Citation: *R. v. Quintal*, 2016 YKTC 46

Date: 20160831
Docket: 15-00468
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before His Honour Judge Chisholm

REGINA

v.

EVAN BAILEY QUINTAL

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

Appearances:
Kevin W. MacGillivray — Counsel for the Crown
Norah Mooney — Counsel for the Defence

REASONS FOR SENTENCE

[1] CHISHOLM J. (Oral): Mr. Quintal sexually assaulted J.C. on June 7, 2015. The Crown has proceeded by way of summary conviction. Mr. Quintal entered a guilty plea at an early opportunity.

[2] Mr. Quintal was 18 years of age when he sexually assaulted J.C., who was 13 years old. They were both attending the same school in Mayo, Yukon. Mr. Quintal had periodically taken J.C. and her friends for rides in his family's vehicle before this offence.

[3] On June 7, 2015, Mr. Quintal picked up J.C. late in the evening. It was the first time they had been alone together. He drove to an abandoned office near Mayo. While still in the vehicle, he put his hand on J.C.'s leg. Although uncomfortable with this action, J.C. felt too scared to say anything. J.C. moved to the back seat of the vehicle, upon Mr. Quintal's request. He removed her pants and vaginally penetrated her with his penis. She had not previously engaged in sexual relations.

[4] After Mr. Quintal drove J.C. home, she showered and then emotionally broke down and cried.

[5] She provided a statement to police in late October 2015, after having previously disclosed the offence to friends.

[6] Upon learning of the charge, Mr. Quintal, who had by this time left the Yukon, turned himself into police. After seven days in custody, he was released on an undertaking.

[7] The Crown seeks a period of imprisonment of 14 months and a two-year probation order. The Crown points to the young age of the victim and the invasive nature of the sexual assault.

[8] The defence submits that a six-month term of imprisonment and a lengthy period of probation would be warranted. The defence relies on the prior good character of Mr. Quintal and his young age to support this range of sentence.

[9] J.C. read her victim impact statement into the record at the sentencing hearing. The actions of Mr. Quintal have had a negative effect on her emotionally and

psychologically. She is depressed and angry and has engaged in self-harm. She has had difficulty focusing because of the troubled emotional state in which she finds herself. She does not wish to be around older boys. She has had the support of her family in coming to terms with Mr. Quintal's abusive offence. She was relieved to see Mr. Quintal move away from the Yukon.

[10] Mr. Quintal is 19 years of age and lives in Iqaluit, Nunavut. He is employed in the property management field with the Nunavut government and, overall, has a good work history. He is well-regarded by his present employer. He has completed high school and plans to continue with studies in order to become a mechanic.

[11] Mr. Quintal is of Métis ancestry. His family's lifestyle is connected to their cultural background. His family has moved around the country due to his father's employment.

[12] Both Crown and defence highlighted the fact that *Gladue* factors are present in this case and that they should be considered by the Court.

[13] Mr. Quintal has a very supportive family. Letters of reference that have been filed reveal that this offence is completely out of character for him. Family and friends describe him as a caring and compassionate individual. He has no prior criminal history.

[14] It has recently been revealed that Mr. Quintal was sexually abused by an extended family member who lived with his family some 13 or 14 years ago. He has not received counselling in this regard, although he has indicated his willingness to do so.

[15] His mother mentions that he suffered in school from self-esteem issues, (eg. for being overweight). The Pre-Sentence Report reveals that he also experienced some bullying while in school. Mr. Quintal's family has experienced trauma in the last few years with the premature deaths of an aunt and uncle of Mr. Quintal

[16] As outlined in *R. v. Ipeelee*, 2012 SCC 13, and *R. v. Gladue*, [1999] S.C.R. 688, the Court must impose a sentence that fits the offence, the offender, the victim, and the community. Sentencing is a highly individualized process which reflects the circumstances of the offence and of the offender (see *Ipeelee* at para. 38 and *R. v. M.* (C.A.), [1996] 1 S.C.R. 500, para. 92). A sentencing court must consider all relevant sentencing principles in determining an appropriate sentence.

[17] One of the most important sentencing principles, found at s. 718.1 of the *Criminal Code,* is that a sentence is to be proportionate to the gravity of the offence and the degree of responsibility of the offender.

[18] The Supreme Court of Canada in *Ipeelee* stated at para. 37:

> The fundamental principle of sentencing (i.e., proportionality) is intimately tied to the fundamental purpose of sentencing — the maintenance of a just, peaceful and safe society through the imposition of just sanctions. Whatever weight a judge may wish to accord to the various objectives and other principles listed in the *Code*, the resulting sentence must respect the fundamental principle of proportionality. Proportionality is the *sine qua non* of a just sanction. First, the principle ensures that a sentence reflects the gravity of the offence. This is closely tied to the objective of denunciation. It promotes justice for victims and ensures public confidence in the justice system. ...

[19] The Court goes on to say:

> …Second, the principle of proportionality ensures that a sentence does not exceed what is appropriate, given the moral blameworthiness of the offender. In this sense, the principle serves a limiting or restraining function and ensures justice for the offender. ...

[20] Pursuant to s. 718.01 of the *Criminal Code*, when an offender is sentenced for abusing a person under the age of 18, primary consideration shall be given to the objectives of denunciation and deterrence. Section 718.2(a) also lists this element as an aggravating factor.

[21] Nevertheless, I must also consider the youth of this offender and the principle of rehabilitation in crafting an appropriate sentence. Although the principles of denunciation and deterrence are paramount, I must show as much restraint as possible for a first offender of this young age. I should impose the shortest possible sentence that will achieve the relevant sentencing objectives. (see *R. v. Q.B.,* (2003) 63 O.R. (3d) 417 at para. 36)

[22] Section 718.2(e) of the *Code* is also applicable. It states:

> (e) all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of aboriginal offenders.

[23] The Crown relies on two cases to support the range of sentence it seeks.

[24] In *R. v. Whiting*, 2013 SKCA 101, the Court of Appeal considered an offence involving a 19-year-old offender who sexually assaulted a 14-year-old girl whom he had

met online. The online conversation was of a sexual nature. The victim had not previously had sexual relations. The offender convinced the young girl to see him, at which time he sexually assaulted her. The Court of Appeal determined that an appropriate penalty was one of 14 months' imprisonment followed by six months of probation.

[25] In *R. v. Pritchard*, 2005 ABCA 240, the Court of Appeal dealt with a 19-year-old offender who met the 13-year-old victim by way of an Internet chat room. He was clearly aware that she was only 13 years of age. The accused met the victim in person on two occasions. On the second occasion, he had unprotected sexual intercourse with her. The Court noted that there was an aspect of luring to this offence. The Court of Appeal determined that an appropriate range of sentence for this type of offence was 14 to 18 months' imprisonment. However, due to the offender's circumstances at the time of the appeal, the Court imposed a sentence of two years less a day to be served conditionally.

[26] I have also referred to other cases, including *R. v. Butler* (an unreported decision of Her Honour Judge Ruddy, dated September 9, 2014), involving a 24-year-old male sexually assaulting a 15-year-old girl. The sexual assault consisted of full vaginal intercourse. At the time of the offence, he was on a condition to have no contact with the victim, as he had been charged with other sexual offences against her. He pleaded guilty to the offence on the day scheduled for trial. Mr. Butler had a prior criminal record, which included two offences of violence from 2012 and a previous offence of sexual interference when he was a youth. He had been the victim of a sexual assault by an older woman when he was 14 years of age. The offender displayed little remorse

and his prospects of rehabilitation were limited. Judge Ruddy sentenced him to 15 months' imprisonment to be followed by two years of probation. The Crown had proceeded by way of summary conviction.

[27] In *R. v. William*, 2014 BCSC 1639, a decision of the British Columbia Supreme Court, the young adult offender sexually assaulted a 15-year-old girl. He was convicted after trial. He was of First Nation ancestry and had experienced a difficult upbringing. He had made recent progress in counselling. The Crown had proceeded by indictment. The Court imposed a one-year term of imprisonment plus three years' probation.

[28] In determining the appropriate sentence in this matter, I have considered the serious invasive nature of the offence Mr. Quintal committed. He has caused J.C. significant emotional and psychological harm. He did not make any effort to determine her age and took no steps to establish what some courts have labelled as *de facto* consent. I must deter Mr. Quintal and others from this type of conduct.

[29] At the same time, there are a number of mitigating factors to be considered: his early plea of guilt; his remorse; the fact that he is a young adult; his prior good character; the fact that he has been a productive member of society; the fact that he is at low risk to reoffend; and the *Gladue* considerations that are present.

[30] Based on all the information before me, I am convinced that this offence is out of character and will not be repeated. In my view, a moderate period of incarceration followed by a lengthy period of probation would produce a fit sentence. The range of sentence for this type of offence is arguably 12 months' imprisonment and upward.

[31] However, as the Supreme Court of Canada reminded us in *R. v. Nasogaluak*, 2010 SCC 6, sentencing ranges are guidelines and not absolute rules. The Court stated that:

> [44] ...A judge can order a sentence outside that range as long as it is in accordance with the principles and objectives of sentencing. ...

[32] In my view, the mitigating factors which are present in this case move the appropriate sentence downward to a 10-month term of imprisonment followed by a two-year probation order. Reducing the sentence for the short period of pre-sentence custody, a remanet of nine months and 19 days remains.

[33] The terms of the probation order are that Mr. Quintal:

1. Keep the peace and be of good behaviour;

2. Appear before the court when required to do so by the court;

3. Notify the Probation Officer in advance of any change of name or address, and promptly of any change of employment or occupation;

4. Have no contact directly or indirectly or communication in any way with J.C;

5. Not attend any known place of residence, employment or education of J.C;

6. Report to a Probation Officer immediately upon his release from custody and thereafter, when and in the manner directed by the Probation Officer.

7. Reside as approved directed by his Probation Officer;

8. For the first four months of this order, he will abide by a curfew by being inside his residence or on his property between 10 p.m. and 6 a.m. daily, except with the prior written permission of his Probation Officer, except in the actual presence of a responsible adult approved in advance by his Probation Officer. He must answer the door or the telephone for curfew checks. Failure to do so during reasonable hours will be a presumptive breach of this condition;

9. Attend and actively participate in all assessment and counselling programs as directed by his Probation Officer, and complete them to the satisfaction of his Probation Officer, for the following issues:

    psychological issues,

    any other issues identified by his Probation Officer,

    and provide consents to release information to his Probation Officer regarding his participation in any program he has been directed to do pursuant to this condition;

10. Participate in such educational or life skills programming as directed by his Probation Officer and provide his Probation Officer with consents to release information in relation to his participation in any programs he has been directed to do pursuant to this condition;

11. Make reasonable efforts to find and maintain suitable employment and provide his Probation Officer with all necessary details concerning his efforts.

[34] I also impose the following ancillary orders:

- a mandatory DNA order pursuant to s. 487.051(1) of the *Criminal Code* authorizing the taking of samples of bodily substances from Mr. Quintal which are reasonably required for DNA analysis and recording;

- an order that Mr. Quintal's name be added to the Sex Offender Registry; and that he comply with the *Sex Offender Information Registration Act* for 10 years pursuant to ss. 490.012(1) and 490.013(2) of the *Code*.

[35] I have considered but declined to make a weapons prohibition pursuant to s. 110 of the *Criminal Code*. I have come to this decision as there is nothing in the facts of this offence which would suggest that such an order is warranted.

[36] I have also considered but declined to make any order pursuant to s. 161 of the *Criminal Code*.

[37] There is a victim fine surcharge of $100, which will be payable forthwith.

[38] Count 1, Mr. MacGillivray?

[39] MR. MACGILLIVRAY: The Crown directs a stay of proceedings.

[40] THE COURT: Stay of proceedings.

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CHISHOLM T.C.J.