

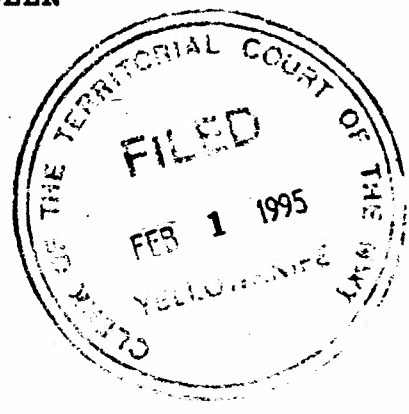
IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:



HER MAJESTY THE QUEEN

- vs. -



SIDO AALUK

Transcript of the Sentencing Hearing before The Honourable Judge R. M. Bourassa, at Gjoa Haven in the Northwest Territories, on Tuesday, November 1st A.D., 1994.

APPEARANCES:

MS. L. CHARBONNEAU: Counsel for the Crown
MR. K. ALLISON: Counsel for the Accused

(CHARGE UNDER s. 348(1)(a) CRIMINAL CODE OF CANADA)
(CHARGE UNDER s. 348(1)(b) CRIMINAL CODE OF CANADA)

1 THE CLERK: In the Adult Court, Sido Aaluk.

2 THE COURT: Are you ready to proceed on these
3 matters, Mr. Allison?

4 MR. ALLISON: Yes, Your Honour.

5 THE COURT: All right, Ms. Charbonneau, tell me
6 what happened, please.

7 MS. CHARBONNEAU: Yes, Your Honour. Both of these
8 incidents happened on the same date as you can see
9 from the charges.

10 It's alleged that on the 9th of August, somewhere
11 between 4:30 and 5 o'clock in the morning, the accused
12 broke into the residence of George Porter here in Gjoa
13 Haven, that's Unit No. 110. He kicked the door open.
14 One of the occupants of the house, who was 16 years
15 old, a young woman, asked him to leave and he did.
16 The 16-year-old then woke up her father, who got up,
17 and looked out the window and saw the accused knocking
18 at a neighbour's residence as well. He appeared to be
19 getting into that house. He wasn't able to so he
20 tried another residence, again without success, and
21 then went back to the Porter residence, kicked the
22 front door, then tried to enter the second door by
23 kicking it but was not successful. Mr. Porter opened
24 the second door and found the accused laying on the
25 floor in the porch. He had been sick in the porch
26 area. Mr. Porter called the police. A patrol was
27 made to the area and the accused was found laying on

1 the porch. He was very intoxicated and he was taken
2 home. He was cooperative when the police arrived.
3 There was damage to the house in the amount of \$417.

4 Those are the facts alleged with respect to the
5 first incident.

6 THE COURT: Those facts admitted as true?

7 MR. ALLISON: Yes, sir.

8 MS. CHARBONNEAU: Later that same day, somewhere between
9 6:30 and 7 in the morning, the accused again broke
10 into another residence here in Gjoa Haven, the
11 residence of Thomas Kikoak, Unit No. 141. Ms. Kikoak
12 is the accused's former common-law spouse. She and
13 her son, who is 8 years old, were sleeping. She heard
14 someone walking in so she woke up and woke up her son.
15 She asked the accused to leave but he refused. The
16 victim's son ran out of the house to call the police
17 for help when his mother requested him to do so. She
18 kept asking the accused to leave but he kept refusing.
19 She managed to talk to him and get him to go to the
20 porch. He was told to open the outside door and he
21 did. It took about 15 minutes before Ms. Kikoak could
22 actually close the door on the accused. They were
23 still talking. She closed the outside door and locked
24 it. The accused then started knocking on the door but
25 she refused to open the door and he kept trying to
26 convince her to open it. He started being verbally
27 abusive to her. The accused became increasingly more

1 angry and started to kick the door harder and harder.
2 He broke the door down and walked in. At this point,
3 the victim ran out of the house and called the police.
4 Again, a patrol was made to the area and the accused
5 was located inside the house. He was placed under
6 arrest and lodged in cells. He was later released on
7 an undertaking. The damage to this house was
8 approximately \$802 for a total of \$1,219. That is a
9 loss of the Housing Association.

10 Those are the facts alleged in support of the
11 second charge.

12 THE COURT: Those facts admitted as true?

13 MR. ALLISON: Yes, sir.

14 MS. CHARBONNEAU: Your Honour, on sentencing, we are
15 alleging a record.

16 THE COURT: Is the record admitted?

17 MR. ALLISON: Yes, sir.

18 THE COURT: It will be Exhibit 1.

19 [EXHIBIT NO. 1: CRIMINAL RECORD OF THE ACCUSED]

20 MS. CHARBONNEAU: For Your Honour's information, there
21 is a conviction on the 13th of August 1991 for assault
22 causing bodily harm which resulted in a jail term. At
23 that time, the victim of the assault was Ms. Kikoak
24 who was, at the time, the accused's common-law spouse.

25 There is a pre-sentence report, Your Honour, which
26 I have read and I have no objection from the Crown's
27 perspective to anything that's in it.

1 These two offences occurred on the same night. In
2 mitigation, obviously there are the guilty pleas. I
3 ask you to bear in mind the following aggravating
4 factors. First, the places were both dwelling houses.
5 Second, this happened at night. Third, in Kikoak's
6 case, there was a young child present and in the other
7 residence, there was also a young person though not as
8 young as Ms. Kikoak's son.

9 I ask you to take into account the accused's
10 persistent behaviour which is apparent from the facts
11 and the context in terms of Ms. Kikoak's residence,
12 them being ex-spouses, and the prior incident of
13 assault would have had an impact on her state of mind
14 as all of this was happening. I ask you in general to
15 take the record into account.

16 I have reviewed the pre-sentence report. There
17 are some positive features to it and I have also
18 discussed with Mr. Campbell, the author of the report,
19 the situation of this accused. This is another case
20 whereby all accounts the accused's problem is alcohol.
21 You can see from his record that subsequent to the
22 assault causing bodily harm conviction, there are a
23 couple of convictions for breach of probation. Those
24 are both breaches that involved the consumption of
25 alcohol. You also see two convictions for possession
26 of liquor in a prohibited area. Gjoa Haven is still a
27 dry community and it makes it perhaps even more

1 serious for the accused to continue drinking despite
2 the fact that he appears to get himself into
3 significant trouble when he does. He is apparently
4 described as someone who is not always in trouble when
5 he drinks but he can't predict whether or not he will
6 behave in this way when he gets drunk.

7 The Crown's position is that he does have
8 therefore an alcohol problem, and it appears that he
9 has not yet followed through on whatever alcohol
10 counselling resources may be available to him.

11 Mr. Campbell has advised that, in his opinion, at
12 this point the main thing is that the accused has to
13 get a handle on his alcohol -- on the issue of alcohol
14 and has to come to the realization that he shouldn't
15 drink because he just doesn't seem to be able to
16 predict when he is going to act in this way when he
17 gets drunk.

18 I am advised that he hires approximately five
19 people; the accused that is, in this community and
20 that his going to jail would likely have as a
21 consequence the loss of some contracts.

22 Your Honour, normally this would certainly be a
23 case where I would strongly be urging you to impose a
24 jail term because of the aggravating factors that I
25 have mentioned. If you are prepared to be lenient in
26 the sense that if you are prepared to try one last
27 time a less intrusive mode of punishment, I guess your

1 options are either to impose one day in jail so that
2 the warning is clear for other Judges, but I would
3 suggest that in that event you rather resort to a
4 suspended sentence.

5 The reason that I say this, Your Honour, is I am
6 going to suggest that if you do not impose a jail term
7 today, any probation order you make should include
8 stringent conditions.

9 I usually -- there is usually some reluctance on
10 the part of the Crown and certainly on the part of the
11 Court to make an abstinence condition; in other words,
12 to order someone not to consume alcohol. That is
13 found to be something that often doesn't work, often
14 sets people up for failure, and just completely
15 unrealistic in general.

16 However, in this case I am asking you to do that
17 for at least part of any probation that you³ impose
18 because this is a dry community for one thing so the
19 accused shouldn't be having alcohol here anyway. And
20 also, if the rationale for not sending him to jail is
21 that he has to deal with this alcohol thing and he
22 hasn't been drinking since this incident, according
23 to the report, so I suggest that it would not be
24 setting him up for failure, and it would simply be
25 making it clear to him that his choices are clear.

26 I would also ask you to consider a restitution
27 order. I gather from defence counsel that some of the

1 money has already been paid back so I am asking you to
2 make an order for the difference. I am not sure of
3 the amount; defence counsel can tell you.

4 It may also be appropriate, in my submission, to
5 have a condition that he not be in the vicinity of the
6 residence of Ms. Kikoak. The accused is in another
7 relationship but it certainly appears that under
8 certain circumstances, he can go back and be abusive
9 towards his former spouse, and I suggest that it might
10 be an appropriate thing for you to do today.

11 And finally, I would ask you to include a
12 counselling condition in that probation order so that
13 the accused has an added incentive to deal with the
14 issue of his alcohol problem.

15 I want to make it clear that in the event that you
16 see fit to resort to the tool of a suspended sentence,
17 this is a case where the Crown would make an
18 application to have the suspended sentence revoked if
19 there are any breaches of any of the conditions that
20 you impose because we view these two offences as very
21 serious and if the accused is given a chance to prove
22 that he can overcome this and makes serious efforts in
23 that direction, that's great. If he demonstrates by
24 his behaviour that he is not prepared to change, then
25 the only alternative will be unfortunately something
26 that's less constructive.

27 Those are my submissions.

1 THE COURT: Thank you, Ms. Charbonneau. Mr.
2 Allison?

3 MR. ALLISON: Like my friend, sir, we submit that
4 this may be a case where a suspended sentence may be
5 imposed and I would like to thank my friend for
6 discussing this in some detail and I don't think I
7 have to underline once again the various conditions
8 which we think should be imposed as well and, in fact,
9 we concur.

10 I would just like to highlight some of the aspects
11 of the pre-sentence report without going into all the
12 usual detail because it's right there in the report.

13 Mr. Aaluk is 28 years old and he is a young man
14 still and yet he has assumed many responsibilities in
15 his community. He is in a stable common-law
16 relationship which has lasted now for two and a half
17 years and he has a 15 month old daughter.

18 As we have heard from my friend, he is also a
19 private contractor and employs five individuals. I
20 understand from Mr. Aaluk, this is a very heavy
21 responsibility for him. He does feel responsibility
22 for the well-being and lifestyle of others and he does
23 find this very stressful at times.

24 THE COURT: Well, maybe if it's too stressful for
25 him, maybe he shouldn't be doing it. If it's so
26 stressful that he gets drunk, smashes down doors,
27 scares the dickens out of little kids and his former

1 girlfriend, maybe, you know, it's too stressful for
2 him.

3 MR. ALLISON: That may be the case, sir, but he is a
4 young man who is attempting to do things in his life
5 that are constructive and he admits that he has a
6 drinking problem and that is leading him into trouble.

7 He regrets the incidents that have occurred and
8 again, I know we have heard this many times before,
9 sir, this would not have occurred if he was sober.

10 It is significant that since these incidents
11 occurred in August, he has not consumed alcohol. I
12 submit that, sir, like one of the officers in the
13 pre-sentence report, that it is better to deal with
14 Mr. Aaluk by making him pay restitution rather than
15 sending him to jail.

16 With respect to restitution, I am informed, and I
17 have the receipt in front of me, that he has paid a
18 total of \$714.41 towards the total restitution bill,
19 leaving an outstanding balance of \$505.21.

20 The report also points out on page 7 that there
21 are available in the community various sentencing
22 alternatives such as supervised probation, community
23 service options, and the Fine Options program.

24 With respect to specific mitigating factors with
25 sentence, my friend has already mentioned the guilty
26 plea. He is remorseful and I think this is evidenced
27 by the payment of restitution. He has excellent work

1 prospects and he has made a good start in a very
2 difficult area, that of being and running -- being in
3 and running a private business.

4 We have a letter of support which I believe is on
5 the final page of the pre-sentence report from Mr.
6 Cahill, the economic development officer, who, I feel,
7 supports him and who I submit supports him in this
8 venture.

9 Those are my submissions, sir.

10 THE COURT: Well, this is, in my respectful view,
11 just yet another example of an individual who is bent
12 on destroying himself and hurting his community
13 because he can't control his drinking. It's not
14 complicated. Look at his criminal record. This is a
15 dry community. The people of this community don't want
16 the trouble that comes with alcohol. And what trouble
17 is that?

18 It's the trouble that's on Mr. Aaluk's record -
19 assault, manufacturing liquor, assault causing bodily
20 harm, mischief, breach of probation, manufacturing
21 liquor.

22 Everybody in jail, all the guys in jail, are just
23 like Mr. Aaluk: They are nice guys when they are sober
24 but drunk they beat up their girlfriends, they break
25 into houses and hurt other people, they hurt little
26 kids, they destroy communities. And here's a man who
27 has been in and out of Court since 1983, all liquor

1 related offences, and he comes before us today and he
2 still hasn't done anything about it.

3 It is really unfortunate but there is nothing that
4 I can do. There is nothing that the community can do.
5 It is all up to Mr. Aaluk. Until he decides to stop
6 drinking, he is going to be in and out of Court.

7 It is offered as an excuse or a reason for not
8 sending him to jail that others are dependent upon
9 him. I just can't see that as an excuse or a
10 justification. It may very well be that they should
11 be dependent on someone who is more reliable than Mr.
12 Aaluk. Mr. Aaluk can't go out, get drunk, terrorize
13 people in their houses, and say "Well, you can't send
14 me to jail because people depend on me".

15 If Mr. Aaluk can't deal with his businesses
16 without getting drunk, then maybe the business belongs
17 to someone else who is more reliable and the employees
18 can be assured that they are not going to have these
19 kinds of worries.

20 I am not sympathetic to Mr. Aaluk. I look at the
21 people that were involved on the night in August - his
22 ex-girlfriend whom he had already beaten up on a
23 previous occasion and gone to jail for beating up.
24 She wakes up with her small son to see this man
25 smashing his way through the door, the little child
26 has to run off and find the police, the woman has to
27 try and argue with a drunk to get him out of the house

1 to protect herself. Is this what we want in Gjoa
2 Haven? I don't think so.

3 On top of that, this is a dry community.
4 Obviously the people in this community, the majority
5 of them, know what happens when a community is full of
6 liquor and they want to avoid it. They want to avoid
7 the problems that Mr. Aaluk is causing.

8 Mr. Aaluk has been warned in the past, he has gone
9 to jail in the past, and he still drinks. Then, as I
10 understand the law, if he is going to drink and cause
11 trouble then he has to accept the consequences. In my
12 view, after hearing the allegations, I think a jail
13 sentence of somewhere between eight months and a year
14 would be appropriate. I tell that to Mr. Aaluk,
15 because I want him to know how seriously I look at
16 these events in light of the law.

17 I take into account that he has pleaded guilty. I
18 take into account the Crown's generous position as
19 well as the arguments of defence. There may be a
20 small chance that Mr. Aaluk will finally do something
21 about his consumption of liquor that to say that he
22 will finally realize that he can't drink. Everybody
23 says the same thing; it's in the prepare sentence
24 report - Sido gets along well with people and they
25 like him until he starts talking about liquor. When he
26 is drunk, he is like everybody else - he is terrible.

27 I suppose it's not inappropriate; it is certainly

1 within what I can do in law, to give him some kind of
2 a chance. But I want to make it very clear to him
3 that if he is back in Court again, he is going to
4 jail. I have already told you, Mr. Aaluk, that I
5 think I would justified in law imposing a sentence of
6 eight months to a year in jail. I won't sentence you
7 today. I am going to put you on probation for a year.
8 You are to keep the peace and be of good behaviour.
9 You are to abstain absolutely from the possession,
10 consumption, or manufacture of alcohol.

11 Do you understand?

12 THE ACCUSED: Yes.

13 THE COURT: Not one drink, Mr. Aaluk, and that's
14 going to be hard. Not one drink. But I tell you that
15 you are going to be one drink away from a jail
16 sentence. Because if you are picked up drunk and
17 charged, I expect the Crown to bring this matter back
18 to Court and I will sentence you and I have already
19 told you that I think that eight months to a year
20 would be appropriate. I don't say that as a threat to
21 you but I want you to know what's at stake.

22 You are to report once a week to the probation
23 officer for the next four months. Thereafter, once a
24 month. I can't order Mr. Aaluk -- I can't force Mr.
25 Aaluk to take alcohol counselling. That's up to him.
26 I know that the probation officer can make it
27 available. I know that the probation officer can

1 assist him in that regard. That's up to Mr. Aaluk and
2 the dynamics between him and the probation officer.
3 But I have ordered that there is to be no consumption
4 or possession.

5 Mr. Aaluk, I tell you what the Crown attorney has
6 said - if you are caught drinking, you will be back in
7 front of me and I will put you in jail. You can't do
8 this to your community and do this to individuals
9 involved in your community. If you can't handle
10 liquor, you better do something about it because your
11 jobs, your contracts, and your employees will not
12 protect you.

13 Do you understand?

14 THE ACCUSED: Yes.

15 THE COURT: I recognize that Gjoa Haven is a small
16 community, Ms. Charbonneau. He is to keep the peace
17 and be of good behaviour. If he harasses or bothers
18 Ms. Kikoak in any way, in my view that's a breach of
19 the probation order. Rather than putting some
20 artificial order there that he can't communicate with
21 her, if they bump into each other in the store, in my
22 view I want to make it realistic.

23 You stay out of trouble, Mr. Aaluk. You consider
24 that you have gotten a big break today. It's all up
25 to you whether you go to jail or not and it's all up
26 to whether you drink or not.

27 You will have to wait and sign some papers and you

1 will be free to go.

2 I should say there will be an order of restitution
3 in the amount of \$1,219. The amount that he has paid
4 so far, of course, will go as a credit to that. The
5 order of restitution is for full damages. The
6 restitution is to be paid within two months.

7 Is that all we can deal with now?

8 MR. ALLISON: Yes.

9 THE COURT: 1:30 then. We will resume at 1:30.

10 (NOON ADJOURNMENT)

11

12 (AT WHICH TIME THIS SENTENCING HEARING CONCLUDED)

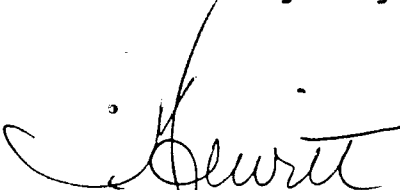
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14 Certified correct to the best of my
15 skill and ability, (Subject to Review
of Presiding Judge)

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Lois Hewitt,
Court Reporter

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