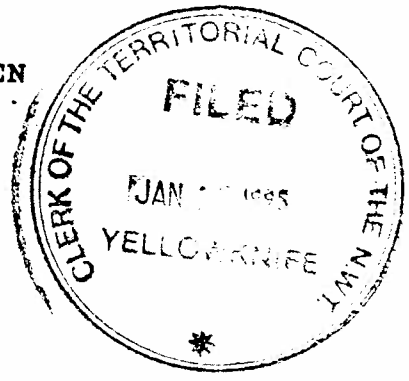
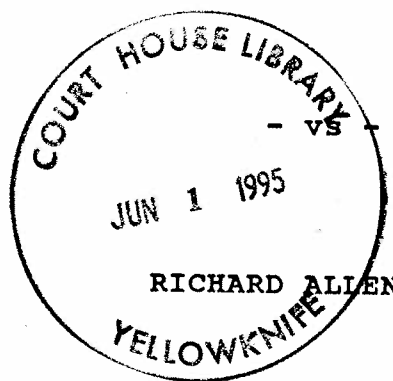


# ORIGINAL

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN




---

Transcript of the Submissions on Sentence of Counsel and the Oral Reasons for Sentence of The Honourable Chief Judge R.W. Halifax, in Yellowknife, in the Northwest Territories, on the 17th day of January, A.D., 1995.

---

**APPEARANCES:**

Mr. L. Rose:	For the Crown
Mr. J. Tarlton:	For the Accused

1 THE COURT: Very well, for the record I accept the  
2 guilty plea and I convict the accused of the offence  
3 charged. Are you prepared then to deal with  
4 sentencing on all three matters?

5 MR. TARLTON: Yes, Sir, the defence is ready to  
6 proceed. I'm wondering for the purposes of the  
7 sentencing proceedings, Sir, if Mr. Michel could be  
8 permitted to be seated at counsel table.

9 THE COURT: Very well.

10 MR. TARLTON: Thank you.

11 THE COURT: Proceed, Mr. Rose?

12 MR. ROSE: Yes, thank you, Sir. The Crown is  
13 indeed alleging a record. My friend, I believe, has  
14 reviewed the record and takes no issue with it.

15 MR. TARLTON: Yes, Sir, the record has been reviewed  
16 with Mr. Michel and it is admitted for the purposes of  
17 sentencing.

18 THE COURT: Thank you. Exhibit S-1, record of  
19 previous convictions.

20 [EXHIBIT S-1 - RECORD OF PREVIOUS CONVICTIONS]

21 MR. ROSE: As Your Honour will note, it is a  
22 record that extends back to 1983 and reflects 18  
23 previous entries. Of those convictions, four have  
24 been for offences involving violence and of course,  
25 Your Honour, the most significant is the 1992  
26 conviction in which the accused was sentenced to two  
27 months in jail for sexual assault and that that

1 disposition seemed to have had little, if any,  
2 deterrent effect on the accused.

3 Also significant is the one, albeit dated,  
4 conviction for willfull damage and the two more recent  
5 mischief convictions, the latest entered into court in  
6 1991.

7 While the record certainly does not indicate that  
8 the accused has become a career criminal, at best this  
9 record can be described as unenviable. And while the  
10 accused cannot be sentenced on his record, this record  
11 certainly is compelling evidence that the actions that  
12 bring the accused before the Court are not anomalous,  
13 are not out of character, and that indeed the public  
14 may require some protection from this individual.

15 The Crown acknowledges that the accused did plead  
16 guilty, though at the very last moment, almost -- one  
17 might characterize the guilty plea as a court house  
18 conversion and certainly that has to blunt the  
19 mitigating effect of the guilty plea.

20 However that being said, Your Honour, I have to  
21 candidly acknowledge as an officer of the Court, as  
22 well as in my role of Crown counsel, that the guilty  
23 plea did truly spare the victim the trauma of having  
24 to come to court and testify in open court. Now, in  
25 some cases the victim isn't spared the trauma and  
26 indeed sometimes the victim uses the Court process as  
27 a cathartic effect to tell her story, but in

1 particular I would be less than candid if I didn't  
2 advise the Court that the victim was indeed profoundly  
3 traumatized by the court experience, and hence, some  
4 significant benefit should accrue to the credit of the  
5 accused on sentencing.

6 Now in regard to the sexual assault, itself, while  
7 it's always tempting to editorialize on these types of  
8 offences, at the end of the day Your Honour isn't  
9 going to sentence the accused on my editorial  
10 comments, but on the law and how the law affects or  
11 interfaces with the facts.

12 Now in this particular case, Your Honour, one can  
13 only characterize the sexual assault as that of a  
14 major nature. There was violence involved that  
15 extended beyond the inherent violence of the act  
16 itself, it's extended. And because it's  
17 characterized, because the Crown will characterize  
18 this, and hopefully the Court will agree, as a major  
19 sexual assault, the Alberta Court of Appeal Sandercock  
20 threshold of a three year custodial sentence starting  
21 point will apply, and that's just what it means, a  
22 starting point. It's not a tariff, but a starting  
23 point. A starting point that can decrease with  
24 mitigating circumstances and increase with aggravating  
25 circumstances to the maximum of ten years in prison.

26 Now, given all of the circumstances, given the  
27 fact the accused has not spent any significant

1 custodial time before this, these offences, the Crown  
2 would submit that a global sentence on all three  
3 offences should be somewhat in the lower end of that  
4 range; in other words I'm talking about three years as  
5 a starting point and ten years as a maximum sentence.  
6 And indeed, that sentence would address the dominant  
7 sentencing principle here which would be general  
8 deterrence, and at the same time a sentence in that  
9 range would not crush the accused so as to interfere  
10 with his rehabilitation.

11 Again, in terms of the two property offences, Your  
12 Honour, the Crown would submit that perhaps it's going  
13 to be a fine that could be converted into default time  
14 to be served consecutive to the sexual assaults and to  
15 each other would be an appropriate disposition.

16 Subject to any questions Your Honour may have,  
17 those are the Crown's submissions.

18 THE COURT: Thank you. Mr. Tarlton?

19 MR. TARLTON: Thank you. Thank you to my friend,  
20 Your Honour.

21 My submissions, Sir, I'll first be dealing with  
22 Mr. Michel's antecedents and then I'll be addressing  
23 some comments with respect, as well, relating to his  
24 antecedents with the criminal record. Finally, Sir,  
25 I'll be discussing a bit concerning the history of  
26 this particular charge and putting it into the context  
27 of my submissions, the final part of my submissions

1 which will deal with the principles of sentencing  
2 that, in my respectful submission, ought to be  
3 considered by the Court in this case.

4 Firstly with respect to his personal antecedents,  
5 Mr. Michel's birthdate is June the 15, 1966. He was  
6 born in Lutsel K'e and is a native of Chippewan  
7 extraction. His family, as I understand, resides in  
8 Lutsel K'e as well as in the Yellowknife area. His  
9 formal level of education, Sir, was Grade 10. His  
10 work history, he advises me, has been that in the  
11 terms of working general labour. As well, he has  
12 worked in the past during summers fire-fighting in  
13 Yellowknife in the Lutsel K'e area. He also does  
14 trapping on occasions as well. His most recent  
15 employment, Sir, ended in October of last year. Mr.  
16 Michel has resided both in Lutsel K'e and Yellowknife  
17 for the greater part of his life.

18 He was involved in a commonlaw relationship, Sir,  
19 of which there are two children, girls ages 8 and 6.  
20 That relationship ended in separation in early 1992  
21 just shortly before the offence before -- involving  
22 the sexual assault before the Court today. The  
23 children, I'm advised, are in the custody of the  
24 natural mother. She resides here in Yellowknife. Mr.  
25 Michel has advised me that he visits his children on a  
26 regular basis when he is in town, approximately every  
27 week or so.

1 With respect, Sir, to his antecedents as reflected  
2 on the record. As my friend has noted, Mr. Michel  
3 does have previous convictions for crimes of violence.  
4 However, I would note that two of these offences took  
5 place back in 1988 and 1990. The one in 1992, the  
6 sexual assault, I am advised by Mr. Michel involved a  
7 complainant by the name of Mildred Lockhart who Mr.  
8 Michel was alleged at a party to have fondled her  
9 breasts. Mr. Michel has advised me that with respect  
10 to that offence and the other offences here, he has  
11 always entered guilty pleas and has never had matters  
12 go to trial before. And, as I say, up until June of  
13 1992 when this offence date arose, Mr. Michel had, in  
14 terms of his dealings with the Court, had received --  
15 I believe his worse sentence had been one of two  
16 months that for the sexual assault in early 1992 along  
17 with the firearm prohibition at the time.

18 With respect, Sir, next to the history of this  
19 matter because I feel, for the record, I wish to  
20 discuss that in terms of submissions I will make  
21 involving the guilty plea and what -- how it should be  
22 considered by the Court. Mr. Michel, as I understand,  
23 was originally arrested on this charge back on  
24 February the 12th of 1994 and following court  
25 appearances in February 23rd of 1994 elections were  
26 made for Territorial Court, a plea of not guilty was  
27 entered and a trial date was originally set for May

1 the 4, 1994 and Mr. Michel remained in custody at that  
2 time. At that time, Sir, as is indicated, there was  
3 an issue clearly of identification and, indeed, there  
4 was some very compelling factors and given the  
5 disclosure that had been received by defence at that  
6 time to indicate that there would be a very legitimate  
7 and serious issue as to identification.

8         Shortly before the trial on May the 2nd of 1994,  
9 there was an application for adjournment. As counsel  
10 at that time, I'm relying on my notes and my  
11 recollection, the adjournment was brought upon by the  
12 defence the reason being that one -- in fact a witness  
13 police officer involved in this matter had been  
14 subpoenaed by the defence and she was ill and,  
15 unfortunately, Crown counsel and I could not agree at  
16 that time as to any admissions as to what she said.  
17 The matter was then adjourned to May the 20, 1994.  
18 Then on May the 17, 1994 an application was brought by  
19 the Crown this time for an adjournment. That  
20 adjournment request was granted and the trial was then  
21 rescheduled for June the 22nd and 23rd of 1994.

22         What happens then, Sir, is on June the 8th of 1994  
23 the search warrant which was to be the subject of some  
24 very vigorous legal argument, was then executed. My  
25 friend then, making his first appearance for the Crown  
26 on June the 13, 1994, brought an application for an  
27 adjournment. The reason for that request was that as



1 the warrant had been executed just recently, the Crown  
2 wished to have the evidence obtained by the search  
3 warrant sent to the forensic laboratories in Edmonton,  
4 Alberta for testing for DNA analysis. The adjournment  
5 was granted. The matter was then set for September  
6 22nd. It was I believe endorsed preemptory on the  
7 Crown at that time. At that time, as well, Mr.  
8 Michel's status was reviewed and indeed my friend at  
9 the time allowed that Mr. Michel, given this delay  
10 that was brought upon by the Crown, ought to be  
11 released and he was then released on an undertaking  
12 with respect to this charge.

13 Then we got to September, September 22nd. At that  
14 time, Sir, the matter had to be adjourned again. The  
15 reason for that was that the results from the DNA  
16 testing were not made available to the Crown until I  
17 believe the week of September 13, 1994 and were not  
18 disclosed to defence until literally the eve of that  
19 trial date the day before. As a result, Sir, your  
20 brother Judge Bruser granted an adjournment and indeed  
21 noted although the application was brought by the  
22 defence, that in granting the adjournment he stated on  
23 the record that it was -- he was not going to hold it  
24 against defence for bringing that given the fact that  
25 the evidence was brought -- was only disclosed to  
26 defence on the eve of Mr. Michel's trial and obviously  
27 defence did not have any time to prepare any defence

1 or response to that.

2 Then after that, Sir, there were some appearances  
3 the following week on September the 27th and the 28th  
4 for the matter to be spoken of to set a date. My  
5 understanding is I was -- appeared as counsel for Mr.  
6 Michel on the 27th and it had to be put over a day  
7 because I believe at that time we were discussing with  
8 Your Honour the availability of several days for the  
9 trial and Your Honour, I believe, was not available on  
10 the 27th and it had to be adjourned an extra day and  
11 then Mr. Duke appeared as agent on my behalf on the  
12 28th day to set the trial dates for January.

13 And I only point that out, Sir, because while this  
14 matter has taken some time, in my respectful  
15 submission at least three of the adjournments in this  
16 matter were as a result of the Crown bringing  
17 applications, specifically the latter two with respect  
18 to the efforts of DNA testing and the fact that the  
19 results were not able to be obtained sufficiently in  
20 advance of the trial date. And that, in my respectful  
21 submission, should not be construed against Mr. Michel  
22 given what has ultimately transpired.

23 And also, Sir, reflecting on your comments and  
24 concerns regarding the plea as it goes to the saving  
25 of administrative efficiency, Sir, and indeed I  
26 acknowledge that a guilty plea at a very late stage  
27 obviously does not serve the same purpose or same

1 benefit for the saving of judicial resources as a plea  
2 entered at the earliest possible date, but  
3 nevertheless, Sir, I believe it was -- if I'm -- I  
4 believe, and if I am mistaken I think my friend can  
5 address this matter, it was brought to the Court's  
6 attention last week that as a result of discussions  
7 that my friend and I had, that we anticipated that  
8 even if the matter had gone to trial that it would, in  
9 all likelihood, not last the full week and that we  
10 anticipated that indeed all five days which were set  
11 aside would not indeed be required.

12 As well, Sir, the entry of the plea at the late  
13 date goes, as well, to the issues that were involved  
14 in this case. It was, and started out as a fairly  
15 straightforward case of identity and then became  
16 involved in that -- the identification issue became  
17 affected by the efforts by the Crown to seek the  
18 admissibility of the evidence obtained by the search  
19 warrant.

20 As I indicated earlier this morning, Sir, and I  
21 indeed state again for the record, this issue is one  
22 of concern both to the prosecutorial side as well as  
23 the defence bar. It is a novel issue. As far as my  
24 and my friends' exhaustive research was able to  
25 obtain, this is likely the first situation that the  
26 provisions of the new search warrant provisions under  
27 the Code were ever utilized in this fashion, and this

1 was a very novel point of law that was likely to have  
2 been -- at least anticipated to have been tested in  
3 court.

4 Ultimately, Sir, that did not happen because Mr.  
5 Michel has decided to change his plea, but -- and I  
6 would also point out echoing on comments my friend  
7 gave this morning, Sir, notwithstanding that there may --  
8 that may have minimized some of the impact on the  
9 saving of administrative and judicial resources, there  
10 were other important concessions made by the defence  
11 in order to facilitate this matter being dealt with as  
12 quickly as possible. As said, my friend and I had  
13 discussions in December, early December, with the  
14 forensic scientist who did -- performed the DNA  
15 testing at the laboratories in Edmonton, and as a  
16 result of our being able to discuss with the witness  
17 and ask questions, we were able to agree on facts that  
18 precluded having her having to be called to testify in  
19 this matter. As well, Sir, there was also issues with  
20 respect to continuity were resolved which, as well,  
21 alleviated the fact that a medical doctor who had been  
22 involved in these proceedings, but has since moved to  
23 I believe Kingston, Ontario, was not required as well.  
24 That was also done by way of concession of the  
25 defence.

26 So while Mr. Michel by his late plea may not have  
27 completely saved the Court complete -- to its complete

1 satisfaction the lack of or saving of resources and  
2 time, there were, there were already done, in terms of  
3 the defence, certain things which did, in fact, go to  
4 saving the prosecution and the public at large  
5 considerable cost and that should be, in my respectful  
6 submission, considered by the Court in terms of the  
7 sentencing.

8 As well, Sir, echoing all my friend's comments,  
9 Mr. Michel's plea has saved the victim the trauma of  
10 testifying and, indeed, that is something which should  
11 be given careful consideration by the courts when  
12 imposing sentence.

13 THE COURT: Of course on the other hand, Mr.  
14 Tarlton, sometimes as far as the victim is concerned  
15 it's the apprehension and the trauma waiting to  
16 testify that is greater than the actual testifying.

17 MR. TARLTON: That is -- and that may be, I can only  
18 say that it is something that I suppose noone can be  
19 said likes to come to court, be they a party or a  
20 witness, but nevertheless, she did not have to  
21 testify, she did not have to be cross-examined, she  
22 did not have to relate what happened, and I think  
23 considerable credit should be given to Mr. Michel for  
24 that. And, as I say, there -- and I only wanted to  
25 get into the history and what happened because while,  
26 as I said earlier, certainly a guilty plea at a later  
27 date doesn't go as far as an early guilty plea with

1 respect to the saving of administrative costs and the  
2 public resources, there have been efforts made by the  
3 defence throughout these proceedings that have, in my  
4 respectful submission, alleviated the allocation of  
5 resources and also saved the public considerable cost.

6 My other submission, Sir, and while acknowledging  
7 the regime of Sandercock, I would like to address the  
8 principle of jump in terms of sentencing. As  
9 indicated, Sir, Mr. Michel has not -- until this  
10 offence date he had served, in terms of incarceration,  
11 very very low-end Territorial time. The sentence,  
12 while it must obviously address the concerns of  
13 general deterrence, should not be such as to  
14 completely crush Mr. Michel in terms of his ultimate  
15 future and his potential for rehabilitation. And I  
16 would be certainly as well, Sir, recommending that in  
17 the sentencing regime that Mr. Michel should be  
18 sentenced at the very low end, appropriate to the  
19 sentencing principles for major sexual assaults.

20 The final note I have, Sir, is that if ultimately  
21 the period of incarceration is such as to require a  
22 penitentiary term, I would be asking, Sir, that Mr. --  
23 that there be an endorsement on the warrant that Mr.  
24 Michel serve his sentence here in the Territories as  
25 opposed to an institution in the south. I have spoken  
26 with my friend and I believe the Crown is not opposed  
27 with that. As I say, Mr. Michel's roots are here in

1 the north. He has family here. He has young children  
2 here. He would like the opportunity, while he is  
3 serving his sentence, to still be in communication  
4 with them and I would ask that such an endorsement be  
5 made on the warrant.

6 And finally, Sir, Mr. Michel has asked me to  
7 extend his apology to the victim for what occurred.

8 And one other matter, Sir, just in terms of the  
9 issues here by way of explanation but not an excuse  
10 for what happened in court yesterday with Mr. Michel's  
11 non-attendance, as I indicated to the Court the  
12 problem was one of a combination of impecuniosity and,  
13 as well over the weekend, a close family friend of the  
14 Michel family passed away. That made things very  
15 difficult in terms of Mr. Michel being able to get  
16 some arrangements to come back to Yellowknife for his  
17 court date. He had been planning to come back on  
18 Friday and because of the -- of this person passing  
19 away, those plans fell through and there were  
20 difficulties getting money together for him to take a  
21 regular flight out early on the weekend. And again,  
22 Mr. Michel has asked me to extend his apologies to the  
23 Court for the delay and inconvenience it might have  
24 caused.

25 Subject, Sir, to any further questions or comments  
26 you might have, those would be my submissions.

27 THE COURT: Thank you. Reply from the Crown?

1 THE COURT: Thank you. Reply from the Crown?

2 MR. ROSE: None, Your Honour.

3 THE COURT: Would you stand up, Mr. Michel? Do  
4 you have anything you wish to say, Mr. Michel, before  
5 I pass sentence?

6 THE ACCUSED: I would like to apologize to the  
7 victim, that's about it.

8 THE COURT: Anything else?

9 THE ACCUSED: No.

10 THE COURT: Very well. Okay, I'll deal with the  
11 matter of the sexual assault first, it's obviously the  
12 most serious charge out of the three, the other two  
13 are a theft under and a mischief charge which are of a  
14 minor nature in the circumstances.

15 This offence allegedly occurred on the 5th of June  
16 1992, of course there wasn't a charge laid until the  
17 5th of April 1993 and then there is the offence which  
18 counsel, Mr. Tarlton, has indicated that there was a  
19 number of delays because of DNA testing and the like.  
20 There were some issues that were expected to be argued  
21 as to identity and parameters within which Section  
22 487.01 of the Criminal Code apply.

23 At the start of the trial the accused changed his  
24 plea to guilty and has accepted the allegations as to  
25 the circumstances alleged by the Crown, which indicate  
26 that the accused at almost 3 a.m. on the 5th of June  
27 in the city of Yellowknife confronted the victim on



1 the street in the City of Yellowknife and by use of  
2 some force to some degree, which was not completely  
3 explained, forced her into a back lane area and by the  
4 use of force had sexual intercourse with her in the  
5 back lane near the Y.K. Pizza building.

6 The circumstances alleged indicated that the  
7 victim attempted to fight off the accused but was  
8 overpowered and, of course, had some difficulty  
9 identifying the accused but later identified him  
10 through a photograph after, I assume from the  
11 circumstances, reviewing a number of photographs from  
12 the R.C.M.P.

13 Thereafter, or some time later, a warrant was  
14 issued by Judge Bourassa to seize samples of hair and  
15 saliva from the accused for the purposes of DNA  
16 testing which was done and an analysis completed  
17 which, for all intents and purposes, identified the  
18 accused as the person who committed the sexual assault  
19 on the victim on the 5th of June, 1992.

20 So obviously this is a major sexual assault. It's  
21 a sexual assault where intercourse has taken place  
22 against the wishes of the victim.

23 The decision of Regina vs. Sandercock from the  
24 Alberta Court of Appeal, which has been accepted and  
25 followed in this jurisdiction, sets the starting point  
26 for any sentence at three years. The Court must then  
27 look at the circumstances of the offence and decide

1 whether there is aggravating and mitigating  
2 circumstances that that starting point should be  
3 adjusted.

4 The Court should also look at the situation of the  
5 accused, if he has previous related offences or other  
6 offences of violence, the fact that there was an early  
7 guilty plea.

8 In this case, of course, there is not an early  
9 guilty plea, although there is a guilty plea at the  
10 last moment which did at least save the victim from  
11 having to get up in court and give evidence as to the  
12 circumstances surrounding the sexual assault;  
13 although, of course, the victim had to be prepared to  
14 give evidence on Monday morning and, of course, the  
15 accused didn't show for his court appearance at that  
16 time. So I can't say that all the stress and trauma  
17 of the victim having to give evidence and prepare to  
18 give evidence has been avoided in this case as well.

19 Now there is obviously other things which Mr.  
20 Tarlton has asked the Court to give the accused credit  
21 for which is, in his opinion and as he has expressed,  
22 shortened the trial time or the cost to the system.  
23 On the other hand, the Court should be expecting  
24 counsel to perform in that manner; if there is things  
25 not in issue then why are we spending court time to  
26 deal with them if there isn't an issue? But I do  
27 appreciate the effort that was made by counsel in that

1 regard.

2 Now, on the other hand, there is a previous  
3 conviction for sexual assault the 20th of March, 1992.  
4 Obviously it wasn't a serious sexual assault as the  
5 sentence was one of two months imprisonment, but also  
6 there is offences in 1988 for assault causing bodily  
7 harm, in 1990 for assault with a weapon, and further  
8 in the fall of 1992 a charge of robbery, so a theft  
9 with violence, which again must have been on the minor  
10 end with only a sentence of three months imprisonment  
11 on the robbery charge.

12 But I think the Court has to consider that the  
13 accused does have a bit of a track record of offences  
14 of violence, but also this is his second sexual  
15 assault conviction under Section 271 of the Criminal  
16 Code. In my view, that makes for aggravating  
17 circumstances in this case. This is not a low end, if  
18 one can call it that, a low-end major sexual assault.  
19 There was more violence used than just the violence of  
20 the actual sexual assault itself. There was outside  
21 violence and overpowering of the victim being accosted  
22 on the street.

23 I suppose it's nieve to still think that women  
24 should be able to walk the streets of this community  
25 without being violated. It's a sad comment to have to  
26 make in our society that women are put in a position  
27 of having to protect themselves from men who wish to

1       prey upon them for their own sexual desires, and as a  
2       result do not have the benefit of acting as a normal  
3       citizen of another gender in this society. But the  
4       accused should not be paying the price for every other  
5       situation of this nature, but it seems to me that it  
6       is a sad comment in our society that it has  
7       deteriorated to that point.

8                Would you stand up, Mr. Michel? Now, Mr. Michel,  
9       obviously we're looking at a penitentiary term  
10       generally speaking considering the directions of the  
11       Court of Appeal in the Sandercock judgment and this  
12       court must start at three years. Now, I have  
13       considered the mitigating and aggravating  
14       circumstances, I also note that for a period of time  
15       you have been in custody and I take that into  
16       consideration as well, that there was a time frame  
17       where you were held in custody while this matter was  
18       ongoing. But after considering all the matters and  
19       the circumstances, some of which I reviewed, it seems  
20       to me that there is obviously more aggravating  
21       circumstances than mitigating circumstances and, in  
22       particular, the fact that this is a second conviction  
23       for a sexual assault.

24               In my view, the starting point provided for in the  
25       Sandercock decision should be increased in these  
26       circumstances. And, under the circumstances, it's my  
27       view that they should be increased to four years

1 imprisonment and I so sentence you to four years  
2 imprisonment with regard to the sexual assault.

3 With regard to the charge of mischief, you do have  
4 a number of previous convictions, again this is a  
5 drunkenness situation, Mr. Michel, where you're trying  
6 to get in the Gold Range after you've been barred, I  
7 sentence you to 30 days imprisonment to be served  
8 consecutively.

9 You then have the theft on the 10th of December,  
10 again alcohol related, the theft of alcohol, I  
11 sentence you to 30 days imprisonment to be served  
12 consecutively.

13 In the circumstancesm the victim of crimes  
14 surcharge will be waived. With regard to the  
15 recommendation requested by the defence, I'm prepared  
16 to make the recommendation that, if possible, the  
17 sentence be served in the Northwest Territories.  
18 However you should realize, Mr. Michel, I cannot bind  
19 the correctional facilities or penitentiary services  
20 as to where you will serve your sentence, that's an  
21 administrative matter for the correctional service in,  
22 this case the Canadian Penitentiary Service, but I  
23 will make that recommendation.

24 Now, Mr. Michel, you've got two convictions for  
25 sexual assault and I would suggest you consider taking  
26 advantage of any programs or counselling that may be  
27 offered or available through correctional services

1 while you're incarcerated. Because to be quite frank,  
2 one more of these and you could wind up spending the  
3 rest of your life in jail. The public is entitled to  
4 protection from this kind of continual behavior and  
5 you're now with two convictions for sexual assault and  
6 I think you have to realize that the circumstances are  
7 such that if it happens again, the jail term will be  
8 substantial.

9 Anything further, counsel?

10 MR. ROSE: A firearm prohibition?

11 THE COURT: Oh yes, we have a Section 100 order,  
12 don't we. I note that there was a Section 100 order  
13 made previously.

14 MR. ROSE: That's right, Sir.

15 THE COURT: So are we into a subsequent offence?

16 MR. ROSE: I believe we are, Sir.

17 THE COURT: Section 100(1)?

18 MR. ROSE: Yes, Sir.

19 THE COURT: Do you agree, Mr. Tarlton?

20 MR. TARLTON: Yes, Sir.

21 THE COURT: So this is a life prohibition then?

22 MR. ROSE: And one further matter, Sir, as I  
23 understand it there has been an order pursuant to 486  
24 of the Criminal Code banning any publication of  
25 material that might indeed identify the complainant, I  
26 notice that the press are in the room and I would just  
27 ask Your Honour to advise them of its implications.

1 THE COURT: There is a 486 ban on publication,  
2 that's correct, whereby the press is prohibited or  
3 anybody is prohibited, in fact, from publishing or  
4 broadcasting any information that may identify the  
5 complainant in this matter.

6 Now the Section 100 order is a Section 100(1)  
7 order and to be quite frank, Mr. Michel, I don't like  
8 to have to make this order considering you're a person  
9 that comes from Lutsel K'e, a small community where  
10 use of a firearm or hunting is part of where you come  
11 from. But, unfortunately, it's a subsequent or a  
12 second offence and under Section 100(1) I have no  
13 choice but to make an order whereby you're prohibited  
14 from having in your possession any firearm,  
15 ammunition, or explosive substance for a period of  
16 life, for the rest of your life. I'll allow you 14  
17 days to dispose of any such items.

18 I'm going to add one further part to this order  
19 where I'm granting you leave, Mr. Michel, to re-apply  
20 to the court to have this reconsidered if there is a  
21 change in the law in the future. Now that's a little  
22 unusual, that order, but I'm going to at least try to  
23 leave it open for you because I feel it's -- a person  
24 in your position, not being able to hunt for the rest  
25 of their life, is a pretty harsh treatment in the  
26 circumstances. On the other hand, that's how serious  
27 these offences are treated particularly when it's a

1           second offence. That will be all. That's the total  
2 matters?

3 MR. TARLTON:           Yes, Sir.

4 MR. ROSE:             Yes, Sir.

5 THE COURT:            You have nothing further with regard  
6 to this matter, Mr. Tarlton?

7 MR. TARLTON:           No, Sir.

8 THE COURT:            Mr. Rose?

9 MR. ROSE:             No, Sir.

10 THE COURT:            Okay.

11 -----

12

13

14

15

16

17

18

19

20

21

22

23

24

25

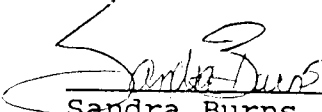
26

27



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

Certified correct to the best of my  
skill and ability. (Subject to Editing  
by Presiding Judge)

  
\_\_\_\_\_  
Sandra Burns  
Court Reporter