# R. v. Katigakyok, 2019 NWTTC 12.cor1

# Date Corrigendum Filed: 2019 08 23

# Date: 2019 08 21

# File: T-3-CR-2018-000094

# 

## **IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES**

**BETWEEN:**

## **HER Majesty the Queen**

**- and -**

**GILBERT KATIGAKYOK**

**REASONS FOR SENTENCE**

**of the**

**HONOURABLE JUDGE DONOVAN MOLLOY**

**Restriction on Publication**

**This decision is subject to a ban on publication pursuant to s. 486.4 CC with respect to the name of the victims and witnesses as well as information that may identify these persons. Some details may have been edited to ensure that the victims and witnesses may not be identified.**

**Corrected Judgment**: A corrigendum was issued on August 23, 2019; the corrections have been made to the text and the corrigendum is appended to this judgment.

#### Heard at: Yellowknife, Northwest Territories

Date of Decision: August 21, 2019

Counsel for the Crown: Martine Sirois

Counsel for the Accused: Peter Harte and Tracy Bock

[Section 271 of the *Criminal Code*]

[Sentencing]

*R. v. Katigakyok*, 2019 NWTTC 12.cor1

# Date Corrigendum Filed: 2019 08 23

# Date: 2019 08 21

# File: T-3-CR-2018-000094

# 

## **IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES**

**BETWEEN:**

## **HER Majesty the Queen**

**- and -**

**GILBERT KATIGAKYOK**

**REASONS FOR SENTENCE**

**of the**

**HONOURABLE JUDGE DONOVAN MOLLOY**

**Restriction on Publication**

**This decision is subject to a ban on publication pursuant to s. 486.4 CC with respect to the name of the victims and witnesses as well as information that may identify these persons. Some details may have been edited to ensure that the victims and witnesses may not be identified.**

1. INTRODUCTION
   * 1. Tuktoyaktuk is a small hamlet on the Arctic Ocean with approximately 900 residents. It is one of the first places in Canada to revert to its traditional Indigenous name. It is an isolated community where people tend to not lock their doors as everyone knows their neighbours.
     2. As of March 17, 2018, Mr. Katigakyok had on a prior occasion snuck into a Tuktoyaktuk household in the early morning hours and sexually assaulted an adult woman. On March 17, 2018, he repeated that conduct, except the 2 female victims were 11 and 12 years old. Those victims were sleeping in a room with 2 other pre-teen girls when he snuck into the house and entered their bedroom. Just 14 days after his arrest for sexually assaulting the 2 girls, he snuck into another house on April 1, 2018 and sexually assaulted an adult woman.
     3. Mr. Katigakyok knows what he did is wrong and he has previously been sentenced to a period of imprisonment. Mr. Katigakyok has significant cognitive deficits associated with Fetal Alcohol Spectrum Disorder (FASD). He is a 25 year old Indigenous man functioning, intellectually, at the age of a seven/eight year old child.
     4. The Court received a joint submission recommending time served, being the equivalent of 12 months imprisonment, and 3 years’ probation. As a term of probation, counsel recommend that I require him to report back to Court in 2 months. The purpose of reporting back would be to determine what, if anything, corrections personnel have done to assess him and identify possible treatment options and/or assisted living alternatives. In the interim, he would simply reside in the same arrangements he had when he committed the three sexual assaults. This arrangement jeopardizes the safety of the female residents of Tuktoyaktuk.
     5. Ultimately I must decide what is a fit sentence based on the circumstances of the offence and Mr. Katigakyok’s circumstances. In arriving at that decision, relevant considerations include:
2. What is the proper place of his *Gladue* factors in determining sentence?
3. Does his cognitive impairment impact upon the determination of his sentence?
4. Is this a case where adopting the joint submission would bring the administration of justice into disrepute?
   * 1. Mr. Katigakyok entered a guilty plea on his trial date to an offence pursuant to section 271 of the *Criminal Code*. An earlier *voir dire* resulted in a ruling that his exculpatory cautioned statement to the police would be admissible at his trial.
     2. Sentencing was adjourned to August 1, 2019 and a Pre-Sentence Report was ordered. After receipt of the joint submission sentencing was further adjourned to August 9, 2019 to allow counsel to make additional submissions. Corrections officials were also subpoenaed to appear and give evidence on treatment options for Mr. Katigakyok.
5. CIRCUMSTANCES OF THE OFFENCES
   * 1. Attached as an appendix to this decision is the Agreed Statement of Facts tendered on May 2, 2019. It details how he snuck into a house, entered a bedroom where 4 pre-teen girls were sleeping, and sexually assaulted 2 of those girls. He left the bedroom when one of the girls said she was going to get the homeowner and father of 2 of the girls. Both sexual assaults involved touching outside of the girls’ clothing.
6. THE OFFENDER’S CIRCUMSTANCES
   * 1. Mr. Katigakyok is a 25 year-old Indigenous male with 2 prior convictions for sexual assault. One of those convictions is not a true prior conviction in this case as it relates to a sexual assault that occurred on April 1, 2018 (after the current offence). The victim in that case was a 28 year old woman. The conduct included grabbing the victim’s breast and undoing her bra and belt. On February 8, 2019, Mr. Katigakyok was sentenced to 12 months (time served) in relation to that offence.
     2. Mr. Katigakyok’s first offence occurred on June 21, 2017. It involved sneaking into a house and sexually assaulting an adult female while she slept with her 4 children near her. The touching was outside of the victim’s clothing. He was sentenced on November 17, 2017 to a period of 90 days imprisonment in regards to that offence.
     3. The Pre-sentence Report details that he is an only child and was raised by his mother, who attended residential school. His mother acknowledges drinking while pregnant and for the first two years of her son’s life. Since that time, she has been completely sober and gainfully employed. Since 1996, Mr. Katigakyok resided with her in a loving home without exposure to violence or substance abuse.
     4. Mr. Katigakyok ceased attending school at the end of Grade 6. He participates in traditional activities, including whaling, hunting and fishing. He harpooned his first beluga whale in 2017. While not gainfully employed, he demonstrates abilities with respect to repairing ski-dos. Though his prior work history is sporadic, his previous employers described him as reliable, pleasant and a hard worker.
     5. On the *voir dire* with respect to the admissibility of his cautioned statement, the defence called Ms. Merril M. Dean, a registered psychologist. Ms. Dean administered a number of cognitive tests to Mr. Katigakyok. Ms. Dean summarized the testing results as follows:

*… Gilbert performed in the Extremely Low range (FSIQ 52; PR 0.2nd; CI at 95Tuktoyaktuk 54-62). Gilbert’s performance across all indices fell in the Extremely Low range; his strongest performance, in Visual Spatial tasks, still falls within the range of scores that are indicators of an intellectual impairment. There was no significant difference with relevant base rates on Gilbert’s scores, indicating that his overall cognitive profile is quite balanced, indicating no significant personal strengths or challenges.*

*Gilbert’s cognitive profile meets the criteria for an intellectual disability. It is clear that Gilbert has an intellectual impairment. A formal diagnosis of an Intellectual Disability cannot be made as a functional adaptive assessment was not completed, nor were others, such as his mother, interviewed regarding his adaptive functioning. Gilbert indicated, however, in the interview, that he receives support and encouragement from family members and others in his community.*

1. PARTIES’ POSITIONS
   * 1. The Court received a joint submission recommending a period of imprisonment of 12 months (time served based on a balance of 8 months remand time credited at the rate of 1.5/1), a three year probationary term, DNA and SOIRA orders, and an order pursuant to section 161.
2. THE PURPOSE, PRINCIPLES AND OBJECTIVES OF SENTENCING
   * 1. In determining a fit sentence for Mr. Katigakyok, I am guided by the:

* Purpose, principles and objectives of sentencing set out in the *Criminal Code*;
* Circumstances of the offences and of Mr. Katigakyok, including his Indigenous status and associated ***Gladue*** factors; and,
* Case law.
  + 1. The fundamental purpose of sentencing is to contribute to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:
       1. to denounce unlawful conduct;
       2. to deter the offender and other persons from committing offences;
       3. to separate offenders from society, where necessary;
       4. to assist in rehabilitating offenders;
       5. to provide reparation for harm done to victims or to the community; and
       6. to promote a sense of responsibility in offenders, and acknowledgement of harm done to victims and to the community.
    2. The principle of proportionality is a fundamental principle of sentencing. It requires that a sentence be proportionate to the gravity of the offence and the degree of responsibility of the offender. Where an offender’s cognitive deficits lessen his moral blameworthiness that must be taken into account in determining an appropriate sentence.
    3. The principle of parity states that a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances.
    4. Finally, all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention paid to the circumstances of Indigenous offenders.
    5. The overarching goal of sentencing is to protect society. In this case, nothing has been done to facilitate Mr. Katigakyok’s rehabilitation. It is unclear as to what extent specific deterrence has real meaning to him. I doubt whether he is capable of acknowledging the harm he has done to the victims. Despite entering a guilty plea, he advised the author of the pre-sentence report that “the victims lied about me and got away with it.”

1. VICTIM IMPACT
   * 1. Neither victim filed a victim impact statement. In the absence of same, it is still appropriate for me to consider the likelihood of psychological harm to the victims (*R. v. McDonnell*, [1997] 1 S.C.R. 948). The author of the pre-sentence report attempted to speak to the victims but their parents advised that they were upset and did not like to talk about what happened. The homeowner noted that previously, Mr. Katigakyok dated their older daughter and was a frequent visitor to the home. While not in a position of trust, they obviously thought Mr. Katigakyok was a person who could be trusted to be in their home.
2. AGGRAVATING AND MITIGATING CIRCUMSTANCES
   * 1. Mr. Katigakyok entered a guilty plea on the trial date. As it was entered prior to either of the victims testifying, it is a mitigating factor. Requiring victims to testify about these matters can aggravate the harm they have already suffered. To some extent the guilty plea’s impact is moderated by his statement that the victims lied about him.
     2. In terms of aggravating circumstances, the most significant is his prior conviction on November 17, 2017 for a sexual assault committed in essentially the same circumstances, except that the victim in that instance was an adult.
     3. Due to the timing of his third offence, I must treat the March 17, 2018 as a second offence for the purpose of imposing sentence (*R. v. Negridge*, [1980 CarswellOnt 46 (Ont. C.A.)). From the point of view of assessing Mr. Katigakyok’s overall character and what is necessary for the protection of the public, the sexual assault conviction on February 8, 2019 is relevant (*R. v. Elsharawy* (1997), 119 C.C.C. (3d) 565) even though it is not a true prior conviction for sentencing purposes.
3. GLADUE FACTORS
   * 1. I must consider section 718.2(e) and the guidance offered by the Supreme Court of Canada in applying Parliament’s directive aimed at addressing the circumstances of Indigenous offenders (***R. v. Gladue***, [1999] 1 SCR 688; ***R. v. Ipeelee***, [2012] 1 SCR 433).
     2. Mr. Katigakyok is a 25 year old Indigenous male. His mother attended residential school and struggled with alcohol addiction while he was in utero and for the first two years of his life. The alcohol usage during pregnancy resulted in Mr. Katigakyok suffering significant cognitive deficits associated with FASD.
4. COGNITIVE DEFICITS/FASD
   * 1. How is Mr. Katigakyok’s sentence supposed to protect the public if he is not deterred from committing sexual assaults by being imprisoned? How is sending him back to Tuktoyaktuk on a status quo basis meant to protect the public and maintain public confidence in the administration of justice? Corrections personnel have yet to identify any rehabilitative opportunities or programs that would assist in lessening the likelihood of Mr. Katigakyok committing further sexual assaults. On seeking input from counsel on this dilemma, counsel for Mr. Katigakyok stated:

*And -- and you'd better write your MLA, because the government is doing nothing to deal with these kinds of problems, and that, in my respectful submission, is what the fundamental principle is intended to do.*

*It's intended to say, we can only sentence someone to what he deserves. We can't sentence him to additional jail, because there's been no political activity with respect to this, and -- and as an example, the auditor general support, with respect to the problem of individuals being sentenced at the end of time served, specifically told corrections that they needed to assess individuals who show up with respect to their ability to participate in programming and what their needs might be.*

*That did not happen, and the example of Mr. Eyakfwo -- in the example of Mr. Eyakfwo, I put it before the court that nothing happened. The current Corrections Act only responds to the auditor general support, to a limited extent, the current draft, because it says they need to assess sentenced inmates, but it says nothing about individuals who show up, as Mr. Katigakyok does, being denied bail and remaining in custody.*

*So the -- one of the challenges is, in my submission, corrections has not responded to identify deficits in its dealings with people like Mr. Katigakyok. Again, in my submission, the fact that the court is left, so to speak, holding the bag, doesn't mean he gets additional time. It means people in the community need to say to their MLAs, why aren't you doing anything about this?*

* + 1. It is the Court’s duty to impose a sentence that achieves the goals of sentencing and it cannot abdicate that obligation to political processes. It was in part, for that reason, the sentencing hearing was adjourned so that the Court could hear from corrections personnel and counsel could cross-examine them if they wished.
    2. After issuing subpoenas, the Court received affidavits from 2 corrections officials. After reviewing those affidavits counsel did not wish to cross-examine those witnesses and the affidavits were marked as exhibits.
    3. The affidavits confirm that there are no options within the Northwest Territories specific to sex offender programming. There are also no specific community resources available in Tuktoyaktuk to treat sexual offending behaviours.
    4. If I place Mr. Katigakyok on a probation order that requires him to participate in rehabilitative programs, corrections will then assess him. If deemed necessary, corrections will work with the Northwest Territories Health and Social Services Authority to determine whether Mr. Katigakyok should be referred to an Adult Out of Territory Supportive Living/Treatment Program. Some of these programs have contingencies such as psychiatric referrals. When accused persons are in custody having them assessed by psychiatrists is a challenge in the Northwest Territories. It is doubtful whether Mr. Katigakyok could be psychiatrically assessed while living in Tuktoyaktuk.
    5. Counsel submit that if the probation order requires Mr. Katigakyok to report back to the Court in 2 months this will somehow pressure corrections officials to have viable treatment options in place by that time. The probation order binds Mr. Katigakyok, not corrections officials or anyone else in government. Short of Mr. Katigakyok refusing to cooperate with any assessments, if no programs are identified Mr. Katigakyok will simply continue living in the same circumstances as he lived in when he surreptitiously entered 3 houses in Tuktoyaktuk and sexually assaulted sleeping female residents.
    6. That option jeopardizes the safety of Tuktoyaktuk’s female residents. It also increases the likelihood that a severely disabled man will eventually be incarcerated indefinitely as a dangerous offender. That outcome would cause Mr. Katigakyok to disappear from society, but does absolutely nothing to address the underlying societal problems that lead to persons like him coming before our courts. So often, once government agencies wash their hands and say we cannot do anything more with those with mental illness or cognitive deficits, they are swept into society’s dustbin for them, our prison system.
    7. Our prison systems are generally ill-equipped to deal with the mentally ill or cognitively impaired. Persons with mental conditions are often vulnerable to abuse and mistreatment by other prisoners. Traditional rehabilitative programs are less likely to address their needs and therefore they are simply housed as opposed to receiving treatment.
    8. On the issue of deterrence and the treatment of persons with FASD, Mr. Katigakyok’s counsel referred the Court to the decision of the Alberta Court of Appeal in *R. v. Ramsey*, 2012 ABCA 257. Mr. Ramsey, who also had significant deficits associated with FASD, received a period of 8 years imprisonment on a sexual assault conviction. His antecedents were worse than those of Mr. Katigakyok. In dismissing his appeal from sentence, the Court referenced the difficulties of imposing sentences in these circumstances:

*16 Crafting a fit sentence for an offender with the cognitive deficits associated with FASD presents at least two identifiable challenges: accurately assessing the moral blameworthiness of the offender in light of the adverse cognitive effects of FASD; and balancing protection of the public against the feasibility of reintegrating the offender into the community through a structured program under adequate supervision. Medical reports assessing the prospect of the offender's rehabilitation and reintegration into the community are essential to the task and must be carefully analyzed.*

*17 This notion is concisely captured by Roach and Bailey who observe that:*

*The determination of an appropriate sentence for the FASD offender is a challenging task for courts. Although it is increasingly recognized that FASD is a disability that can have a profound impact on the level of an offender's moral culpability, the mitigation that this consideration would normally have on the length of a sentence is frequently tempered by the practical need to protect the community. [Yet often] the programming available to an FASD-affected offender is inadequate and the resources to support and monitor such an individual in the community are severely lacking (at para 85).*

*18 These challenges must be placed within the principles and objectives of sentencing. The fundamental principle of sentencing is proportionality: a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender: Criminal Code, RSC 1985, c C-46, s 718.1.*

*19 Further, section 718.2(a) of the Criminal Code requires that a sentence should be increased or reduced to account for any relevant aggravating or mitigating factors relating to the offence or the offender. Therefore, to the extent that FASD is demonstrated to have attenuated or diminished the moral blameworthiness of the offender, it must be taken into account.*

*20 Moreover, sentencing is an individualized process and courts should craft sentences for FASD-affected offenders with awareness of their unique neurological deficits and abilities. "[T]he brain abnormalities associated with FASD are different for every person with this disability" (Path to Justice Conference, Final Report, online: Yukon Department of Justice www.justice.gov.yk.ca/pdf/Path to Justice Conference Final Report, cited in R. v. Harper, 2009 YKTC 18 (Y.T. Terr. Ct.) at para 25, (2009), 65 C.R. (6th) 373 (Y.T. Terr. Ct.)). Courts in dealings with persons with cognitive defects in the spectrum will encounter a "wide range of effects resulting from prenatal alcohol exposure" (Edward P. Riley, M. Alejandra Infante K & Kenneth R. Warren, "Fetal Alcohol Spectrum Disorders: An Overview" 21 Neuropsychol Rev (2011) 73 at 74). This broad diversity in the severity of impairments accounts for the marked disparity in IQ and other quantifiable indicia of cognitive ability among persons diagnosed with FASD, which should in turn alert courts to the "danger of ignoring differences that may be relevant to the appropriate policies applied in each case" (Roach & Bailey, at para 17).*

*21 Accordingly, in assessing the offender's moral culpability, the sentencing judge must have regard to the cognitive deficit of the particular offender. This is consistent with the approach of this court in sentencing offenders suffering from a mental disability. Ordinarily, "where an offender is found to be criminally responsible, but suffering from a serious mental illness, a more lenient disposition reflective of the offender's diminished responsibility is called for:" R. v. Tremblay, 2006 ABCA 252 (Alta. C.A.) at para 7, (2006), 401 A.R. 9 (Alta. C.A.); see also R. v. Resler, 2011 ABCA 167 (Alta. C.A.) at para 14, (2011), 505 A.R. 330 (Alta. C.A.); R. v. Virani, 2012 ABCA 155, 524 A.R. 328 (Alta. C.A.) at para 16). Mental disorder can also be, on much less frequent occasions, a factor that may escalate the objective of protection of the public, but in such cases Parliament and the common law require strict proof and clear fact finding: R. v. Arcand, 2010 ABCA 363, 499 A.R. 1 (Alta. C.A.) at para 164. No such finding was made here.*

*22 A diagnosis of FASD also affects the principles of denunciation and deterrence (both specific and general). The appellant submits that it is inappropriate to emphasize deterrence when Dr. Yee's assessment indicates that specific deterrence is lost on the appellant. Moreover, the importance of general deterrence ought to be diminished where an offender's cognitive abilities undermine his capacity to restrain antisocial impulses and to understand why his behaviours have brought him into contact with the criminal justice system. The appellant also says that denunciation should not be paramount where an offender is of reduced moral culpability.*

*23 Other courts, and in particular the Yukon Territorial Court, have addressed this issue. In R. v. Harper, the court observed that "[t]he role of specific deterrence in sentencing FASD-affected offenders decreases in proportion to the severity of the offender's cognitive deficits" (at para 43). In R. v. Quash, 2009 YKTC 54 (Y.T. Terr. Ct.) at para 70, [2009] Y.J. No. 72 (Y.T. Terr. Ct.) the Yukon Territorial Court noted that "[t]he greater the cognitive deficits of the offender, the less role specific deterrence should play".*

* + 1. In terms of this jurisdiction, a sentence of 4 years imprisonment on a robbery conviction was upheld for an offender whose deficits associated with FASD resulted in him functioning at the cognitive capacity of a nine-year old (*R. v. Bernarde*, 2018 NWTCA 7).
    2. I accept that Mr. Katigakyok’s moral blameworthiness is lessened by his cognitive deficits. It does not entirely negate it however as it is clear that he knows his conduct is wrong and that admitting to it will result in consequences. I base that finding on his videotaped cautioned statement that was played at the *voir dire*.
    3. The difficulty is balancing the protection of women and girls against the feasibility of reintegrating Mr. Katigakyok into Tuktoyaktuk through a structured program under adequate supervision. What is proposed by the joint submission is releasing Mr. Katigakyok into the community in the hope that programming can be identified at some future point and that the associated supervision will be adequate.

1. THE JOINT SUBMISSION
   * 1. Certainty in sentencing is necessary and the efficiency of our system requires that counsel receive deference from judges in regards to joint submissions. Before departing from a joint submission, the Supreme Court of Canada requires that a judge determine that the proposed sentence would bring the administration of justice into disrepute or be otherwise contrary to the public interest (*R. v. Anthony-Cook*, 2016 SCC 43).
     2. In assessing the suggested sentence for this offence, it is important to note that the Crown elected to proceed by summary conviction and consolidated both victims into a single count of sexual assault. The summary conviction election and the age of the victims means that for this offence, the maximum term of imprisonment that could be imposed in 2 years.
     3. A period of 12 months imprisonment in all of the circumstances of this case, including that it must be treated as a second offence, would not likely bring the administration of justice into disrepute.
     4. I find however that the joint submission is contrary to the public interest. That conflict stems from the failure of corrections officials to identify an appropriate treatment program or other residential facility that Mr. Katigakyok could enter into forthwith on his release from custody. That was the Court’s expectation when it adjourned sentencing. Before receiving the affidavits, all the Court had was simply a letter from an official with the Northwest Territories Health and Social Services Authority advising of various options and that the application process takes 6 weeks. Mr. Katigakyok’s guilty plea was entered on May 2, 2019 and he has been in custody in Yellowknife since that time. Surely identifying suitable programs and options for Mr. Katigakyok is a priority. At this stage, the joint submission proposes only a probation order by way of adequate supervision. This is unsatisfactory as a balance to enhance the safety of the public. Mr. Katigakyok was bound by a probation order when he sexually assaulted the 2 girls in their own beds.
     5. Does this require that I reject the joint submission and impose an additional period of custody? At most he could be sentenced to an additional 12 months of imprisonment. Maximum punishments are generally reserved for the worst offenders for offences committed in the worst circumstances. As his cognitive deficits lessen his moral blameworthiness, and the touching was outside of the clothing, Mr. Katigakyok is not an offender deserving of the maximum permissible punishment despite his prior conviction.
     6. My imposition of any lesser period of imprisonment could legitimately be interpreted as tinkering with the joint submission, something the Supreme Court of Canada identified as inappropriate in the *Anthony-Cook* decision.
     7. Finally, Mr. Katigakyok is not responsible for arranging a suitable treatment or assisted living program. Requiring him to remain in jail until corrections officials can arrange for suitable programming punishes him for something outside of his responsibility.
     8. Hopefully corrections officials make suitable arrangements prior to Mr. Katigakyok’s return to Court in 2 months. In the interim, for their own sake and his, the residents of Tuktoyaktuk should consider locking their doors at night.
2. SENTENCE

[47] Mr. Katigakyok is sentenced to serve a period of 12 months imprisonment. As he has a remand credit of 8 months and there is no reason not to credit that time on a 1.5/1 day basis, he has already served that sentence. Mr. Katigakyok is placed on probation immediately, for a period of three years. The terms of that probation order, most of which were proposed as part of the joint submission, are that he shall:

1. Keep the peace and be of good behaviour;
2. Appear before the court when required to do so by the court;
3. Report to a probation officer within 2 business days from your release;
4. Abstain from the consumption of drugs except in accordance with a medical prescription, of alcohol or of any other intoxicating substance;
5. Provide, for the purpose of analysis, a sample of a bodily substance prescribed by regulation on the demand of a peace officer, a probation officer or someone designated under subsection (9) to make a demand, at the place and time and on the day specified by the person making the demand, if that person has reasonable grounds to believe that the offender has breached a condition of the order that requires them to abstain from the consumption of drugs, alcohol or any other intoxicating substance;
6. Provide, for the purpose of analysis, a sample of a bodily substance prescribed by regulation at regular intervals that are specified by a probation officer in a notice in Form 51 served on the offender, if a condition of the order requires the offender to abstain from the consumption of drugs, alcohol or any other intoxicating substance;
7. Attend any and all counselling and treatments directed by the probation officer, including risk reduction programs for sex offenders and programs tailored to Mr. Katigakyok’s identified cognitive deficits;
8. Report back to Court within 60 days and thereafter as directed to monitor the progress of the above counselling and/or treatment;
9. No contact or communication, directly or indirectly, with C.G., A.F., C.B. and L.R.B.;
10. Not to attend within 5 meters the residence or place of education of C.G., A. F., C.B. and L.R.B.;
11. Remain inside your residence from 10 pm to 8 am every day, except in case of medical emergency, unless you have prior permission in writing from your probation officer to be absent from your residence. In addition, the probation officer may impose any reasonable conditions in respect of such absence, but the conditions must include the following:
    1. you must at all times be in the presence of a sober adult
    2. you must stay within 50 kilometers of the destination you give to your probation officer
    3. you must remain outside the hamlet of Tuktoyaktuk during the hours of 10 pm to 8 am
    4. you must report to the RCMP (by telephone or in person) when you leave the hamlet of Tuktoyaktuk
    5. you must report to the RCMP (by telephone or in person) when you return to the hamlet of Tuktoyaktuk.
12. Notify your probation officer of your place of residence and of any change thereafter.
13. Present yourself at the door of your residence within 5 minutes when requested to do so by the RCMP or by your probation officer.
14. Over the first 18 months of this Order, perform 100 hours of community service work at a rate not limited to, but not less than 6 hours a month.

[48] In addition to the probation order the Court makes the following orders pursuant to the *Criminal Code*:

1. That Mr. Katigakyok provide a sample of a bodily substance pursuant to section 487.051 (a DNA order);
2. That Mr. Katigakyok be prohibited from possessing firearms and other items as enumerated in section 110 for a period of 10 years, but allowing for the sustenance exemption as set out in section 113;
3. A lifetime order pursuant to section 490.012 requiring Mr. Katigakyok to comply with the *Sex Offender Information Registration Act*; and,
4. For a period of 15 years, pursuant to section 161(1), Mr. Katigakyok shall be prohibited from all of the activities referenced in sections161(1)(a)(b)(c) and (d) but excluding those in section 161(1)(a.1).

“Donovan Molloy”

|  |  |  |
| --- | --- | --- |
|  |  | Donovan Molloy  T.C.J. |

Dated at Yellowknife, Northwest Territories,

this 21st day of August, 2019.

Appendix A

**T-3-CR-2018-000094**

**IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES**

**BETWEEN:**

**HER MAJESTY THE QUEEN**

**- and -**

**Gilbert KATIGAKYOK**

**AGREED STATEMENT OF FACTS**

The following facts are admitted by the accused without the necessity of calling evidence, pursuant to s. 655 of the *Criminal Code*:

1. On March 17, 2018, at approximately 5:00am in the morning, Gilbert KATIGAKYOK entered a house in Tuktoyaktuk, NT, uninvited.
2. Gilbert KATIGAKYOK entered the bedroom where A.F. (11 years old), C.B. (11 years old), L.R.B. (12 years old) and C.G. (11 years old) were sleeping.
3. Gilbert KATIGAKYOK approached the bed where C.G. was sleeping. C.G. was laying on her belly. She was awoken by Gilbert KATIGAKYOK touching her bum over her clothing with his hand. She rolled over to her side and told Gilbert KATIGAKYOK to leave her alone.
4. Gilbert KATIGAKYOK got up from the bed where C.G. was. He moved over to the bed where L.R.B. was sleeping.
5. L.R.B. was laying on her back. Gilbert KATIGAKYOK laid on his stomach next to her. He watched L.R.B. sleep.
6. Gilbert KATIGAKYOK then moved to the bed where A.F. was sleeping. A.F. was awoken by Gilbert KATIGAKYOK touching her bum over her clothing with his hand.
7. A.F. started to cry. She saw that C.G. was awake. She got out of bed and went over to the bed where C.G. was.
8. A.F. threatened to get M.B., the father of L.R. and C.B. and the adult property representative. This is when Gilbert KATIGAKYOK left the room.
9. Gilbert KATIGAKYOK returned to the bedroom a short time after to collect his black ski mitts that he had forgotten in the bedroom.
10. Gilbert KATIGAKYOK left the residence without further incident.
11. On March 18, 2019, Gilbert KATIGAKYOK was arrested by the RCMP. He collected his clothing and attended the detachment. His clothing was consistent with the description given by the victims.

**Corrigendum of the Reasons for Decision**

**of the**

**Honourable Judge Donovan Molloy**

1. An error occurred on page 12.

Paragraph after “K. SENTENCE” reads:

Mr. Katigakyok is sentenced to serve a period of imprisonment of 12 months imprisonment. (…)

The paragraph number has been added and corrected to read:

**[47] Mr. Katigakyok is sentenced to serve a period of 12 months imprisonment**. (…)

2. Subsequent to the above change, on page 13, paragraph numeration has been changed thereafter.

3. The citation has been amended to read:

Citation: *R. v. Katigakyok*, 2019 NWTTC 12.cor1

(The changes to the text of the document are underlined and bold.)

# R. v. Katigakyok, 2019 NWTTC 12.cor1

# Date Corrigendum Filed: 2019 08 23

# Date: 2019 08 21

# File: T-3-CR-2018-000094

# **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

# **IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES**

# \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

# **BETWEEN:**

# **HER MAJESTY THE QUEEN**

# **- and -**

# **GILBERT KATIGAKYOK**

# \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

# **REASONS FOR DECISION**

# **OF THE**

# **HONOURABLE JUDGE**

# **DONOVAN MOLLOY**

# \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Restriction on Publication**

**This decision is subject to a ban on publication pursuant to s. 486.4 CC with respect to the name of the victims and witnesses as well as information that may identify these persons. Some details may have been edited to ensure that the victims and witnesses may not be identified.**

**Corrected Judgment**: A corrigendum was issued on

August 23, 2019; the corrections have been made to the text and the corrigendum is appended to this judgment.

[Section 271 of the Criminal Code]