

Citation: *R. v. Good*, 2010 YKTC 96

Date: 20100917
Docket: 08-00805
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Judge Faulkner

REGINA

v.

HELEN JUNE GOOD
(aka HELEN JUNE SMITH)

Appearances:
Bonnie Macdonald
Emily Hill

Counsel for the Crown
Counsel for the Defence

REASONS FOR DECISION

[1] Helen June Good, also known as Helen June Smith, was convicted after trial on charges of assault causing bodily harm and uttering death threats. The victim of both offences was Ms. Good's husband, Robert Herschel Smith. The Crown proceeded by indictment.

[2] The facts may be briefly stated. On February 2, 2009, Helen Good was at home with her husband, Robert. Both were drinking alcohol. At some point, Helen became enraged and subsequently both threatened and viciously assaulted her husband administering kicks and striking him with a chair. Mr. Smith suffered a broken jaw

amongst other injuries. Afterwards, the home, in the words of one witness, looked like a whirlwind had hit it.

[3] Helen Good is now 59 years old. Her criminal record begins in 1968 when she was but 16 years of age. The conviction was for causing a disturbance but the circumstances actually involved Helen seriously assaulting two other women. Helen's aggressive personality was already made note of.

[4] In 1969, Helen was convicted of the much more serious offence of wounding with intent. After a bout of drinking, Helen became involved in an argument with a woman named Effie Bill. The argument progressed to a fight, during which Ms. Bill was vanquished. As Ms. Bill lay helpless on the ground, Helen took a steak knife and slashed Ms. Bill's clothing, exposing her body. Helen next took a broken bottle and repeatedly slashed Ms. Bill's face and abdomen causing her serious injuries and permanent disfigurement.

[5] In 1971, Helen was convicted of three counts of common assault and one count of assault causing bodily harm after she beat up a number of women.

[6] In 1983, Helen was convicted of causing bodily harm with intent. No record of the circumstances is now available.

[7] In 1988, Helen was convicted of two counts of assault and one count of assault causing bodily harm. The victims of these offences were Helen's own children - a son and two daughters.

[8] The 1988 incident led to the apprehension of the children; something that occurred some five times while the children were young. By now, a pattern had emerged: periods of relative stability and sobriety followed by bouts of alcohol abuse and serious violence.

[9] The cycle continued in 1990 when Helen was convicted of aggravated assault. Helen, who was visiting in the victim's home, became intoxicated and was asked to leave. She responded to this request by attacking her host, knocking him down and attempting to gouge his eyes out with her fingers. The victim lost one eye and the other was badly damaged.

[10] This incident resulted in the second of many psychological or psychiatric assessments of Ms. Good. Dr. Kehoe, the psychologist in this instance, noted that chaos was the norm for Helen and her children. She was diagnosed as suffering from an Antisocial Personality Disorder. In Dr. Kehoe's opinion, her potential for violence when under the influence of alcohol was very high and extended indefinitely.

[11] Also in 1990, Helen was convicted of a further assault. In this case, the victim was a 12-year-old girl who was assaulted to the point of unconsciousness. It should be

noted that this offence had actually occurred some year prior in B.C. Helen waived the charge into the Yukon and entered a guilty plea.

[12] In 1992 and 1993, Helen was convicted of three probation breaches. All involved Helen becoming grossly intoxicated and causing trouble.

[13] In 1997, Helen was convicted of assault causing bodily harm. By this time, Helen had married Robert Smith, and he was the victim of the offence. Helen struck Mr. Smith in the face with some object – it was never determined exactly what – and administered a number of kicks to his face. The result was serious lacerations requiring a number of stitches to close.

[14] In 2001, Helen was involved in another very serious assault on Mr. Smith. Mr. Smith suffered facial lacerations, black eyes, bruising and a broken arm, jaw, and wrist. Part of one ear was missing. As Mr. Smith was uncooperative, the matter did not proceed to Court but was diverted.

[15] In 2004, Helen was convicted of yet another assault on Robert Smith. The incident was actually reported to the police by Helen herself. In this instance, Mr. Smith suffered serious facial injuries but no broken bones.

[16] At this point there was a further assessment, this time by Dr. Boer. The assessment was just as bleak as in 1990. Indeed, it may be even more chilling as Helen acknowledged that many of her assaults were premeditated. She would wait until

her victim was too drunk to defend himself and then attack. The diagnosis was Major Mental Disorder, Alcohol Abuse, Antisocial Personality Disorder, and Borderline Personality Disorder. It was again noted that Helen's assaults followed a pattern: periods of calm, followed by drinking, followed by Helen becoming gratuitously and excessively violent.

[17] Dr. Boer noted many additional instances of violent and sadistic behaviour in addition to those leading to criminal charges. He also noted that Helen had undergone extensive and repeated counselling and therapy to no obvious effect. He concluded:

“...rarely have I seen such a lengthy and repeated cycle of violence in an assessment that was not being done for the Court for the purpose of informing a dangerous or long-term offender hearing.”

As a result of the 2004 assault conviction, Helen received a custodial sentence and probation. In 2007, there was a Court review of the probation order. It reveals a number of instances in which Helen had returned to using alcohol – always a prelude to further violence.

[18] Finally, in 2010, she was convicted of the index offence.

[19] The matter is now before the Court for disposition and to consider the Crown's application to have Helen declared a long-term offender.

[20] In anticipation of the application, I made an order that Helen be assessed. That assessment was undertaken by Dr. Lohrasbe, an experienced and well-regarded forensic psychiatrist. Dr. Lohrasbe confirmed the diagnoses of Borderline Personality

Disorder and Antisocial Personality Disorder. He concluded, as have others before him, that Helen remains at high risk of further serious violence if she uses alcohol or other intoxicants.

[21] Having come this far in reviewing the chilling catalogue of Helen's crimes, the obvious question is, "why?"

[22] There appears little doubt that Helen's life is the predictable result of neglect and abuse that she herself has suffered at the hands of her parents, partners, caregivers, and associates. Just as predictably, she has passed on many of those effects to her children: two are dead of drug-related causes and a son has serious psychiatric problems.

[23] Unfortunately, much of the therapy and counselling Helen has engaged in over the years has been ineffective at best and, more likely, counterproductive. It has allowed Helen to see herself only as a victim and to blame her violence on her own abuse. For instance, she reports and justifies assaulting men because they reminded her of her father. She has never developed any notable empathy for her victims.

[24] One of the most remarkable features of Helen's history of violence is its sheer persistence. Now nearing 60, she continues to offend when most have burned out.

[25] The second remarkable feature is that, particularly in more recent years, Helen is completely tractable in the community between the episodes of drinking and violence.

She lives quietly and engages with friends and community supports. The last year was no exception. On judicial interim release from early 2009 until June 2010, she created no problems whatever.

[26] The third remarkable feature of Helen's case is that, despite everything, she still enjoys a significant level of community support. During the course of the proceedings, the Court received a report authored by Mark Stevens, a justice worker with the Carcross Tagish First Nation. The report arose from a support circle held for Ms. Good in January 2010. That report, together with letters filed with the Court, clearly demonstrate the level of caring and support that exists.

[27] In order to designate Ms. Good as a long-term offender, the Court must be satisfied of three things. Section 753.1(1) provides:

“The court may, on application made under this Part following the filing of an assessment report under subsection 752.1(2), find an offender to be a long-term offender if it is satisfied that

- (a) it would be appropriate to impose a sentence of imprisonment of two years or more for the offence for which the offender has been convicted;
- (b) there is a substantial risk that the offender will reoffend; and
- (c) there is a reasonable possibility of eventual control of the risk in the community.”

[28] With respect to the first consideration, it is clear that a sentence of two years or more is appropriate. The Crown seeks a sentence of three years and does so with considerable justification. Helen has a forty-year-plus history of violent offending. She

has repeatedly assaulted Mr. Smith, who is her husband – a statutorily aggravating factor under s. 718.2(a)(ii) of the *Criminal Code*. Denunciation, deterrence, and especially, the safety and protection of the public, all cry out for a substantial period of imprisonment. At the sentencing hearing in June, Ms. Hill, on behalf of the offender, conceded this point, arguing for a sentence of two years. I reserved my judgment until September 10. On that date, Ms. Hill advised that her instructions had changed: she now sought a sentence of two years less a day. However, she also conceded that if the Court imposed such a sentence only after allowing credit for time served, the long-term offender designation could still be made: *R. v. Hall*, (2004), 70 O.R. (3d) 257 (C.A.).

[29] In my view a sentence two years or more is warranted. Thus, the first precondition has been satisfied.

[30] In regard to the second consideration, there can be no dispute. Given her history, there is a substantial risk that Helen will reoffend. Indeed, if she again resorts to the use of alcohol, reoffending is a virtual certainty.

[31] The third consideration is whether or not there is a reasonable possibility of eventual control in the community. I confess that this question raises some interesting issues. If, in an application for long-term offender designation, the Court concludes that there is no possibility of eventual control, it cannot, on its own motion, declare the respondent a dangerous offender. The only option would be to impose the maximum sentence provided by law and hope that proves sufficient. Not surprisingly, the defence

conceded this point, arguing that there is a reasonable possibility of control in the community.

[32] Of course, in Helen's case, again because of her exceedingly long history of violence, it would be easy to conclude that there is no prospect of control in the community – at least for longer than limited periods of time. Nonetheless, I conclude that there is some reason to believe that Helen can be managed outside of prison. She is getting older, she continues to enjoy community support, and she has been able to comply with her release conditions over a significant period. There is also evidence before me of a program available to women serving penitentiary sentences which offers the prospect of curbing Helen's violence. The intensive Dialectic Behaviour Therapy (DBT) Program is, according to Dr. Lohrasbe, the "gold standard" for treatment of offenders like Helen Good.

[33] At the end of the day, I conclude that all the preconditions for declaring Helen a long-term offender have been met. That said, I accept that a long-term offender designation should not inevitably follow. The section is not mandatory; it provides that a Judge "may" make the designation. Thus, there is discretion. That discretion should be exercised cautiously, carefully, and with restraint, having regard to the long-term impact on society but also on the offender. The designation should be reserved for the clearest of cases. At the same time, there is nothing in s. 753.1 to suggest that preventive detention measures can only be imposed in the "worst offender / worst offence" category of cases, *R. v. Hall, supra*.

[34] In my view, this is one of those clearest of cases. The offender's record of violence extends for over 40 years. It is punctuated only by periods of imprisonment or relatively brief periods of stability. The violence has continued to a time in life when most offenders have burned out. Her violent episodes are, most often, severe and, most often, perpetuated against defenceless victims. Despite years of therapy, the offender fails to take ownership of her violence, but continues to seek refuge in her own victimization as a justification. The assessments all say the same thing. She is at a very high risk to reoffend, particularly if she abuses alcohol.

[35] I hereby find Helen Good to be a long-term offender.

[36] I turn now to deal with the sentence to be imposed for the index offences.

[37] As already indicated, I am satisfied that a penitentiary term is warranted. The only issue is the length of that term. The maximum sentence that may be imposed on the s. 267 charge is ten years. The maximum on the s. 264.1 charge is five years.

[38] It should be noted that, at the sentencing hearing, I formed the impression that DBT treatment was only available in the federal penal system. If so, the availability of appropriate treatment is a powerful argument in favour of a federal sentence.

However, Ms. Hill now says that DBT can be accessed by inmates at the Whitehorse Correctional Centre (WCC). Nonetheless, in reviewing Dr. Boer's and Dr. Lohrasbe's reports, it is clear that they are referring to a particularly intensive form of DBT which is only available in the penitentiary. The limited information placed before the Court on the

program available locally did not satisfy me that this programming would meet Helen's needs.

[39] Ms. Hill also presented evidence of Helen's participation in treatment and counselling since her admission to WCC in June, suggesting that it would be counterproductive to interrupt these efforts. However, as the Crown points out, Helen has always participated in treatment while incarcerated but always repeats the pattern of offending once released. Moreover, as Dr. Lohrasbe points out, much of the counselling Helen has sought out has actually been counterproductive.

[40] In my view, it is time to try a different approach. That approach requires a penitentiary sentence. There is also good reason to believe that a sentence of less than two years would be inadequate, as such a sentence would fail to provide for the safety and protection of the public in general, and Mr. Smith in particular.

[41] I am satisfied that the sentence of three years contended for by the Crown is appropriate in all the circumstances having regard to the offender's overall history and, in particular, her history of assaults on Mr. Smith.

[42] Helen Good is sentenced to a period of imprisonment of three years on each count to be served concurrently. She is entitled to credit for time in remand awaiting sentence. This amounts to nearly five months at the ordinary rate of credit in effect at the time of the offence, leaving a remanet of thirty one months yet to be served.

[43] The next issue is the length of the long-term offender designation. In this case, the difficulty of treatment, the potential for quick relapse if Helen uses intoxicants, and (at the risk of repeating myself) the sheer length of her criminal history, cry out for the longest possible period of supervision. I order that Helen Good be subject to a long-term offender designation for a period of ten years following her release.

[44] The surcharges are waived.

[45] There will also be an order pursuant to s. 109 of the Criminal Code, prohibiting the offender from possessing any firearms, ammunition, or other thing enumerated in s. 109 for the remainder of her life.

[46] There will also be an order whereby the offender will provide samples of bodily substances for the purpose of DNA analysis and banking.

[47] I want to express my thanks and appreciation to Ms. MacDonald and Ms. Hill for the dedication, hard work, and professionalism they both brought to this case.

T.C.J. Faulkner