Citation: *R. v. Ellis*, 2020 YKTC 3

Date: 20200117
Docket: 15-00036A
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before His Honour Judge Wyant

REGINA

v.

JUSTINA KRISTIN ELLIS

Appearances:
Noel Sinclair — Counsel for the Crown
Jennifer A. Cunningham — Counsel for the Defence

REASONS FOR SENTENCE

[1] WYANT T.C.J. (Oral): The Court should always consider the least restrictive sentence, particularly where it concerns Indigenous offenders and the *Gladue* factors in this case are certainly factors for me to consider.

[2] I will be frank in saying that when you look at the nature of the offences that Ms. Ellis pled guilty to and the violence that was inflicted and marry that with her prior record — which, of course, she is not to be re-sentenced on but which clearly disentitles her to leniency — I would say categorically and without hesitation that a sentence of 28 months, in my respectful view, is a very lenient sentence and, if anything, in my respectful view, on the lower, if not lowest, end of the range that I would have thought was appropriate.

[3] I say that taking into account the fact, of course, that there are several mitigating circumstances, including:

- her guilty plea;
- the significant *Gladue* factors in her background, which, of course, have been enunciated in writing and orally before the Court now on many occasions; and
- the many things that have happened to her and the issues that she suffers from.

[4] When you combine that with the nature of the violence in these offences and her prior record, in my respectful view, 28 months is more than fair and reasonable, and it is the sentence that I will adopt in these circumstances.

[5] Having decided that I am re-imposing the sentence, the sentence will be one of 28 months but, however, at this time, it is 28 months of time served, given that it has all been served.

[6] I will make an order for the collection of DNA, given it is a primary designated DNA offence but, again, on the record, I am saying that I hope the authorities do not exercise on this one given that DNA has been collected already on these offences.

[7] I will make the 10-year order under section 109, as Ms. Cunningham suggests, given that that was the original position, a 10-year order following her release from custody from owning or possessing any firearm, crossbow, prohibited weapon,

restricted weapon, prohibited device, ammunition, prohibited ammunition, or explosive substance.

[8] This leads us then to the determination on the long-term supervision order.

[9] Having this matter come before me now on a number of occasions and particularly, most recently, this past Tuesday and having heard the representations of both counsel with respect to the joint recommendation and having read all of the material that I have on Ms. Ellis, the Court finds without any hesitation or difficulty that I am satisfied that the predicated offences attract custodial sentences of more than two years and, in fact, I have imposed a sentence of 28 months of time served and therefore that no more custody should be imposed.

[10] I conclude that there is a substantial risk, at this point in time, based on the information that has been provided, that Ms. Ellis will reoffend, and I have concluded that there is a reasonable possibility of eventual control of that risk posed by Ms. Ellis in the community. So pursuant to s. 753.1(1) of the *Code*, I do declare Ms. Ellis to be a long-term offender.

[11] Having considered the principles of sentencing in s. 718, including Ms. Ellis' status as an Indigenous person, an Aboriginal offender, and having considered the representations of counsel and the joint recommendation, which I feel is appropriate, in addition to the sentence of 28 months of time served — which will result, I suppose, in a technical sentence of one day today — I am ordering that she be subject to a long-term supervision order for a period of five years following her release from custody.

[12] Of course, I made the order for the collection of DNA, pursuant to s. 487.051, and the 10-year order for firearms prohibition, which I note is different to the draft order that you had submitted, Mr. Sinclair.

[13] I am also making an order requiring that a copy of all reports given by psychiatrists, psychologists, criminologists, and other experts and any observations of the Court with respect to the reasons for the long-term offender finding together with a transcript of the sentencing of the offender, including the sentencing proceedings and exhibits filed be forwarded to the Correctional Service of Canada for information and case management purposes, pursuant to s. 760 of the *Criminal Code*. I am doing this on the basis that Ms. Ellis has pled guilty and admitted responsibility to the personal injury offences under s. 344 and 246(a) of the *Criminal Code*, which are serious personal injury offences, as defined in s. 752, and on the basis, of course, of the evidence that has been provided to me, all of which has been filed, and the representations of counsel.

[14] I want to make some additional comments for the record, given that the transcript of these proceedings will be sent to the Correctional Service of Canada, and then I do intend to adopt the suggested wording in the order that both of you have very kindly provided to me with respect to the non-binding judicial recommendations. But I want to make some other comments and to reflect, of course, that Ms. Ellis — and we all know this and both counsel spoke to this when we appeared earlier this week — has suffered a significant traumatic childhood and was a witness to or a victim of physical, mental, and sexual abuse. In every way, she is a victim of intergenerational trauma and clearly a victim of the legacy of colonization and residential schools in this country.

[15] Ms. Ellis has been diagnosed extensively, particularly by Dr. Lohrasbe, but also others. Without giving an exhaustive list — and all of you know this — she suffers from a number of things, including ADHD, depression, fetal alcohol syndrome, borderline personality disorder, significant addiction issues, and possibly post-traumatic stress disorder as well, amongst others. In my respectful view, as both counsel have very professionally put forward, she clearly requires long-term supervision and intensive supervision, and that is the reason why I completely agree that the evidence meets the criteria for the long-term supervision order.

[16] In the community, she needs appropriate supervision and she has the right for that appropriate supervision. Ms. Ellis was born in the Yukon. She was abused in the Yukon. She was a product of the child welfare system in the Yukon. She committed her crimes in the Yukon. Frankly, given all of that, it is the Court's view — and I know it is counsels' view — that, as much as possible, she ought to be kept in the Yukon in her community and supervised and treated in the Yukon and not taken out somewhere else if at all possible, for example, to the Lower Mainland in British Columbia. No person, all things being equal, in this Court's view, should be deprived of that support in their own community just because they live perhaps in a community that does not have the resources afforded to it that other parts of Canada have.

[17] I am not being critical of policies of governments, departments, or any individuals at all, because they are quite well-meaning, and I recognize that resources cannot be provided to everyone equally in all circumstances, but as much as possible, it is this Court's hope that the appropriate resources will be provided to Ms. Ellis and that, if possible, those resources can be provided in the Yukon Territory, if not immediately

then certainly as quickly as possible. Otherwise, the Court has the concern and fear that she will not get the necessary support that she needs. Wherever she goes, certainly, she needs that support, whether it is in the Yukon or elsewhere.

[18] It is the Court's view that the resources ought to be sufficient to deal with her complex issues and that additional resources ought to be afforded to the extent they can be for Ms. Ellis to ensure that her risk is managed in the community and to ensure that she does not reoffend.

[19] Further to those comments, I am going to adopt the non-binding judicial recommendations, which will form part of the order, that:

1. Best efforts be made by federal, territorial, Indigenous, and other non-governmental agencies to cooperate and to contribute extra resources to allow for one-on-one community supervision of Ms. Ellis due to her complex mental health needs;

2. Best efforts be made to ensure that Ms. Ellis is not incarcerated and that she remains in the community under supervision recognizing that incarceration is known to destabilize Ms. Ellis' rehabilitation and to exacerbated her mental health challenges;

3. Best efforts be made to allow Ms. Ellis to transition back to a suitable supervised residential facility in the Yukon as soon as possible. In particular, since it may take time to establish and approve a Correctional Service of Canada community residential facility in the Yukon, it is

recommended that efforts be made to establish a suitable Yukon-based non-approved residential facility for Ms. Ellis with comparable supervision resources sufficient to Ms. Ellis' needs and the maintenance of public safety; and

4. Best efforts be made to facilitate the development of substantial Yukon-based Correctional Service of Canada supervision resources suitable to maintaining public safety and to the needs of Ms. Ellis.

[20] I appreciate the wording of those non-binding recommendations and I adopt them in their entirety.

[21] I do, again, want to emphasize the comments that I made earlier with respect to the resources Ms. Ellis needs apply no matter where she is, whether it is in the Yukon or elsewhere, but the Court hopes that appropriate, if not additional, resources and supervision will be afforded to her by the Correctional Service of Canada, if available. The Court, again, hopes that all of this can be eventually done in the Yukon.

[22] In making those comments again, the comments of the Court are not meant to criticize any of the good work that has already been done on Ms. Ellis' behalf and will continue to be done on Ms. Ellis' behalf — and the Court recognizes there are exigencies and resource issues that are at play here — but the Court really hopes, as Justice Veale has said earlier and has been said by other courts in Ms. Ellis' case — by Judge Lilles, for example, many years ago — that appropriate resources are given to her here.

[23] Ms. Ellis, of course, you heard the comments, particularly of Crown counsel the other day with respect to reoffending, particularly of a violent nature, that the consequences, if proven, would be periods of incarceration. You understand that, Ms. Ellis?

[24] THE ACCUSED: Yes.

[25] THE COURT: There are a lot of people who are willing and want to help you, Ms. Ellis, and to right some of the wrongs that have occurred to you in your life so far.

[26] I will require that slight change then in the order, Mr. Sinclair and Ms. Cunningham, with respect to changing (2) from a lifetime firearms probation order to a 10-year order.

[27] MR. SINCLAIR: Right. And filling in the —

[28] THE COURT: The time in custody.

[29] Defence counsel's signature on the order is dispensed with.

[30] Mr. Sinclair, I am authorizing that any judge of the Yukon Territorial Court, whether it be a regular judge or deputy judge, can sign that order on my behalf. I do not want to hold anything up and then it can be filed.

[31] The victim surcharge and any court costs are waived.

[32] I want to thank counsel for their very diligent work, both counsel, on this particular matter and the recommendation you have come to. I think it both reflects the public interest but also reflects the particular nature of the offences that Ms. Ellis

committed, her very tragic background, and her needs. I compliment both of you for the hard work and the recommendation, which is entirely appropriate.

[33] Thank you.

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WYANT T.C.J.