

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

HER MAJESTY THE QUEEN

- and -

DANIEL AQIGAAQ

SENTENCING HEARING

APPEARANCES:

JUDGE B.A. BRUSER

L. Rose, Esq.,

Counsel for the Crown.

D. Blais, Esq.,

Counsel for the accused.

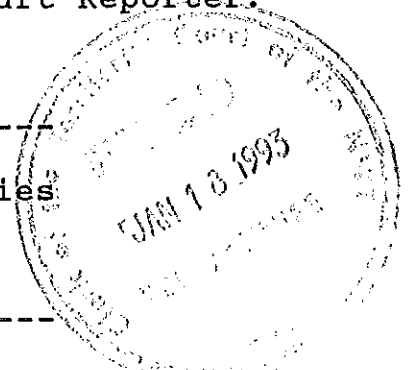
J. McFarland, Ms.,

Court Reporter.

Baker Lake, Northwest Territories

December 7, A.D. 1992

(Charged under Section 271 of the Criminal Code)



1 THE COURT: You have plead guilty, sir,
2 to committing a sexual assault on S E
3 (phonetics). The court has made an order directing
4 that no information that can reveal her identity be
5 published or broadcast in any manner. Through the
6 guilty plea, which was given after you re-elected to
7 be tried in this court from a court composed of a
8 judge and jury, you have spared the young victim from
9 having to come to court to testify. You have spared
10 her, therefore, considerably more trauma. This counts
11 greatly in your favor.

12 I want to review the facts. On July 29th of this
13 year, the 11-year-old victim disclosed that she had
14 been sexually assaulted by you. The background as to
15 what occurred is the following: During the month of
16 July, you went to the home of the victim here in Baker
17 Lake. You went there for a lawful purpose; you went
18 there to visit. It seems that in the past, you had
19 been over there and you had done so to visit with
20 the father of the child.

21 The father was home when you arrived. You, he
22 and others watched television. He went out for a
23 brief period of time to do something with the mail.
24 When he was out, you took advantage of the absence by
25 taking the victim to the bathroom of her home. For a
26 brief moment, you put your hand on the outside of her
27 clothing between her legs. Crown counsel alleged that

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1 at the time, the child was, to use his language,
2 "between childhood and womanhood." He said that this
3 was a very confusing time in her life.

4 After the facts were read in, defence counsel
5 agreed with them and the court accepted the guilty
6 plea. The Crown says that there is no record. This,
7 too, is in your favor. He does point out, though,
8 that the victim was traumatized. And the submission
9 of the Crown to the court was that the court consider
10 one day imprisonment and a probation order with a term
11 that you have no contact with your victim.

12 Defence counsel pointed out that you are a
13 25-year-old single individual who lives with your
14 parents. Although you have only a Grade 8 education,
15 you have taken further steps to ensure your gainful
16 employment in our economy. At the present time and
17 for a short period of time from now, you have work and
18 will be working. Defence counsel correctly points out
19 that this is not in law, as we use the term, a major
20 sexual assault and that you were cooperative with the
21 R.C.M. Police.

22 It is very difficult for the courts to assist
23 people in understanding why the courts do not say
24 that a sexual assault is a major one, when the effect
25 on the victim is major. Perhaps the language, "major
26 sexual assault" has caused some of the confusion which
27 members of the public in the Northwest Territories

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1 have in understanding why the courts deal with some
2 sexual assaults in a perceived lenient fashion.

3 Mr. Aqigaag, when you were in the home, you were
4 a trusted guest. When the father left, it seems that
5 he had no concern, I infer, about leaving you in the
6 company of his child. You violated that brief period
7 of trust. The age of your victim is also a factor
8 which makes this somewhat worse than if she had been
9 considerably older.

10 On the positive side, as I have already
11 mentioned, are the guilty plea, which spared the
12 victim from testifying, the absence of any record,
13 your cooperation with the authorities, the brief
14 duration of the incident, the fact that you did not
15 put your hand inside her clothing, the absence of any
16 physical harm to the victim and the absence of any
17 verbal threats to her. The trauma, though, which the
18 victim sustained cannot accurately be measured, nor
19 can one determine how long it will last.

20 I now want to say something about the Alberta
21 Court of Appeal judgment of R v WBS and R v MP from
22 June 17th, 1992, Alberta Judgements number 601,
23 I believe, on the Quick Law System. That judgment
24 dealt with, again, to use the legal terminology,
25 a major sexual assault upon children. Some of
26 the principles in the judgment, I believe, are
27 applicable to cases that do not fall within the

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1 category of a major sexual assault. I want to refer
2 to some of them.

3 At page 2, the court referred to the judgment of
4 Sandercock from 1985, also in the Alberta Court of
5 Appeal. That case dealt with major sexual assaults
6 and the starting point for them in the sentencing of
7 an adult offender for having committed an offence
8 against an adult victim. The following, I find, is
9 applicable to any sexual assault and I will read it:
10 "It is sometimes said that we live in a sexually
11 permissive era; the age of the liberated libido. Many
12 believe that gratification of sexual desire by almost
13 any means is not only normal, but healthy. This
14 attitude, unsurprisingly, has led to some confusion
15 and the belief by some that society also permits the
16 use of others as objects for sexual gratification. It
17 does not, and denunciatory sentences are needed to
18 reinforce the point." I see nothing in that language
19 which is restrictive to major sexual assaults.

20 At page 4 of the judgment of WBS and MP, there is
21 the following: "When a man has assaulted a child for
22 his sexual gratification, then even if no long-lasting
23 physical trauma is suffered by the child, it is
24 reasonable to assume that the child may have suffered
25 emotional trauma, the effects of which may survive
26 longer than bruises or broken bones and may even be
27 permanent." The court then went on to list some of

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1 the consequences that might follow.

2 The court uses the following language: "One
3 consequence of being abused sexually may be that the
4 child will never be able, as an adult, to form a
5 loving, caring relationship with another adult of the
6 opposite sex, being always fearful, even
7 unconsciously, that such a partner will use sexual
8 acts to hurt him or her, rather than as an intimate
9 expression of caring and affection.

10 There is no empirical way of proving that a
11 particular child-victim's emotional trauma will or
12 will not make it more difficult or impossible for him
13 or her to love another without fear of abuse. We
14 have only the recorded experiences of men and women
15 who attribute their difficulties as adults in forming
16 mature and fulfilling relationships to their having
17 been abused sexually when they were children."

18 And further on at page 4: "Another consequence
19 of being abused sexually may be that the child, when
20 he or she becomes an adult, will treat a child or
21 children as he or she had been treated as a child;
22 that is, he or she may abuse a child sexually." The
23 court then concluded that passage by saying that there
24 was no actual way to measure whether or not that might
25 occur.

26 At page 5, the court said that the initial
27 effects of sexual abuse of a child may include

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1 reactions of fear, anxiety, depression, anger,
2 hostility and inappropriate sexual behavior.

3 Long-term effects are summarized as follows: "Adult
4 women, violated as children, are more likely to
5 manifest depression, self-destructive behavior,
6 anxiety, feelings of isolation and poor self esteem, a
7 tendency toward re-victimization and substance abuse,
8 difficulty in trusting others and sexual maladjustment
9 in such areas." And some technical terms are used as
10 "sexual dysphoria, sexual dysfunction, impaired sexual
11 self-esteem and avoidance of or abstention from sexual
12 activity have also been reported."

13 "Victims of sexual abuse," the court went on, "in
14 their childhood, may also be affected when they become
15 parents by themselves abusing their own children."
16 Again, at page 5, and this is significant in this
17 case, sir, "Molestation involving more intimate
18 contact is more traumatic than less intimate contact,
19 but it is less clear that intercourse and penetration
20 are dramatically more serious than single manual
21 contact. There is inconclusive evidence of a
22 relationship between the degree of trauma and the age
23 of the victim."

24 What I conclude from this is that the effect on
25 the victim is a significant factor for this court to
26 take into consideration, and I do so.

27 The Crown submits quite fairly, and I intend no

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1 criticism of the conduct of the Crown, that one day
2 imprisonment and probation would satisfy the public
3 interest.

4 The primary goal of the criminal justice system is
5 to protect the public. There are a number of ways to
6 do so. I am of the view that the sentence recommended
7 by Crown counsel would fail to address adequately,
8 public protection. The reason is that it would send a
9 weak message to others, not only in Baker Lake, but
10 elsewhere. It would give insufficient recognition to
11 public denunciation. And I can take notice, I believe
12 that the sexual abuse of children in Baker Lake far
13 exceeds the national norm.

14 A one-day term of imprisonment followed by
15 probation would most certainly give insufficient
16 weight to the effect upon the victim. It would
17 however, probably deter you re-offending, taking into
18 consideration that you have been charged, you have had
19 to come to court and face embarrassment in front of
20 your community and the sentence recommended by the
21 Crown could also adequately address your
22 rehabilitation.

23 As you can see, there is balancing which this
24 court has had to do. I conclude that the sentence
25 should be a period of imprisonment and that it ought
26 to be longer than one day.

27 There will be one month imprisonment to be

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1 followed by a period of probation of one year. The
2 terms of the probation order are that you keep the
3 peace and be of good behavior. You will have to
4 appear in this court as required by the court to do
5 so. You will report to the probation officer when and
6 as directed in Baker Lake, or wherever you are living,
7 within 72 hours of your release and thereafter, when
8 and as the probation officer directs throughout the
9 year. You will be under the supervision of the
10 probation officer for the one-year period. You will
11 take counselling when and as that person deems
12 necessary.

13 I do not know if there is a psychological
14 problem. I hope not. But if there is, the probation
15 officer can, I expect, help you to get to the bottom
16 of it. You are to have no contact or communication in
17 any way with S E (phonetics). You are not to
18 be alone with any person under the age of 14 years.
19 You will pay a \$35.00 victim of crime surcharge or in
20 default of payment, three days imprisonment,
21 consecutive.

22 Is there anything more from the Crown regarding
23 the probation order?

24 MR. ROSE: I think you have covered all
25 the bases, Your Honour.

26 THE COURT: Anything more from the
27 defence?

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1 MR. BLAIS: No.
 2 THE COURT: How long will your client
 3 need to pay the \$35.00?
 4 MR. BLAIS: He can pay that today, Your
 5 Honour.
 6 THE COURT: As requested then, forthwith.
 7 That's all, sir.

8 (SENTENCING CONCLUDED)

9 -----
 10 I, Joanne McFarland, Court Reporter, hereby
 11 certify that I attended the above Sentencing Hearing
 12 and took faithful and accurate shorthand notes and the
 13 foregoing is a true and accurate transcript of my
 14 shorthand notes to the best of my skill and ability.

15 Dated at the City of Calgary, Province of
 16 Alberta, this 22nd day of December, A.D. 1992.

17
 18
 19 *Joanne McFarland per K. Sulton*
 20 Joanne McFarland
 Court Reporter.