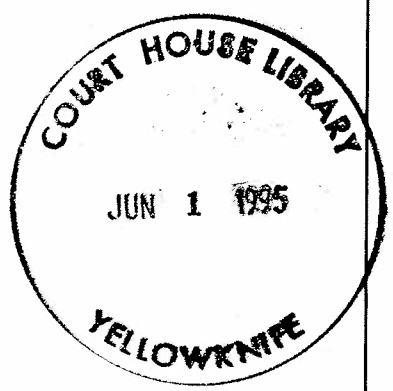


IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

HER MAJESTY THE QUEEN

- and -

FLOYD KAKFWI



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Transcript of Reasons for Sentencing, held in Fort Good Hope, in the Northwest Territories, on the 16th day of March, A.D., 1995. The Honourable Judge B.A. Bruser presiding.

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APPEARANCES:

Mr. J. MacDonald	For the Crown
Mr. J. Posynick	For the Defence

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(CHARGED UNDER SECTIONS 246.1, 87, 100, AND 145(1)(A)  
OF THE CRIMINAL CODE)

COPY

1 THE COURT:

I am going to sentence you now

2 because I am comfortable with what I am doing. I  
3 do not say that what I am about to do makes me happy.  
4 It does not, Mr. Kakfwi, but my job, you see, has to  
5 be to protect the public. With what I am about to do  
6 I am comfortable that the public will be protected.  
7 That is what I mean by the word "comfortable". This  
8 is not a comfortable proceeding for anyone to be  
9 involved in.

10 This offender is 23 years of age. He has pled  
11 guilty to five offences, two of which are in youth  
12 court. One of them involved a sexual assault on a  
13 very young girl. The other is a sexual assault  
14 over a lengthy period on another young girl. On  
15 October 23rd, 1994, he had a firearm, unloaded, in  
16 his possession for a purpose dangerous to the public  
17 peace. At the time he did so he was prohibited from  
18 possessing firearms by operation of law, and on  
19 November 18th, 1994, while he was in the court  
20 complex, here, and while awaiting an appearance  
21 before the Court, he fled. He was apprehended not  
22 too long afterward.

23 I do not intend to review the circumstances of all  
24 the crimes. They were read into the record by Crown  
25 counsel earlier this afternoon. The facts are not in  
26 dispute on any of the matters. The circumstances of  
27 everything which this offender did are extremely serious.

1 Considering the age of Floyd Kakfwi, I find his  
2 record, entered as Exhibit S-1, along with the matters  
3 the Court is now dealing with to be one of the most  
4 menacing records I have seen in over 20 years of  
5 involvement with the criminal law. I do not say it is  
6 the worst.

7 The record shows to everyone dangerousness. It  
8 runs two pages. Much of it is a youth record  
9 and much of it is an adult record. There are many  
10 entries on it for crimes of violence and for weapons  
11 offences. There are many entries on the record for  
12 not obeying orders of the Court.

13 As recently as January, 1993, a little more than  
14 two years ago, this court, Mr. Kakfwi, gave you a  
15 tremendous break. The Court I believe did so (from  
16 looking at the record and not from any independent  
17 memory) because there were submissions made on that  
18 date to warrant a rehabilitative sentence. It did  
19 not work.

20 There was a one year probation order with  
21 the suspended sentence. The following month you  
22 were sentenced for a number of offences including  
23 uttering threats and failing to obey a probation  
24 order which involved, apparently, according to the  
25 record, possession of a weapon and in January,  
26 1994, nine months for assault. I haven't gone over  
27 the rest of the record. It is with the court file.

1 If the matter goes further, the Court of Appeal can  
2 review it in its entirety. The public here, however,  
3 has not had the benefit of seeing the record. I  
4 intend, while not going over it all, to highlight  
5 it.

6 As a young person, there are (apart from property  
7 offences of which there are many): Common assault,  
8 careless use of a firearm, careless use of a firearm  
9 again, possession of a weapon for a purpose dangerous  
10 to the public peace, pointing a firearm, and  
11 possessing a firearm while prohibited. Then as an  
12 adult, there are property offences. There are  
13 failures to obey court orders, then there are the  
14 following by way of highlighting the dangerous  
15 aspects of the record: Assault, assault again,  
16 another assault, all three being in 1990; then again  
17 in 1990, possession of a weapon for a purpose  
18 dangerous to the public peace; 1992, assault,  
19 possession of a weapon for a purpose dangerous to  
20 the public peace, possession of a firearm while  
21 prohibited, assault, and contempt of court. I  
22 have skipped over many other matters that aren't  
23 related to violence; 1993, I already referred to  
24 the suspended sentence for possession of a weapon  
25 for a purpose dangerous to the public peace; 1993,  
26 uttering threats; 1994, assault, and, again, many  
27 other entries for crimes not involving violence.

1           The psychiatric report which has been of assistance  
2 today is valuable because for one reason it is not  
3 surprising from reviewing it to note this horrendous  
4 record. The doctor who prepared the report asks  
5 the Court to consider the possibility of a  
6 probationary sentence with a requirement for  
7 treatment. He writes, "In the absence of any  
8 professional intervention, there is some likelihood  
9 that Mr. Kakfwi could possibly act out in a  
10 dangerous manner if exposed to a stressful  
11 situation." He goes on.

12           I do not agree completely with Dr. Singh. I do  
13 not believe that there is "some likelihood" that  
14 Mr. Kakfwi would act out without professional  
15 intervention. In my view, it is a dead certainty  
16 that he will act out and that there will be more  
17 along the trail of victimization. More innocent  
18 people will be hurt and I believe there is a strong  
19 likelihood that with the wrong combination of  
20 alcohol, proximity of weapons, and anger fueled by  
21 alcohol abuse, that someone will die. This must  
22 not be allowed to happen.

23           The Court has been invited by Mr. Posynick who  
24 spoke ably on behalf of you, Mr. Kakfwi, to impose  
25 some imprisonment, but not a lengthy period. Mr.  
26 Posynick said that after speaking to the Chief and  
27 others, this offender could be part of a "pilot

1 project" for the healing that is about to start or  
2 has started in the community and for what ails the  
3 community. Mr. Posynick said that this offender might  
4 serve as an "impetus" for all the good work to get  
5 under way more strenuously.

6 I will not permit this court process to be  
7 used for pilot projects in the case of offenders  
8 who have proven time and time again to their  
9 community that they are dangerous. The  
10 community has been aware of Mr. Kakfwi's  
11 problems for years. The community has not been  
12 able to give him the type of professional  
13 intervention that he needs so desperately and  
14 immediately.

15 Mr. Kakfwi, I give you credit, as I said  
16 earlier, for all the time in custody in remand.  
17 The sentence when viewed globally should not crush  
18 you, but I do not know what it would take to crush  
19 you. This court does not have that type of  
20 knowledge. It could not possibly know what would  
21 be crushing. I have a sense of what could possibly  
22 be crushing. I won't impose that type of sentence on  
23 you. The totality then is very much in my mind  
24 because the total effect according to one of the  
25 principles of law should not be so great as to be  
26 a crushing blow. If you are crushed, then the  
27 healing process may never occur. If the healing

1 process does not occur while you are locked up, then  
2 when you are released, there is every reason to  
3 believe that you will immediately or very soon  
4 thereafter reoffend.

5 The warrant of committal, therefore, will be  
6 endorsed with the following recommendations:

7 1) That Floyd Kakfwi immediately upon  
8 entering prison receive intensive psychological  
9 or psychiatric counselling following an initial  
10 assessment.

11 2) That he receive immediate and ongoing  
12 alcohol abuse treatment.

13 After the professional intervention in prison  
14 has been allowed to work, Mr. Kakfwi can meet with  
15 his community again. I am confident the community  
16 will be here to help him. If the healing within  
17 the community is working, then Mr. Kakfwi can join  
18 those who are healing others and receive ongoing  
19 healing. This way, the public can be protected  
20 for the long term.

21 The main principle which I am focusing on today  
22 on all the matters is the need to incapacitate  
23 this offender for a sufficiently long time so  
24 that he will not harm anyone again.

25 I now turn to the matters in particular. First,  
26 the first sexual assault -- I bear in mind that  
27 the offender at the time was 13 and at that time he

1 had no record -- there will be a period of secure  
2 custody of six months. It will be served in an  
3 adult institution. The facts involve sexual  
4 intercourse on five occasions with a six or seven  
5 year old. On each of the matters before the Court  
6 I have considered the guilty pleas because they  
7 are to the credit of the offender.

8 The second sexual assault is more serious  
9 because there are so many more acts of sexual  
10 intercourse. The offender was 14 to 16 at the time,  
11 thereby at a more responsible age within the  
12 parameters of being a young offender. It is not as  
13 if he has been of good character since then. He  
14 committed those offences between November 4th, 1986,  
15 and November 4th, 1987. It was one offence, but  
16 involved a number of incidents. I use the word  
17 "offences" in the plural in that context only.  
18 He was considerably older than his victim. The  
19 abuse of the victim who was away from her home and  
20 in a hostel, was horrific. We do not see many cases  
21 as bad as this in the courts in the Northwest  
22 Territories. There will be 18 months' secure  
23 custody consecutive.

24 I turn now to the adult matters. For the weapons  
25 offence, there will be nine months consecutive. It  
26 would be longer, but for the time in custody and it  
27 would have been longer had the rifle been loaded.



1 I have taken into account that at the time he committed  
2 that offence he was on an undertaking. It is an  
3 aggravating factor.

4 For possessing the firearm while prohibited, there  
5 will be a six-month period of imprisonment. I have  
6 taken into consideration the remand time. It will be  
7 a concurrent period, and for the escape, there will be  
8 a three-month period of imprisonment. Again, but for  
9 the lengthy remand period, it would have been  
10 consecutive. It will be concurrent. I think that  
11 works out to 33 months. That is a penitentiary term.

12 The final recommendation I am making is that he go  
13 to an institution where he will not be crushed and  
14 where the intensive psychiatric counselling that he  
15 needs will be available.

16 On the firearms offence, the one contrary to  
17 section 87, I prohibit you from having in your  
18 possession any firearms, ammunition, or explosive  
19 material for a period beginning today and ending more  
20 than ten years after your release. The ten-year  
21 period would be the minimum period by operation of  
22 law.

23 Mr. MacDonald, refresh my memory. Is there an  
24 upper limit to it? I think it is life.

25 MR. MACDONALD: Yes, it's life.

26 THE COURT: I make it for life.

27 Mr. Kakfwi, you are indeed lucky that the Crown

1 had not brought a Dangerous Offender Application. If  
2 it had and if it had succeeded, you would have gone  
3 to prison on an indeterminate basis and you could  
4 have been in prison for the rest of your life. Get  
5 the healing process under way.

6 The Court thanks the spokeswoman for the Justice  
7 Committee. The Court was unable to go along with  
8 the recommendations of the Committee. The Court was  
9 unable to go along with the recommendations of the  
10 Band Council. The Court was unable to do this  
11 because this court is governed by the law. I believe  
12 that I am applying the law. If I am mistaken, the  
13 Court of Appeal can correct me.

14 MR. MACDONALD: Sir, just before you --

15 THE COURT: Yes?

16 MR. MACDONALD: -- close the matter, I advised  
17 the Court that my information was that the youth  
18 worker was applying to have Mr. Kakfwi serve the  
19 custodial disposition imposed under the Young  
20 Offenders Act in an adult facility. Perhaps, for  
21 the record, the youth worker should confirm  
22 that that's her application.

23 THE COURT: Is that correct?

24 MS. EDGI: Yes.

25 THE COURT: There it is. Is there anything  
26 more from the Defence?

27 MR. POSYNIK: No, thank you, Your Honour.

1 THE COURT: Mr. Kakfwi, before you go on with  
2 Mr. Posynick -- we will break in a moment so the two  
3 of you can talk -- the Court has a tremendous amount  
4 of compassion for what you have gone through. The  
5 Court only trusts that you will make it work. In the  
6 long run, you are the person who has to make it work,  
7 not the Chief, not Florence Barnaby, not all the  
8 people here, but you, and you can do it. I know you  
9 can do it.

10 That's all. We'll take a five-minute break to  
11 let Mr. Posynick further brief his client. Then  
12 we'll resume and complete the balance of the docket.  
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1 (AT WHICH TIME THESE PROCEEDINGS WERE CONCLUDED)

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Certified a correct transcript,

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Deborah A. Joujan  
Court Reporter

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