

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- vs. -

A J



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Transcript of the Reasons for Judgment of The Honourable  
Judge B.A. Browne, at Iqaluit in the Northwest Territories,  
on Thursday, June 4, A.D., 1998.

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APPEARANCES:

Ms. D. Robinson: Counsel for the Crown  
Neil Sharkey, Q.C.: Counsel for the Accused

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Charges under s. 149(1) and 271  
of the Criminal Code of Canada

1 THE COURT: One of the most difficult jobs that  
2 I have as a Judge is imposing sentence in a case such  
3 as the one that we heard about and I am asked to deal  
4 with this afternoon.

5 Mr. J . . . who has pled guilty to a number of  
6 sexual assault charges today in Court, is well known in  
7 this community and has been for many years.

8 Today, he has pled guilty to a number of sexual  
9 assault charges, and we hear from the facts that while  
10 he carried on his life, holding responsible positions  
11 in this community, he was also, as Mr. Sharkey has  
12 described, carrying on a secret life of sexually  
13 abusing his stepdaughter, and that seemed to have gone  
14 on for almost 20 years.

15 At the end of the day today, there will be only  
16 sadness. It is obvious that the victim in this case  
17 has suffered year after year from those assaults,  
18 wondering when it would happen again, being afraid to  
19 come forward in case no one believed her, and having no  
20 ability to stop the abuse. I have no doubt that she  
21 continues to deal with what has happened to her, and  
22 will continue for some years to deal with the things  
23 that we have heard about today.

24 I hope that the guilty plea that Mr. J . . . has  
25 entered in court today will give her some peace of mind  
26 and some comfort to carry on. He has, today,  
27 acknowledged responsibility for being in the wrong. He

1 has taken responsibility for abusing her, and as I have  
2 indicated, I hope that that gives her some peace and  
3 comfort at the end of the day today and will allow her  
4 to carry on with the healing that she will obviously  
5 have to go through.

6 There is sadness, as well, because Mr. J will  
7 go to jail for a long time today as a result of his  
8 actions towards his stepdaughter; and sadness, as well,  
9 for the family members, and I think that there are many  
10 family members in court today. The family existed when  
11 this abuse was going on for all of those years. As a  
12 result of the allegations being made and coming before  
13 the Court, the family has, no doubt, been torn apart,  
14 and each member of the family, after court is finished  
15 today, will have to, in their own way, try to get on  
16 with their lives and deal with what has happened within  
17 the family as they carry on from day to day.

18 In figuring out a proper sentence in any case, it  
19 is often useful to mention facts that make the charge  
20 serious and those facts that can be said in favour of  
21 the accused. Those factors must then be balanced by  
22 the sentencing Judge in the context of recognized  
23 principles of sentencing.

24 The main purpose of the criminal law is to protect  
25 the public, and that is the overriding factor that must  
26 be considered in a case such as this. In dealing with  
27 sexual assault charges as well, important principles of

1 sentencing that must be considered by the Judge are  
2 deterrence, and that means that the sentence should try  
3 to discourage the accused before the Court from  
4 committing similar offences. It should also set an  
5 example to members of the community that if people are  
6 involved in activities such as we have heard about  
7 today, the Courts will be severe in the treatment of  
8 those situations of abuse, and it is always the hope of  
9 the Court that people will pay attention to that and  
10 not be involved in the kind of behaviour that might  
11 lead to that kind of sentence.

12 So, it is always the hope, when sentences of the  
13 kind that will be imposed today are imposed, that that  
14 will discourage others from being involved in similar  
15 activities.

16 The Courts must also recognize, in imposing  
17 sentence, the hope that any accused appearing before  
18 the Court will be rehabilitated by whatever sentence is  
19 imposed.

20 In this case, there are certainly facts that  
21 suggest that these charges are serious and suggest a  
22 lengthy sentence. I do not propose to talk about the  
23 allegations particularly, simply to mention some of the  
24 factors that suggest a lengthy sentence.

25 As I indicated previously in my remarks, the first  
26 incident of assault happened when the complainant was  
27 13 years old, the final incident when she was 32;

1 approximately 20 years. Mr. J was obviously in a  
2 position of trust. The young woman living in that home  
3 should have felt that her home was a safe and  
4 comfortable place to be. She should have been able to  
5 trust the person who was in the position of a father to  
6 her, and Mr. J took advantage of his relationship  
7 with that young woman in the incidents that we have  
8 heard about, and that taking advantage of a position of  
9 trust again suggests a lengthy sentence.

10 It is also important to consider the extent of  
11 sexual activity that took place in arriving at a proper  
12 sentence, and in this case, we have heard that on many,  
13 many times, Mr. J approached his stepdaughter and  
14 digitally penetrated her vagina, and that happened on a  
15 continuing basis, or as set out in the Informations.

16 There are things, certainly, that can be said in  
17 favour of Mr. J . He comes before the Court today,  
18 72 years of age, not in perfect health, he has no  
19 criminal record. His reputation in the community has  
20 been severely affected as a result of these charges, as  
21 it should be, but I have no doubt that that will  
22 certainly affect him and the way that he is seen in the  
23 community. He will have to deal with that now that the  
24 abuse is out in the open.

25 It is significant that Mr. J has entered a  
26 guilty plea. None of the complainants who are involved  
27 in any of the charges have had to testify in court, and

1 particularly, the complainant where guilty pleas have  
2 entered, she did not have to testify, and that is  
3 significant. It is also significant, as I have  
4 mentioned, that she knows, now, that Mr. J has  
5 taken responsibility for his actions towards her, and  
6 hopefully, that will assist her.

7 It is also appropriate to consider the time and  
8 expense saved with the guilty plea in terms of court  
9 resources.

10 So the guilty plea that Mr. J has entered  
11 today is significant for many reasons. I think it also  
12 fair to say that entering that guilty plea would be a  
13 very difficult step for Mr. J to take, having  
14 regard to the reputation he previously enjoyed in the  
15 community, and it is to his credit that he has come  
16 forward and honestly admitted what he has done to that  
17 young woman over all those years.

18 After commenting on all of the factors that the  
19 lawyers have put before me and recognizing the factors  
20 that make these charges serious and suggest a lengthy  
21 sentence and the factors that can be said in  
22 Mr. J 's favour, a Judge's job is to balance all of  
23 those factors, and at the end of the day, come up with  
24 a sentence that, under all of the circumstances and  
25 after everybody having their say in court, is  
26 appropriate for the crimes committed and for the person  
27 who has been charged with those crimes.

1                   Mr. J           , stand up, please.

2                   Actually, I just want to confirm there are four  
3 charges where guilty pleas have been entered; is that  
4 right?

5 MS. ROBINSON:                   Yes, Your Honour.

6 THE COURT:                   With regard to all of the charges  
7 that are before me today, Mr. J           , after having  
8 talked about all of the things that I have thought  
9 about and explained as best I can the principles of  
10 sentencing that I must work within, the sentence on all  
11 of these charges, taken together, will be the minimum  
12 sentence that has been recommended to me by the  
13 lawyers, three years.

14                   With regard to the charge from 1979 to 1979, the  
15 sentence is one year.

16                   1989 to 1991, one year consecutive.

17                   1993 to 1995, one year consecutive.

18                   The other charge from 1997, one year concurrent.

19                   I just want to say briefly that when I considered  
20 the sentence in that range that I should give you, I  
21 have given you the lowest sentence within the range  
22 proposed by the lawyers because of your age, because of  
23 the guilty pleas that have been entered, which I  
24 believe is significant from the complainant's point of  
25 view, and I also believe that it is a significant  
26 admission for you to make in your life.

27                   I will make a recommendation on the papers that go

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with you to the jail that you serve that sentence at Baffin Correctional Centre.

Mr. J , as I have said, it is very significant to me that you have pled guilty to the charges that are before the Court today. As I was sitting in my office thinking about all of the things that I have heard this afternoon, the thought that kept coming back to me is that I hope that now you can live as an honest man. You can make whatever reputation you make for yourself, but it is most important that you be honest with yourself and with others, and it has been a long time since you have done those things.

As I was thinking about that, I then looked back at the papers that Mr. Sharkey had given to me, and that was the very advice that your grandmother and your father gave to you many, many years ago, to live in harmony with others and to respect others. The first step in doing any of those things is to be honest with ourselves and with others. I hope that as of today, you can make a commitment to yourself and to other people, who have obviously been suffering as a result of your actions, that you will be honest with yourself and with others.

Good luck, Mr. J .

**(AT WHICH TIME THE PROCEEDINGS CONCLUDED)**

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Certified correct to the best of  
my skill and ability,

  
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Tracey Hoffman,  
Court Reporter