

IN THE TERRITORIAL COURT OF YUKON
Before Her Honour Chief Judge Ruddy

REGINA

v.

JUSTINA KRISTIN ELLIS

Appearances:
John W. Phelps
David J. Christie

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCING

[1] RUDDY C.J. (Oral): Justina Ellis is before me for sentencing in relation to two offences to which she has entered pleas of guilty. They include one for robbery and one for strangling the victim with intent to overcome resistance and allow her to commit the robbery offence.

[2] The facts are set out in detail in an Agreed Statement of Facts. Essentially, they involve a situation in which Ms. Ellis and the victim had been together in his room at a local hotel. They had engaged in sex the evening before the offences in exchange for money. The next day, Ms. Ellis was awoken by the victim, there was a further exchange between them, during which she tied him up with electrical cord, and used

more electrical cord to strangle him to the point of blacking out. She stole some money and other belongings of the victim's and left the hotel room.

[3] She explains the offence in relation to the victim asking her to participate in activity which included biting his neck and sucking his blood, which she says freaked her out, leading to her committing the offences before the Court.

[4] The Crown has brought, with the consent of the Attorney General, an application for a dangerous offender designation. As a result, there is a multitude of information that is before me with respect to Ms. Ellis and her circumstances.

[5] I'm going to summarize some of that information. Clearly, with the volume of material before me, as well as the sensitivity of much of that information, I'm not going to go into extensive detail, but I think it is relevant, both to the joint submission that has been put before me and the decision that I ultimately need to make about whether or not that should be adopted.

[6] In summary, Ms. Ellis is a 34-year-old member of the Tr'ondëk Hwëch'in First Nation. She has had what can only be described as a traumatic childhood. The reports before me, which include a Pre-Sentence Report, numerous psychiatric and psychological assessments, an FASD assessment, and a very detailed *Gladue* Report, outline her background and circumstances. It is, quite frankly, a very heartbreaking read. I can only imagine what it would have been like for Ms. Ellis to have lived through the circumstances that are outlined.

[7] As noted, it was a very traumatic childhood, characterized by neglect, instability, exposure to substance abuse and violence, and she was also subjected on numerous occasions to physical abuse and was sexually victimized as well.

[8] Not surprisingly, Ms. Ellis developed significant substance abuse issues herself, which began as early as age 10 with the inhalation of several noxious substances. She went on to develop significant problems with numerous drugs, and also with alcohol.

[9] Ms. Ellis' history demonstrates an inability to maintain sobriety for any length of time, despite her having been sent to numerous different treatment programs and there having been numerous interventions in an attempt to assist her. From her early teens on, she has lived a very high-risk, unstable, and transient lifestyle, and has developed an extensive criminal history, which indicates an inability to regulate her own emotions and behaviour, leading to her acting out violently. Ms. Ellis struggles with managing her behaviour, both inside and outside of an institutional setting, and it is noted in the reports that the combination of her cognitive deficits and significant substance abuse issues has led to very poor compliance with court orders.

[10] The reports indicate a lengthy list of various diagnoses that apply to Ms. Ellis in her circumstances. The first of those was the prenatal exposure to alcohol, which has led to a diagnosis of partial Fetal Alcohol Syndrome. There's also the polysubstance disorder; a dysthymic disorder, which I understand to be a long-standing low grade depression, and a borderline personality disorder. There were various other diagnoses in the list, but those are the ones I think are key in understanding her behaviour. Again,

there has been very limited success with multiple interventions and programs that have been tried in an effort to assist Ms. Ellis.

[11] The reports before me indicate, without question, that Ms. Ellis is at high risk to reoffend and, in particular, at high risk to reoffend violently. As Dr. Lohrasbe notes, she has an abundance of risk factors and very few protective risk factors, so it is universally agreed that the risk for future violence is high.

[12] We have spoken more than once today about a prognosis that would, on the face of it, appear to be somewhat bleak, but there is some hope in the reports before me. I turn particularly to the report of Dr. Lohrasbe, where he notes that, in terms of her long-term prospects, there are two factors which he sees as areas of hope to allow for her effective management within the community as opposed to in a jail setting.

[13] The first of those is the impact of aging, and he goes on at length to explain how that will inevitably lead to a reduction in her risk factors. He also notes, which is unusual, I take it, from his report, that Ms. Ellis has a significant capacity to engage with therapists and caregivers and to make meaningful relationships with supports, and, in fact, is someone who inspires a great degree of protectiveness in the people who are around her. He notes that caregiver motivation is a significant factor that will contribute, hopefully, to her effective management within a community setting.

[14] Dr. Lohrasbe goes on to indicate that very close supervision and monitoring can be effective in managing her risk in the community. Part of the difficulty is the limited resources available in the Yukon, and it is also evident from the reports that Ms. Ellis has exhausted a large number, if not all, of those options. So the issue then is where

we can find an appropriate placement that is going to include the close supervision and monitoring that she requires.

[15] Dr. Lohrasbe sets out, in the last three pages of his report, the factors he sees as crucial to Ms. Ellis' effective management within the community, with safe accommodation being what he refers to as "the cornerstone"; a placement that would have supervision with strict rules that would be simplified in a way that Ms. Ellis can understand, rules that would be repeated in a way that she can absorb them, and that would have very predictable consequences for her. He notes the importance of a team approach with a focus on substance abuse and close medical supervision, the need for vocational training, which she has clearly expressed an interest in pursuing, and also encouraging the development of her artistic interests. With all of that in mind, he does come to the conclusion that she can be, in that very strict and supervised situation, effectively managed within the community.

[16] What is also important is what Dr. Lohrasbe says in terms of prospects for rehabilitation. It is notable that he indicated that placement in a correctional institution would actually be counterproductive to her rehabilitation. He speaks to the fact that programming in such situations is inevitably done in the abstract and, while Ms. Ellis has demonstrated an enthusiasm for programming, a willingness to engage in programming, if it doesn't happen in an environment where she is able to very concretely apply what she is learning, which cannot happen in an institution, it will have little long-term benefit to her.

[17] I take from his comments that, in terms of her long-term prospects, there is importance in structuring her placement to allow for rehabilitation to happen within a community setting.

[18] Dr. Lohrasbe goes on to recommend that the longest possible period of monitoring and supervision would be necessary in both managing her risk and also supporting her rehabilitation.

[19] I have a joint submission before me which urges me to find that a sentence of 28 months would be appropriate in all the circumstances, less credit for remand. It is agreed that Ms. Ellis, with 16½ months spent in pre-trial custody, credited at 1.5:1, is entitled to credit of 24 months, which would leave four months to be served. It is also agreed that I should impose a 10-year long-term supervision order in conjunction with a dangerous offender designation. I understand that it is intended that Ms. Ellis will be transferred to one of three proposed supervised placements upon completion of her custodial sentence.

[20] The question for me with a joint submission is not whether it is the sentence that I would otherwise impose, but whether its adoption would bring the administration of justice into disrepute. The importance of plea agreements to the effective running of our courts dictate that a joint submission should not be rejected lightly.

[21] In this particular case, it is evident to me that a considerable amount of effort has gone into crafting the joint submission. These are extremely difficult circumstances. All of the reports indicate that Ms. Ellis has very complex needs. Her risk factors are

significant and, as noted, multiple efforts in the past have proven to be unsuccessful.

This is not an easy case when you look at it from any perspective.

[22] It is clear to me that counsel have spent a considerable period of time weighing Ms. Ellis' risk factors, also her complex needs, and her very sympathetic background, in trying to arrive at the most fair and reasonable outcome in all of the circumstances. I would certainly commend counsel for their efforts in reaching this joint submission. This case has taken a considerable amount of time and effort, and I think it is certainly to the credit of everyone involved that we have reached what is such a fair and appropriate outcome in all of the circumstances.

[23] I would also like to extend the thanks of the Court to the others who have been involved in that process both in looking at options and also in providing reports to assist counsel and the Court, which would include Mr. Stevens who provided the *Gladue* Report, Ms. Casselman who provided the Pre-Sentence Report, and Dr. Lohrasbe who provided the psychiatric assessment. And also Ms. Ellis herself, because I understand, both from her comments and also from her counsel, that she is looking at this, in as positive a manner as possible, as a new beginning for her, in the hopes that we will be able to have her placed in a situation that is going to give her the support she needs to be successful. So that is to your credit as well, Ms. Ellis, in what I know are quite scary circumstances for you.

[24] That is my thought process in arriving at the conclusion that not only am I prepared to adopt the joint submission, but I am fully satisfied that it is the most fair and appropriate outcome in all of the circumstances.

[25] There are a few things I need to do to make that happen. The first of those is that I do need to make the finding that the preconditions for a dangerous offender designation have been made out on the extensive evidence and information before me, and I would so make that a finding.

[26] Pursuant to s. 753(4.1) of the *Criminal Code*, I would also note that I am satisfied on the evidence that there is a reasonable expectation that a lesser measure than indeterminate detention will adequately protect the public, that being the long term supervision order that is being proposed.

[27] Next, I would adopt the view that 28 months is an appropriate sentence in all of the circumstances, but credit Ms. Ellis for 24 months spent in pre-trial custody, which leaves a remanet of four months still to be served, and I think it is important to note that, in reaching the length of sentence, counsel have clearly turned their minds to the importance of allowing for sufficient time for Ms. Ellis to be placed in an appropriate structured and supervised facility within the federal corrections system as part of her long-term supervision order.

[28] I would then impose a long-term supervision order of 10 years. That leaves me with a couple of questions. Whether we need to turn our minds to conditions or whether that is determined within the federal corrections system, and whether or not there are any ancillary orders which need to be imposed, given the nature of the offences, specifically, DNA and firearms; they are the two that come to mind.

[DISCUSSION WITH COUNSEL RE: ANCILLARY ORDERS]

[29] I will make an order Ms. Ellis provide such samples of her blood as are necessary for DNA testing and banking. So because of the type of offence it is, Ms. Ellis, the *Criminal Code* says that you have to give a sample of your blood, and they will put it into the DNA databank. They will prick your finger to do that. If they have already done that in the past, they will not do it again, but I have to make the order.

[30] I also have to impose a firearms prohibition – would it be 10 years in this case?

[31] MR. PHELPS: I believe so, yes.

[32] THE COURT: I do not know if there have been prior ones.

[33] MR. PHELPS: I believe it's 10 years.

[34] THE COURT: There will be an order prohibiting you from having in your possession any firearms, ammunition, or explosive substances for a period of 10 years.

[35] The victim surcharges?

[36] MR. CHRISTIE: They can be payable forthwith and then defaulted.

[37] THE COURT: The victim surcharges would be \$200 on each count, payable forthwith, on the understanding that a warrant of committal will issue, allowing Ms. Ellis to serve the default time concurrently with her sentence.

[38] THE CLERK: Is there a breakdown on that sentence, given the two counts?

[39] THE COURT: It is the intention, simply, to be the same sentence on both, concurrent. Given the seriousness of both offences, that makes sense in my mind.

[40] MR. PHELPS: And request a stay of proceedings with respect to Count 3.

[41] THE COURT: Okay. Thank you. All right, is there anything we missed? No?

[42] MR. PHELPS: I don't believe so.

[43] THE COURT: Okay. So, again, I must say the task of looking through all the materials was quite daunting in and of itself, so I can appreciate the effort that went into pulling all of this together, and I want to again extend my thanks to everyone for their participation in developing the joint submission.

[44] I want to just end, Ms. Ellis, by wishing you the very best of luck. It is my hope that, as part of the orders that I have made today, we are able to find for you the kind of structured placement that you need to help you make the changes that you want to make and to be successful in the long run.

[45] MS. ELLIS: Thanks.

[46] THE COURT: It is certainly my hope that we do not see you back in this courtroom.

RUDDY C.J.T.C.