Citation: *R.* v. *Dickson*, 2009 YKTC 21

Date: 20090217
Docket: 08-10034
08-10034A
Registry: Watson Lake

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

REGINA

v.

ANTHONY THEODORE DICKSON

Publication of information that could disclose the identity of the complainant, witness or justice system participant has been prohibited by court order pursuant to section 486.4 or 486.5 of the *Criminal Code*.

Appearances:
Jennifer Grandy — Counsel for Crown
Gordon Coffin — Counsel for Defence

REASONS FOR SENTENCING

[1] LILLES T.C.J. (Oral): I am dealing with the matter of Anthony Theodore Dickson. He has pled guilty to two charges before the Court.

[2] First, on or about the 8th day of September 2007, at or near Watson Lake, Yukon Territory, he did unlawfully commit an offence in that he did commit a sexual assault on M.R.J., contrary to s. 271 of the *Criminal Code*.

[3] He has also pled guilty to an offence contrary to s. 145(3) of the *Criminal Code*, that being on December 2, 2008, a breach of a condition of an undertaking given to the Court. That undertaking required him to abstain absolutely from the possession or

consumption of alcohol.

[4] The circumstances with respect to the predicate offence are as follows. A number of individuals, including Mr. Dickson and M.R.J., were drinking at Cathy (phonetic) Dickson's house. M.R.J. was intoxicated. I infer that others were drinking to excess and were probably intoxicated as well.

[5] There was a trip to the liquor store, and the witness who returned from that trip saw Mr. Dickson leave a bedroom when he entered the house. That witness went into that bedroom and observed M.R.J. naked from the waist down, crying, trying to collect her clothes.

[6] On September the 9th, the next day, M.R.J. went to the hospital and a sexual assault kit was used to take vaginal and anal swabs. A DNA sample was also taken from Mr. Dickson. The vaginal swab DNA matched Mr. Dickson's DNA.

[7] It is apparent that M.R.J. was passed out from over-consumption of alcohol. When she woke up she saw Mr. Dickson leaving the room. The presence of Mr. Dickson's DNA and semen on the vaginal swabs is a clear indication that there was sexual contact between Mr. Dickson and the victim, M.R.J. There was no consent to that sexual contact, and indeed in M.R.J.'s intoxicated condition, there could be no valid consent.

[8] Mr. Dickson comes to court with a criminal record. That criminal record is a limited one. Although it began in 1988, there are only eight entries. Two were drinking and driving convictions some years apart. One of his earliest convictions was for

drinking and driving, and this is consistent with the information in the pre-sentence report that indicated that Mr. Dickson began consuming alcohol at a very early age, at age 16. There are also two assaults on his record, which could be considered related offences to the matter before the Court today except that I note that the last assault occurred in 1998 and is therefore somewhat dated.

[9] Of greater importance is the fact that Mr. Dickson received fines or suspended sentences for all of the convictions on his record. There was no jail sentence. The jail sentence that I am going to impose today will be his first jail time by way of sentence.

[10] There are a number of aggravating and mitigating circumstances. I am not going to list them all. They were the subject of discussion between myself and counsel. I will identify the major ones.

[11] The most significant aggravating feature is the fact that the victim in this particular case was a vulnerable victim. She was intoxicated and passed out. Although this point was not dwelled on by counsel, it is obvious to me, and I have inferred, that Mr. Dickson, too, was significantly intoxicated, to the extent that he has very little recollection of the incident himself. Nevertheless, it was an opportunistic attack on a vulnerable victim who was passed out.

[12] I mention that Mr. Dickson has been involved with alcohol for a very long period of time, since he was 16 years of age, and he is now age 43. The pre-sentence report indicates that he has made some attempts to deal with this issue, but not seriously, and he has not completed any programming in that regard. I view this as somewhat of an aggravating factor.

[13] On the other hand, from what we know about alcoholism, individuals are seldom motivated to turn their lives around unless they have faced some very serious crisis in their life. As I mentioned earlier, Mr. Dickson has not received any jail time for any of his previous offences. One could infer that he has not hit bottom yet and has not faced the reality of his addictions.

[14] Mr. Dickson entered a guilty plea in this matter. It was not the earliest guilty plea, but there were significant delays in obtaining DNA samples and reports which tied Mr. Dickson to the offence. In the absence of any information to the contrary, I accept that he himself had no recollection of this event and, therefore, until the DNA evidence came in, he really was not in a position to accept responsibility.

[15] I mentioned to counsel during their representations that a guilty plea, particularly in these kinds of cases, is worthy of a lot of credit. The reason for that is that the victim is spared having to go through the ordeal of a trial, which can be very trying in our adversarial system of justice. Had the guilty plea been an earlier one, even more credit would be forthcoming. A victim awaiting trial, in these kinds of cases, would be subject to a considerable amount of anxiety and apprehension.

[16] It is also a mitigating factor that Mr. Dickson has been evaluated and rated to be a moderate to low risk to reoffend.

[17] The pre-sentence report makes a number of additional points. Mr. Dickson has a limited education, limited to grade 11. He also has a firefighting certificate. Although he is currently unemployed, he has had seasonal employment as a labourer from time to time, described in the pre-sentence report as being somewhat sporadic. He has two

children, aged 17 and 20. I received letters from Mr. Dickson's two sisters that highlighted the impact that his recent pre-trial incarceration has had on those children. I do not see that as a mitigating factor, but I point out again, as I did in my discussion with Mr. Dickson during the hearing, that his behaviour has not only had a significant impact on the victim in this case but it has had a significant adverse impact on members of his family as secondary victims.

[18] It is a mitigating factor that although not motivated in previous years to seek counselling or treatment for his alcohol problems in a serious way, while in pre-trial custody in this matter he did attend and complete the White Bison program in the Whitehorse Correctional Centre. I am not familiar with that particular program, but I am aware that the programs that are available for remand prisoners generally tend to be very introductory in nature. It is a very modest start, and Mr. Dickson, hopefully, will view this as the start of a longer life-time journey towards responsibility and sobriety.

[19] There was a victim impact statement filed. I mentioned in passing that this victim impact statement is very similar to the hundreds of victim impact statements I have seen in my twenty years on the bench. Those statements tend to show significant humiliation and feelings of degradation on the part of victims of sexual offences.

[20] I note in the *R.* v. *White* case, 2008 YKSC 34, Mr. Justice Gower quotes on page 11 from *R.* v. *G.W.S.*, 2004 YKTC 5. The quote is in relation to the profound effects on a woman's well-being which can result from a sexual assault, even where intercourse is incomplete, which is alleged in this particular case:

> … typical feelings of humiliation, degradation, guilt, shame, embarrassment, fear, and self-blame can result from the unwanted

> invasion of intimate privacy and the loss of control associated with sexual victimization.

[21] In *R.* v. *Peters*, [2005] Y.J. No. 124, Mr. Justice Gower, in para. 16, refers to the case of *R.* v. *Smith*, [2003] Y.J. No. 116:

> I want to make it very clear that, in my view, this kind of offence is a very serious offence. In my view, it also involves a high degree of emotional violence. It may not be physical violence, in the sense of someone being beaten up or rendered unconscious with some form of weapon, but, as has been alluded to earlier today, this kind of victimization invariably has a profound long-lasting negative impact on the victim. Although there is no victim impact statement before me today, I am prepared to take judicial notice of that fact.

[22] Both of those quotes underscore what was in the victim impact statement today. They outline the harm that is experienced by a victim of a sexual assault, whether or not there is a finding of penetration.

[23] Mr. Coffin, is there anything that your client, Mr. Dickson, wants to say to the Court before I pass sentence on him?

[24] THE ACCUSED: No.

[25] THE COURT: With respect to the sexual assault, the s. 271, charge, an appropriate sentence would be 15 months incarceration. However, due to the pre-trial incarceration credit of four months which I attribute to this charge, the sentence for the s. 271 offence will be 11 months incarceration.

[26] With respect to the breach of undertaking, the sentence will be one month incarceration, consecutive. The total sentence is 12 months incarceration.

[27] In addition, there will be an 18-month probation order attached to the s. 271

charge. The statutory terms will apply. In addition:

1. He is to remain within the Yukon Territory unless he obtains written permission from his probation officer or the Court.
2. He is to report to the probation officer within five working days of his release from Whitehorse Correctional Centre and thereafter when and in the manner directed by the probation officer.
3. He is to reside at such location as approved by his probation officer and not change that residence without the prior written permission of his probation officer.
4. He is to abstain absolutely from the possession or consumption of alcohol and controlled drugs or substances except in accordance with a prescription given by a qualified medical practitioner. He is to provide a sample of breath and urine for the purpose of analysis upon demand by a peace officer who has reason to believe that he may have failed to comply with this condition.
5. He is not to attend any bar, tavern, off-sales or other commercial premises whose primary purpose is the sale of alcohol.
6. He is not to attend at any residence where individuals are consuming alcohol.
7. He is to take such alcohol and drug assessment, counselling or programming as directed by his probation officer.
8. He is to attend and complete a residential treatment program as directed by his probation officer.

9. He is to take such other assessment, counselling and programming as directed by his probation officer.

10. He is to have no contact, directly or indirectly, or communicate in any way with the complainant in this matter, being M.R.J., except with the prior written permission of his probation officer in consultation with victim services.

11. He is to provide his probation officer with consents to release information with regard to his participation in any programming, counselling, employment or education activities that he has been involved in during the period of this probation order.

[28] Ms. Grandy, is there anything else that should go into the probation order that I have omitted?

[29] MS. GRANDY: Not that I can think of, Your Honour.

[30] THE COURT: Mr. Esler, anything that I have omitted that you think should be in there?

[31] DUANE ESLER: I believe there was a suggestion on the pre-sentence report about --

[32] THE COURT: -- a curfew, which I have deliberately not included. Was there anything else?

[33] DUANE ESLER: What about take such other assessment, counselling and programming as directed by your probation order, including, but not limited to, sex

offender treatment? I'm not up to date on the sex offender's program in Whitehorse, but we could be looking at that.

[34] THE COURT: Well, I have that general term there. Strictly speaking, it need not include specific reference to the sex offender treatment program, but in light of the s. 271 offence, I have no problem in adding that.

[35] Madam Clerk, with respect to clause 9, please add: "including but not limited to the sex offender treatment program."

[36] DUANE ESLER: I understand that they also do it up at the jail, so he could start on it while he's there, right?

[37] MS. GRANDY: Your Honour, there -- it may be appropriate to have a condition that he not attend at M.R.J.'s residence. And I would --

[38] THE COURT: I understood there was no ongoing relationship with them. These were just acquaintances; is that right, Mr. Coffin?

[39] MR. COFFIN: I believe so.

[40] THE COURT: So that should not be a problem. So there will be a term that:

12. He is not to attend at the residence or place of work of M.R.J.

[41] Anything else, Ms. Grandy, before we do the orders?

[42] MS. GRANDY: Yes. If I could just have a moment?

[43] THE COURT: What are you looking for?

[44] MS. GRANDY: There's a fairly new section which prohibits contact while an individual is serving their custodial term.

[45] THE COURT: Right. This often comes into play in spousals, where an individual, who is otherwise on probation, should not be having contact with someone, will use the access to the telephone in the WCC to contact that individual.

[46] MS. GRANDY: Yes.

[47] THE COURT: Do you have any sense that that is a problem in this case?

[48] MS. GRANDY: I don't have it. Out of an abundance of caution, I suppose, we'll just give the complainant that much more assurances that there won't be any contact before the probation order starts.

[49] THE COURT: It is s. 743.21, my clerk advises me, counsel.

[50] MR. COFFIN: Is that in force?

[51] THE COURT: It says "to come into force by order of the Governor in Council."

[52] THE CLERK: It's in force.

[53] THE COURT: It is in force?

[54] THE CLERK: Yes.

[55] THE COURT: You can advise that it is?

[56] MS. GRANDY: My understanding is that it's fairly recently in force.

[57] THE COURT: Mr. Coffin, I am assuming that you would not have any objection to that term, there being absolutely no reason for him to communicate with her?

[58] MR. COFFIN: No, there is no reason for him to communicate.

[59] THE COURT: It is hard to imagine how he might end up doing it accidently or inadvertently.

[60] MR. COFFIN: Yes.

[61] THE COURT: But if it would give the victim some degree of comfort, I am prepared to make the order. As I say, it is an order that is more often made in relation to those cases where there has been some kind of ongoing relationship with the individual.

[62] MR. COFFIN: I can't think of a good reason why, why not, right at the moment.

[63] THE COURT: Or why?

[64] MR. COFFIN: Or why, that's right.

[65] THE COURT: For the comfort for the victim, that is the only reason.

[66] MR. COFFIN: Yes.

[67] THE COURT: I will make that 743.21 order that prohibits him from communicating, directly or indirectly, with the complainant in this case, M.R.J.

[68] The s. 109 mandatory order will go for a period of ten years as requested, in standard form. He will have five working days after his release from custody to surrender any firearms, ammunitions or other items prohibited by this order to the RCMP.

[69] This is a primary designated offence. The application for a DNA sample for database purposes will go in the normal form, as requested by Crown counsel.

[70] MR. COFFIN: I only rise because my memory was that, and perhaps it's been changed, but it used to be that the order didn't need to be made if there was already a DNA sample in the custody of the authorities.

[71] THE COURT: I am not sure. My practice has been to make the order, and if it turns out that they do not need it, they do not take the sample. I do not know where that sample is at the current time, whether it was used, whether it was all used up when it was sent down south, how it is stored in the databank. So I will make the order and leave it to the authorities to determine whether or not they need the additional samples.

[72] Pursuant to the *Criminal Code* and the *Sex Offender Information Registration Act*, the application is granted that you comply with the *Sex Offender Registration Act* for a period of 20 years. That is the specific amount of time that is prescribed by the *Criminal Code* for an offence pursuant to s. 271 which is pursued by way of indictment

by the Crown, as was this case.

[73] Anything else, Ms. Grandy?

[74] MS. GRANDY: I would ask for Count 2 on the A Information to be marked as withdrawn, please.

[75] THE COURT: Withdrawn.

[76] MS. GRANDY: And I apologize, Your Honour, I missed the length of the probation order.

[77] THE COURT: Eighteen months.

[78] MS. GRANDY: Thank you.

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LILLES T.C.J.