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IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER:

HER MAJESTY THE QUEEN

VS

FRANK JOHN NADARY

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Transcript of Proceedings of an Oral Judgment given  
by His Honour Judge R. W. HALIFAX, sitting at Fort  
Smith in the Northwest Territories on Thursday,  
August 1, A.D. 1985.

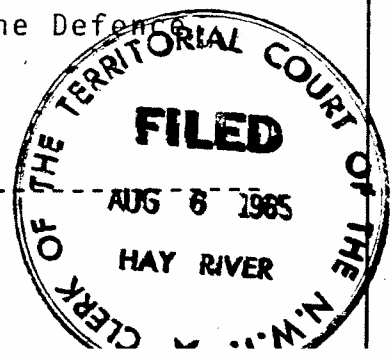
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APPEARANCES:

MS. N. BOILLAT Counsel for the Crown

MR. J. VERTES Counsel for the Defence

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1 THE COURT: In sentencing, we have two matters before  
2 the Court: break, enter, and theft, which involves a  
3 dwelling house carrying a maximum penalty of life imprison-  
4 ment, although not a serious break and enter; the other  
5 matter is one of sexual assault some three days later, which  
6 in the circumstances before the Court is no doubt the most  
7 serious offence of the two. I should say firstly that it is  
8 my view that a jail term is necessary in these circumstances;  
9 but at the same time, the totality of the sentences must be  
10 taken into consideration.

11 Firstly, with regard to the break and enter:  
12 It occurred some five days after the accused was released  
13 from custody after serving a sentence for the same offence  
14 of break, enter, and theft. From April 19, 1983, up to and  
15 including the offence of today's date of break and enter,  
16 this is the fourth conviction for break and enter, just over  
17 two years. There are also some other property offences with  
18 regard to automobiles. As well, the accused was on Probation  
19 at the time this offence occurred. Those things have to be  
20 taken into consideration and, as I say, five days after he  
21 was released from doing a three-month term for a similar  
22 offence. With regard to that charge, it seems to me as well  
23 that it should be one for which consecutive sentences should  
24 be involved between the two offences.

25 Now, there has been an agreed Statement of  
26 Facts with regard to the sexual assault which, in my view,  
27 raises some serious questions: the age of the victim, the

1 nature and circumstances surrounding the offence, the threats  
2 of death, and the fact that a weapon was used by the accused.  
3 Nobody can say and knows what the long-term results on the  
4 13-year old victim will be, particularly when this is her  
5 first sexual experience and is of the nature as set out in  
6 the agreed Statement of Facts. I think one can expect from  
7 experience that there is no doubt going to be negative  
8 results.

9 Now, the accused has just turned 18. There  
10 is no doubt that the background from which he comes has been  
11 a great deal less than satisfactory. It is a sad situation.  
12 It is not just him in the family; there are others in the  
13 family that suffer borderline or retarded growth or develop-  
14 ment, both intellectually and in regard to relationships.  
15 There has no doubt been continued alcohol abuse in the family.  
16 They live in substandard housing. There has been a transi-  
17 tion from a more land based type of environment to a commu-  
18 nity environment. Of course, some of the skills have been  
19 lost with regard to the land; and it is unfortunate that  
20 that is the situation this young person comes from.

21 On the other hand, however, it becomes  
22 obvious from the Reports that although at times the accused  
23 indicated verbally he would like to try doing something to  
24 get ahead, the Reports indicate that he does not make any  
25 effort. Of course, that may be as a result of his borderline  
26 intelligence; but at some point, it seems to me that the  
27 continued alcohol abuse, granted, has not given the accused

1 a chance; and maybe he has not had, at least inside the  
2 family, any role models of which to follow which would get  
3 him out of what this family has got into: a rut. On the  
4 other hand, just because somebody comes from that type of  
5 background, it is my view that the public has to be protected,  
6 particularly women being subject to sexual assaults; and I  
7 must say women of any age are entitled to protection from  
8 our society and from our system of criminal justice with  
9 regard to sexual assaults and assaults upon their person.

10 What is even more aggravating is the age and  
11 the circumstances of this victim and the threats and the use  
12 of a weapon. In fact, the only way it ended was when the  
13 victim completely became hysterical after almost three-  
14 quarters of an hour.

15 In this situation, it is my view that the  
16 Court's sentence must be such to be not only a deterrent to  
17 this accused but to anybody else who may be of like-mind.  
18 It also must contain and be of such nature to show the repug-  
19 nance society has for this type of offence; and in fact, in  
20 my view, the public protection becomes a major consideration  
21 in this type of offence.

22 Now, it is not as if the accused is a first  
23 offender. He does have a criminal record; although, there  
24 is no previous indication on his criminal record of any  
25 violence or such offences. They have been property offences  
26 and offences under the Liquor Act for drinking under age,  
27 basically.

1                   Having said all of that, I must say that it  
2 is most difficult to decide what the totality of the sentence  
3 should be. On the one hand, I do not want to make it so  
4 onerous that any possible rehabilitation of the accused would  
5 be crushed and extinguished; but I must say that the rehab-  
6 ilitation of the accused is not a major consideration, in my  
7 view, in this type of offence. There is no doubt that the  
8 Courts have said over and over again that deterrence and  
9 protection of the public in these type of circumstances  
10 should be of more concern. Hopefully, during the term of  
11 incarceration, some assistance can be given to the accused  
12 to assist him in reentering society to become a useful  
13 citizen. It seems to me for that to be anywhere close to  
14 any minor success at all, it takes some effort from the  
15 accused, which has not been shown in the past.

16                   However, as I have already said, I take into  
17 consideration the disadvantaged background he comes from.  
18 He was under the influence of alcohol, and that is another  
19 factor to be considered, although not to be treated as an  
20 excuse. I almost get the feeling from the Reports that, at  
21 times, alcohol becomes more of an excuse to the accused  
22 because it is used. Again, though, because of his borderline  
23 intelligence and his background, maybe much more cannot be  
24 expected.

25                   With regard to this matter, I should also  
26 raise the case of R. versus Beaulieu, which Mr. Justice  
27 Marshall in the Supreme Court of the Northwest Territories

1 has dealt with just recently: a sexual assault from Fort  
2 Resolution. That accused had a previous criminal record,  
3 and a sentence of four years was given. There was some  
4 minor violence involved but, surely, nothing of this nature  
5 and no weapon involved. It seems to me that is an indication  
6 from what I have noted in the last year or two that sentences  
7 with regard to sexual offences seem to be getting a little  
8 lengthier.

9 Having said all that, that is my view; and  
10 I have taken this into consideration in trying to decide  
11 what is a fit and proper sentence.

12 With regard to the break, enter, and theft--  
13 considering the last sentence was one of three months, and  
14 this happened within five days of release--I sentence the  
15 accused to six-months imprisonment.

16 With regard to the offence of sexual assault  
17 contrary to Section 246.2, during the commission of which  
18 was used a weapon, I can only visualize the terror that this  
19 young girl has gone through. It seems to me a sentence has  
20 to be sufficient in length, as I have said, to show the  
21 repugnance of society plus deterrence and protection of the  
22 public.

23 Taking into consideration Mr. Justice Marshall's  
24 decision on the Beaulieu case--although that accused was  
25 somewhat older than this accused, it seems to me, in the  
26 circumstances, this case is in a lot of ways more aggravating  
27 although in some ways not so bad; but considering the aggra-

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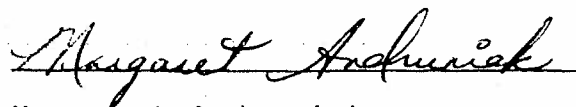
vating circumstances in both cases, it seems to me this one may be a little worse. Considering the accused's age, I see no reason why the sentence should be much different.

I therefore sentence the accused on the sexual assault to four-years imprisonment to be served consecutively.

I would make the recommendation that the accused receive the benefit of any programs that can be made available to him to assist him in his reentry into society.

That will be all, Mr. Nadary.

Certified a Correct Transcript:



Margaret Andruniak  
Court Reporter