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IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

v.

POOTOOGOOK JAW

Transcript of the sentencing proceedings held before
His Honour Judge T. B. Davis sitting at Cape Dorset,
Northwest Territories, on Thursday, April 14, A.D.
1983.

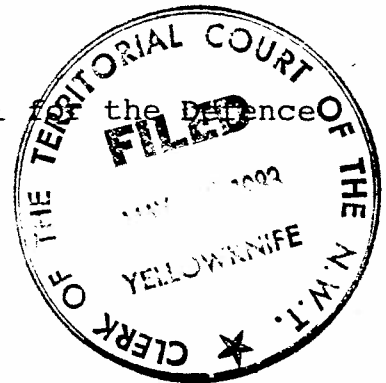
APPEARANCES:

MR. M. ZIGAYER

Counsel for the Crown

MR. J. BOUVARD

Counsel for the Defence





1 THE CLERK: Pootoogook Jaw, you stand charged on or
2 about the 28th day of November, A.D. 1982, at or near the
3 Hamlet of Cape Dorset in the Northwest Territories, did
4 indecently assault J O S , a female person,
5 contrary to Section 149 of the Criminal Code; count two,
6 on or about the 28th day of November, A.D. 1982, at or near
7 the Hamlet of Cape Dorset in the Northwest Territories, did
8 indecently assault R K J , a female person,
9 contrary to Section 149 of the Criminal Code. Do you under-
10 stand the charges as read?

11 THE ACCUSED: Yes.

12 MR. ZIGAYER: Sir, I believe there are presently two
13 informations before the Court. The one information contains
14 two counts, and the other information contains one count and
15 another count that has been withdrawn.

16 THE COURT: It appears that count number two on one of
17 the informations had been previously withdrawn according
18 to a notation made on the information itself.

19 MR. ZIGAYER: At this time I would stay that information
20 and ask that we proceed on the newer information.

21 THE COURT: All right, information marked as 456 is
22 being filed with the clerk, and a direction to stay proceed-
23 ings on it will be noted. The matter then before the Court
24 consisted of two counts, the charges which were read to the
25 accused this evening. Those will be the only matters dealt
26 with by the Court. Mr. Jaw, how old are you? Are you over
27 16?



1 THE ACCUSED: Twenty-four.

2 THE COURT: You have an option on these charges to
3 elect to be tried by a magistrate without a jury; or you
4 may elect to be tried by a Judge without a jury; or you may
5 elect to be tried by a Court composed of a Judge and jury.
6 How do you elect to be tried?

7 THE ACCUSED: Magistrate.

8 THE COURT: With regard to the first count that on the
9 28th of November you indecently assaulted J S
10 contrary to Section 149 of the Criminal Code, how do you
11 plead to that charge, guilty or not guilty?

12 THE ACCUSED: Guilty.

13 THE COURT: With regard to the second charge that on
14 the same date you also committed the assault on R K
15 J contrary to Section 149 of the Criminal Code, how
16 do you plead to that--I'm sorry, an indecent assault, how
17 do you plead to that charge, guilty or not guilty?

18 THE ACCUSED: Guilty.

19 THE COURT: Just have a seat then, please.

20 MR. ZIGAYER: Sir, this series of incidents occurred on
21 the 28th of November, 1982. It appears that on that day,
22 Mr. Jaw, Pootoogook, had forced the girl referred to in the
23 first count, S --he was at the time staying alone in
24 his room, and he told his younger sister, Enook, to come to
25 his room; and while lying on the bed, he let her comb his
26 hair for five to ten minutes, and then asked her to stop
27 and asked J , the girl referred to in the first count,



1 to comb his hair instead, and while this was happening, he
2 took her arm and tried to get her under him. She was resist-
3 ing and shouting. At the time he had offered her one dollar
4 to comb his hair, and at some point, while she was combing
5 his hair, he became sexually aroused and grabbed her and
6 placed her underneath him. She was struggling to try to get
7 away, but he wouldn't let go. He was fully clothed at this
8 time, and so was the girl in question. Eventually he was in
9 a position above her and began what could only be described
10 as fucking her through the clothes. It was just a question
11 of bumping up and down.

12 Eventually the cries of the girl drew some-
13 one else to the room; and when that other person came to the
14 room, the accused stopped his actions and the girl made her
15 immediate escape.

16 Now, concerning the second count, the
17 circumstances are quite similar. When J. walked out,
18 Enook came in and again was told or allowed to comb his
19 hair, and then he told her to get R. Both of them
20 were in the room, and both were playing around with his
21 hair, and he kissed R on the cheek in an affectionate
22 manner and asked them if they wanted to play skidoo, and they
23 said they did.

24 He was lying on top of his bed, and he was
25 holding R 's hand, and they were having fun and laughing.
26 At that point he told Enook to go and get
27 him some water, and R continued combing his hair. When



1 Enook came back with the water, he drank it and then gave
2 her the glass and told her to take it back down. He told
3 Enook to stay downstairs for a few minutes.

4 At that point he took R and placed her
5 underneath him. She was struggling as had J , and while
6 she was under him, he did the same thing as he was doing to
7 J for a few seconds. He was bumping up and down on
8 her for a few seconds and then let go.

9 Enook came in because R was shouting
10 for her, and then they left the room together and that
11 concluded the second incident.

12 Concerning what happened with J , I
13 overlooked one point, and that is that at one point he
14 grabbed her or touched her in the area of her vagina. That
15 is the only part I believe I have committed, and those are
16 the circumstances of this offence.

17 Perhaps one more matter. The ages of
18 these two individuals, J was I believe eleven years
19 of age; and R J , seven years of age.

20 MR. BOUVARD: The facts are admitted, your honour.

21 MR. ZIGAYER: Sir, I submit to the Court a copy of the
22 accused's previous criminal convictions.

23 MR. BOUVARD: The record is admitted.

24 MR. ZIGAYER: Sir, in my address to the Court, I will be
25 rather short. Mr. Jaw has no previous convictions of this
26 kind. This seems to be out of character for the accused.
27 The pre-sentence report indicates that he feels some remorse



1 and blames some of what happened on the consumption of
2 alcohol.

3 It is unfortunate that sometimes alcohol can
4 have this effect on some persons allowing them to do some-
5 thing that they would not ordinarily do.

6 The primary concern that I wish to voice
7 is that of general deterrence, that young people in the
8 community should not be subject to such attentions, and that
9 through the sentence that the Court imposes today, the Court
10 should perhaps get that message across to the community.

11 The remorse is to be taken into considera-
12 tion. He has indicated the remorse prior to coming to Court
13 today, and he entered a guilty plea at the earliest possible
14 time.

15 However, I would suggest, sir, that a term
16 of imprisonment is required for general deterrence. I am
17 not able to say that specific deterrence should not be
18 addressed by the Court, but I will not make any submissions
19 on that.

20 In estimating what might be an appropriate
21 term of imprisonment, I would refer to the Code just to
22 remind the Court that at the time this offence was committed,
23 the maximum term of imprisonment possible for such an offence
24 was five years imprisonment. Now, I am not asking for any
25 term nearly as long as that, not a term of penitentiary
26 duration. I am suggesting that a term of incarceration at
27 the lower end of the spectrum would be appropriate,



1 that that term would be in the vicinity of three to four
2 months. This would take into consideration, of course, the
3 facts that there are no previous convictions of this sort
4 for the accused and yet still taking or recognizing the
5 seriousness of the charges. Those are my submissions.

6 THE COURT: Thank you.

7 MR. ZIGAYER: One further thing, sir. As I think that
8 it is proper to address this point, both of these offences
9 occurred within a very short period of time, and I would
10 therefore suggest that whatever term is imposed for these
11 two incidents, that they be concurrent, not consecutive.

12 THE COURT: Thank you.

13 MR. BOUVARD: I do not think Mr. Zigayer or I have any
14 objection to the Court reading the pre-sentence report,
15 your honour. I don't know if you want to read it now.

16 THE COURT: Maybe I will glance and I will see if it
17 is too complicated to review at the moment just before you
18 proceed. Maybe I can hear you on that; and if there is
19 something in particular in the report that is of major
20 concern to you, you can indicate it. I think I have picked
21 out probably the points of major interest to me at the
22 moment.

23 MR. BOUVARD: I do not think there is anything in particu-
24 lar about the report, your honour. There is nothing that
25 Mr. Jaw objects to in the report.

26 I think the basic tenure of it is that
27 although he has broken the law, that he appears to be a



1 generally respectable individual and seems to have support
2 in the community and has shown some remorse. I think that
3 characterizes the pre-sentence report as being a positive one
4 for him.

5 I concur with everything that Mr. Zigayer
6 said, your honour. I think he stated the matter fairly, and
7 I cannot disagree with him. I will not go over what he said
8 and repeat it again. That would not make too much sense.

9 I will just point out some added things
10 about Mr. Jaw. He is 24 years old; he is originally from
11 Cape Dorset; he lives here now with his wife and two children;
12 he has been married since September the 2nd, 1979; and he has
13 two children ages two years and three months. His education
14 is grade seven, and he just recently obtained employment with
15 the housing association as a labourer. It is a fulltime job,
16 he has been there for the last four weeks. He earns \$5.10
17 an hour there.

18 Before that he worked last year from Septem-
19 ber to November with the Government of the Northwest Terri-
20 tories in Cape Dorset as a painter. The contract ended so
21 he had to leave that job, and he has done work as a carpenter
22 in the past, and various other labour-type jobs.

23 The other thing I point out about the record,
24 your honour, is that it is a relatively old record, the last
25 conviction was entered in May of 1978, so it has been five
26 years since he has gotten into any trouble. I think that
27 although from 1975 to 1978 he had a spat of run-ins with the



1 law, he has straightened himself out pretty well.

2 This kind of an offence you have before you
3 is unusual for him and out of the ordinary; and just speaking
4 with him, I can tell you that he has expressed a lot of
5 remorse and embarrassment about this; and I think that,
6 itself, will be a specific deterrent to him; and as the
7 pre-sentence report indicates, he does have support from his
8 family and the community in general; and I think that will
9 assist him greatly in not getting involved with any trouble
10 with the law, and the sentence Mr. Zigayer suggested would be
11 appropriate in my submission in the circumstances.

12 THE COURT:

Thank you. Having accepted the plea of
13 guilty by Mr. Jaw to the two charges of indecent assault on
14 two young females contrary to Section 149 of the Criminal
15 Code, I will enter convictions on both of the charges.

16 Mr. Jaw, while in the presence of his sister,
17 enticed or had in his presence two young ladies at different
18 times when he assaulted them, and while in his room, made
19 motions similar to those of intercourse while forcing the
20 girls to lie under him while they were both fully clothed.

21 He did make an effort to touch the area of
22 one of the girl's vagina, and it is considered to be a serious
23 matter in that the girls were very young, and neither of
24 them appeared to have been willing to have this assault take
25 place.

26 I am, however, severely impressed by the
27 terms in the pre-sentence report and counsels' submissions



1 that it has been five years since the accused has been in any
2 trouble with the Courts, and therefore it has been obvious to
3 me that in the past five years, he has been making an effort
4 to keep a job and be a good member of the community.

5 It is also noted that he is remorseful and
6 feels sorry for what he has done in this case and has been
7 embarrassed by it. He has supported his family and his
8 children at jobs when they are available to him, and I will
9 take that into account in a very strong way because rather
10 than sending the accused to gaol under these circumstances,
11 I am going to place the accused on a probation order.

12 On the charges, however, I am also going to
13 impose a fine; and on each of the charges, I will impose a
14 fine of \$100 or in default thereof, ten days in gaol consecu-
15 tively for each.

16 In addition to that, on both the charges I
17 will place the accused on probation for a period of one year.
18 One of the terms will be to report within two weeks to the
19 probation officer and thereafter as required. The accused
20 will also be required to perform 100 hours of community ser-
21 vice work within a period of six months under the supervision
22 and direction of the probation officer.

23 Do you understand all of that, Mr. Jaw?

24 THE ACCUSED: Yes.

25 THE COURT: You are prepared to comply with the commu-
26 nity service work? How long will the accused need to make
27 payment of the fines?



1 MR. BOUVARD: He says he can pay it within a month, your
2 honour.
3 THE COURT: All right, the accused will be allowed two
4 months within which to pay.
5 MR. ZIGAYER: Sir, are those default periods consecutive?
6 THE COURT: Yes, default on payment of the fines will
7 be consecutive. Mr. Jaw, you will be required to stay in
8 the Court until such time as the Clerk has prepared the
9 probation order to be signed.

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11
12 Certified a correct transcript

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14 Catherine Metz
15 Catherine Metz
16 Court Reporter
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