Citation: *R. v. Blake*, 2025 YKTC 55

Date: 20251029
Docket: 23-00343
23-00343A
Registry: Whitehorse

# IN THE TERRITORIAL COURT OF YUKON

Before Her Honour Judge Caldwell

REX

v.

DONAVON ARLENE BLAKE

**Publication, broadcast or transmission of any information that could identify the complainant or a witness is prohibited pursuant to s. 486 of the *Criminal Code*.**

Appearances:
Elmer B. Brillantes — Counsel for the Crown
Mark A. Townsend — Counsel for the Defence

**This decision was delivered from the Bench in the form of Oral Reasons.
The Reasons have since been edited without changing the substance.**

## REASONS FOR SENTENCE

[1] CALDWELL T.C.J. (Oral): Mr. Blake, I found you guilty after a trial of the sexual assault and forcible confinement of C.T. in May 2023.

[2] I will not outline all of the facts, as they are contained in my October 4, 2024, judgment. The facts, however, are serious. In brief, they involve forced fellatio and penetration in the bathroom of the Great Canadian Superstore ("the Superstore") in Whitehorse. Your treatment of C.T. was violent, callous, and degrading. You and C.T.

knew one another. You were friends with C.T.'s older brother, though I am guessing that that friendship is over.

[3] You are here before me today for sentencing. I know that you and your family most want to hear the result. Therefore, I will tell you the sentence first and then I will give my reasons for the sentence.

[4] I find that the appropriate sentence, in this case, is the sentence sought by the Crown: one of four years in the penitentiary. That number will be discounted by the amount of time you have served in pre-trial custody. You served 122 actual days, which I view as 183 days on an enhanced 1:1.5 basis. We usually view time served in pre-trial custody as more difficult than post-sentence custody, so we enhance or add on days to reflect this difficulty. Four years equals 1,460 days. I subtract 183 days from 1,460 days, that leaves 1,277 days or roughly 3.5 years left for you to serve.

[5] I will now turn to my reasons.

**Evidence on this hearing**

[6] A number of pieces of evidence were entered on the sentencing hearing. There were Victim Impact Statements from both C.T. and her mother, T.B. The offences had and continue to have a profound, long-lasting impact on C.T. and by extension on her mother.

[7] C.T. describes feeling increased ever present fear. She is afraid of using the washrooms in public places. She is afraid to go out of her house alone and stays home much of the time. She also sleeps a lot to avoid her feelings. She has increased panic

attacks and feels both fearful and sad about what occurred. She has lost her trust in the world and stated, “What Mr. Blake did has changed my life.” As Mr. Brillantes, the Crown, noted, your sentence will end, Mr. Blake, but C.T. likely will pay the price of your actions for the rest of her life.

[8] You have a criminal record. Your record is short but highly relevant. There were six prior findings of guilt reflecting issues with sexual assault, complying with court orders, and alcohol. The last finding was in 2013; the first as a youth entry in 2009. The two prior sexual assault entries are the most relevant. The first involves six months deferred custody. The second, in 2013, was for two years less one day, plus two years’ probation. I should correct and note that your last conviction was in 2023, but your last conviction for sexual assault was in 2013. I do note that 10 years passed between your last sexual assault conviction and the date of this offence, and I have considered that gap. However, the prior findings are still highly relevant.

[9] Both a Pre-Sentence Report and a *Gladue* report were provided. Each mirrors the other but for a few details that I attribute to change in circumstances between the preparation of the Pre-Sentence Report and the later preparation of the more detailed *Gladue* report.

**Position of the parties**

[10] The Crown, as you know, has asked for a four-year penitentiary sentence, and I do find that that is appropriate. Your lawyer, on your behalf, asked for a reformatory sentence of two years less one day, preferably served on a conditional basis. The Crown also requests other orders and your lawyer, on your behalf, does not oppose

those orders. Those orders are: a DNA order; a 20-year *Sex Offender Information Registration Act,* SC 2004, c 10, *("SOIRA")* order; and a s. 109 weapons prohibition for life.

**Purpose and principles of sentencing**

[11] There are six primary sentencing objectives:

1. denunciation of both your conduct and the harm done to C.T.;
2. deterring you and others from committing these offences in future;
3. separating you from society, if that is necessary;
4. assisting in your rehabilitation;
5. making amends for the harm done to C.T.; and
6. promoting a sense of responsibility in you and acknowledging the harm done to C.T.

[12] Denunciation and deterrence are the main objectives in this case. Section 718.04 of the *Criminal Code* states that abuse of a vulnerable person requires the Court put these objectives first. The section notes that being Aboriginal and female by definition means that the victim is vulnerable. The sentence must be proportionate to the gravity of your offences and your degree of responsibility.

[13] Section 718.2(e) of the *Criminal Code* also says that all options aside from jail must be considered, especially for Aboriginal offenders, such as yourself, but those

other options must be reasonable in the circumstances and consistent with the harm suffered by C.T. This section is the codification of the principles in *R. v. Gladue*, [1999] 1 S.C.R. 688. These principles require the Court to consider the multi-generational trauma inflicted on First Nations peoples by colonization. This trauma flows from many aspects of colonization but the most obvious is the trauma inflicted through the residential school system.

[14] You are a residential school survivor, given that your parents and, I assume, many of your relatives and family friends attended those schools. No doubt the alcohol abuse and physical abuse you both witnessed and suffered growing up are a manifestation of that trauma.

[15] Further, the Supreme Court of Canada has held that:

> 114 The overrepresentation of Indigenous people in Canada's prisons is a present-day product of this country's colonial past. ... [see *R. v. Sharma*, 2022 SCC 39]

[16] It is shocking to learn that the Annual Report of the Office of the Correctional Investigator 2022-2023 stated that 33% of Canada's prison population consists of Aboriginal offenders, despite the fact that they made up only 3% of the Canadian population at the time *Gladue* was decided (see *R. v. Trudeau*, 2024 ONCJ 119, at para. 34).

[17] On the other hand, the Supreme Court in *R. v. Ipeelee*, 2012 SCC 13, stated:

> 129 …
>
> Generally, the more violent and serious the offence the more likely it is as a practical reality that the terms of imprisonment for aboriginals and non-aboriginals will be close to each other or the same …
>
> [see *Gladue* at para. 79]

[18] This does not mean that the *Gladue* principles do not apply to sentences for serious violent offences. The statement simply means that the divergence in prison terms lessens when dealing with more violent and serious offences.

**Assessment of the sentence**

[19] This sentencing hearing follows a trial that clearly was very traumatic for C.T. Exercising your right to trial is not aggravating on sentence. It does mean, however, that you do not benefit from the mitigating factor of a guilty plea. Mitigating factors are factors that lessen a sentence. A guilty plea is a mitigating factor because it is viewed as a sign of remorse about what you did and because a plea spares the victim having to go through a trial. Trials are particularly difficult for victims of sexual assaults, given that the trial process demands that they both relive what happened, tell a court of strangers what occurred, and, further, be challenged in cross-examination.

[20] Up until today's date, you expressed no remorse and that lack of remorse was reflected in the Pre-Sentence Report. Today, on the day of sentencing, you did express remorse through your counsel and, again, through your counsel, you said you would

take responsibility for the offences. I accept that there is some remorse, however late in the day, and I view that in mitigation, though to a limited degree in this case.

[21] To reach the appropriate sentence, I must balance the mitigating factors with the aggravating factors. The *Gladue* factors are factors which mitigate on sentence. I have received your *Gladue* report. I know that you were born 34 years ago in Fort McPherson, Northwest Territories. Your parents were relatively young when you were born. I know that you have three siblings, and I believe that two may be in court today with you, along with your mother. You are status Tetlit Gwich'in. Your parents are both residential school survivors, having attended the All Saints residential school in Fort McPherson. You describe a chaotic household when you were young. At that time, both your parents abused alcohol. Your father became violent when he was drunk, beating your mother at times, and inflicting violence on you and your brother, Deon, though you said Deon received the brunt of the abuse. That chaos and violence undoubtedly can be traced to the impact of the trauma of the residential schools and the colonization and the impact on your parents in their community.

[22] I know you have a good relationship with your parents and siblings now. I also know your mother has been particularly supportive, attending court appearances, including today's, and testifying at your trial. She clearly is very concerned about your welfare and is eager and determined to stay involved in your life. I have no doubt that seeing you go to jail is extremely difficult for her.

[23] Further in mitigation I consider your mental health issues. I know you have struggled with depression, sometimes very serious depression. Drugs and alcohol also

have been an issue. I know that your substance abuse problems date back to the loss of your beloved Uncle Charlie when you were 14 years old, and you have had other more recent losses. I am very sorry to hear of those difficulties. Those losses must be very difficult for you.

[24] I also infer that your mental health and substance abuse issues are interwoven into the ongoing issues suffered by your parents and your community. Sadly, the impact of colonization and the trauma of the residential schools is intergenerational, passing from one generation to the next.

[25] Also in mitigation is that you are now working. I believe your employment is relatively recent, but that fact does not appear to be due to lack of effort on your part. I know that the restrictions of your bail have caused issues for you.

[26] I also know that you have recently enrolled in Yukon University and are furthering your heavy-duty mechanic skills. You deserve credit both for finishing high school and for continuing your education. I know that you want to go into business with your brother, Deon. I encourage you to go after those dreams. Your completion of high school and your prior work show that you have the potential to achieve those objectives. Getting there just has to wait until your sentence has been served.

[27] There are very serious aggravating factors in this case, factors that serve to increase the sentence, and they must be balanced with the mitigating factors. This is your third sexual assault. There is a significant gap since your last conviction. However, that last conviction carried a very significant sentence, two years less one day, the maximum allowable reformatory sentence.

[28] As Mr. Brillantes eloquently put it at the end of his reply submissions, “What would the imposition of the same sentence say to the public?” Certainly, the implication would be that the courts do not take these matters seriously and that we do not take the profound impact on C.T. seriously.

[29] Further in aggravation I look to the young woman that you victimized. As I outlined at the start of my reasons, the *Criminal Code* defines C.T. as a person who is particularly vulnerable for two reasons: she is female; and she is Indigenous. The section of the *Criminal Code* defining her vulnerability was included in the *Code* to address the results of a very high-profile inquiry in this country, the National Inquiry into Missing and Murdered Indigenous Women and Girls. The report noted the historically and wrongfully diminished status in society and the vulnerability of Indigenous women in Canada.

[30] I look not only to the *Criminal Code* definition, however, but I also look to who C.T. is as an individual. C.T. is one of the most vulnerable victims I have encountered. That vulnerability was clear from watching her and hearing her throughout her two days of testifying in this court. She clearly has impulse control problems, reacting easily with anger and frustration. Impulse control, however, does not explain the full extent of her vulnerability. C.T. presents as someone much younger than her 22 years. She spoke of the umbilical cord being wrapped around her neck at birth and issues flowing from that birth. It was clear from her testimony that she has both cognitive and emotional challenges.

[31] That was the young woman you chose to assault, Mr. Blake.

[32] I also have to look to the facts, to what happened in this case. The sexual assault involved both fellatio and penetration. It occurred in the bathroom of the Superstore. You and Mr. Ty Blake were laughing at her when she ran from the washroom back to her mother. The sexual assault was violent, humiliating, degrading, and heartless. No woman deserves to be treated so callously, whether it is one of your own family members or if it is C.T. It is important that the sentence reflect how serious this event was, and it is important that C.T. and her mother leave the courtroom today knowing that what happens to C.T. is important and that the courts will not tolerate this type of treatment.

[33] Further in aggravation is the impact of what did happen on C.T. The significant impact on C.T. mirrors our current understanding of the general impact of sexual assault on victims.

[34] Just five years ago, the Supreme Court of Canada, in *R. v. Friesen*, 2020 SCC 9, stated:

> 118 … our understanding of the profound physical and psychological harm that all victims of sexual assault experience has deepened. …

[35] In 2022, the Ontario Court of Appeal noted in *R. v. A.J.K.*, 2022 ONCA 487, that the general range of sentence for a sexual assault involving forced penetration is three to five years. *A.J.K.* post-dates the 2020 *Friesen* decision.

[36] *R. v. N.H.S.*, 2023 MBKB 168, noted at para. 25 that:

> It is common ground that *Friesen* changed the sentencing landscape for sexual offences, even those against adult victims. Pre-*Friesen* cases can be relevant, but should be used with some caution.

[37] All of the sentencing cases provided by your lawyer, including *R. v. White*, 2008 YKSC 34, pre-date *Friesen*, most by a lengthy gap in time. I do not fault your lawyer for providing the older cases. I merely infer that it would be difficult to find cases decided after *Friesen* that support the sentencing position being taken on your behalf.

[38] Further, the offenders in those cases had no criminal record or no prior sexual assaults on their record. As I stated at the outset, determining an appropriate sentence involves balancing the mitigating factors and the aggravating factors in the context of the sentencing principles. In this case, deterrence and denunciation are paramount.

[39] I have outlined your mitigating factors and, in particular, have considered the principles in *Gladue*. I find, however, that the four years minus the time you have served in pre-trial custody reflects the appropriate balance of all of the factors in this case.

[40] I also impose a DNA order.

[41] I order that you comply with the provisions of *SOIRA*, for a period of 20 years.

[42] There will be a s. 109 order for life. You are prohibited from possessing any firearms, firearm parts, crossbows, restricted weapons, ammunition, or explosive substances for life.

[43] I will waive the victim surcharge, given the length of time you will be in custody.

[44] The sentence will be imposed on the most serious offence, the sexual assault. I impose a sentence of six months concurrent, meaning that you do not serve further time, on the forcible confinement charge.

_____
CALDWELL T.C.J.