

SUPREME COURT OF YUKON

Citation: *R. v. T.W.N.*, 2017 YKSC 38

Date: 20170614
S.C. No.: 15-01509A
Registry: Whitehorse

BETWEEN:

HER MAJESTY THE QUEEN

AND

T.W.N.

Publication of information that could disclose the identity of the complainant or a witness has been prohibited by court order pursuant to s. 486.4 of the *Criminal Code*.

Before Mr. Justice L.F. Gower

Appearances:
Keith D. Parkkari
Melissa D. Atkinson

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCE

INTRODUCTION

[1] GOWER J. (Oral): T.W.N. pled guilty on August 30, 2016, to three charges on the Indictment:

Count #1: On or between the 1st day of August in the year 1997 and the 28th day of February in the year 2003 at or near the City of Whitehorse in the Yukon Territory, did commit a sexual assault on A.N., contrary to Section 271 of the *Criminal Code*;

Count #4: On or between the 1st day of August in the year 1997 and the 28th day of February in the year 2003 at or near the City of Whitehorse in the Yukon Territory, did in

committing an assault upon A.N., cause bodily harm to her, contrary to Section 267(b) of the *Criminal Code*;

Count #8: On or between the 1st day of January in the year 1990 and the 26th day of September in the year 2005 at or near the City of Whitehorse in the Yukon Territory, did commit assaults on A.A.N., A.B.N., and M.N., contrary to Section 266 of the *Criminal Code*.

[2] I note that there were originally 14 counts on the Indictment, which was scheduled to go to trial on August 30, 2016. These guilty pleas were entered with some amendments being made to the Indictment on the same day. There had been a preliminary inquiry at which the victims, or some of them, testified.

[3] Before I get into the circumstances of the offences, I want to put on the record my appreciation to counsel for being able to resolve this matter in the manner that you have done. It is still difficult for the victims to go through a sentencing hearing, but probably much less so than if a trial had been necessary to get to the bottom of this.

[4] I also want to say to the victims that whatever sentence I impose here today should not be taken as a gauge or a measure of the extent to which your dignity and your self-worth has been harmed by T.W.N. and his actions. As a judge, in compliance with the law, I have to impose a sentence which is fit, taking into account the circumstances of the offences, the circumstances of the offender, and your circumstances. I do not think that there is any sentence that I can impose that can make you whole again. I ask you to take this into account.

CIRCUMSTANCES OF THE OFFENCES

[5] I think it is important to read the facts of the offences into the record. These have been previously agreed to by counsel and have been entered as an exhibit in this proceeding. I will paraphrase slightly, where appropriate.

[6] The accused was born September 3, 1961. He is currently 55 years old. The accused and G.G were married in 1984. During the material time in their relationship, they resided in the family home in the Riverdale subdivision of Whitehorse, Yukon.

[7] There are three children born from the relationship between G.G. and the accused: A.C.N., born in 1985; A.B.N., born October 28, 1986, who is now 30; and A.A.N., born July 31, 1989, who is now 27. G.G separated from the accused in 1995 and commenced divorce proceedings. At that time, A.B.N. was eight or nine years old and A.A.N. was about six years old.

[8] Following the separation, the accused moved into an apartment in the Riverdale subdivision.

[9] The custody and access arrangement was that A.B.N. and A.A.N. would live with their mother. The accused would have visitation with the girls on Tuesdays and Thursdays, and every second weekend. As part of the custody and access arrangement, once the girls were 13 years old, they could determine if they wanted to visit with their father, the accused, or spend weekends at his residence.

[10] A.N. is from the Philippines. She immigrated to Canada in 1996. Upon her arriving in Canada, she settled in Whitehorse, where she resided with family members.

[11] In March of 1997, the accused started dating A.N. They had first met a few months earlier. A.N. was not supported in this relationship by her family.

[12] On July 28, 1997, the accused and A.N. were married. A.N. was 23 years old. They resided in the accused's apartment in Riverdale.

[13] The accused and A.N. had two children: M.N., born September 28, 1998, currently 18 years old; and S.N., born February 2000, currently 17 years old.

[14] In October 1998, A.N. and the accused moved to a home in the Granger neighbourhood of Whitehorse.

[15] A.N. and the accused separated in February 2003. They reconciled, but then separated permanently in October of 2003. A.N. moved out of the family home.

Following the separation, the accused and A.N. had a shared custody arrangement of the two children, based upon A.N.'s and the accused's work schedules.

Incidents Involving A.N.

[16] During the accused's and A.N.'s marriage, there were multiple times the accused pushed A.N., yelled at her and backed her into a corner, not allowing her to leave.

These incidents lasted from a few minutes to several hours.

[17] In the spring of 1999, A.N. and the accused were arguing at their home. A.N. was carrying M.N. at the time of the argument. As A.N. was trying to get away from the accused, he kicked her in the right knee. Her knee then swelled up. The injury had a lasting effect.

[18] On one occasion, when A.N. was pregnant with S.N., A.N. and the accused were arguing, as the accused was going out and A.N. did not want him to. The accused dragged A.N. from the front door of the residence up a flight of stairs, down a hallway, and into their bedroom.

[19] On another occasion, after S.N. was born, the accused dragged A.N. from S.N.'s bedroom to their bedroom. When the accused dragged A.N., he would do so by the hair or clothing, whatever he could get a grip of.

[20] A.N. recalls another incident when they were fighting. The accused threw her on the bed. He sat on her, confining her movement, and pinned her hands above her head

and tried to smother her with a pillow. During this altercation, she cut her hand on a blind. She attended Whitehorse General Hospital for medical treatment, receiving stitches and a tetanus injection.

[21] On the New Year's Eve before the accused and A.N. separated, they got into an argument. A.N. wanted to go out and the accused did not. A.N. went out with the children. When they returned home, the accused ripped A.N.'s shirt while they were arguing in the kitchen. The accused continued to yell at and berate A.N. for several hours. The children, M.N. and S.N., observed this incident. M.N. recalls the accused ripping his mother's shirt.

[22] Other incidents of assault included the accused forcing the bedroom door open and pinning A.N. against the wall. A.N. quit locking the bedroom door because the accused would force the door open anyway, breaking it on at least one occasion.

[23] Although A.N. was working full-time, the accused controlled the finances of the relationship.

[24] Several acts of sexual assault occurred during the period of A.N.'s and the accused's marriage. Because of the controlling and physically abusive nature of the relationship, A.N. felt compelled to participate in these sexual acts. They included: rape fantasies, where the accused wanted A.N. to fight back; vaginal penetration with a cucumber on two occasions; anal sex on two occasions; videotaping of sexual acts; and oral sex with the accused holding A.N.'s head, forcing her to accept ejaculate into her mouth on many occasions. A.N. did not expressly consent to these sexual acts. Although she told the accused she did not like or want to engage in some or all of the above acts, she did not expressly object to these sexual acts. Because of the

controlling nature of the relationship, A.N. felt compelled to engage in sexual acts requested by the accused, as she felt it was her duty as a wife.

Incidents Involving M.N.

[25] M.N. is the son of A.N. and the accused. From as early as M.N. can remember, about four to five years old, until he was about six or seven years old, the accused would tuck M.N. in at bedtime. This generally involved the accused crawling under the covers and cuddling with M.N. M.N. recalls on many occasions when M.N.'s eyes were closed, the accused would move his hand over M.N.'s crotch and touched M.N.'s genitals overtop of M.N.'s pajamas. This unwanted touching continued until M.N. told the accused he was too hot when the accused was in bed with him. M.N. was of school age when the touching stopped.

Incidents Involving A.A.N.

[26] A.A.N. is the daughter of G.G and the accused. She was born July 31, 1989. A.A.N. lived in the family home with the accused until the accused and G.G separated in 1995.

[27] Following the separation, A.A.N. stayed overnight at the accused's residence every second weekend, first at the Riverdale apartment, then at the house in Granger. This continued until shortly before or when A.A.N. turned 13 years old.

[28] When A.A.N. was a young child, the accused would play a game with her that he called the "pinchy-bum" game. It involved the accused chasing A.A.N., or other children, and when he caught up to them, pinching their bums. Instead of pinching A.A.N.'s bum, the accused would touch or pinch in the area of her vagina with his hand. The pinching was brief in nature, but was repeated multiple times during the game. At

the time, A.A.N. perceived this activity to be a game. As she became more aware, she realized that the pinching of her genital area was inappropriate. A.A.N. recalls the pinchy-bum game stopping when she was about 9 or 10 years old.

[29] From the time she was a young child until she was about nine years old, the accused would tuck A.A.N. into bed. He would crawl under the covers with her. She normally wore pajamas to bed. Her recollection is that the accused was fully clothed. The accused would crawl under the covers with her; cuddle her with his hand on her stomach. The accused would pretend to be asleep. He would twitch, moving his hand onto A.A.N.'s chest. After a period of time, he would twitch again, moving his hand so it rested over her groin. A.A.N.'s perception is that the touching would happen for half an hour to an hour. The touching happened up to several times a week at the family home in Riverdale. The inappropriate touching happened regularly at the accused's Riverdale apartment and at the accused's residence in Granger. The touching stopped when A.A.N. was about nine years old, when she no longer wanted to be tucked in.

Incidents Involving A.B.N.

[30] A.B.N. is the daughter of G.G and the accused, and is the second of the three children. A.B.N. lived in the family home with the accused until the accused and G.G separated in 1995.

[31] Following the separation, A.B.N. stayed at the accused's residence every second weekend, first at the Riverdale apartment, then at the Granger home. This continued until A.B.N. was between 11 and 13 years old.

[32] When she was a young child, she believed starting when she was five years old or younger, the accused would play a game with her that he called the "pinchy-bum"

game. It involved the accused chasing A.B.N., or other children, and when he caught up to them, pinching their bums. A.B.N. remembers the accused missing when he would pinch her bum and instead touch or pinch in the area of her vagina with his hand.

[33] When she was young, A.B.N. thought that it was odd that the accused would miss her bum so many times in a row and would keep pinching her private areas, where she had been taught as a young child that strangers were not allowed to touch her.

This activity occurred on a regular basis. As A.B.N. became more aware, she realized that the pinching of her genital area was inappropriate.

[34] A.B.N. made efforts to reduce seeing the accused when she was about 11 or 12 years old. Per the separation agreement, when A.B.N. was 13 years old, she was allowed to decide if she wanted to see the accused. She decided not to see the accused or stay at his residence. A.B.N. stopped playing the pinchy-bum game when she was 11 or 12 years old.

[35] From the time she was a young child, her first concrete memories are from when she was about five years old until she was about 11 or 12 years old. The accused would tuck A.B.N. into bed. He would crawl under the covers with her. She normally wore pajamas to bed when she was younger and jeans when she was older. The accused was fully clothed. A.B.N. recalls he would regularly wear blue shorts. The accused would crawl under the covers with her; cuddle her with his hand on her stomach. The accused would pretend to be asleep. He would twitch, moving his hand onto A.B.N.'s chest. After a period of time, he would move his hand so it rested over her genital area. A.B.N. is not sure how long the touching lasted for, but notes the accused would not spend the night. The touching happened repeatedly at the family

home in Riverdale, the accused's Riverdale apartment, the accused's Granger home, and at the accused's mother's residence. The touching stopped when A.B.N. was about 11 or 12 years old, when she made efforts not to spend nights at the accused's residence.

CIRCUMSTANCES OF THE ACCUSED

[36] T.W.N. was born in Vancouver in 1961 and moved to Whitehorse with his parents in 1970. His mother passed away in 2012. He was the only child and he had a very close relationship with his mother. He said he felt secure in his childhood. To the author of the pre-sentence report, the accused stated that his father was H.N.

[redacted], and that he passed away in 1999. T.W.N. did not find out that H.N. was not his real father until he was in his 30s. He was shocked by this discovery. He said that he does not know who his biological father is.

[37] He said he never witnessed any physical violence between his parents. He said that he was shocked when his parents separated when he was 18 or 19 years old, but otherwise felt that he had a typical and normal childhood.

[38] He also said that he had a typical school life, with no real difficulties and was an average student. He graduated from Grade 12 and then attended College, taking computer studies for about three or four months. He then returned to Whitehorse and started what appears to be a number of years of consistent employment.

[39] He worked in various businesses, including a delivery business with his stepfather and various retail outlets in Whitehorse. He also worked at a couple of group homes and, for a period, as an auxiliary correctional officer at the Whitehorse

Correctional Centre. Most recently, he was employed as a security guard, but has been on disability from that position for the last three years.

[40] When asked why he would touch his children's genitals, he answered that he did not know why and later stated for the risks/needs assessment that he did it because of "a sense of power" and control, but he has not really thought about it. He said that he was not sexually aroused when he did so.

[41] N.N., currently 38 years old, has been married to T.W.N. for about eight-and-a-half years. She said to the probation officer doing the pre-sentence report that she has never been afraid or concerned about T.W.N.'s behaviour. She described her husband as kind, thoughtful and demonstrative of his love.

[42] T.W.N. has been prescribed medication by a psychiatrist as of September 2016 for depression and anxiety. He is on disability from his employment due to the stress of what has been happening to him as a result of these charges.

[43] T.W.N. says that his actions have negatively impacted his victims. He said that his actions have likely caused them confusion, sadness, and have caused them to question the relationships in their lives and has interfered with their ability to trust. M.N. has disowned his father. T.W.N. explained that he thought his sexual relationship with A.N. was agreed-upon and consensual. He said he now feels bad about his actions and communicated disgust with himself for his behaviour. He asserted that he was willfully blind as to her consent and that he also took advantage of his vulnerable children.

[44] He has been consulting with a psychologist in Whitehorse, pursuant to the benefits package from his employment. I am told by counsel today that this may have

expired, but that it may regenerate with the new fiscal year. I am not sure of the status of that exactly.

[45] One of the things noted by the probation officer in the pre-sentence report is that there were no concerns with respect to T.W.N.'s supervision and that cooperation with supervision appears to be one of his strengths. The probation officer also noted that T.W.N. has a wide base of community support, particularly within the Filipino community in Whitehorse, and that he appears to have been greatly affected by these matters post-charge.

[46] In particular, and I note this because it may be important after the fact, that the probation officer stated at the end of the pre-sentence report:

...[T.W.N.] may benefit from programming addressing spousal and sexual violence to solidify any gains that he may have made through self-reflection of his past behaviours.

Risk Assessment Report and Personality Assessment

[47] The most recent risk assessment report and personality assessment was authored by psychologist, Craig Dempsey, and is dated March 8, 2017.

[48] In doing that assessment, Mr. Dempsey used a number of different interview instruments designed to assess the offender's level of risk for various things, such as recurring sexually inappropriate behaviour or recurring spousal violence.

[49] The first such instrument is called "Risk for Sexual Violence Protocol". In doing that assessment, Mr. Dempsey noted that there was some indication that T.W.N. physically forced his estranged partner to engage in sexual acts with him, that being A.N.; however, there was no indication that he physically forced his children to engage in sexual acts with him.

[50] Mr. Dempsey described T.W.N. as being presently somewhat self-aware.

[51] T.W.N. was assessed for psychopathy. He was determined to be well below the designated cut-off scores to be considered psychopathic. He does not have any major mental illness or delusional disorders.

[52] T.W.N. has no historic or current difficulty with substance abuse and had no conflict with the law prior to the charges for sexual assault.

[53] Mr. Dempsey noted that, "He has been gainfully employed, attends all appointments required of him and in most areas is a prosocial member of the community." He said that, "[T.W.N.] is amenable to any treatment options and has engaged in treatment for his anxiety and depression." He has also adhered to all of his current bail conditions, which have been in place since March 12, 2014 to date, for a total period of three years and three months.

[54] Based on the Risk for Sexual Violence Protocol, Mr. Dempsey rated T.W.N. as a low/moderate risk for sexually reoffending.

[55] Based on the Static-99R assessment instrument, T.W.N. scored in the low risk range for sexually reoffending.

[56] Based on a third instrument, entitled "Sexual Offender Risk Assessment Guide", T.W.N., again, scored as a low risk for sexual reoffending.

[57] Importantly, on the issue of programming and counselling, Mr. Dempsey expresses the view that, "A comprehensive sexual offender treatment program would assist [T.W.N.] in identifying interpersonal factors and environmental stressors that contributed to his sexual offending behavior."

[58] Mr. Dempsey also assessed T.W.N. with an instrument entitled "Spousal Assault Risk Assessment". As already indicated, there was no history of spousal or general assault prior to the current offences nor has he violated any court-ordered sanctions. He was scored as a low risk to re-offend violently in a spousal context.

[59] Mr. Dempsey also performed a Personality Assessment Inventory and said that all of T.W.N.'s scales were in the normal range. He presented as an individual who is currently managing his anxiety appropriately.

[60] When interviewed, Mr. Dempsey noted that T.W.N. presented as a caring and empathetic individual, with no evidence of paranoia. He was described by Mr. Dempsey as being emotionally stable.

[61] Importantly, and I will come back to this, Mr. Dempsey made the following remark:

... [T.W.N.'s] behavioral pattern would not be considered "enduring" and appears to have occurred solely in the context of his intimate relationship with his estranged wife and children. It is encouraging that [T.W.N.'s] antisocial traits are not significant or entrenched as those with these prominent features often have lengthy conflict with the Criminal Justice System.

[62] Mr. Dempsey continued that T.W.N. presented as having reasonable control over the expression of anger and hostility and has attended for treatment regarding his propensity to engage in violence and aggression, and is on medication for mood stabilization.

[63] In closing, Mr. Dempsey stated that T.W.N. accepts responsibility and is amenable to all remediation efforts put forward and he is motivated for treatment.

Mr. Dempsey stated:

It is my understanding that the Department of Justice offers spousal abuse and sexual offender programming and he should be encouraged to attend and participate in these programs.

[64] I emphasize that, again, because of the issue of whether counselling would likely be ordered if he is released on a conditional sentence order.

Letters of Support

[65] There were eight letters of support filed, plus one from Many Rivers Counselling. I do not intend to go through all of them, but just make a few observations from some representative letters.

[66] The first one is from N.N., the accused's current wife. As I said, the couple have been married for eight-and-a-half years. She spoke about still being able to trust her husband in every area of her life and observing that he expresses "great remorse for his behaviour and his actions."

[67] The next letter is from R. Y., who has known the accused for more than five years. He described T.W.N. as "a decent, hardworking and trustworthy person" who is remorseful for these charges and is sorry for what he has done.

[68] Next is C. M., who has known the accused for over eight years and is a friend to N.N. She said that she feels this "was an isolated event" and that T.W.N. has "remorse and sorriness for what he had done" and he shows this through his ongoing efforts of seeking counselling, which is a continuing theme in the sentencing.

[69] Next is a letter from J.S., who has known T.W.N. for over 13 years. J. says that T.W.N. is a reliable person and has been very supportive to her over the years and says that "he is regretful of circumstances that occurred in his past relationships and recognizes his mistakes."

[70] Last is a letter from M.P., who has known T.W.N. since he arrived in the Yukon about 15 years ago. He described T.W.N. as always having been a hard worker, who would on many occasions go out of his way to help people in the community. Mr. P. has never deemed him to be a threat, nor has he ever been suspicious of T.W.N. around children or women. Mr. P. says that T.W.N. "has voiced many times that he regrets that his children have had to suffer so much emotional pain throughout this arduous process."

CIRCUMSTANCES OF THE VICTIMS

[71] The victims read their statements into the record in person as well as via videoconference. It was recent, it was tearful, and it was very poignant to hear those remarks.

[72] The first victim impact statement is from G.G. She said that she was devastated when she learned of the abuse, that the crime disturbed her so much she became less productive, fell into a depression and became too ill to eat. She talks about interrupted sleep patterns and vivid nightmares.

[73] We also heard from A.B.N., who said she would not wish her childhood experience on her worst enemy. She said she was a shy kid at school to begin with and then became very ashamed as a result of what happened. She said T.W.N.'s temper scared her. She said, as an adult, she has had a really challenging time accepting father figures generally. She said that she hated herself for the longest time. She could not sleep. She lost days of school, skipped school, and had less than average grades because she hid from life.

[74] A.A.N. also read her statement into the record. She talked about her life being filled with hurt and self-abuse and having no self-worth. She spoke about being mentally and emotionally unstable and suffering from depression. She said she hated herself and began to cut herself, which I take to be a reference to self-harm behaviour. She said she has extremely bad anxiety to the point where she was prescribed antidepressants in high school, and that she has had sleep problems.

[75] A.N. also filed a victim impact statement. She said that the last several years have basically been spent surviving the emotional trauma that T.W.N. had inflicted on her and her children, and indirectly to the rest of her family and the people around her. She spoke of having lost work because of time required for health problems, counselling problems and legal appointments, which has cost her family financially. She spoke of always being on the lookout for T.W.N.'s presence, as it continues to bother her that she and her children have opted to avoid public venues and gatherings if there might be a chance of seeing him.

[76] One of the things that the Court is required to do on a sentencing is to take into account the aggravating and mitigating circumstances.

AGGRAVATING CIRCUMSTANCES

[77] The aggravating circumstances were fairly set out by Mr. Parkkari earlier, and they are now codified in s. 718.2 of the *Criminal Code*:

(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) evidence that the offender, in committing the offence, abused the offender's spouse or common-law partner,

[78] He did so.

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

[79] He did so.

(iii) evidence that the offender, in committing the offence, abused a position of trust or authority in relation to the victim,

[80] This was the case in this situation.

[81] And:

(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,

[82] That is also applicable in the case before me.

MITIGATING CIRCUMSTANCES

[83] First, and importantly, T.W.N. has no criminal record.

[84] Second, and similarly, there is no evidence of any violence or sexually inappropriate behaviour prior to the relationship with A.N. over the period from 1997 to 2003, or since that relationship, especially during the eight-and-a-half-year marriage to N.N.

[85] These two facts, in combination with the positive testimonials from eight friends and relatives in letters of support, indicate that this admittedly extended period of criminal and harmful behaviour was out of character for the accused. Plus, this seems to be objectively supported by Mr. Dempsey's opinion, where he spoke about T.W.N.'s

behavioural pattern not being considered enduring. I take that to mean that it is not something that he would likely see recur in the future.

[86] Third, T.W.N. has scored in the low to moderate risk range in his propensity to re-offend sexually and in the low risk range for reoffending as a spousal assaulter.

[87] Fourth, T.W.N. has voluntarily — and I would say even eagerly and enthusiastically — sought out psychiatric and psychological help and counselling while awaiting the outcome of these offences.

[88] Fifth, T.W.N. has been able to comply with all his release conditions since he was released on his recognizance on March 12, 2014, without a single negative incident. In this regard, I will just refer briefly to the email from Sean Couch-Lacey, dated June 5, 2017, where he reported to Ms. Atkinson, defence counsel:

[T.W.N.] was required to report weekly during most of his time on bail...[T.W.N.] has reported consistently and has demonstrated vigilance in this regard...[T.W.N.] has been fastidious and conscientious with respect to his reporting requirement.

[89] This is corroborated by Sean Couch-Lacey, whose comment I made reference to earlier, that cooperation with supervision appears to be a strength for T.W.N.

[90] The next mitigating circumstance is that T.W.N. has continued to demonstrate his responsibility as a parent by keeping completely up to date with his child support payments for M.N. and S.N. I conclude that this reflects positively on his character.

[91] Also, T.W.N. has demonstrated genuine remorse and regret for his criminal behaviour to this Court, to the victims and the general public, to his friends and family, to his bail supervision officer, and to the psychologist, Craig Dempsey. This is corroborated by his guilty plea.

[92] Lastly, in terms of mitigating factors, the assaults on the children, while serious and having a sexual undertone, did not involve any form of penetration or overt physical force beyond that used in the pinchy-bum game. As I understand the facts, the touching appears to have been on top of the clothing and did not involve any nudity on T.W.N.'s part.

CASE LAW

[93] Both counsel concede that there are few, if any, sentencing precedents which are directly on point, yet both also seem to agree that the appropriate range for these offences appears to be from 18 months to in excess of two years.

[94] I agree with the Crown that in cases of sexual offences against children, especially where the offender is in a position of trust, courts must emphasize denunciation and deterrence.

[95] However, as was recognized in *R. v. Haugo*, 2006 BCPC 319, ("*Haugo*") at para. 72 to 74:

[72] With respect to deterrence, it has been held that a conditional sentence can address both general and specific deterrence through the conditions imposed. Similarly, such a sentence can address denunciation.

And then there is a reference to *R. v. Proulx*, [2000] 1 S.C.R. 61, ("*Proulx*") which I will come back to briefly.

[73] It has also been held that restorative justice and rehabilitation are better achieved through a conditional sentence than through incarceration.

And, thirdly:

[74] There is no offence for which a conditional sentence cannot be imposed, as long as the prerequisites have been satisfied.

I will come back to those prerequisites in a minute.

[96] The judge in *Haugo* goes on at paras. 79 through 81. I think it is important to read these in because there are some similarities to the case at bar:

[79] In *R. v. Proulx*, it was held that a conditional sentence with house arrest can provide ample denunciation in many cases. The shame of encountering members in the community may make it even more difficult for the offender to serve the sentence in the community than in prison. Denunciation will depend on the circumstances of the offender, the nature of the conditions imposed, and the community in which the sentence is to be served.

[80] In my view, in the circumstances of this case, general deterrence, denunciation, and rehabilitation are the objectives which figures most prominently in the sentencing of this accused. Those objectives can be addressed through the imposition of a conditional sentence with strict terms.

[81] The accused is 69 and the risk factor for reoffending is extremely low. He has expressed profound remorse for his acts, pleading guilty to the offence, thus saving the victims from testifying. He worked in the community as a psychiatric nurse, dealing with patients without incident, and achieved promotions to a responsible position. He has no criminal record. He has the support of his family and friends.

[97] As indicated, I am also going to refer briefly to the leading case on conditional sentences, which is *Proulx* from the Supreme Court of Canada. That case is the source of the quote in the *Haugo* case stating that conditional sentences can satisfy the principles of both denunciation and deterrence. Those comments appear at paras. 102 through 107 in the *Proulx* decision.

[98] In terms of the prerequisites for when a Court may consider a conditional sentence, as Mr. Parkkari pointed out, these are set out in s. 742.1 of the *Criminal Code*. These are paraphrased by the Court in *Proulx* at para. 46:

[46] This provision lists four criteria that a court must consider before deciding to impose a conditional sentence:

(1) the offender must be convicted of an offence that is not punishable by a minimum term of imprisonment;

And I pause here to observe that none of these offences are.

(2) the court must impose a term of imprisonment of less than two years;

And I will come back to that.

(3) the safety of the community would not be endangered by the offender serving the sentence in the community; and

(4) a conditional sentence would be consistent with the fundamental purpose and principles of sentencing set out in ss. 718 to 718.2.

[99] Going back to the second point about imposing a term of imprisonment of less than two years, the Court in *Proulx* said that is a two-stage process. At the first stage, the judge simply has to exclude two possibilities: (1) probationary measures; and (2) a penitentiary term. If either of those sentences are appropriate, then a conditional sentence should not be imposed.

[100] In going through this consideration, the Court may rely on the submissions of the parties, although they are not binding. For example, both parties may agree that the appropriate range of sentence is a term of imprisonment of less than two years. I take that to be the situation here.

[101] Going on to the second stage of determining whether the sentence of less than two years is appropriate, I must then consider the fundamental purposes and principles of sentencing in ss. 718 to 718.2.

[102] Some of the principles of sentencing have been touched on earlier, in terms of the aggravating circumstances in this case.

[103] Section 718 sets out the following principles that must be taken into account:

- (a) to denounce unlawful conduct and the harm done to victims or the community that is caused by unlawful conduct;
- (b) to deter the offender and other persons from committing offences;
- (c) to separate offenders from society, where necessary;
- (d) to assist in rehabilitating offenders;
- (e) to provide reparations for harm done to victims or to the community; and
- (f) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims and to the community.

[104] I am satisfied that a jail sentence of less than two years in the case at bar is appropriate.

[105] I am also satisfied that the safety of the community would not be endangered by the offender serving that jail sentence in the community.

[106] Lastly, I am satisfied that a conditional sentence would be consistent with the fundamental purpose and principles of sentencing set out in ss. 718 to 718.2 of the *Criminal Code*.

[107] Accordingly, I am going to impose a conditional sentence of imprisonment of two years less one day.

[108] I am going to impose the statutory conditions that T.W.N.:

1. Keep the peace and be of good behaviour.
2. Appear before the court when required to do so by the court.
3. Report to a supervisor within two working days immediately upon his release from custody.

4. Remain within the Yukon unless he has written permission from his sentence supervisor.
5. Notify his sentence supervisor of any change of name or address and promptly of any change of employment or occupation.
6. Have no contact directly or indirectly or communication in any way with A.N., M.N., A.B.N., A.A.N., and G.G, unless contact is initiated by these individuals and approved of by the sentence supervisor.
7. Remain 50 metres away from [addresses redacted because of publication ban].
8. Reside as approved by your sentence supervisor and abide by the rules of the residence and not change that residence without the prior written permission of your sentence supervisor.
9. For the first 12 months of this order, abide by a curfew by being inside your residence or on your property between 10 p.m. and 7 a.m. daily, except with the prior written permission of your sentence supervisor and except for purposes of employment, including travel directly to and directly from your place of employment. You must answer the door or the telephone for curfew checks. Failure to do so during reasonable hours will be a presumptive breach of this condition.
10. Attend and actively participate in all assessment and counselling programs as directed by your sentence supervisor, and complete them to the satisfaction of your sentence supervisor, for the following issues:
 - spousal violence;

- anger management;
 - psychological issues;
 - any other issues identified by your sentence supervisor, which I am assuming will include sexual reoffending; and
 - provide consents to release information to your sentence supervisor regarding your participation in any program you have been directed to do pursuant to this condition.
11. Perform 240 hours of community service as directed by your sentence supervisor or such other person as your sentence supervisor may designate. This community service must be completed by the end of the conditional sentence order. Any time spent in programming may be applied to your community service at the discretion of your sentence supervisor.
 12. Participate in such educational or life skills programming as directed by your sentence supervisor and provide your sentence supervisor with consents to release information in relation to your participation in any programs you may have been directed to do pursuant to this condition.
 13. Make reasonable efforts to find and maintain suitable employment and provide your sentence supervisor with all necessary details concerning your efforts.
 14. Not possess any firearm, ammunition, explosive substance or any weapon as defined by the *Criminal Code* except as required by your employment and except with the prior written permission of your sentence supervisor.

[109] Following the end of the conditional sentence order, there will be a period of probation for a period of three years.

[110] That probation order will be subject to the statutory conditions:

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 of employment or occupation.
4. Remain within the Yukon Territory unless you obtain written permission from your probation officer or the court.
5. Report to your probation officer within two working days at the end of the conditional sentence order, and thereafter, when and in the manner directed by the probation officer.
6. Reside as approved directed by your probation officer, abide by the rules of the residence and not change that residence without the prior written permission of your probation officer.
7. 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:
 - 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 order.

8. Have no contact directly or indirectly or communication in any way with A.N., M.N., A.B.N., A.A.N., and G.G, unless contact is initiated by these individuals and approved of by the probation officer.
9. Remain 50 metres away from [addresses redacted due to publication ban].
10. Not possess any firearm, ammunition, explosive substance or any weapon as defined by the *Criminal Code* except as required by your employment and except with the prior written permission of your sentence supervisor.

[111] In addition, there will be a DNA order; an order regarding T.W.N.'s participation in the Sex Offender Information Registry for a period of 10 years; an order prohibiting him from possessing firearms, ammunitions or explosives, pursuant to s. 110 for a period of 10 years; and there will be an order that he pay victim fine surcharges of \$200 on each count within 30 days from today's date.

GOWER J.