

Citation: *R. v. Charlie*, 2021 YKTC 54

Date: 20211126
Docket: 19-00690
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before His Honour Chief Judge Cozens

REGINA

v.

VINCENT LAWRENCE CHARLIE

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

Appearances:

Jane Park
Samantha Dawson

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCE

[1] COZENS C.J.T.C. (Oral): Vincent Charlie has entered a guilty plea to having committed an offence contrary to s. 151 of the *Criminal Code*. The Crown has proceeded by way of indictment.

[2] The Agreed Statement of Facts reads as follows:

1. On December 10, 2019, at approximately 4 a.m., Cpl. Jeff Myke of the Teslin RCMP got a report of a sexual assault from [C.N.], who stated that Vincent Charlie sexually assaulted his 14-year-old daughter [M.J.], at his residence, but that [C.N.] had kicked Mr. Charlie out and did not know where he was.

2. Cpl. Myke made patrols and located Mr. Charlie near [C.N.'s] residence. Mr. Charlie was arrested, held for bail, and released on December 13, 2019.
3. Through an investigation, it was discovered that at approximately 2:40 a.m. on December 10, 2019, [M.J.] was in her bedroom, which is located in the basement, trying to sleep when she heard Mr. Charlie coming down the stairs.
4. Mr. Charlie got into bed with her and put his arm under her neck. He then whispered, "move over babe." He then put his hands down her pants and began to kiss her. When his hands were down her pants, he was touching her vagina.
5. He got up and went upstairs, only to return a few minutes later. He removed her pants and performed oral sex on her while rubbing her chest.
6. He left again and came back a third time and performed oral sex on her again. He then got up and removed his pants and climbed on top of her and said, "I'm going to fuck you."
7. Mr. Charlie was unable to get an erection, so he left. [M.J.] took this opportunity to run upstairs and lock herself in the bathroom. On her way to the bathroom, she saw Mr. Charlie sitting on the couch and then made eye contact.
8. She began texting family members to ask for help and finally got hold of her brother, [T.T.], who came to get her from the bathroom. [T.T.] then woke up [C.N.], who then kicked Mr. Charlie out of the residence and called 911.
9. When Cpl. Myke arrested Mr. Charlie, [he] uttered, "I'm so ashamed. I hope that little girl is okay." When asked if he wanted to provide a statement, Mr. Charlie stated that he was blacked out and does not remember anything.
10. Mr. Charlie was drinking heavily during the events set out and due to his level of intoxication does not have a recollection of his actions during the timeframe of the offence. Vincent does not dispute the facts as set out herein which are based on the statement of [M.J.]

Positions of Counsel

[3] Crown counsel submits that Mr. Charlie should be sentenced to a custodial disposition of two years minus one day custody, less credit for time served, which at the date of the sentencing hearing was 312 days, and as of today's date is 408 days, the equivalent of 13.4 months of custody.

[4] The minimum period of custody for this offence is one year.

[5] The aggravating factors include, firstly, the statutory ones as set out in sections:

718.01 When a court imposes a sentence for an offence that involved the abuse of a person under the age of eighteen years, it shall give primary consideration to the objectives of denunciation and deterrence of such conduct.

...

718.04 When a court imposes a sentence for an offence that involved the abuse of a person who is vulnerable because of personal circumstances — including because the person is Aboriginal and female — the court shall give primary consideration to the objectives of denunciation and deterrence of the conduct that forms the basis of the offence.

718.2 ...

(a) a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender, and, without limiting the generality of the foregoing

...

(ii.1) evidence that the offender, in committing the offence, abused a person under the age of eighteen years

...

(iii.1) evidence that the offence had a significant impact on the victim, considering their age and other personal

circumstances, including their health and financial situation

...

[6] Crown counsel also points to the circumstances of the offence, which include the repetition, and the nature of the sexual assaults, including occurring in M.J.'s home where she was sleeping; and Mr. Charlie having abused the trust of someone who had been helping him.

[7] Counsel recognizes that the presence of **Gladue** factors and the guilty plea, should be considered as mitigating factors (**R. v. Gladue**, [1999] 1 S.C.R. 688).

[8] Counsel for Mr. Charlie submits that a sentence of the mandatory minimum of one year custody be imposed.

Victim Impact Statements

[9] M.J. and her mother submitted Victim Impact Statements ("VIS"). It is clear that this sexual assault has had a profound, significant, and ongoing negative impact on M.J., as well as on her family. I have read these reports. I will not specify what these negative impacts are for the purposes of pronouncing sentence, in the interests of protecting M.J. and her family's privacy, but I am very well aware of them.

[10] I will say, that despite these negative impacts, I see in both M.J.'s and her mother's VIS that there is some healing started, there is considerable resilience, and there is the strength to move forward in M.J.'s, and her family's, healing process. I would certainly encourage M.J. and her family to continue along this path in the healing process. I am hopeful the courage that M.J. has shown so far in coming forward and

participating in this, at times difficult process, are indicative of her resolve not to let the actions of Mr. Charlie define her, and that she will choose to define her own life.

[11] While in determining the appropriate sentence for Mr. Charlie, I am required to consider his status as an Indigenous person and thus take into account **Gladue** factors. I am mindful also that M.J. is an Indigenous victim, and that she and her family experienced the victimization caused by Mr. Charlie's criminal action as people also impacted by the negative impacts Indigenous peoples have incurred in Canada due to governmental policies.

Circumstances of Mr. Charlie

[12] Mr. Charlie is 44 years of age. He is a member of the Vuntut Gwich'in First Nation. He has the following record of criminal convictions:

Youth

1995: s. 253(b);

Adult

1996: ss. 334(b) and 430(4);

1997: ss. 252 and 430(4);

1999: ss. 266 and 145(3);

2000: ss. 266 and 733.1(1) ;

2001: ss. 253(a) times two, 430, 266, and 145(3) times four;

2002: s.733.1;

2003: ss. 334, 145(3) times two, 129(a), and 733.1(1) ;

2004: ss. 129(a), 145(3), and 145(1)(b) ;

2006: s. 264.1;

2007: ss. 145(5.1), 266, 145(3), 334(b), 349(1), 145(5), 733.1(1), and 145(4) ;

2008: s. 266;

2009: ss. 733.1(1) times four, 145(2), and 266;

2018: ss. 145(3) times three, and 349(1) ;

2020: ss. 320.14(1)(a) ;

[13] The longest period of time that Mr. Charlie was sentenced to custody was 120 days time served for the 2020 conviction. He states that all or almost all of his criminal convictions were related to his alcohol use.

[14] The personal information and present circumstances of Mr. Charlie were provided through a Pre-Sentence Report ("PSR"), a Forensic Complex Care Team ("FCCT") Report, and a **Gladue** Report.

[15] Mr. Charlie states that he has no recollection of having committed this offence, due to his level of intoxication. He, however, accepts as truth what M.J. said happened, and entered his guilty plea as a result. He is very remorseful for what he did to M.J. and has expressed feelings of grief and regret. He recognizes that he "has hurt many

people, destroyed a lot of trust and added to the dysfunction of his community" by committing this offence.

[16] Mr. Charlie stated that he pleaded guilty because he has a lot of respect for the victim and her family, and he does not believe M.J. would have reason to lie about it. He has accepted that she was telling the truth.

[17] Mr. Charlie's father attended residential school, where he was a victim of sexual abuse. Mr. Charlie's mother did not attend residential school. However, Mr. Charlie states that the community of Old Crow has many residents who suffered the effects of the resultant intergenerational trauma associated with the residential school program, and that he witnessed drinking and violence regularly while growing up.

[18] Mr. Charlie says that he suffered psychological and emotional abuse at the hands of his parents in the early years of his life — something his six-and 16-year-old younger brothers were spared, as his parents subsequently became sober and made positive healing steps. In the PSR, he mentions that he was physically abused by both his parents, but in the **Gladue** Report denies any such physical abuse as having occurred, so I am uncertain in this regard.

[19] His parents are currently positively involved in the community. Mr. Charlie now has a good relationship with both of his parents. This said, he still blames them for the regular physical abuse and the instances of sexual abuse he suffered as a child, because he feels that they did not protect him.

[20] Mr. Charlie was significantly impacted by the death of his maternal grandmother in 2005. He had spent approximately one quarter of each year living on the land with his grandparents until he was 11 years old. He also spent much of his time on the land with his parents. He learned about the Vuntut Gwich'in culture and tradition while living on the land.

[21] Mr. Charlie states that many of his peer group from the community of Old Crow have passed away from alcoholism, drug overdoses, or suicide. He considers himself to be an alcoholic, having started to drink at a young age and continuing to struggle with alcohol abuse throughout his life. Abusing alcohol and violence were part of a common cycle in Mr. Charlie's community and home when he was growing up. He states that all of his relationships have been negatively impacted by his alcohol use.

[22] Mr. Charlie stated that he did really well at school when his parents moved to Whitehorse after they became sober, but when they returned to Old Crow things became difficult for him, and drinking became a regular occurrence for him, continuing to be a problem to this day.

[23] Mr. Charlie's longest period of sobriety was 18 months while he was working for the Protection of Wildlife Refuge in 2016 to 2018. He has attended for treatment for his substance abuse five times between 2012 and 2020. The first was the Thuy Namut Program in British Columbia, which was a six-week program. He also attended at Round Lake in British Columbia and the Henwood Treatment Centre in Edmonton. In 2017, he completed the 28-day program at Mental Health Substance Use Services in Whitehorse. In 2020, he attended the Jackson Lake Treatment Program.

[24] Mr. Charlie has been assessed through the Problems Related to Drinking Scale as having a severe level of problems related to alcohol use, and on the Drug Abuse Screening Test as having a moderate level of problems related to the use of drugs.

[25] His criminogenic risk assessment using the LS/CMI notes Mr. Charlie as having a high overall level of risk/needs.

[26] Mr. Charlie was assessed for his risk of sexual recidivism, using the Risk for Sexual Violence Protocol ("RSVP"). The RSVP identifies "static and dynamic factors that contribute to the propensity to commit acts of sexual aggression".

[27] In this risk assessment, there was no evidence indicative of Mr. Charlie being at risk for future commissions of acts of sexual violence in the following factor areas:

- *Chronicity of Sexual Violence;*
- *Diversity of Sexual Violence;*
- *Escalation of Sexual Violence;*
- *Physical Coercion in Sexual Violence;*
- *Psychological Coercion in Sexual Violence; and*
- *Attitudes That Support or Condone Sexual Violence.*

[28] The one area identified as possibly being a risk factor is as follows:

- *Extreme Minimization or Denial of Sexual Violence.*

The basis for this risk factor is that Mr. Charlie's stated lack of recollection of the sexual assault is possible evidence of a denial of sexual violence.

[29] Other assessment areas in the application of the RSVP to Mr. Charlie are as follows:

- *Problems With Self-Awareness*

This is associated with the above-mentioned concern regarding Mr. Charlie's apparent lack of recollection of the sexual assault. His ambivalence in this regard indicates a possible problem with self-awareness.

- *Problems With Stress or Coping*

The substance abuse and suicidal ideation indicate that Mr. Charlie experiences problems with stress and coping.

- *Problems Resulting From Child Abuse*

Mr. Charlie's history of family turmoil and chaos, coupled with being sexually abused and bullied, provide evidence that Mr. Charlie has serious resultant problems.

- *Problems With Substance Use*

Mr. Charlie's history of substance abuse, in particular alcohol, show that he has a serious substance use problem.

- *Violent or Suicidal Ideation*

Mr. Charlie's history of suicide attempts, while not indicative of any violent ideation towards others, is a concern.

- *Problems With Intimate Relationships*

Mr. Charlie's history within intimate relationships are indicative of an inability to trust and his having attachment problems.

- *Problems with Non-Intimate Relationships*

Mr. Charlie's history of "acquaintance rape certifies as a serious problem". That is a quote. (I note that the circumstances of this offence might not necessarily qualify for what we have traditionally considered the word "rape" to mean, in that it implies actual penetration of the vagina with the penis. There was no evidence of such penetration before me. However, to the extent that this was an attempt at what is generally considered to constitute a rape, it would fall within the category of rape. It was simply not completed. I do not want there to be any uncertainty here. The sexual assault was an attempted rape, besides the other sexual assaults that were committed in conjunction with this attempt, being the touching and

the oral sex. I do not want there to be any misconceptions about the seriousness of the sexual assault or, more technically, sexual interference committed here).

- *Non-Sexual Criminality*

Mr. Charlie's criminal history indicates trouble with criminality.

- *Problems With Treatment*

Possible problems are noted, given that Mr. Charlie had left treatment before, but are offset by Mr. Charlie's current level of insight and willingness to attend treatment.

- *Problems With Supervision*

Mr. Charlie's history of multiple breaches of probation indicate historical problems with supervision.

- *Major Mental Illness*

Mr. Charlie has been diagnosed as suffering from Major Depressive Disorder and Post Traumatic Stress Disorder.

[30] There was no evidence to support any concerns in the following areas:

- *Sexual Deviance*; and
- *Psychopathic Personality Disorder*.

[31] Mr. Charlie is considered not to have problems with planning, based upon his current level of insight and planning success in the past when sober.

[32] The FCCT Report concludes that Mr. Charlie is a low-moderate risk to reoffend using sexually abusive behaviour. He is noted by the professionals he has recently been involved with as "doing well to attend to all his mental health needs", as possessing "tremendous levels of insight into his current and past situations", and that he "displays the ability to formulate realistic goals and plans for his future". His greatest risk factor, however, is his problem with substance abuse, in relation to his problem with depression. Mr. Charlie is noted as requiring intensive inpatient substance use treatment and aftercare.

[33] Mr. Charlie is single. He has a 21-year-old son, who has achieved academic success. Mr. Charlie's son, brothers, and parents are sober supports for him. Mr. Charlie's father noted that Mr. Charlie is self-sufficient when he is on the land. It is Mr. Charlie's intention upon his release to move into his father's cabin on the Dempster Highway, and to otherwise live in his sister's alcohol-free home when he comes to Whitehorse for supplies.

[34] Mr. Charlie has had a sporadic work history, with his longest period of employment being 18 months. Mr. Charlie suffered a serious leg injury when he was

struck by a motor vehicle in 2018 that limits his ability to work in the construction field as a carpenter, as he previously had. He hopes to receive training in order to move into the culinary arts field.

[35] He attended school in Old Crow through to Grade 9, and then completed Grades 10 to 12 by correspondence through F.H. Collins Secondary School in Whitehorse. I note that in saying that Mr. Charlie attended school in Old Crow through to Grade 9, my understanding is that there was a period of time where he may have been in Whitehorse attending school. I do not intend to try to clarify those dates or any differences between the PSR and **Gladue** Report in this regard, because it will not matter for the purposes of this sentencing.

[36] Mr. Charlie says that he tried to commit suicide when he was 10 years of age, again when he was 24 years of age, and then on three occasions in the last three years for which he was hospitalized — the most recent of which was February to March 21, 2021, after the sudden death of a close relative.

[37] Mr. Charlie has been impacted by numerous deaths of people related to and close to him by suicide, illness, substance abuse, and criminal acts, as I stated earlier.

[38] He states that he was diagnosed as suffering from Post Traumatic Stress Disorder last year, and that he has been taking anti-depressant medication since then. It is Mr. Charlie's hope that he will be able to attend at Poundmaker's Lodge in Alberta for treatment. Steps have already been made to secure funding for his attendance there through his counsellor at the FCCT. Mr. Charlie states that his attendance at the

Jackson Lake Healing Camp in 2020, followed by his then going out to live on the land off the Dempster Highway, was the healthiest he has been.

[39] Mr. Charlie recognizes that he has a serious substance abuse problem and that he needs intensive treatment. He states that he is prepared to re-engage in treatment, including at Jackson Lake, where he had not previously been fully successful.

[40] Mr. Charlie also has professional supports. He has continued to be engaged with his counsellor from the FCCT. He is noted to be highly engaged in counselling and to be working hard to address his needs and risk factors.

[41] Mr. Charlie has not incurred any significant internal violations during his time in custody at the Whitehorse Correctional Centre ("WCC"). He has worked as a cleaner and in the kitchen while incarcerated. While continuing to see his FCCT counsellor at least once a week, he has not participated in any further counselling and educational opportunities, but has engaged in other activities, such as reading books and writing.

Analysis

[42] The general range of sentencing for sexual assaults in the Yukon has been set out in the *R. v. White*, 2008 YKSC 34 case as being between 12 to 30 months. *White* involved repeated attempts of sexual intercourse with a female acquaintance, who had been sleeping in his room, over her expressed objections, lasting approximately 10 minutes. The victim suffered a minor injury to her vaginal area. Both were adults, although the offender was considerably older than the victim. The offender was Indigenous and *Gladue* factors were present in his upbringing.

[43] Gower J. conducted an intensive review of sentencing cases for sexual assault across Canada and stated:

85 ... it is my view that the current range in the Yukon for non-consensual sexual intercourse with a sleeping or unconscious victim, which is admittedly a very broad description of a type of sexual assault, with some exceptions, is roughly from one year, at the lower end, to penitentiary time in the vicinity of 30 months, at the higher end.

[44] Gower J. also stated:

21 The fact that there was no proof of penetration beyond a reasonable doubt is a neutral factor. Nevertheless, the attempt at penile penetration over a relatively protracted period of time and the resulting injury are sufficient to make this a serious sexual assault. In *R. v. G.W.S.*, 2004 YKTC 5, Lilles C.J., at para. 20, spoke of the profound effects on a woman's well-being which can result from a sexual assault even where intercourse is incomplete:

"... Typical feelings of humiliation, degradation, guilt, shame, embarrassment, fear, and self-blame can result from the unwanted invasion of intimate privacy and the loss of control associated with sexual victimization. ..."

22 Further, I view Mr. White's absence of remorse and his denial of responsibility as a neutral factor. He is not to be penalized for exercising his constitutional right to a trial.

[45] Noting the aggravating factors, which included the offender's record of criminal convictions, which contained offences of violence, albeit no prior sexual offences, his high risk rating for the commission of further offences generally, and a moderate risk rating for sexual offences, the breach of trust aspect of the offence, and the unwillingness of the offender to participate in any substance abuse treatment despite his having a serious drug and alcohol addiction problem, as well as the **Gladue** factors in mitigation, Gower J. imposed an effective sentence of 26 months in custody.

[46] I appreciate that the **White** case dealt with the comments of Gower J. in respect to a sexual assault charge, not a sexual interference charge, and that this involved an adult victim and not a youth victim, but it is still useful in determining appropriate sentences for cases under s. 151.

[47] The **R. v. Friesen**, 2020 SCC 9 case involved a sentence following a guilty plea to a charge of sexual interference of a four-year-old child victim. The circumstances were egregious and not directly comparable to the case before me. Of note, however, are the following comments in paras. 1 and 5:

1 Children are the future of our country and our communities. They are also some of the most vulnerable members of our society. They deserve to enjoy a childhood free of sexual violence. Offenders who commit sexual violence against children deny thousands of Canadian children such a childhood every year. This case is about how to impose sentences that fully reflect and give effect to the profound wrongfulness and harmfulness of sexual offences against children.

...

5 ... we send a strong message that sexual offences against children are violent crimes that wrongfully exploit children's vulnerability and cause profound harm to children, families, and communities. Sentences for these crimes must increase. Courts must impose sentences that are proportional to the gravity of sexual offences against children and the degree of responsibility of the offender, as informed by Parliament's sentencing initiatives and by society's deepened understanding of the wrongfulness and harmfulness of sexual violence against children. Sentences must accurately reflect the wrongfulness of sexual violence against children and the far-reaching and ongoing harm that it causes to children, families, and society at large.

[48] The Court conducts an extensive analysis of offences of sexual violence against children, in particular from para. 42 onward.

[49] The Court stated that sentences for sexual offences against children should be higher than cases where the victim is an adult (paras. 115 to 118).

[50] The Court stressed that sexual interference should not be treated less seriously than sexual assault (paras. 119 to 120).

[51] The moral blameworthiness of the offender is greater when the child is younger and more vulnerable to sexual violence (para. 135).

[52] Courts should be careful not to assess the resultant harm to the child on the basis of the nature of the sexual violence, and not downgrade the harm where penetration has not occurred for example (paras. 137 to 147).

[53] Sexual violence that occurs in the victim's home is an aggravating factor (para. 178).

[54] M.J., though older than the victim in *Friesen*, nonetheless falls within the definition of "child" as set out in *Friesen*, and the principles stated in *Friesen* are applicable to her as a victim as well.

[55] In *R. v. Dick*, 2016 YKTC 25, the offender was sentenced to two years less a day custody, plus two years of probation, following a conviction after a trial on a charge of sexual assault. The victim was 13 years of age. She was visiting the offender's daughter when the offender pulled her into the bathroom, pulled down her pants and underwear, and placed a hand over her mouth. He placed one of her hands on his penis and his penis on her buttocks close to her vagina, before the victim was able to escape.

[56] The offender had a significant and serious criminal record, including a prior conviction for a sexual offence against a young person approximately 29 years earlier when he himself was a younger person. His last criminal conviction occurred approximately eight years prior to the sentencing date.

[57] There is nothing in the decision that speaks to whether Mr. Dick had or had not expressed remorse for his actions. Given that the conviction occurred after trial, this should not necessarily be surprising. There was also no risk assessment information in the decision. **Gladue** factors were mitigating. Mr. Dick had attended residential school. He was currently in a positive relationship with a common law spouse at the time of sentencing, and he had been sober since 1984 following treatment.

[58] The recent decision of Ruddy J. in **R. v. Charlie**, 2021 YKTC 48, involved a 41-year-old Indigenous offender at the time of sentencing, who had woken up the intoxicated and sleeping Indigenous 16-year-old female by penetrating her anus with his penis. She was awakened by a “stinging, almost tearing”, pain in her anus. The sexual assault stopped after she woke up. The offender was convicted after trial. The victim had been required to testify twice: first at the preliminary inquiry; and then again in Territorial Court at trial after re-election with Crown consent to have the matter tried in that court.

[59] At the time of sentencing, the offender maintained his denial of having committed the offence. Mr. Charlie had a mostly dated criminal record, although there was a 2020 conviction for a s. 267(b) offence.

[60] **Gladue** factors were very prevalent in the offender's dysfunctional life. He suffered from substance abuse issues and had little to put forward to the Court with respect to what he had been able to accomplish towards his rehabilitation. He scored on the LS/CMI as having a very high overall level of risk needs.

[61] Ruddy J. considered a number of cases — in particular, **White** and **Friesen** — and how the landscape has changed in sentencing offenders for offences of sexual violence against children. Ruddy J. concluded that the factual similarities to the **White** case, apart from the younger age of C.J., required that a sentence of 32 months in custody be imposed primarily to take into account what was stated in **Friesen** about sentences being increased when the victims are younger.

[62] I have reviewed the other cases filed, but do not feel the need to review these for the purpose of this decision. It is clear that denunciation and deterrence are the primary sentencing purposes when the victim of a sexual offence is a child, as is the case here.

[63] As is normal, the sentences imposed in cases of sexual assault and sexual violence involving child victims varies according to the circumstances of the offence and the offender, as sentencing is an individualized process, although generally sentences within established ranges are imposed.

[64] The sentence proposed by the Crown properly emphasizes the aggravating factors. In my opinion, however, I am satisfied that the mitigating factors in this case would allow for a sentence to be imposed that is somewhat lower than what the Crown suggested. The most significant of these factors is Mr. Charlie's guilty plea, which spared M.J. the further traumatisation that would likely have occurred if she had been

required to prepare for and testify at a trial. The significance of Mr. Charlie's guilty plea should not be underestimated.

[65] His guilty plea is also accompanied with what I consider to be a genuine acceptance of responsibility and genuine remorse, and not simply an inevitable acceptance of the strength of the Crown's case, which is sometimes at the root of a guilty plea.

[66] This remorse and acceptance of responsibility is also an important factor in assessing Mr. Charlie's risk of committing further sexual offences in the future. I am satisfied that Mr. Charlie, in part because of realizing the harm he has caused M.J and her family through his actions, is motivated to take such counselling and treatment as is available to him in order to put himself into the position where his risk factors are reduced and he will not commit any further such offence.

[67] Motivation on its own is insufficient, however. Mr. Charlie needs to commit to following through on his present level of motivation, given his long-standing, significant, and continuing problems with substance abuse issues.

[68] I also note the many positive factors stated by those professionals who have been dealing with Mr. Charlie, and the assessment that he is of a low to moderate risk to reoffend by committing an offence of a sexual nature. To the extent that Mr. Charlie does pose a risk, I note that the FCCT Report supports a finding that any such risk would not be a result of a predisposition towards sexual deviancy, but a result of Mr. Charlie abusing substances in a situation where there is a vulnerable female present.

[69] This is a significant factor for Mr. Charlie to keep in mind when making choices in the future. If he continues to abuse substances, then his involvement in the criminal justice system will likely continue, and Mr. Charlie may find himself in the position again of having to apologize to another victim. This said, it is important to note that despite his history of substance abuse, he has no prior convictions for offences of a sexual nature.

[70] Further mitigating are the **Gladue** factors that are present. Mr. Charlie's childhood and life have been profoundly negatively impacted as a result of his Indigenous status, both within his own family and within his community of Old Crow.

[71] Section 718.2(e) requires me to consider Mr. Charlie's Indigenous status when imposing sentence in order to determine whether there are alternatives to custody that are reasonable in the circumstances, that are consistent with the harm done to M.J. and her family and to the community as a whole, also in accord with the entire scheme of the purposes and principles of sentencing. This includes determining the length of any custodial disposition.

[72] However, due to the aggravating factors, even when considering and applying the mitigating factors, a minimum sentence of one year would be inappropriate. The repeated instances of the sexual assaults upon this young victim; the significant intrusiveness of these assaults — including the fact that only the failure of Mr. Charlie to maintain an erection likely is all that prevented M.J. from being the victim of a sexual assault involving penile vaginal penetration — call for a sentence that is higher than the minimum.

[73] The **Dick** case is factually somewhat similar to the case at hand. The offender in that case had a prior conviction for a sexual offence, albeit dated, it lacked the mitigation of a guilty plea, and it lacked evidence of rehabilitation specifically targeted at the root causes of his commission of the offence, which would otherwise have potentially constituted a risk reduction factor.

[74] The **Charlie** case that I just mentioned with Judge Ruddy is somewhat similar, although, as in **Dick**, there was one act of sexual violence, whereas here there are three separate occasions of sexual interference committed by Mr. Charlie quite close in time.

[75] In both the **Dick** case and the other **Charlie** case, the offenders lacked the significant mitigating factors of a guilty plea and remorse. Mr. Charlie, in the case before me, also has the benefit of more information from the professionals that he has been cooperating, including a detailed Risk Assessment Report.

[76] I find that Mr. Charlie's circumstances place him in a situation where a lesser custodial disposition than that given to Mr. Dick is warranted. I say this recognizing that the **Friesen** case speaks to higher sentences being imposed than previous to **Friesen**, and that **Dick** was pre-**Friesen**.

[77] In considering the aggravating and mitigating factors, the circumstances of the offence, including the impact on M.J., the circumstances of Mr. Charlie, the jurisprudence, and the purposes and principles of sentencing in ss. 718 to 718.2, I am satisfied therefore, that a sentence of 20 months' custody is appropriate. With credit against this sentence of 13.4 months of time served, Mr. Charlie has a remaining

6.6 months of custody to be served, the equivalent of which I consider to be 199 days' custody.

[78] The custody will be followed by a period of probation of two years. The terms of the probation order will be as follows. Mr. Charlie is to:

1. Keep the peace and be of good behaviour;
2. Appear before the court when required to do so by the court;
3. Notify the Probation Officer in advance of any change of name or address, and promptly of any change in employment or occupation;
4. Have no contact directly or indirectly or communication in any way with M.J., C.N., T.T., and R.J.;
5. Do not go to any known place of residence, employment or education of M.J., C.N., T.T., and R.J.;
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. Reside as approved by your Probation Officer and not change that residence without the prior written permission of your Probation Officer;
8. Not to be outside of your residence if you are under the influence of alcohol;

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,

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;

[79] I have added this next clause because I believe that offences like this are offences of significance to the community.

[80] You will:

10. Perform 50 hours of community service as directed by your Probation Officer or such other person as your Probation Officer may designate. Any hours spent in programming may be applied to your community service at the discretion of your Probation Officer;
11. Make reasonable efforts to find and maintain suitable employment and provide your Probation Officer with all necessary details concerning your efforts; and

12. Have no contact directly or indirectly, nor be alone in the presence of, any person you know to be, or who reasonably appears to be under the age of 16 years, except with the prior written permission of your Probation Officer or except in the actual presence of a sober adult.

[81] I included the permission of the Probation Officer, which I do not believe was mentioned earlier, because there might be situations where it can be assessed that there is not a risk and, in today's world with all that we are learning, I am reluctant to distinguish between sexes. Let us put it that way.

[82] There are ancillary orders that must flow. This is a primary designated offence, so there will be an order for DNA.

[83] There will also be *SOIRA* order and this is statutorily to be for a period of 20 years.

[84] There is also a s. 109 mandatory firearms order. That order will be for 10 years, but I will include within that a s. 113 exemption for sustenance (hunting) in accordance with the direction of the Chief Firearms Officer.

[85] I am going to waive the victim surcharge. Mr. Charlie still has some time in custody.

COZENS C.J.T.C.