

SUPREME COURT OF YUKON

Citation: *R. v. Butler*, 2017 YKSC 63

Date: 20171006
S.C. No.: 16–01500
Registry: Whitehorse

BETWEEN:

HER MAJESTY THE QUEEN

AND

CURT SPENCER BUTLER

Before Mr. Justice R.S. Veale

Appearances:
Ludovic Gouaillier
David C. Tarnow

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCE

[1] VEALE J. (Oral): Mr. Butler has been charged with four counts on the

Indictment:

Count #1: On or between the 5th day of May, 2014, and the 12th day of May, 2014, at the City of Whitehorse in the Yukon Territory, did make an arrangement by means of telecommunication to commit sexual exploitation of a child, contrary to Section 172.2 of the *Criminal Code*;

Count #2: On or about the 12th day of May, 2014, at the City of Whitehorse in the Yukon Territory, did distribute child pornography, contrary to Section 163.1(3) of the *Criminal Code*;

Count #3: On or about the 12th day of May, 2014, at the City of Whitehorse in the Yukon Territory, did have in his

possession child pornography, contrary to Section 163.1(4) of the *Criminal Code*;

Count #4: On or about the 16th day of April, 2015, at the City of Whitehorse in the Yukon Territory, did store a restricted weapon in a manner contravening the Storage, Display, Transportation and Handling of Firearms by Individuals Regulations, contrary to Section 86(2) of the *Criminal Code*.

[2] He has pled guilty to and been convicted of counts 1, 3, and 4.

[3] Crown and defence have made a joint sentence submission, which I will get to shortly.

[4] Mr. Butler is 48 years of age. He has no criminal record. His intention is to serve his penitentiary sentence in British Columbia and remain in the Kelowna area thereafter.

[5] There is a minimum sentence of one year for the pornography offences, counts 1 and 3 that he has been convicted of. And in light of that, by agreement of Crown and the Court, Dr. Lohrasbe made a very thorough risk assessment of Mr. Butler.

[6] However, before going into that, I will just indicate that there is an Agreed Statement of Facts, Exhibit 1.

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

1. During May of 2014, Homeland Security Investigations in San Jose, California, United States of America, was conducting investigations against individuals using Internet chat rooms and forums for the purpose of meeting and engaging in illicit sexual conduct with persons who are under 18 years of age, along with distributing child pornography.
2. Between May 5, 2014 and May 12, 2014, in an undercover capacity, Special Agent Beagle engaged in conversations with an individual with a screen name of "sickman437" in an "englishchats" Internet chat room.

3. Over the course of several days of conversing, this individual agreed to send Special Agent Beagle images depicting child pornography, in exchange for being able to direct the Special Agent and his purported 11 year old daughter engaging in illicit sexual conduct via web camera.
4. The individual using the “sickman437” user name sent approximately 25 images to Special Agent Beagle via Yahoo instant messenger. Afterward, “sickman437” expressed concern about what he had done.
5. Exhibit 2 at the preliminary hearing is a sealed copy of the images sent to Special Agent Beagle.
6. Special Agent Beagle was able to determine the IP address associated with the screen name “sickman437” and using a computer program was able to narrow down the location to Whitehorse, Yukon.
7. Special Agent Beagle then contacted the Integrated Child Exploitation Team of the British Columbia (“BC”) Royal Canadian Mounted Police (“RCMP”) in Vancouver and provided them with the chat logs. As a result of this information, a Production Order was sought and granted in B.C. which revealed that the IP address was associated with a Whitehorse address of 75A Dolly Varden Drive.
8. The Production Order and the Homeland Security documentation was forwarded to the Whitehorse RCMP, where various property searches revealed that Curt Butler (“Mr. Butler”) resided at 75 Dolly Varden Drive, (there being no 75A Dolly Varden Drive).
9. A Search Warrant was sought, obtained, and executed for Mr. Butler’s residence on April 16, 2015. Two computers and several CD/DVDs were seized. In addition, during the course of the search, a properly registered Ruger 9mm handgun was located, improperly stored, in the nightstand in a spare room along with two full 9mm clips.

10. Mr. Butler was located while working and was arrested, Chartered and warned. He provided a statement to the RCMP where he admitted there was more child pornography in his truck and in a jacket located in the residence.
11. After his truck was secured, a Search Warrant was sought and obtained. The search of the truck resulted in a Lexar thumb drive being located on April 17, 2015.
12. The seized computers, the thumb drive and the CD/DVD's [as written] were sent for analysis.
13. Both of the computers had been used to access the thumb drive and there was evidence of files of child exploitive nature being accessed. The last time the thumb drive was accessed was April 15, 2015.
14. Both computers had Yahoo messenger installed on them and the user name "sickman437" was associated with both computers.
15. Eight of the CD/DVD's [as written] were analyzed, five of which contained child pornography; the discs were copied between April 15, 2013 to March 11, 2014.
16. The seized items were analyzed and a total of 9693 images/videos depicting child pornography were located, of which many images/videos were duplicates. It was determined that 2369 images/videos depicting child pornography were unique.

[8] I am going to read at some length from Dr. Lohrasbe's report, Exhibit 2, dated May 29, 2017. At page 9, his opinion, in brief, is this:

Mr. Butler's history and clinical presentation does not indicate the presence of a major mental disorder of psychotic proportions; his contact with reality is intact. He does not have a mood disorder. There are no indications of a personality disorder, and in particular no indications of an Antisocial Personality Disorder or of psychopathy. His consumption of alcohol did pose significant problems during

his childhood and early adulthood, when he did have an alcohol use disorder; it has now long been in abeyance. Despite the absence of overt and typical mental disorder, the question that nevertheless arises is whether it is reasonable to regard his online offending as manifestations of some kind of mental disturbance. In my view it is, but only if the concept of 'mental disturbance' is applied broadly, in the sense of a transient, situationally-driven aberration. ...

[9] And then he enters into a lengthy discussion of online pornography offences but, at page 12, he concludes this:

To summarize this lengthy discussion: Mr. Butler's internet offending resulted from a confluence of: (1) childhood sexual trauma that left him vulnerable to many self-destructive feelings and actions, including situationally-prompted sexual curiosity; (2) his excessive immersion into pornography that became increasingly deviant and culminated in his interchanges of child pornography and deviant sexual arousal, and, (3) his dysfunctional marriage. Diagnostically, he likely had an Adjustment Disorder at the time of the internet offending, and also enacted deviant sexual arousal (Pedophilia).

[10] Dr. Lohrasbe then went on to apply several models to determine the level of risk that he would assess for Mr. Butler. Referring to the "good lives model" (GLM) of therapy", at page 22, he says this:

This model cannot be indiscriminately applied to all offenders as many lack the interest, imagination, or motivation for change. Still others lack the required cognitive and emotional capacities to sustain efforts over the lengthy timeframes necessary for effective change. Mr. Butler is deeply remorseful and his [as written] highly motivated to make sure that he does not relapse into offending ever again. He has no limitation to his cognitive capacities, and is emotionally stable. His remorse, guilt, and shame are likely to be sustained and will serve as restraints on his future behavior. He is very aware of the need to be vigilant in all future situations that involve stress and secrecy. He is an excellent candidate for therapeutic interventions.

[11] He says that Mr. Butler is a low risk to re-offend. He adds:

To that end, he listened carefully to my suggestion that accessing any form of pornography, even adult pornography, is destructive for him as even legal adult pornography will deepen his sense of interpersonal isolation and the disconnect between emotions and sexuality which are indirect contributors to his low self-regard, self-destructive tendencies, intimacy deficits, and deviant sexual behaviour. He was very attentive to this feedback, and expressed an interest in establishing a long term therapeutic relationship with someone experienced with these issues.

[12] He concludes with this summary:

Based on all the information available, and keeping in mind the limitations in our knowledge of internet offending, outlined above, it is my opinion that at present and in the foreseeable future:

1. Mr. Butler is at low risk for internet (non-contact) sexual offending.
2. He is at even lower risk for contact sexual offenses [as written].
3. There appear to be no major obstacles to him benefiting from therapy and/or appropriate treatment programs that target relevant risk factors as well as assist in his personal growth.
4. High intensity treatment programs are not indicated.
5. His risk can readily be managed while he is back in the community.
6. At the time he is back in the community, ongoing therapy with an experienced clinician in the community is highly recommended.

[13] There is a joint sentence submission before me which I am prepared to adopt as appropriate in these circumstances, given the level of remorse exhibited by Mr. Butler, his guilty pleas, and the report of Dr. Lohrasbe.

[14] The joint sentence submission is a sentence of one year custody in each of counts 1 and 3. In other words, it is a consecutive sentence of two years.

[15] He will receive a sentence of 30 days concurrent on Count #4. As I have indicated, this is the minimum sentence provided for in the *Criminal Code* for these pornographic offences.

[16] There will be a probation order of three years. The conditions of the probation order are that you:

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 court or your probation officer in advance of any change of name or address, and promptly of any change of employment or occupation.
4. Report to a probation officer within 72 hours of your release from custody, and thereafter, when and in the manner directed by your probation officer.
5. Reside as directed by your probation officer and not change that residence without the prior written permission of your probation officer.
6. Not possess any firearm, ammunition, explosive substance or any weapon, as defined by the *Criminal Code*, and not change that condition without the prior written permission of your probation officer.
7. Not attend schools, pools, parks, playgrounds, or other places where persons under the age of 18 years are likely to congregate, and not change that condition without the prior written permission of your probation officer.

8. 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 18 years without a person of 25 years or older present, and not change that condition without the prior written permission of your probation officer.
9. Not possess computers or other electronic devices capable of accessing the Internet, including smart phones, tablets, and the like, and not change that condition without the prior written permission of your probation officer.
10. Attend and actively participate in all assessment, treatment and/or counselling programs as directed by your probation officer.

[17] There will be a mandatory DNA order and an order to be registered, and remain registered for life, in the Sexual Offenders Registry. These will be prepared by the Court Clerk immediately following this hearing.

[18] There are also two additional orders that are before me: one is for the forfeiture of firearms; and the other for forfeiture of computer equipment.

[19] I am going to sign both of those orders, as they have been reviewed by Crown and defence counsel.

(ORDERS SIGNED)

[20] I can indicate, for the record, that counsel have done a significant amount of work to achieve this sentence. I believe it is appropriate in the circumstances, given that the sentence meets the requirements of denunciation and deterrence, but also provides an opportunity for rehabilitation for you, Mr. Butler, which I think is very important in the circumstances, given the mitigating factors that you presented by entering your guilty

pleas which saves the Court trial time and the Crown attorney from having to prove its case.

[21] Anything else counsel?

[22] MR. GOUAILLER: Yes, there will be a stay of proceedings on the remaining count.

[23] THE COURT: There will be a stay of proceedings entered on Count #3.

[24] The \$200 victim surcharge on each count, amounting to \$600 in total, is ordered payable forthwith. I will note Mr. Butler to be in default of payment and I will order that he serve his default time in custody concurrent to the time that he is to serve in custody.

VEALE J.