

**IN THE TERRITORIAL COURT OF YUKON**  
Before Her Honour Judge Ruddy

REGINA

v.

P.J.L.

**Publication of information that could identify the complainant or a witness is prohibited pursuant to s. 486.4 of the *Criminal Code*.**

Appearances:  
Sarah Bailey  
Lynn MacDiarmid

Counsel for the Crown  
Counsel for the Defence

**REASONS FOR SENTENCE**

[1] RUDDY T.C.J. (Oral): P.J.L. has entered guilty pleas to two offences: a sexual assault, and failing to comply with a condition of release requiring him to abstain from the possession or consumption of alcohol. Facts are set out in an agreed statement of facts filed as Exhibit 1.

[2] In brief, the complainant, T.L.G., and P.J.L. are cousins, although not closely acquainted. On May 18, 2019, both had gathered with other family members to mourn the death of T.L.G.'s uncle, by suicide. Alcohol was consumed. Ultimately, T.L.G. went to sleep, firstly, on a couch on the porch before moving inside to sleep on a bed. She

was fully clothed. T.L.G. awoke to find P.J.L. penetrating her vagina with his penis. Her pants and underwear had been pulled down to her knees. When she realized what was happening, T.L.G. slapped P.J.L. and asked him what he was doing. She noted that P.J.L. smelled strongly of alcohol. He mumbled something and left the room.

[3] Over the next day and night, the gathering continued. Again, alcohol was consumed. T.L.G. went to sleep in the early morning hours on a couch. She was again awakened to find P.J.L. on top of her and penetrating her vagina with his penis, her pants and underwear pulled down to her knees. She slapped him in the chest and he stopped. She noted him to slur his words and believed him to be intoxicated.

[4] T.L.G. left the residence upon realizing that she and P.J.L. were the only ones still there. P.J.L. followed T.L.G., telling her that booze gets the best of him. He later sent her Facebook messages saying he was sorry and asking her not to charge him. T.L.G. ultimately reported the incident, and P.J.L. was arrested the evening of May 19, 2019.

[5] At the time of the incident, P.J.L. was subject to an undertaking with a condition requiring him to abstain from alcohol.

[6] P.J.L. comes before the Court with a prior criminal record. It is not an unduly lengthy record. The convictions are only between 2018 and 2020. Of concern, however, is the fact that he has two prior convictions for sexual assault, both in 2018. For the first, he received a six-month sentence plus 18 months' probation, in addition to credit for 209 days spent in pre-sentence custody. The second sexual assault received a sentence of six months to be served conditionally within the community. I do not have

any factual information about either of those convictions, other than they are obviously for the same offence for which I am sentencing him today.

[7] P.J.L.'s background is set out in a *Gladue* report prepared for the second sentencing in March of 2018, in relation to the second sexual assault conviction. There is also a *Gladue* report update that was prepared for these proceedings.

[8] P.J.L., if my math is correct, is now 32 years of age. He was born and raised in Inuvik and is of Indigenous descent, although I did not find in the reports what the particular background is. The information I do have is that his grandparents attended residential school, as did his mother. None of his grandparents spoke of their experiences. For his mother, her experience was fortunately relatively brief, and she did not experience any abuse herself.

[9] P.J.L.'s parents married in 1989. His father worked as a mechanic. His mother obtained her GED while staying home to raise P.J.L. and his siblings. P.J.L.'s parents operated a vehicle dealership in Inuvik.

[10] Much of P.J.L.'s childhood was spent out on the land learning traditional skills and values from family members, including his grandfather, E.L., and his aunt W. E.L. would also take young members of the community out on the land to provide cultural mentorship and help them get back on the right track. It would appear from the reports that P.J.L. often joined him on those trips.

[11] P.J.L. is noted to be extremely knowledgeable on the land and willing to share his knowledge and hard work with others.

[12] P.J.L.'s father was apparently a binge drinker who would disappear for days at a time. His mother, however, appears to have offered considerable stability for her children.

[13] P.J.L.'s youth included instances of bullying and one notable assault by a teacher. Of particular concern, P.J.L. was involved in a serious Ski-Doo accident at age 12 and suffered a major head injury. He experienced a long and difficult recovery with significant support from his mother.

[14] In P.J.L.'s teenage years, the family spent some time in Alberta for his mother to complete a post-secondary program. While there, P.J.L. was subjected to racist bullying.

[15] P.J.L. and his family have lost a number of family members, many to suicide. These have hit P.J.L. very hard, particularly the loss of his uncle N. to suicide, his cousin K. by drowning, and his aunt W., who passed in 2006. P.J.L., in the *Gladue* report, describes feelings of guilt and unresolved grief in relation to these losses.

[16] P.J.L. completed his Grade 12 education and was actively involved in Arctic sports and the Dene Games, with his grandfather having been one of the founders of the Dene Games. Since graduation, P.J.L. has held various positions as a labourer and heavy equipment operator.

[17] He has been in a long-term common-law relationship, and the couple share three children, ages eleven, seven, and one.

[18] Several friends and family members have provided letters of support for P.J.L., attesting to his many positive qualities. All speak highly of his skills on the land, in particular, and his role as a loving father. Most urge a rehabilitative sentence for P.J.L.'s benefit and, particularly, for his children's benefit. It is evident from these letters that P.J.L. has a great deal of support from people who care about him and want him to get help.

[19] However, the sentencing is not just about P.J.L. and what is in his best interests. It is also about the nature of his behaviour and, more importantly, the impact his actions have had on T.L.G. She has taken the time to file what, I must say, is one of the most detailed victim impact statements I have ever received. It is clear to me she put a lot of thought into just how P.J.L.'s actions have impacted on her life. In the interest of her privacy, I am not going to go through it in detail, but it is clear to me that the offence has had a profound impact on every aspect of T.L.G.'s life. It has profoundly damaged her in many ways.

[20] She speaks of living in considerable fear. I know that P.J.L. does not feel she needs to be, but, based on the nature of the offences, particularly the fact that she was assaulted not once, but twice, over two days, I have absolutely no difficulty understanding why she is as fearful as she is. She has isolated herself from family and from friends. She has blamed herself. She has developed issues with mental health and self-harm. She has spoken of reactions she has received that have reinforced that sense of self-blame for what happened, which is, quite frankly, heartbreaking. She has talked about her difficulties coming to terms with what has happened, and her struggles with substance abuse. It has affected her relationships on virtually every level.

[21] I think, quite frankly, it is one of the most comprehensive and eloquent victim impact statements on what it means to live with having been sexually assaulted, and how it impacts on virtually every aspect of one's life. It is really important for me as the judge to understand just how this has impacted on her, but I also think it is incredibly important for P.J.L. to understand that this did not end for T.L.G. after these two nights. She has lived with the impacts of it for years, and she will live with the impacts of it for the rest of her life.

[22] While there is nothing that this Court can do that is going to put her back in the position she would have been in had this not happened, it is my hope that today, at least, brings her some closure to these proceedings that will help her to continue to move forward.

[23] As noted, I cannot lose sight of the fact that this is not just about P.J.L. and the other members of his family that are clearly concerned for him and his well-being. The Court has to consider the nature of his behaviour and the very profound impact that it has had on T.L.G.

[24] In terms of appropriate disposition, counsel are essentially offering me the same position, which would keep P.J.L. in the Yukon and hopefully allow for some rehabilitative steps to be taken. In terms of assessing what is being proposed, I am mindful of the fact that through the Yukon Supreme Court decision in *R. v. White*, 2008 YKSC 34, there has long been an established sentencing range for these types of offences, with a low of 12 months, to a high of 30 months, for penile penetration

offences committed against vulnerable, sleeping, or unconscious victims. The question for me is where does P.J.L. fall within this range.

[25] A determination of an appropriate sentence in this case requires the Court to consider and balance what are often conflicting factors.

[26] On the one hand, s. 718.2(e) of the *Criminal Code* requires me to consider P.J.L.'s Indigenous heritage, and how the history of systemic racism and discrimination may have contributed to his offending behaviour. This information is incorporated into the sentencing process often as the basis for reducing the duration of a sentence, or for looking at alternative dispositions with a view to reducing the overrepresentation of Indigenous offenders in Canada's justice system and jails. This is often achieved by shifting the focus to rehabilitation.

[27] On the other hand, the Court must consider the objectives of denunciation and deterrence. This is particularly so, given the nature and seriousness of the offence. The *White* decision spoke at length about the prevalence of these types of offences in the Yukon and their devastating impacts on victims, as is clearly evident in T.L.G.'s very thoughtful victim impact statement. This calls for a sentence which sends a very clear message to P.J.L., and others, that such behaviour will not be tolerated. This is most usually achieved through the imposition of a custodial sentence.

[28] In deciding how to balance these competing factors, in this particular case, there are a number of considerations that I think are important.

[29] Firstly, recent amendments to the *Criminal Code* in s. 718.04 now require the Court to give primary consideration to denunciation and deterrence where the offence involves the abuse of a vulnerable person, which expressly includes victims who are Aboriginal and female, as I believe is the case here, within that definition of "vulnerable".

[30] Secondly, the offence involves the abuse of a family member, albeit I do not think it is a close connection but they are nonetheless related, which is a statutorily aggravating factor under s. 718.2(a)(ii).

[31] Thirdly, P.J.L. was intoxicated during the commission of both acts that make up the offence, and, at that time, he was subject to a condition on an undertaking that required him to abstain.

[32] Fourthly, P.J.L. took advantage of T.L.G. not once but twice over two days. On both occasions, she was at her most vulnerable, sleeping, at the home of a family member where she had every right to feel safe. Both instances involved full penile penetration without T.L.G.'s consent.

[33] Finally, P.J.L. has two prior convictions for sexual assault for which he was sentenced just slightly more than a year before these incidents occurred.

[34] In sum, the circumstances of the offences are extremely aggravating. P.J.L.'s related history is extremely aggravating. The question really remains the extent to which that is balanced out by *Gladue* factors and the question of rehabilitation.

[35] In this particular case, I do have two reports which highlight the fact that there are, in P.J.L.'s history, what we would term as "*Gladue* factors" that help us understand

the evolution of his offending behaviour based on an understanding of his antecedents and, to some extent, what has happened within not just his family, but the broader community.

[36] There is little doubt that we have a major problem, in terms of the overrepresentation of Indigenous offenders in both our justice system and jails, and that we, as courts, need to do everything that we can to reduce that overrepresentation. That does include looking for ways to support rehabilitative efforts that would hopefully keep individuals not just out of the system themselves, but would perhaps assist in breaking that cycle in a way that the children of those offenders perhaps do not return to see us here in our courtrooms. We have the obligation, both morally and legally, to do what we can to try and reduce that overrepresentation. So, I am dealing with very much opposing factors that I need to balance.

[37] When it comes to rehabilitation and the extent to which I can balance things on that end, I think I have clearly expressed part of my concern, being the extent to which there have been actual efforts towards rehabilitation. I do accept that there is certainly a sincere desire for rehabilitation expressed by P.J.L.'s family and those people who care about him and who recognize the otherwise positive qualities that he brings to the community and to his family. They speak strongly of his need for rehabilitation and their desire to support that. P.J.L. has spoken at length here today about his desire to get some help. He has indicated that he has encountered some barriers.

[38] I am unfortunately left in the position where I do not have an awful lot of information that really helps me assess the degree of sincerity of his desire to seek

rehabilitation and the degree of motivation that he may have to follow through, but certainly those that support him are clear in their desire for him to follow that route and to support him in those efforts. His wife, in particular, appears to be very cognizant of the impact what has happened has had on her to some extent but, more particularly, to their children, and she has taken steps to reach out to get both her and the children some assistance.

[39] Unfortunately, as I said, I do not have a lot of clear information before me and I really have nothing that would allow me to negate the comments that P.J.L. has made about his efforts towards rehabilitation in Northwest Territories because I simply do not know what is available there. If he were talking about the Yukon, I would have a fairly good sense about the validity of what I am being told or not told. I have less so when it comes to Northwest Territories.

[40] So the question then is what do I do with all of this and, more particularly, whether what counsel are suggesting, while not fully a joint submission, is an appropriate disposition in all the circumstances. I will say I do not believe I have ever imposed a sentence higher than what the Crown sought in my career. I always consider that the high-water mark. I will say this is one case where it seriously crossed my mind to consider whether or not it would be appropriate to impose a sentence greater than that sought by the Crown.

[41] One thing I will say that persuades me not to are the *Gladue* factors. If there is to be any hope for rehabilitation at all, conditions must be imposed after his time in custody that require P.J.L. to follow through with treatment.

[42] While I would put him at the upper end, if not over the upper end, of the *White* range of 30 months, and I might otherwise have sentenced him to something over that amount, what persuades me not to is the opportunity to place him on three years of probation. This would require him, firstly, to get the counselling he needs, and to demonstrate that he is serious about getting it, and also to open some doors to some opportunities for him to get that help. It would also allow me to put no contacts in place for the longest possible period of time that I can, because I think T.L.G. is entitled to that comfort for so long as I can give it to her, particularly as she continues to struggle with what happened.

[43] This sentence is slightly over what is being suggested to me, but here is what I am satisfied with in balancing the competing factors as appropriate.

[44] I have considered the time he has spent in pre-trial custody. Applying the time spent in pre-trial custody, in my mind, gets me as low as I can go, which is two years less a day, as the appropriate sentence. I am not going to reduce it further from the two years less a day, but remand credit gets me to the two years less a day, and then I am going to add three years' probation, the maximum allowable term.

[45] P.J.L., I just want to be clear in doing so. The probation, in particular, is not intended to be punitive. It is intended largely to give you the opportunity to demonstrate that you really do want to make those changes, that you want to follow through, that you want to take those steps to get the treatment that you need to be the role model you want to be for your children and, in particular, to be someone who understands, now that you have a daughter, what it means to protect the women in your life, particularly

the ones that are vulnerable. I am trying to balance the punitive aspects, which are about the aggravated nature of the behaviour and your history of similar behaviour, against the fact that I recognize that you do need some help to keep you out of the system.

[46] The conditions are going to be as follows. There will be the statutory terms that you:

1. Keep the peace and be of good behaviour.
2. Appear before the Court when required to do so by the Court.
3. Notify your probation officer in advance of any change of name or address, and promptly of any change of employment or occupation.

[47] In addition to the statutory terms, you are to:

4. Have no contact directly or indirectly or communication in any way with T.L.G.
5. Not go to any known place of residence, employment or education of T.L.G.
6. Report to a probation officer immediately upon your release from custody, and thereafter, when and in the manner directed by the probation officer.
7. Not possess or consume alcohol and/or illegal drugs that have not been prescribed for you by a medical doctor.

8. Not attend any premises whose primary purpose is the sale of alcohol, including any liquor store, off sales, bar, pub, tavern, lounge or nightclub.

[48] I recognize some of these are very problematic conditions, particularly the abstain condition. In this particular case, I am satisfied with P.J.L.'s history that management of risk requires sobriety in the community.

[49] You are to:

9. Attend and actively participate in all assessment and counselling programs as directed by your probation officer, and complete them to the satisfaction of your probation officer, for the following issues:

substance abuse,

alcohol abuse,

sexual offending,

psychological issues,

any other issues identified by your probation officer,

and provide consents to release information to your probation officer regarding your participation in any program you have been directed to do pursuant to this condition.

[50] I would just state for the record that, if appropriate, I am satisfied that the programming should include family counselling, if that can be arranged.

[DISCUSSIONS]

[51] There are some ancillary orders I am required to include by law, P.J.L. They are that you provide such samples of your blood as are necessary for DNA testing and banking.

[52] Secondly, that you comply with the provisions of the *Sex Offender Information Registration Act*, S.C. 2004, c. 10, for the remainder of your life.

[53] Lastly, pursuant to s. 109, I have to impose an order prohibiting you from having any firearms, ammunition, or explosive substances in your possession.

[54] Now, I do know that one of the real positives in your life, P.J.L., is the connection you have to the land and the considerable skills that you have learned over the years. There are provisions that will allow for you to make an application for an exception to the prohibition. You may want to speak further to Ms. MacDiarmid about that, if that becomes appropriate, as I imagine those activities often involve firearms.

[DISCUSSIONS]

[55] MS. BAILEY: Just two things, I guess: victim fine surcharge and no possession.

[56] THE COURT: I am going to waive the surcharge, simply in view of his custodial status and I do not want to create financial burdens that will disadvantage his children.

[DISCUSSIONS]

[57] With respect to the breach, I am always uncomfortable sentencing on abstain breaches for individuals with addiction issues, so I am going to impose a 60-day

concurrent sentence. It will not add any additional time. You serve it at the same time, but it is going to be reflected on your record as 60 days on count 7.

[58] That leaves me the remaining counts, I believe.

[59] MS. BAILEY: Stay of proceedings on the remaining counts.

[DISCUSSIONS]

[60] THE COURT: Just so that I am clear, in getting to the two years less a day, I have factored in the credit for remand time.

[DISCUSSION]

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RUDDY T.C.J.