

SUPREME COURT OF YUKON

Citation: *R. v. Couch*, 2017 YKSC 50

Date: 20170710
S.C. No.: 16-01502
Registry: Whitehorse

Between:

HER MAJESTY THE QUEEN

And

DAVID COUCH

Before Madam Justice B.L. Keyser

Appearances:
Noel Sinclair
Michael Sparks

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCE

[1] KEYSER J. (Oral): David Couch has been convicted after trial of one count of indecent assault on Leslie Cowley between 1971 and 1980. The maximum sentence available is one of five years. Crown has asked for a sentence of between three and four years. Defence has filed cases consistent with provincial terms of incarceration. Both counsel agree that if I find a period of provincial custody to be appropriate that the conditional sentence order regime must be considered and addressed.

[2] These are always difficult decisions to make. The incidents complained of occurred over 40 years ago. Letters of reference filed on behalf of David Couch paint him as a good father, husband, provider, and friend, who has largely led a pro-social life since this offence. He comes before the Court with no prior criminal record. This is often the case. The victim impact statement read out by Leslie Cowley is a devastating

portrayal of the physical and emotional damage she has suffered as a result of being indecently assaulted as a child. Sadly, this, too, is often the case.

[3] Counsel on both sides filed cases for guidance in this matter. However, no case is identical. Most turn on their facts and the charges they have been convicted of, like sexual assault, for example, which have a higher maximum than indecent assault.

[4] A number of aggravating factors appear in this case:

1. Leslie Cowley was a child when these assaults took place. She should have felt loved and secure.
2. David Couch was in a position of trust, as an older uncle, even when he was not babysitting.
3. The incidents occurred on more than one occasion. Even in David Couch's own statement to police, he admitted to a maximum of three occasions. I found the assaults to be serious. Having Leslie Cowley naked, touching her for a sexual purpose, rubbing her vaginal area, rubbing his erect penis against her, and penetration of some kind — digital, if not with his penis.
4. The impact on Leslie Cowley was immense, traumatic, and life-long.

[5] The only mitigating factor is that David Couch has no other criminal record. He appears to have led a pro-social life since these assaults.

[6] There has been no acceptance of responsibility by him. Leslie Cowley had to testify at the preliminary hearing and at the trial. David Couch repudiated his admissions to RCMP at the trial. This is not in any way to suggest that he is not entitled to have the

Crown prove its case against him, but he does not receive the credit one gets for acknowledging responsibility or pleading guilty.

[7] Both counsel agree that in cases of assaults of a sexual nature against children that the primary considerations in sentencing are denunciation and general deterrence. Defence counsel has pointed out that those factors, according to the Supreme Court of Canada and other courts, can be achieved through the imposition of a conditional sentence order.

[8] So what, then, is the appropriate disposition for David Couch? Courts have described sexual assaults on children as a plague, particularly in the northern regions of Canada, and there is a recognition that the sentencing for crimes of this nature has increased over the last decade.

[9] I am satisfied, however, that the cases provided by the defence are more in line with what is appropriate for offences now 40 years old and for which the maximum punishment is set at five years. However, that does not derogate from the aggravating elements already outlined. Thus, I find the appropriate penalty in this case to be one of 18 months' incarceration.

[10] That being so, I must now consider the conditional sentence order principles as outlined in s. 742.1. I am satisfied that the service of the sentence in the community would not endanger the safety of the community. David Couch took advantage 40 years ago of a young and vulnerable child, but he does appear to be a low risk to reoffend. The real issue is whether a conditional sentence order would be consistent with the fundamental purpose and principles of sentencing, as set out in ss. 718 to 718.2.

[11] I have already mentioned, as agreed by counsel, that the primary factors in such cases are general deterrence and denunciation. These are not the only factors at play. I accept that specific deterrence is probably not necessary for David Couch, although he has not been assessed by any professionals that I have been made aware of and he has not undertaken any counselling that I have been made aware of.

[12] However, one of the principles of sentencing is also to promote a sense of responsibility in offenders and to acknowledge the harm done to victims or the community. In this case, I am not satisfied that the imposition of a conditional sentence order would adequately acknowledge either the harm done to Leslie Cowley personally or the community at large. It also, in my view, would not promote a sense of responsibility in David Couch. Therefore, I decline to order that the sentence be served in the community.

[13] Given the comments of counsel, I decline to make a *SOIRA* order or a weapons prohibition. There will, however, be a DNA order that David Couch forthwith provide a sample of his blood for DNA storage and analysis.

KEYSER J.