

Citation: *R. v. Sugden*, 2021 YKTC 61

Date: 20211007  
Docket: 20-10039A  
Registry: Watson Lake

**IN THE TERRITORIAL COURT OF YUKON**  
Before His Honour Judge Chisholm

REGINA

v.

BRANDON SUGDEN

**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  
Norah Mooney

Counsel for the Crown  
Counsel for the Defence

**REASONS FOR SENTENCE**

[1] CHISHOLM T.C.J. (Oral): Brandon Sugden was convicted after trial for sexually assaulting L.D.

[2] Mr. Sugden and L.D. were friends. She visited his home on November 14, 2020, where they both consumed alcohol. Sometime later, her boyfriend and his uncle arrived with whiskey. She consumed some of that alcohol before passing out in the washroom. Her next memory was waking up on the floor of the washroom. Her pants and underwear had been removed and someone was having vaginal intercourse with her

from behind. She assumed it was her boyfriend. The person did not respond to her when she asked if it was her boyfriend. He pushed her head down. Ultimately, she managed to look behind and see that it was Mr. Sugden. She jumped up and freaked out, gathered her clothing, and exited the washroom.

[3] A Pre-Sentence Report (the “Report”) was prepared for the Court. Mr. Sugden, as well as his father and mother were interviewed by the author of the Report.

Mr. Sugden is 24 years of age. He was 23 at the time of the offence. He identifies as non-status Métis Caucasian. He has no prior criminal history. Although his family was initially close-knit, Mr. Sugden explained that he changed his peer group when he was younger and began to associate with individuals that his parents did not approve of. His parents separated when he was 11 years of age. Although he presently lives with his father, the offender relates that the relationship is, at times, strained. His father believes that Mr. Sugden suffers from depression. Mr. Sugden indicates that he deals with anxiety and depression, although there is no formal diagnosis before the Court.

Mr. Sugden is presently unemployed but has a good work history.

[4] In my view, the Report reveals a certain level of immaturity in Mr. Sugden.

[5] The Crown seeks a 20-month jail sentence followed by two years of probation.

[6] The defence submits that a 12-month term of imprisonment with a lengthy period of probation would be appropriate.

[7] Although no victim impact statement has been filed, I consider the likelihood of psychological harm to the victim having experienced this assault.

[8] In terms of the gravity of the offence, Mr. Sugden sexually assaulted his friend while she was passed out in a setting where she should have been able to feel safe. Unfortunately, it is not uncommon to see this type of case before the Courts in this jurisdiction. It is a serious crime.

[9] Mr. Sugden does not receive the benefit of having pleaded guilty. This is, of course, not an aggravating factor. He had a right to take this matter to trial. However, he is not entitled to the mitigation associated with a guilty plea.

[10] I have considered case law for this type of sexual assault.

[11] The decision in *R. v. White*, 2008 YKSC 34, sets out the appropriate range of sentence, that is, between 12 and 30 months of jail. Justice Gower considered a number of cases in coming to the conclusion that this was the range of sentence in the Yukon. This wide range of sentence reflects that the circumstances of the offence and the offender may vary significantly from one case to another. It also highlights the fact that sentencing is an individualized process.

[12] In *R. v. Rosenthal*, 2015 YKCA 1, the Yukon Court of Appeal considered the appropriate sentence for a 26-year-old offender who had been found guilty of sexual assault on a woman asleep and under the influence of alcohol. She had asked to share his bed but woke up to him digitally penetrating her. He discontinued the assault when told to do so. The Court of Appeal described it as a serious and invasive form of sexual assault. Mr. Rosenthal had no prior criminal record and a good work history. His parents had separated when he was five years of age. The Court of Appeal overturned

a suspended sentence that had been imposed by the trial judge and substituted a 14-month jail sentence.

[13] In *R. v. R.W.R.*, 2019 YKTC 33, a 38-year-old offender was found guilty after trial for sexually assaulting his estranged partner who had fallen asleep on the floor. The Court held that there was a breach of trust. The offender had a limited criminal record. Judge Cozens imposed a 20-month jail sentence plus 12 months of probation.

[14] In considering the principles of sentencing, the important objectives in this case are denunciation, deterrence, and rehabilitation.

[15] In *R. v. Kolola*, 2021 NUCA 11, the Court of Appeal reiterated the principle that:

30 Denunciation has long been a primary principle in sentencing for offences of sexual violence. The objective of denunciation is to communicate society's condemnation of an offender's conduct and is a means of expressing society's values: ...

[16] At the same time, rehabilitation is an important sentencing objective, especially when the offender is youthful. Mr. Sugden falls into the category of young adults. I recognize, as stated by his mother, that this offence is out of character for him. He also has the support of his mother and father. He would be wise to carefully listen to their advice, especially with respect to relationships because, as he will discover at some point, they are much wiser than he may believe them to be.

[17] Due to his personal circumstances, in my view, a significant period of probation is appropriate to assist with his rehabilitation. At the end of the day, I find that the

appropriate sentence is one of 16 months' imprisonment followed by 24 months of probation.

[18] The terms of the probation order are the statutory terms 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 his Probation Officer in advance of any change of name or address, and promptly of any change in employment or occupation.

Additionally, he is to:

4. Have no contact directly or indirectly or communication in any way with L.D.;
5. Not attend any known place of residence, employment or education of L.D.;
6. Report to a Probation Officer immediately upon your release from custody, and thereafter, when and in the manner directed by the Probation Officer; and
7. Attend and actively participate in all assessment and counselling programs as directed by his Probation Officer, and complete them to the satisfaction of his Probation Officer, for the following issues: alcohol abuse; psychological issues; mental health counselling; sexual offending behaviour; and provide consents to release information to his Probation Officer regarding his participation in any program he has been directed to do pursuant to this condition.

[19] Additionally, I impose the following ancillary orders:

1. A 10-year mandatory firearms prohibition in accordance with s. 109 of the *Criminal Code*;
2. An order that Mr. Sugden provide bodily substances for the purposes of DNA analysis and recording, pursuant to s. 487.051, this being a primary designated offence; and finally,
3. A *SOIRA* order, pursuant to s. 490.012, in accordance with s. 490.013. That order is for 20 years.

[20] In terms of a victim surcharge, in the circumstances and since Mr. Sugden will be in custody for a period of time, I am of the view that it would be a hardship and it is waived.

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CHISHOLM T.C.J.