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IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- and -

JULI KUTSIQ

Transcript of the Oral Reasons for Sentence delivered by His Honour Judge R. M. Bourassa, sitting at Yellowknife, in the Northwest Territories, on Thursday May 2, A.D. 1985.

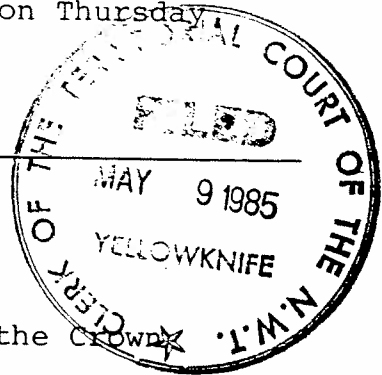
APPEARANCES:

MR. J. D. SUTTON

On behalf of the Crown

MR. C. ROGERS

On behalf of the Defence



1 THE COURT: Juili Kutsiq is convicted of two charges of break,
2 enter and theft. The circumstances of the break and enters
3 as admitted by the defence are peculiar. The offences
4 occurred while the accused was on a species of release from
5 the Yellowknife Correctional Centre. I have to query or
6 look in askance to a situation where this man from the
7 community of Igloolik, a thousand miles away, why he would
8 be released on Christmas Day in Yellowknife with no friends
9 or relatives, that I am aware of; and then the only thing,
10 at forty below, that a stranger can do in this town is go
11 into a bar and drink, which is precisely what Juili Kutsiq
12 did, and after drinking committed the offences before the
13 court.

14 The accused has a fairly significant criminal record. He
15 was convicted in 1981, in December, of theft under and breach
16 of probation. He received, I would take it, six months in
17 jail. There were five counts of theft under in 1983, in
18 Igloolik. He was convicted of break and enter with intent,
19 break and enter and theft, failure to comply with the con-
20 ditions of an undertaking, and received sixteen months' im-
21 prisonment. In 1983, in October, he was convicted of being
22 unlawfully at large, possession of a weapon, and assault in
23 Yellowknife, and received more consecutive time. In December
24 of 1983, at Nanisivik, he was convicted of aggravated assault
25 and received four months consecutive. The net result is that
26 the accused has been in jail for a period of, non-stop,
27 twenty-one months since 1983.

1 As a result of convictions for these offences
2 today--and I only say this in order to give background, I'm
3 not certainly taking it into account--the accused's
4 parole is likely to be cancelled, the result of which is
5 he may possibly be remaining in jail until sometime in 1986,
6 and that is regardless of what this court decides today.

7 At my request, following the submissions of
8 defence counsel who was asking for a lenient sentence, some
9 investigation was undertaken by defence counsel, as a result
10 of which a document, Exhibit 2, called a 'community assess-
11 ment' has been prepared. Basically, defence counsel is
12 requesting that the accused be released--or subjected to
13 only a very short term of imprisonment, and then released
14 into his home community. I am somewhat familiar with the
15 community of Igloolik. It, like Arctic Bay, has certain
16 social controls in place that are neither statutory nor
17 governmental, but certainly social controls that are in
18 place that operate effectively. The proof of the pudding is
19 there is virtually no crime in Igloolik. Courts have to go there
20 very, very seldomly.

21 To consider the request of defence counsel,
22 I wanted and invited a community
23 reaction to the proposal, which I have received. The
24 criminal record and the offences in themselves, and the back-
25 ground of the accused, would seem to irresistably lead to
26 the position that the Crown Attorney is arguing for, and
27 that is for a consecutive custodial sentence. The common,

1 the usual aggravating factors are present. The man was on
2 a temporary absence pass or species of release. He goes
3 out, a mile away from the jail where he is serving a sig-
4 nificant sentence, he gets drunk, and then he goes and
5 commits two more break and enters, across the street virtually
6 from the jail. Conventional thinking would dictate a con-
7 secutive sentence, and a significant one.

8 The accused, in addition to submissions of counsel,
9 made his own statement to the court. "As you know, I have
10 been in jail since the 23rd of August, 1983, and never in
11 my life have I been sentenced to such a long time in jail.
12 I know that I have been nothing but trouble to my home town
13 and the people that I have to go around with. I caused a
14 lot of problems in most any way. I know that I am a person
15 that I could make this life of mine better and do something
16 about it instead of just wanting to, instead of just thinking
17 of wanting to do it and get down and actually do it, like
18 you people, to live a normal life and leave this criminal
19 life of mine." And further on, "I would like to become a
20 better person eventually and live a happy life like normal
21 people." I don't dismiss that as a manufactured plea or a
22 skillful attempt to play at the court's heartstrings by a
23 clever defendant. This accused has been before this court
24 before. I accept that submission as being a heartfelt one
25 from the accused. I don't have any reservations about his
26 sincerity.

27 Before sentencing the accused, the court can

1 certainly consider the offences, the accused's record, his
2 antecedents, the gravity of the offences, all of the trad-
3 itional and normal factors to be considered; but the court
4 must also consider the offender. Jail is obviously accom-
5 plishing nothing. I agree with Crown when Crown says this
6 community assessment or expression of opinion has to be
7 treated with caution. A number of individuals who gave
8 opinions expressed the view that Juili Kutsiq 'should have
9 learned in jail, should have learned to stay away from liquor
10 should have learned to stay away from trouble.' Up until
11 now, obviously, he hasn't learned. On the other hand, the
12 man is in jail, he has been in jail for almost two years.
13 He is still a young man, he is only twenty-one years old.

14 Too often this court has to deal with offenders
15 where Crown and defence both candidly agree that a man is
16 institutionalized, knows no other way of living, knows no
17 life other than the Yellowknife Correctional Centre. I have
18 to ask myself whether a further consecutive period of im-
19 prisonment will accomplish anything. I don't believe it's
20 going to accomplish anything by way of personal deterrence
21 or personal rehabilitation. The accused, because of the
22 allegations that were subsequently withdrawn of what occurred
23 while he committed these break and enters, is subjected, on
24 the submissions of defence counsel, to abuse at the Yellow-
25 knife Correctional Centre. He is very likely at the very
26 low end of the status scale. He is experiencing great trouble.
27 Since the offences in December, he has been apparently

1 suicidal. So, apart from protecting the public, in the
2 sense that he's not on the street, I can't see that further
3 incarceration will accomplish anything in a positive nature
4 with respect to the individual.

5 Now, I'm going to do in this case as I've done in
6 another case, and I understand the Joanasie Naqitarvik
7 case is under appeal, and I may very well be in error.
8 I am going to take community views into account. The
9 accused is from Igloolik, and as I have already said, Igloolik
10 is one of those special communities that has social control
11 mechanisms in place. I would imagine that in some ways
12 Igloolik would be a very difficult community to live in
13 because of the pressures exerted by these informal agencies
14 that in fact keep everyone in line. I am reluctant on the
15 one hand to release a "criminal" into a community such as
16 that. On the other hand, a community such as that could
17 have a very positive benefit and effect on this accused.
18 If he responds to the people in that community, and the ones
19 in that community who are willing to help him, in my view
20 his chances for reformation and rehabilitation are very
21 significant, far more than they would be if he was released
22 in Frobisher Bay or even Yellowknife. I have no doubts that
23 it will be difficult for the accused, should he be ultimately
24 returned to Igloolik. It's going to be difficult, because
25 I'm certain that as he has said he has caused a lot of
26 trouble in his community, and he is going to have to work
27 very hard to be reaccepted by them; but at least in that
community he will not be exposed to a criminal peer group,

1 an antisocial peer group. He will be exposed to very
2 heavy pressure to conform, to act properly, to act in a
3 respectful manner, and the other pressures that can be
4 brought by the community itself in this informal way. As
5 I say, these pressures that are present in Igloolik are
6 effective. They're effective--at least I conclude they're
7 effective--by the very virtue of the fact that there is an
8 absence of crime. So, I think I have to take the community values
9 into account, and I have to consider, in terms of dealing
10 with this man, the situation in that community. I may be
11 in error there, and if I am, I'm sure Crown will seek and
12 have me corrected.

13 There is another factor the court can consider, and
14 that is just plain mercy. This man has pleaded for himself,
15 his lawyer has pleaded for him. I accept what the Crown has
16 said that looking at the offences and the circumstances, and
17 the record, it should be consecutive time. But I just can't
18 believe that there is no hope for this individual. I don't
19 think it would be inappropriate to give him a chance. I don't
20 think it would be inappropriate to expose the public to the small
21 risk that he may reoffend. Balanced against his expressed
22 remorse and desire to change his ways, balanced against
23 the possible benefits of going back to Igloolik, I feel
24 that further time in jail will simply destroy this individual.
25 On the other hand, I am not totally optimistic or convinced
26 that being released, this man will never be before the courts
27 again. There is a reasonable chance, a reasonable possibility,

1 that if this accused is released with the help of the people
2 in his community, and with the situation that he is exper-
3 iencing lately in the Yellowknife Correctional Centre, that
4 he will reform. He is going to have to be closely super-
5 vised. It comes down to trying to balance all the
6 factors I have reflected.

7 I have already said that a further time in jail is
8 going to crush him, in my estimation. I think that the
9 small risk involved in setting him free versus his being
10 crushed is worth taking. In arriving at that conclusion, I
11 have considered significantly, and it's weighed heavily on
12 me, the community he comes from. I want you, Juili Kutsiq,
13 to listen to me very carefully, as you have been. I
14 want you to understand very clearly that this court is going
15 to give you a chance, one chance. It's going to be up to
16 you and and only you as to what happens. If you get back
17 with liquor and drugs and trouble, all the tears and all the
18 pleas in the world won't keep you out of jail. You are
19 old enough. You have had a bad time, but you are old enough
20 to make proper decisions. I'm going to make sure that you are
21 supported and that there are people who are willing to help
22 you, but you have to make the decisions as to what you do.
23 Now, as those people who Mr. Rogers spoke to and wrote on
24 your behalf have said, I hope you have learned your lesson.
25 If you have, you'll never be back before the courts again.
26 Do you understand that?

27 THE ACCUSED: Yes, Your Honour.

1 THE COURT: I'm going to in each case suspend the passing of
2 sentence. I'm going to place the accused on probation for
3 a period of eighteen months. I'm going to direct that he
4 report to the probation worker in Igloolik forthwith upon
5 his release and thereafter once every two weeks for a period
6 of one year. He is to undertake such counselling--be it
7 counselling for alcohol, drug abuse, or personal counselling--
8 as may be directed by his probation worker from time to
9 time. He is to abstain absolutely from the consumption of
10 alcoholic beverages. He is to abstain absolutely from the
11 use of non-prescription drugs or intoxicants.

12 I want it to be known in Igloolik that Juili Kutsiq
13 is attempting to make amends and to re-establish himself in
14 Igloolik, and I'm going to order therefore that under the
15 direction and supervision of the probation worker and to his
16 complete satisfaction, that he perform two hundred hours of
17 community service work within the next eight months.

18 I thank counsel for their submissions and assis-
19 tance in this matter.

20 (AT WHICH TIME THIS MATTER WAS CONCLUDED.)
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22
23 Certified a correct transcript

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25 _____
26 Edna Thiessen, Court Reporter
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