appeal imposed a three-year jail sentence on a father who
5 had relations with his daughter and followed the principles
6 as set out in sentencing in the Morrisette case of 1971.
7 The Manitoba Court of Appeal in 1979 in The Queen v. Savage
8 indicated that a forty-five year old widower who had regular
9 sex with his two daughters for a three-year period when they
10 were between twelve and fifteen years of age should be
11 imprisoned for a three year period. In March of 1985, the
12 case that I referred to by the Nova Scotia Court of Appeal
13 was The Queen v. Gagoler. The father and also an uncle of
14 two young girls, who were victims, with no criminal record
15 but was of borderline intelligence was placed in jail for
16 five years on those offences. In Frobisher Bay recently under
17 Supreme Court 2660 in the Northwest Territories Supreme Court
18 in The Queen v. Wally Shoviga Mr. Justice Boilard imposed
19 eighteen months in jail for a sexual assault.

20 Courts have also gone in a much more lenient
21 way on special circumstances, as I have expressed, because
22 Mr. Justice Marshall, after hearing substantial evidence in
23 the case where a thirty-five year old man sexually assaulted
24 his sixteen year old step-daughter while he was intoxicated
25 by pulling her legs apart and putting his hand on her vagina
26 and who was appearing before the Court because he had one
27 previous assault charge on the same daughter and a number of

1 other liquor offences, gave him only three months in jail and
2 two year's probation, because members of the Native community
3 in which he lived indicated that they wanted to help the
4 accused. The Snare Lake community seemed to be substantially
5 in support of his rehabilitation.

6 The Appeal Court in Alberta recently in Appeal
7 Court D-7510-03, November of 1983, had allowed a ninety day
8 jail term to be served intermittently when a father of a
9 young person had felt her breasts and pubic area over a four
10 year period before she left home at the age of sixteen. They
11 felt that a denunciatory sentence was appropriate even though
12 he was the breadwinner in the family, although they kept the
13 sentence to a minimum on that occasion because they felt that
14 it was unnecessary to cause any further family disruption.

15 Therefore, the range of cases that have been
16 decided is such that I must resort to the general principles
17 of sentencing, which include as the major factor the protection
18 of the public, and that includes protection of young people
19 as well as children within a family setting. The sentence
20 that the Court must consider has to be severe enough that
21 people will be deterred or stopped or influenced to stop, at
22 least, from committing similar offences and must be severe
23 enough that the accused himself will understand the serious-
24 ness of them and also be deterred from committing them again.
25 But in balancing those needs, the Court must also consider the
26 actual circumstances of the accused himself and how much is
27 necessary in order to have the accused avoid any offences in

1 the future. In taking that into consideration, the Court is
2 allowed to review the background of the accused, his present
3 circumstances, his attitude and other matters that might
4 influence the Court in determining what is necessary specifi-
5 cally to assist in not only ensuring that the accused does
6 not commit offences, but to ensure that he can have some
7 benefit from any rehabilitation that he is prepared to partici-
8 pate in, as well as the effect that such will have on his
9 family.

10 Noting the background of the accused and his
11 involvement with the community, the fact that he has today
12 apologized to the community and to his family publicly in
13 Court and recognizing that the sentence today and the appear-
14 ance in Court and the conviction today probably will substan-
15 tially change his entire way of life in the future and,
16 therefore, will be a long lasting effect on him, I feel that
17 I can probably impose a shorter jail term than otherwise
18 would be expected for this offence. I think I can, therefore,
19 fall within the lesser time or middle ground, at least,
20 required by the Appeal Court in Alberta in the case of R. v.
21 R.P.T. and R. v. T.S. as a combined case reported in 1983
22 7 Canadian Criminal Cases (3d) at page 109. I do, however,
23 feel that I must obey that direction and policy of the Court
24 and in addition to a short jail term impose terms in the form
25 of a probation order so that the accused will do as he has
26 indicated he is interested in doing, that is, through counsel
27 indicated that he is interested in taking counselling and try

1 to rehabilitate his state and reassemble himself.

2 Therefore, I believe that a period of jail of
3 nine months at this time would be sufficient for the penalty
4 of the accused. I am going to place him on probation for a
5 period of one year following his release from jail and require
6 that he report to the probation officer as directed and that
7 he participate in any counselling services recommended by
8 the probation officer. Are there any matters that were
9 suggested to me with regard to rehabilitation and probation
10 that I did not cover in those two items?

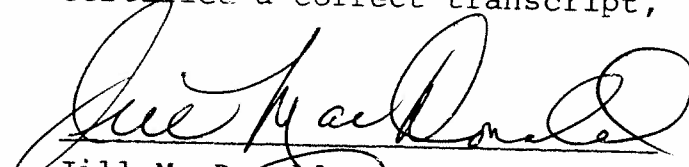
11 MR. BLANCHFLOWER: I submit the length of the sentence is a very
12 rehabilitative factor, Your Honour.

13 THE COURT: Thank you. Any other matters?

14 MS. ERICKSON: Sir, my concern was counselling, which has been
15 done.

16 THE COURT: Thank you. Mr. A , you have heard what I
17 have suggested here and why I have made what I consider to be
18 the lowest possible time in jail available. Are you prepared
19 to obey the terms of the probation order and take counselling
20 if it is directed and available? All right. The Clerk will
21 be preparing the probation order for your signature and will
22 review it with you and review the effect of the Criminal Code
23 on the probation order.

24 Certified a correct transcript,

25 
26 Jill MacDonald, Court Reporter.
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