IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

VS

ISAAC OQUATAQ

Transcript of the Oral Sentencing Delivered by His Honour Judge R. M. Bourassa, sitting at Yellowknife in the Northwest Territories, on Friday, June 22nd, A.D., 1984.

APPEARANCES:

MR. J. SHIPLEY: Counsel for the Crown

MR. C. ROGERS: Counsel for the Defence

N.W.T. 5349-80/0284

THE COURT: Isaac Oquataq is convicted of an offence of sexual assault. It is a hybrid offence. The Crown has elected to proceed by indictment and the defendant has elected to be tried in the Territorial Court and has pleaded guilty. In addition, he is convicted of an offence of failing to comply with an undertaking in that the accused was on an undertaking for an offence of sexual assault at the time of this offence for sexual assault, and his undertaking contained two conditions, keep the peace and be of good behavior and to abstain from the consumption of alcoholic beverages. The accused, by committing this offence and drinking at the time of this offence obviously broke his undertaking.

The accused has an extensive criminal record of some thirty-three criminal convictions starting in 1973 with break, enter and theft, taking a vehicle without the consent of the owner, mischief, right up until 1977. From 1977 to 1978 the scope of illegal conduct was broadened a little bit in that one sees further offences of theft, escaping lawful custody, possession of stolen propery, and assaulting a peace officer. The accused has had no record of criminal convictions since his release on mandatory supervision in 1979.

The facts that have been given to me by the Crown attorney, I won't repeat them again. Suffice to point out that the salient features are that one, there was no injury inflicted upon the girl. Secondly, she was held

against her will.Although it hasn't been stated by the Crown that she was terrified or greatly scared, I think I can presume that there must have been some element of fear for a period of at least forty-five minutes to an hour. That the accused forcily removed her outer clothing, and indicated his desire to have sexual intercourse with her and that this was definitely against her will and desires.

I have also in terms of background for this individual been provided with, by Defence counsel, a number of documents and reports from the Alberta Hospital in Edmonton, the Psychiatric Treatment Centre dealing with this particular individual. I am concerned with one aspect of the assessments, at least vis-a-vis the sentence,that he has limited intellectual potential and is in the borderline range. That he has anti-social behavior that is so tenacious that there was unfortunately little that can be done to help him from a psychiatric point of view. There is a program designed for those who show violent propensities and are inclined to be sex offenders. And there are Dr. Herbert Pascal's remarks that he doesn't think this accused is a particularly good candidate for the program. Finally the report concludes, "I share your concerns about the difficult time this man has had with respect to his own problems and the problems he presents to the community, but I am frankly unable to state with certainty that anything can be done for him with respect

to psychiatric treatment as such".

I have to repeat that so far as this court is concerned with respect to what effect a jail sentence will have-- I don't think it will have any positive affect on this individual.

Taking into account the accused's record and the conduct involved here, I think that the primary goal on sentencing must be general deterrence. Given the accused's propensity for criminal behavior as evidenced by his record up until 1979, and the less than optimistic statements made in the psychiatric report, I don't think that a subjective sentencing process will have any positive effect. It does, I believe, in some circumstances. However, I don't see that as being called for or appropriate here.

I thank counsel for the cases they have provided me. They do provide some guideance and assistance. With respect to the Selamio decision in which His Lordship Mr. Justice Tallis, as he then was, imposed a $200 fine and probation on what we would now call a sexual assault case whose facts were very, very close to this one, I have to, I think, distinguish that case. His Lordship was dealing with someone who was unaccustomed and unfamiliar with the ways of town living. He was socially inept. He had no criminal record, and there were significant cultural problems in terms of conflict which His Lordship quite properly took into account in imposing sentence. But this isn't the case with the accused before me today. The

accused before me today has lived in the largest community in the Northwest Territories for a number of years. He has lived in Frobisher Bay. He has been socialized in large communities. It is not as though his cultural background is similar to that of Selamio.

With respect to R. vs. Abel, obviously there was violence used in that particular case. The accused had a record of violence. I think the court has to take into account that the victim in that case was an old woman who was paralyzed and abused and the sentence of 24 months, quite appropriate in that situation, I think is a little severe for the situation that is before me today. The woman who was abused in the Abel case, it is almost like abusing a small child. The offender was dealing with people that can't protect themselves.

The decisions in R. vs. Moses, R. vs. Appaqaq, and R. vs. Lafferty are of some guideance. With respect to the accused's detention prior to today's date, under Section 649, it is permissible to take into account time served in jail as a result of the offence. This accused has served three months in jail. Is it as a result of the offence, or is it as a result of something else? In my view it is as a result of something else. It is as a result of him committing an offence while on an undertaking and consuming liquor and failing to comply with the conditions. That is why he was put in jail. He wasn't put in jail because of this offence. It is not, as the Crown attorney mentioned,

that he is in jail awaiting trial on this offence because he had a previous criminal record or was unable to make bail. The accused bargained for his release in terms of trading his promise to stay out of trouble and not drink for his freedom. He broke his promise. He ended up back in jail.

Under those circumstances, I don't think that the court can put great weight on the time that was spent in custody. I do take it into account, but as I say, I attribute not much weight to it. He is in jail because of his own conduct. He is not in jail because of being processed on this offence.

With respect to the breach of undertaking matter, I think it should be dealt with consecutively. It must be understood that when people bargain for their freedom with promises that those promises are important. They mean something to the court, and they cannot be lightly disobeyed. I think it is particularly aggravating that the accused committed this offence while on an undertaking for an identical offence.

Isaac, would you stand, please. On the charge contrary to Section 133, I am going to sentence you to one month in jail. With respect to the charge of sexual assault, twelve months in jail consecutive.

(AT WHICH TIME THESE PROCEEDINGS WERE CONCLUDED.)

Certified a correct transcript,

Laurie Ann Young

Laurie Ann Young
Court Reporter