

Citation: *R. v. D.C.R.*, 2011 YKTC 15

Date: 20110310
Docket: 09-00766
10-00090
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before: His Honour Judge Gower

REGINA

v.

D.C.R.

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

Appearances:
Eric Marcoux
Edward Horembala

Appearing for the Crown
Appearing for the defence

REASONS FOR SENTENCING

[1] GOWER T.C.J. (Oral): This is the sentencing of D.C.R. on charges of sexual assault, unlawfully entering a dwelling house and breach of probation, all arising January 6, 2010, in a rural Yukon community. The victim is the offender's former common-law spouse. I am sitting on this matter as a Territorial Court judge.

[2] The offender was arrested on the date of the offence. He was released on a recognizance on January 20, 2010. On June 11, 2010, he waived his right to a preliminary inquiry, having elected to proceed to trial in Supreme Court. However, on December 8, he re-elected to Territorial Court, and the Crown, through an arrangement and agreement with defence counsel, re-elected to proceed summarily following some

extensive discussions with a view to a joint submission.

[3] Counsel informed me that they have come to an agreement on that joint submission and it is that there be a sentence of imprisonment of 12 months, but that the accused be allowed to serve that conditionally pursuant to s. 742.1 of the *Criminal Code*; that the 12-month term be followed by a period of probation for two years, and that there be ancillary orders of a firearms prohibition under s. 110 of the *Code* for a five-year period, and a DNA order under s. 487.051 of the *Code*.

[4] The facts in this case are that at about 2:00 a.m. on the date of the offence the offender went to the victim's home where she was sleeping with their two children, a 15-year-old son and a three-year-old daughter. The offender had been drinking beer earlier at a friend's house nearby and had been asking questions about whether his ex-spouse was involved in another relationship. The victim was sleeping with her three-year-old daughter when she woke up hearing the front door open and saw the offender standing at the end of her bed. He told her that they needed to talk. She told him she wanted him to leave. The young daughter started crying. The offender then manually grabbed the victim's genitalia with force, while using obscene language and asked her about the relationship. The victim was wearing a nightgown and a pair of pyjama bottoms at the time and the offender grabbed her on top of her clothing. He squeezed her hard in the crotch area for a couple of minutes. The victim then walked out of the bedroom with her young daughter and the offender followed her. They started arguing. Over the following two hours, approximately, the victim repeated to the offender that he needed to leave. She screamed for her 15-year-old son to come and help her. She told the offender she was going to call the police and tried to leave many times. The

offender disconnected the phone in the residence and took the phone away from the victim. He blocked her way from the door when she was trying to leave him, and once physically held her down. He threatened to take his own life. The victim held the three-year-old girl in her arms most of that time. In the end, the offender walked out of the residence.

[5] The victim contacted the RCMP and was taken to the nursing station later that day, where she was noted to have fingermarks and fresh bruising in her genital area.

[6] The offender was bound by a probation order at that time to not be in the presence of the victim, except in circumstances specifically approved in writing by his Probation Officer. He did not have such written approval.

[7] The circumstances of the offender are as follows: Mr. R. is a 40-year-old Caucasian male born and raised in Vanderhoof, British Columbia. He had a normal upbringing with his younger brother and sister and remains very close and respectful of his parents. The family lived in British Columbia until the offender was 16 years old, when they moved to Yukon for employment purposes. The offender graduated from high school in 1988 and immediately went to work in a mine. He has been steadily employed since then, primarily as a heavy equipment operator. He is currently employed at a coal mine near Grande Cache, Alberta.

[8] The offender met the victim in 1990 and began a relationship with her within the year. They have had two children, a son born in 1994 and a daughter born in 2007. The offender acknowledges that there was a lot of turmoil in the relationship at times. He separated from the victim temporarily between 1997 and 1998. Over that time, he

had a brief relationship with K.G., which resulted in the birth of their daughter, J. The offender and Ms. G. never lived together and eventually separated, but remain on positive terms. Ms. G. and her daughter presently live in Edmonton. Ms. G. submitted a letter of reference in support of the offender, acknowledging that he has been a good and loving father to J.

[9] I am informed by defence counsel that Mr. R. remains current with respect to all of his child support obligations, including those for the two children that he had with the victim.

[10] The offender states that his family has been very supportive and a positive influence on him and he remains very close with them. He also says that he only drinks socially and does not use drugs and has no history of substance abuse.

[11] According to the pre-sentence report, the offender has accepted responsibility for his actions, but does not appear to have any empathy for the victim. He associates his behaviour with poor judgment and anger. Aside from the breach arising from the current offences, the offender has been compliant with his pre-trial recognizance since January 20, 2010. The offender did not feel he was intoxicated in any way at the time of the offence.

[12] I am satisfied that I can accept the joint recommendation of Crown and defence counsel in this case; that the sentence suggested meets the conditional sentence requirements set out in s. 742.1 of the *Criminal Code*, and, as well, meets the objectives of the principles of sentencing set out in s. 718 through 718.2 of the *Code*. The reason for accepting that submission is based on the specific conditions which are proposed in

this case. For the 12-month conditional sentence, the conditions will start with the statutory ones, which include:

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 Sentence Supervisor within two working days, then as and when required by the Supervisor and in the manner directed by the Supervisor;

[13] In this case, because Mr. R. will be residing in Alberta and the conditional sentence order will be supervised by Mr. Clark Cronk, who is a Probation Officer in the Grande Prairie area, the statutory jurisdictional condition will specify Alberta rather than the Yukon Territory. So it will read:

4. Remain within the province of Alberta unless you have written permission from your Supervisor;
5. Notify your Supervisor in advance of any change of name or address, and promptly notify your Supervisor of any change of employment or occupation;

Next will be a condition regarding house arrest.

6. At all times, you are to remain within your place of residence, except with the prior written permission of your Supervisor for purposes of employment, including travel directly to and directly from your place of employment. In this regard, you must present yourself at the door or answer the telephone during reasonable hours for curfew checks; your

failure to do so will be a presumptive breach of this condition;

[14] I will note for the record that the two residential addresses provided by the offender include his current home in Sexsmith, Alberta, at [address given], and the landline telephone number at that address is [telephone number given]. I am informed that the offender commutes from that residence to the mine near Grande Cache, according to his schedule, which has been filed with the Court and provided to Mr. Cronk. While on shift at the mine, he resides with his cousin, whose current address is [address given] in Grande Cache, and the landline telephone number at that residence is [telephone number given].

[15] There will be a further condition that Mr. R.:

7. Abstain absolutely from the possession or consumption of alcohol, controlled drugs or substances, except in accordance with a prescription given to him by a qualified medical practitioner;

[16] Now, there was no mention of occasional samples. Mr. Marcoux, was that intentional or not? Did you intend that to be part of that condition? Samples of breath upon demand, et cetera?

[17] MR. MARCOUX: Yeah, I think it's standard, I believe.

[18] THE COURT: All right.

[19] MR. MARCOUX: I'd be seeking that.

[20] THE COURT: Mr. R.:

8. You are to provide samples of your breath or urine for the purposes of analysis upon demand of a Peace Officer who has reason to believe that you may have failed to comply with this condition;
9. You are not to attend any bar, tavern, off-sales or other commercial premises whose primary purpose is the sale of alcohol;
10. You are to have no contact directly or indirectly or communication in any way with the victim, except through counsel for the purpose of family law proceedings;
11. You are also not to attend at the victim's home or place of employment;
12. You are not to be within the Yukon Territory for the duration of your conditional sentence;
13. You are to make reasonable efforts to find and maintain suitable employment and provide your Supervisor with all the necessary details concerning your efforts;
14. You are to take such assessment, counselling or programming as directed by your Supervisor, including attendance at a residential treatment centre if directed by your Supervisor; and specifically including anger management counselling if directed by your Supervisor;

[21] The terms of the probation order, as I understood you, Mr. Marcoux, you wanted the same terms to apply to the probation order; is that correct?

[22] MR. MARCOUX: Yes, that's correct.

[23] THE COURT: So there will be the statutory terms for the probation

order as well as the other conditions that I have just enumerated, beginning with house arrest. However, the condition that he not be present within the Yukon Territory will be amended to read that he not be present within the community where the offence occurred for the duration of the probation order. The condition regarding abstention from alcohol and not attending at premises where alcohol is sold will only apply for the first 12 months of the probation order. Finally, there will be a five-year firearms prohibition pursuant to s. 110 of the *Criminal Code*, and the DNA order under s. 487.051 of the *Code*.

[24] I think I have covered everything. Counsel, is there anything that I have left out?

[25] MR. MARCOUX: Well, just for precision, was there a clause stating that he -- for the conditional sentence order that he resides as directed or -- and not change that address without --

[26] THE COURT: No.

[27] MR. MARCOUX: Was there something like --

[28] THE COURT: I did not say that, and if you want me to add that, I will add that additional condition that Mr. R.:

15. Reside as directed by the Sentence Supervisor and not change that address without the prior written permission of the Supervisor.

[29] MR. MARCOUX: Thank you.

[30] THE COURT: Mr. Horembala, anything?

[31] MR. HOREMBALA: Just to make clear that the firearms prohibition commences today.

[32] THE COURT: It does commence today, yes.

[33] MR. HOREMBALA: Thank you.

[34] MR. MARCOUX: Which leaves only the issue of the victim surcharge. I understand Mr. R. can pay the surcharge, which is \$50 per --

[35] THE COURT: It's a \$50 surcharge.

[36] MR. MARCOUX: -- per count, yes.

[37] THE COURT: I will make that order. How much time do you need to pay?

[38] MR. HOREMBALA: It'll be paid today.

[39] THE COURT: All right. Payable forthwith.

[40] MR. MARCOUX: And the Crown will ask the Clerk to enter stays of proceedings on the remaining counts.

[41] THE COURT: So noted. Mr. Cronk, do you have any questions about anything I have said?

[42] CLARK CRONK: No, I don't.

[43] THE COURT: Okay. Thank you for participating.

[44] MR. HOREMBALA: Before he leaves, my client is scheduled to leave the Yukon tomorrow on a plane. So in terms of him reporting to Mr. Cronk, I'm going to ask that he not have to do that until either Monday or Tuesday. His car is in Edmonton, he drove to Edmonton and got an air --

[45] THE COURT: All right. So that condition with respect to reporting then will be amended to read that: Mr. R. will report to Mr. Cronk or Mr. Cronk's delegate not later than March 15th at 4:00 p.m.

[46] CLARK CRONK: Yeah, that would be sufficient.

[47] MR. HOREMBALA: Thank you.

[48] THE COURT: Okay. Is there anything else. gentlemen?

[49] MR. HOREMBALA: No.

[50] THE COURT: All right. Thank you very much.

[51] MR. MARCOUX: Oh yes, I'm sorry, Your Honour. I'm sorry. Before we leave, I just wanted to make sure that we have a publication ban on your reasons for the identity of the victim in this case.

[52] THE COURT: All right. So noted. Thank you.

[53] MR. MARCOUX: Thank you.

(Proceedings adjourned)

(Proceedings reconvened)

[54] THE COURT: I thought on the elevator of a condition that I usually like to put into conditional sentence orders and I forgot to make it a condition because the Crown did not ask for it, and that is the condition that the offender carry a copy of the conditional sentence order with him at all times when he is outside of his residence.

[55] MR. MARCOUX: Yes, that's fine.

[56] THE COURT: All right. Thank you. I will make that an order.

[57] MR. HOREMBALA: Okay.

GOWER T.C.J.