

IN THE YOUTH JUSTICE COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- and -

T.C. (A Young Person)

Transcript of the Oral Reasons for Sentence delivered
by the Honourable Justice V.A. Schuler, sitting at
Yellowknife, in the Northwest Territories, on March
17th, A.D. 2006.

BAN ON PUBLICATION OF COMPLAINANT/WITNESS
PURSUANT TO SECTION 486 OF THE CRIMINAL CODE

APPEARANCES:

Mr. J. MacFarlane:	Counsel for the Crown
Mr. S. Shabala:	Counsel for the Young Person

(Charges under s. 271 Criminal Code)

Official Court Reporters

1 THE COURT: Although we are sitting in
2 Supreme Court, this Court is sitting as a Youth
3 Criminal Justice Court, and, accordingly, I just
4 want to indicate for the record that under
5 section 110 of the Youth Criminal Justice Act
6 there is a prohibition on publication of the name
7 of the offender, and, because the offences are
8 sexual assault, there is also a publication ban
9 on the names of the victims and any information
10 that would tend to identify the victims.

11 T.C. pleaded guilty to a charge of sexual
12 assault in this court, the Youth Justice Court,
13 which is count 1 in the indictment, and he was
14 found guilty on another sexual assault charge
15 after a trial, and that was count 2 in the
16 indictment. He is now before me for sentencing
17 on both charges.

18 The facts on count 1 are that Mr. C. - and
19 when I say Mr. C. I mean T.C. - was asked to come
20 to Yellowknife from Hay River to babysit his
21 nine-year-old cousin while her mother attended a
22 workshop. He was 16 at the time. He and his
23 cousin were in the hotel room and he told her to
24 lick his penis and forced her to put it in her
25 mouth while he moved her head up and down. He
26 ejaculated in her mouth and told her not to tell
27 anyone.

1 On a second occasion, when he was 17 years
2 old, Mr. C. was at his parents' home where his
3 12-year-old cousin, not the same cousin in count
4 1, was staying. Mr. C. went into the room where
5 she was sleeping and she woke up to find him
6 sitting on the bed. He grabbed her hand and made
7 her rub his penis under his boxer shorts.
8 Although she pulled away a couple of times, he
9 grabbed her hand again and continued the rubbing,
10 although she did say in her evidence that it did
11 not last very long. The incident ended when he
12 left the room.

13 Although Mr. C. is now 20 years old, under
14 section 160 of the Youth Criminal Justice Act the
15 provisions of that Act apply. The Crown does not
16 seek an adult sentence for Mr. C.

17 A very comprehensive pre-sentence report has
18 been filed outlining Mr. C.'s background and
19 family circumstances. Certain things are very
20 clear about his family. They have had their
21 problems in the past - for example, with alcohol
22 abuse - but they have made efforts to overcome
23 those problems and they are very supportive of
24 Mr. C.

25 The background is very important, in my
26 view, because there is an indication in the
27 pre-sentence report that when he was a child and

1 his parents were drinking a lot Mr. C. saw
2 certain behaviour at parties by some adults at
3 the parties that might give him the idea that
4 abusing women or girls, especially when they are
5 in a vulnerable state, is something that adults
6 do; that maybe it is behaviour to be expected.

7 Neither the things that Mr. C. saw, as
8 described in the pre-sentence report, nor what he
9 has done himself, as reflected in the charges
10 before the Court, can be described as "sexual
11 indiscretions", the term that was used by defence
12 counsel. These are sexual assaults. At one
13 point in the pre-sentence report Mr. C. refers to
14 seeing younger girls being raped by older men
15 when the girls are passed out.

16 This case illustrates the way in which
17 alcohol abuse has devastating repercussions for
18 the younger generation in our society, for the
19 children who see the behaviour, and, I am sure,
20 when they see it do not understand it and do not
21 quite know what to make of it. Unfortunately, it
22 is behaviour that this Court hears about in
23 almost every trial.

24 I have to say that in constantly hearing
25 evidence about drunken parties it occurs to me to
26 wonder on occasion, where are the children when
27 all of this is going on? Well, this case is a

1 good illustration. The children, unfortunately,
2 are there watching and learning from the
3 behaviour that they see.

4 I am not pointing the finger specifically at
5 T.C.'s parents. I am talking about adults in
6 general, adults drinking too much and having
7 parties. When adults do not control themselves,
8 do not control their drinking and do not control
9 their actions, children do not learn
10 self-control. They see the example that is set
11 for them and then they adopt that kind of
12 behaviour. So this is really a terribly tragic
13 illustration of that problem in our society.

14 Mr. C. has a grade nine or ten education and
15 he has had some employment, although it appears
16 to have been somewhat sporadic. He recently
17 obtained his class 3 driver's license and
18 employment as a truck driver.

19 It is also unfortunate, and it is not
20 surprising, again, in light of his experiences as
21 a child, that, as the pre-sentence report says,
22 Mr. C. turns to alcohol and drugs as a coping
23 mechanism for difficulties in dealing with his
24 emotions and lack of self-esteem. His
25 involvement in alcohol and drugs and the fact
26 that he has a lot of friends who drink and do
27 drugs is not a good sign. He needs to leave

1 those friends behind, because they are only going
2 to bring him down with them.

3 The family support that he has and the
4 indication that the family have improved their
5 communication and are prepared to work with T. is
6 a good sign, as is his cooperation in the
7 preparation of the pre-sentence report. The fact
8 that since his arrest on these charges he has got
9 his license and has pursued work as a truck
10 driver is to his credit, and it indicates that he
11 is thinking about his future and acting
12 responsibly.

13 I also take into account that he does not
14 have any prior criminal record. He is a first
15 offender.

16 Any sexual assault on a child is serious and
17 is a significant threat to the child's
18 well-being. Although there is no victim impact
19 statement from the victim on count 1, the
20 information in the pre-sentence report makes it
21 clear that the victim has encountered problems
22 not just in dealing with what happened to her,
23 but also because of the negative reaction of some
24 family members towards her. There is no question
25 that forcing a little girl to do what Mr. C. made
26 her do would have a long-term, traumatic effect
27 on her.

1 The victim on count 2 speaks in her victim
2 impact statement about feeling scared and feeling
3 that she was a bad person, in other words,
4 blaming herself, which, of course, and
5 tragically, is something that victims often do
6 and which then compounds the difficulty that they
7 have in dealing with the situation.

8 So the victim on count 2 obviously has
9 suffered, as well, and she says that she has lost
10 one of her favourite aunties because she
11 disclosed what happened. So, again, there has
12 been a negative impact on the family
13 relationships, and all of this, of course, is
14 because of what T.C. did.

15 Both Crown and defence counsel agree that
16 because of the seriousness of the offence on
17 count 1 a term of custody in the form of a
18 custody and supervision order is appropriate.
19 The Crown and defence both say that it should be
20 between 12 and 15 months in length. Where they
21 differ is on count 2, the Crown saying that the
22 sentence on that count should be 12 to 15 months
23 consecutive and that the global sentence on both
24 counts 1 and 2 should then be adjusted to
25 somewhere in the range 18 to 24 months and one
26 year probation to follow; whereas defence counsel
27 says that on count 2 the sentence should be

1 lengthy probation rather than custody because it
2 is not a serious sexual assault.

3 For custody to be an available disposition
4 on either of the offences under the Youth
5 Criminal Justice Act, I have to find under
6 section 39(1) that each is either a violent
7 offence or an exceptional case where the
8 aggravating circumstances are such that
9 imposition of a non-custodial sentence would be
10 inconsistent with the principles of the Act.

11 In my view, forcing someone to engage in
12 sexual activity of the kind in both of these
13 offences is a form of violence. So both offences
14 do fall within section 39. So a custodial
15 sentence can be considered on both of them, and I
16 bear in mind the parameters that apply to that in
17 section 42 of the Youth Criminal Justice Act.

18 I have to consider the aggravating and
19 mitigating factors. On count 1, certainly the
20 early guilty plea is a substantial mitigating
21 factor. The fact that the young victim did not
22 have to testify at all means that she was saved
23 more trauma, and it indicates that Mr. C. is
24 genuinely sorry for what he did and prepared to
25 take his punishment.

26 On count 1, the age of the victim at the
27 time of the offence, nine years old, is an

1 aggravating factor. So is the fact that she had
2 been placed in Mr. C.'s care. In other words,
3 her parents had trusted him to look after her and
4 he broke that trust by abusing her. The nature
5 of the sexual activity he had her perform,
6 fellatio, is serious and is comparable to sexual
7 intercourse.

8 On count 2, the fact that he did not plead
9 guilty is not aggravating. He simply does not
10 get the benefit, the mitigating benefit of a
11 guilty plea. The age of the victim in that case,
12 12 years old, is aggravating. I do note that the
13 offence, forcing her to masturbate him, seems not
14 to have lasted very long and is less serious than
15 the offence on count 1. By that I mean that it
16 is a less intrusive form of sexual assault. It
17 is aggravating, however, that this was Mr. C.'s
18 second sexual assault, and it may be that having
19 got away with the assault on his nine-year-old
20 cousin he decided then to assault the
21 12-year-old.

22 I must also take into account that Mr. C.
23 himself was 16 and 17 years old at the time of
24 these assaults. The law is that it is his age at
25 the time of the offences that determines his
26 level of blameworthiness and not his age now. In
27 my view, that is an important factor, especially

1 considering the sexual behaviour that he
2 witnessed when he was younger, including what he
3 says he experienced himself. Still, in light of
4 the age of the victims and the circumstances of
5 the offences, T.C. does bear a pronounced degree
6 of blameworthiness.

7 Section 38, which incorporates section 3 of
8 the Youth Criminal Justice Act, sets out the
9 principles of sentencing for youth. Counsel have
10 already referred to some of them, so I will not
11 repeat those. But I note that included in them
12 are 3(a)(i), preventing crime by addressing the
13 circumstances underlying a young person's
14 offending behaviour; and subsection (ii),
15 rehabilitating young persons who commit offences
16 and reintegrating them into society; and, while
17 ensuring the sentence is proportionate to the
18 seriousness of the offence and the degree of
19 responsibility of the offender, making sure the
20 sentence is the least restrictive that is capable
21 of attaining the goal of holding the young person
22 accountable and imposing meaningful consequences
23 on him.

24 I am also required under section 39(2) to
25 consider all alternatives to custody raised at
26 the sentencing hearing that are reasonable in the
27 circumstances. No alternative has been proposed

1 to a custodial sentence on count 1, and, in my
2 view, there is no reasonable alternative because
3 of the seriousness of that offence in any event.

4 My assessment of Mr. C., having heard him
5 testify at the trial and having read the
6 pre-sentence report, is that a custodial sentence
7 will be a meaningful consequence for him,
8 particularly since he is a first offender.

9 On count 2, looking at it in isolation, it
10 seems to me that if it was the only offence I was
11 dealing with it is not inevitable that custody
12 would be the only appropriate sanction in all the
13 circumstances. I do have in mind when I say that
14 the variety of sentences that are imposed even on
15 adults for that sort of offence. So I have had
16 to come to a sentence that will reflect all of
17 these various factors.

18 It is also my view that Mr. C. certainly
19 needs, along with the support of his family,
20 professional help and guidance. His behaviour
21 with these very young girls indicates, obviously,
22 that he has some problems that he needs to deal
23 with, and there is no question that he needs help
24 and supervision to ensure that he does not engage
25 in this sort of behaviour again.

26 I think it is important to note that his
27 family, as I have said, is very supportive, but

1 the pre-sentence report does give rise to some
2 troubling concerns; for example, the marijuana
3 use apparently with his father. Marijuana is
4 still an illegal substance and everyone should be
5 aware of that, and encouraging T.C. to use it or
6 turning a blind eye to his use of it is not going
7 to help him at all.

8 I also note that the pre-sentence report
9 says that T.C.'s younger brother - and I don't
10 think there was an age given in the report, but
11 it is his younger brother, in any event - looks
12 up to him. So I hope that T. will think about
13 that and try to help his brother by setting a
14 good example for him and showing him that despite
15 the difficult family life they have had in the
16 past he can move beyond that and become a good
17 and productive member of his community.

18 I have reviewed the cases submitted by Crown
19 counsel, and I note that they do show a wide
20 range of sentences for sexual assault where the
21 offence involves sexual intercourse. For
22 example, in the case of R. v. K.G.B., a decision
23 of the New Brunswick Court of Appeal, six months
24 custody was imposed followed by three months'
25 supervision. In the decision of R. v. V.I.C.
26 from the Saskatchewan Court of Appeal there was a
27 sentence of 21 months' custody and supervision,

1 in other words, combined, imposed where there
2 were multiple acts of intercourse against a
3 six-year-old.

4 The cases reflect the way in which sentences
5 must be tailored to the individual circumstances
6 of the offender and the circumstances of the
7 offence.

8 Stand, please, Mr. C. On count 1, which is,
9 as I have said, the more serious of the two
10 offences, I think the range of sentence that has
11 been suggested by counsel is appropriate, and my
12 order is that you serve a 12-month custody and
13 supervision order with the first eight months of
14 that to be custody and the last four months under
15 supervision in the community subject to
16 conditions to be set.

17 Under section 42(4) I am required to tell
18 you that if you breach any of the conditions
19 while you are under supervision in the community,
20 you may be brought back into custody and required
21 to serve the rest of the second period in
22 custody, as well; in other words, the four months
23 after the eight months of custody.

24 You should also be aware that under other
25 provisions of the Youth Criminal Justice Act a
26 court could require you to serve the second
27 period in custody, as well.

1 The periods in custody and under supervision
2 in the community may be changed if you are or if
3 you become subject to another sentence. So that
4 is the sentence on count 1.

5 On count 2 of the indictment, I am going to
6 impose a period of probation for 18 months to be
7 consecutive to the sentence on count 1; in other
8 words, to start at the end of the period of
9 supervision on count 1. The conditions of the
10 probation will be the statutory conditions that,
11 first, you keep the peace and be of good
12 behaviour. That means don't get into trouble.
13 That you appear before the Youth Justice Court
14 when required to do so. That you have no contact
15 of any kind, direct or indirect, with the victims
16 of the offences except that in conjunction with
17 your probation officer you may write letters of
18 apology to the victims, which your probation
19 officer is then to arrange for delivery of.

20 You are not to be alone with any child under
21 the age of 14 unless you are in the presence of
22 another adult who is sober. You are to attend
23 alcohol and drug abuse counselling and sexual
24 offender counselling as directed by your
25 probation officer. You are to report to your
26 probation officer within five days after the term
27 of probation commences and after that as required

1 by your probation officer. You are to make every
2 effort to obtain and maintain employment or
3 attendance in an educational program. Do you
4 understand those conditions, Mr. C.?

5 THE YOUNG PERSON: Yes.

6 THE COURT: All right. You may have a
7 seat, then.

8 The mandatory DNA order will issue. Do you
9 have an order, counsel?

10 MR. MacFARLANE: Unfortunately, I don't, Your
11 Honour. I will make arrangements to get that
12 done as soon as possible.

13 THE COURT: All right. Well, just so that
14 it doesn't fall through the cracks, as these
15 things sometimes seem to have a tendency to do, I
16 am going to direct that the order be submitted to
17 me within 30 days of today's date. So I will ask
18 counsel both to cooperate in making sure that it
19 is presented within the 30 days.

20 Now, is there anything else, counsel, that I
21 need to address in this case?

22 MR. SHABALA: As I expect Mr. C. will be
23 availing himself of the counselling for sexual
24 issues, could I request that a copy of the
25 pre-sentence report be amended to the custody
26 order?

27 THE COURT: I don't know whether that

1 is -- that may be the usual procedure, in any
2 event, but that's fine.

3 MR. SHABALA: Thank you.

4 THE COURT: A copy of the pre-sentence
5 report, Madam Clerk, I will ask you to attach
6 that to the warrant or order, then, that goes to
7 the correctional facility.

8 THE COURT CLERK: As amended or --

9 THE COURT: Oh, I'm sorry. When you used
10 the word "amended", I thought you meant to say
11 "appended" --

12 MR. SHABALA: I'm sorry. I might have
13 used "amended".

14 THE COURT: -- Mr. Shabala. I'm sorry. I
15 misunderstood you.

16 MR. SHABALA: Yes.

17 THE COURT: Well, I don't know that I can
18 amend the report.

19 MR. SHABALA: Yes. I am just looking for an
20 appendix, pardon me. To have the pre-sentence
21 report affixed to the warrant of committal so
22 when he arrives at the institution, does take
23 that counselling, a copy of that pre-sentence
24 report would be available.

25 THE COURT: But you are talking about the
26 pre-sentence report as is?

27 MR. SHABALA: That's right.

1 THE COURT: You are not concerned about
2 the various comments --
3 MR. SHABALA: No.
4 THE COURT: -- that you had made?
5 MR. SHABALA: No.
6 THE COURT: All right. That's fine, then.
7 Just the report as is will be appended.
8 THE COURT CLERK: Ma'am, is it secure or open
9 custody?
10 THE COURT: Madam Clerk has raised an
11 issue which I had not considered and counsel had
12 not actually addressed, and that is whether it is
13 secure or open custody. Now, I am not sure
14 whether under the legislation that is a decision
15 the Director makes or whether I have to direct
16 that.
17 MR. MacFARLANE: It depends on the
18 jurisdiction, Your Honour. My understanding in
19 this jurisdiction, it's the Court that makes that
20 decision. So the Crown position yesterday was
21 asking for secure custody for Mr. C. To be
22 practical, as you noted section 89, it seems that
23 because he is 20 he will be serving the sentence
24 at North Slave. So that may be a moot point.
25 But the Crown position is that it should be
26 secure custody reflecting the seriousness of the
27 offence and perhaps the danger to the community.

1 THE COURT: Mr. Shabala?

2 MR. SHABALA: I adopt My Friend's position

3 on that matter, Your Honour. I believe it should

4 be closed.

5 THE COURT: All right. The custody in the

6 circumstances and, again, considering the nature

7 of the offence, will be secure custody. Is there

8 anything further that I need to deal with?

9 MR. MacFARLANE: No, Your Honour.

10 MR. SHABALA: Nothing further, Your Honour.

11 THE COURT: All right. Mr. C., I have

12 made all these conditions. I am sure that you

13 will be given the opportunity for counselling in

14 the correctional facility and, obviously, while

15 you are on probation. And I hope that you do

16 very seriously take that counselling and learn

17 from that counselling, because these are serious

18 offences that you have committed and any more

19 behaviour like this is guaranteed to land you in

20 jail, and I am sure you don't want to spend the

21 rest of your life in and out of jail. So you

22 have got to do a lot of thinking and you have got

23 to do a lot of work. Do you understand?

24 THE YOUNG PERSON: Yeah.

25 THE COURT: All right. Thank you. We

26 will close court, then.

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 to be a true and
accurate transcript pursuant
to Rules 723 and 724 of the
Supreme Court Rules.

Jill MacDonald, CSR(A), RPR
Court Reporter