Citation: *R. v. Skookum*, 2016 YKTC 62

Date: 20161110
Docket: 15-00325
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before His Honour Judge Luther

REGINA

v.

ANTHONY CHARLIE SKOOKUM

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:
Susan E. Bogle — Counsel for the Crown
Lynn MacDiarmid — Counsel for the Defence

REASONS FOR SENTENCE

[1] LUTHER J. (Oral): The Court is concerned this afternoon with Anthony Charlie Skookum, who had been charged with a sexual assault on April 19, 2015, at Whitehorse, Yukon, on a female person, S.C. He pleaded guilty to this charge. There was an Agreed Statement of Facts, which was tendered into evidence and is part of the record. There are two previous sexual offences for which we also have an Agreed Statement of Facts and, again, these are part of the record.

[2] The Crown has sought to have me find Mr. Skookum to be a dangerous offender under s. 753(1)(b) of the *Criminal Code*.

[3] In addition to the three sexual offences on his record, the first one of which occurred when he was a young person, there is also a very significant criminal record, which includes at least 15 failing to comply with court orders, mostly as an adult; as a youth, two violent crimes under ss. 267(a) and 268 of the *Criminal Code*; and as an adult, ss. 72 and 267(b) of the *Criminal Code*, both of which, as I recall, occurred after he was released on the sex offence involving a young girl. Mr. Skookum was convicted of sexual offences in 2006, 2011, and then the present one. I note that Mr. Skookum was born in May of 1990.

[4] With the amendments to the *Criminal Code* the Parliament of Canada has established a fairly low threshold for a dangerous offender finding, and that was acknowledged by a number of decisions, including that of my brother, Judge Cozens, in the case of James William Smarch, *R. v. Smarch*, 2014 YKTC 51. Reading at para. 201 of that decision Cozens, J. states:

> I find that s. 753(1)(b) creates a low threshold for declaring an individual to be a dangerous offender. Mr. Smarch has, in the past and in the predicate offence, shown a failure to control his sexual impulses. He is noted to be at a high risk to re-offend. He is not in a position to state that actions he has taken since the commission of the offence, such as involvement in counselling and programming, have reduced his risk of re-offending from that of high risk to that of a lesser risk. If he re-offends sexually his re-offending will undoubtedly cause "injury, pain or other evil to persons". This injury, pain or other evil will be through his failure to control his sexual impulses. In light of my finding in regard to these factors, I have no choice, given the wording of s.

> 753(1)(b) but to declare Mr. Smarch to be a dangerous offender.

[5] That James William Smarch was declared a dangerous offender does not automatically mean that Mr. Skookum will be as well. Each case is decided on its own facts. The predicate offence here is far more serious than that of Mr. Smarch.

[6] Defence counsel have argued that the Crown has failed to prove the third part of the test involving the future:

> 753(1)(b) ...a likelihood of causing injury, pain or other evil to other persons through failure in the future to control his or her sexual impulses.

[7] The argument of the defence is to the effect that Mr. Skookum is now older and more mature, that he is more responsive, and that the present offence with the potential consequences have caused him to experience a significant wake-up call. He claims that now he fully realizes that he cannot drink alcoholic beverages anymore. Mr. Skookum has done a lot while he has been in custody at the Whitehorse Correctional Centre. I agree with that. Basically, he has done all that he can do there.

[8] We are not concerned about what risks Mr. Skookum posed to the public in the past. He has been in custody since near the end of August 2015. Dr. Lohrasbe interviewed him on July 14, 2016. At that point he had been in custody for 11 months. Dr. Lohrasbe's Report is dated August 28, 2016.

[9] From the time of the offence, back in April, until the time that he was remanded in custody, Mr. Skookum did very well for himself. For the most part, he was gainfully employed and, as I recall, did not get into any further trouble in that brief span of time.

[10] Dr. Lohrasbe is a forensic psychiatrist with considerable experience and is highly regarded and respected throughout western Canada, where he has done most of his work. Certainly here in this Territory he is highly regarded and respected. Despite the fact that Mr. Skookum was experiencing a wake-up call and despite the fact that he had been in custody for some time, Dr. Lohrasbe concluded that Mr. Skookum is at high risk to re-offend as of the date of the Report. I would agree with that.

[11] If we take a look at page 20 of Dr. Lohrasbe's Report, under the heading "Risk Assessment", third paragraph:

> With such an established history of varied violence it is clear that without effective treatment interventions and effective risk management Mr. Skookum is at high risk for acts of violence in the foreseeable future.

And then at page 22, paras. 4 and 5, Dr. Lohrasbe is talking about the 2011 offence involving the young girl:

> If Mr. Skookum is being truthful about in his claims of total amnesia for the incident and of no sexual interest in children, we have very clear information as to the extreme ways he can be 'out of control' during an alcoholic blackout; he is capable of a sexual assault against a child, something that he claims to find reprehensible. With such a scenario, it is hard to place outer limits on what he is capable of doing. Those actions 'came from somewhere' and that somewhere was within Mr. Skookum, not some disembodied source.
>
> It is conceivable that, in a drunken state, Mr. Skookum did not perceptually distinguish between an adult and a child, which is perhaps from his perspective the 'best-case' scenario as explanation. However, that hypothesis only shifts the source of risk from unacknowledged deviant thoughts/fantasies to capacity for gross perceptual error when intoxicated. The risk to a future victim is independent of what drove his behaviour.

And then two paragraphs down:

> I emphasize that with any of these hypothetical scenarios, there is the need for sex offender therapy. It is an area that has been unaddressed.

[12] So to summarize, the fact that Mr. Skookum was out of trouble and gainfully employed from April 19 to his arrest in August does not mean that he is no longer at high risk to re-offend.

[13] We heard from Mr. Sean Couch-Lacey, who has been passionate and devoted in his efforts to establish a new pilot program for sex offenders in the Yukon, and for this, he is to be highly commended. The details of this program are contained in Exhibit 6.

[14] It is my opinion that the Yukon program in all likelihood will meet many local offenders' needs, especially for first offenders, and it is important to get this program going. A program of this nature has to start somewhere. There have been other programs in the past but I believe this one is better than all of the previous local programs they have had.

[15] However, through his testimony, we heard from Mr. Couch-Lacey that this is a pilot program, it has a tentative start, it is experimental, and he also used the words "hope" and "possible". This program in its infancy, and perhaps even in its maturity, cannot compare in scope with the well-established federal programs. An analysis of Exhibit 3 reveals a comprehensive and thorough program available in the federal system, which covers all the important bases and takes about five months from commencement to end, if all goes well.

[16] In Dr. Lohrasbe's recommendations, the first four are:

> a) There is a high likelihood that he will commit an act of sexual and/or general violence.
>
> b) He has responded poorly to past treatment efforts.
>
> c) If future treatment interventions are to be more effective, they should be intensive and comprehensive.
>
> d) Intensive and comprehensive treatment programs are delivered by the Correctional Service of Canada (CSC).

[17] I want to refer to Tab 10 of this is a Pre-Sentence Report that was completed by Probation Officer Robin Treusch back in the spring of 2012. At that time, Mr. Skookum was facing a charge under s. 733.1(1). He had already been convicted of the sexual assault involving the young child and for that was given a long territorial sentence and a long probation period. That should have been the wake-up call, the fact that he did something that he would have never dreamed of doing, then gets released, then gets on probation. This is what is interesting about that:

> Although Mr Skookum has participated in intensive treatment with little, if any, impact. Mr Skookum lacks the insight into the consequences that his substance abuse has on his offending behaviour therefore contributing to his high risk to re-offend. The writer has been intensively supervising Mr Skookum with an initial reporting schedule of three times per week to an increase of reporting daily due to his increased use of alcohol, not abiding by his conditions, failure to find employment and dishonesty. Psychological reports and risk assessments place Mr Skookum in the high risk category to re-offend both violently and sexually.

[18] Defence has asked that I look at some cases in their quest to have me not declare Mr. Skookum to be a dangerous offender. One of them I looked at was from the Ontario Superior Court, *R. v. P.H.*, [2005] O.J. No. 5698 (S.C.), a case that is easily

distinguishable from the one we have here because it is highly unlikely that the judge would have reached the same decision in *P.H.* if P.H. were 10 years older and if Dr. Skilling, in that case, had not concluded that the needs of P.H. could best be met in the juvenile justice system. There is a slightly different issue there but a similar process that we go through as judges. At para. 31:

> Based on the current medical evidence, there is no reason to believe that P.H. will be found to be at substantial risk of re-offending in respect of the types of offences...

[19] And then if we take a look further, we see that the Ontario Court of Appeal has dealt with this issue in cases of *R. v. Szostak*, 2014 ONCA 15 and *R. v. D.M.L.*, 2012 ONCA 78. I refer to para. 4 of the *D.M.L.* case and para. 43 of *Szostak*.

[20] Even with the compassionate and understanding sentence that Mr. Skookum received for the second sex crime and the best efforts of the local probation services, he offended violently again in 2014 and then this major sexual assault in April of 2015. He was cavalier in his approach to drinking and hanging out with his buddies when he knew full well that when he did so, he was going to get in further trouble and create more victims.

[21] As to s. 718.2(e) of the *Criminal Code* dealing with aboriginal offenders, I do fully accept the reasons set out in *R. v. Paxton*, 2013 ABQB 750 at paras. 454 and 455, and would state that, yes, there are clearly *Gladue* factors in this case, as seen on pages 4 and 5 of Dr. Lohrasbe's reports and in the numerous other reports in the voluminous file. Of note, though, he was treated well by both foster families. I am not downplaying the

issues that he was facing, but unlike a lot of other individuals that we see, he was treated well by both foster families.

[22] The Crown has properly indicated that the paramount consideration here is protection of the public. I agree. Therefore, the Court has no hesitation whatsoever in finding Mr. Skookum to be a dangerous offender.

[23] The Crown is seeking a determinate sentence of five to six years plus a 10-year Long Term Supervision Order ("LTSO"). The penitentiary sentence recommended by the Crown is on top of the 21 months, which I am going to make it to be 22 months' credit for time already at the Whitehorse Correctional Centre.

[24] Defence's proposal is for a sentence of three to four years less the 22 months.

[25] In my opinion, the Crown's position is somewhat excessive and defence's position is unrealistic.

[26] For a first offence of the nature of the crime from April 19, 2015, we know from the Supreme Court of the Yukon in *R. v. White*, 2008 YKSC 34 that the range would be from 12 to 30 months. This has been upheld by the Yukon Court of Appeal in *R. v. Rosenthal*, 2015 YKCA 1.

[27] However, the comprehensive work done by Gower J. in *White* is talking about people convicted for first time sexual offences. Yes, most of them had criminal histories of some sort but we are talking about first time sex offenders. It is important to note, and this is often overlooked, that at para. 44 of the *White* decision, Gower J. says that the range could, in fact, go to seven years. Clearly, the 12 to 30 months is not the

range for a third offence, especially for someone with such an extensive record, which includes crimes of violence and over 15 breaches of court orders.

[28] Even though we are dealing with a different framework under s. 753, it would be wrong to inflate a penitentiary term just to make sure that the Pacific Region of Correctional Services of Canada ("CSC") can fit Mr. Skookum into their program. Through the witnesses in this hearing, we are familiar with the parole process and also the procedures at the Regional Reception Centre in Abbotsford, British Columbia. We are also familiar with much of the established and fine programming for First Nations men in the Pacific Region. We never really heard about women's programs.

[29] In analyzing this, by the time Mr. Skookum is transferred out of the Yukon and is properly assessed, we are looking at four to five months' time being served. Mr. Zagozewski explained that there is usually a waiting list for the intensive sex offender programming that Mr. Skookum is in need of and which he must complete. The CSC official explained in some detail the program that we see well-outlined in Exhibit 3. Ideally, this can be completed in five months. However, realistically, it will be somewhat more than that, depending on the waiting list.

[30] I am not going to inflate a sentence merely to accommodate any *unnecessary inefficiencies* nor am I going to naively or somewhat arrogantly expect the man that I sentence to receive undue preferential treatment. Nonetheless, I do have a realistic anticipation that the reception and intensive sex offender programming can and should be completed within a period of 18 months. We know that the waiting lists get reviewed and re-assessed regularly.

[31] In addition, there are First Nations cultural programs that are available and are highly spoken of, in addition to other worthwhile educational and other programming, so that we have a reasonable expectation that something lesser than an indeterminate sentence will adequately protect the public from a further serious personal injury offence. The Crown has fairly taken the aspect of an indeterminate sentence off the table. Dr. Lohrasbe also agrees with this reasonable expectation test. So do I.

[32] At long last, through fear or perhaps maturity, this offender appears to be motivated to change and to fully engage in the program and the programs that will be made available to him.

[33] To conclude, the paramount consideration is the protection of the public. With his background and continuing high risk, we must do our utmost within the law to avoid creating more victims.

[34] Thus for the predicate offence:

- The Court imposes a sentence of 72 months less 22 months' credit for time on remand, for a total of 50 months;
- There will also be a 10-year LTSO;
- Naturally, the victim surcharge of $200 is hereby payable forthwith;
- The s. 109 order is for life;
- There will be a DNA order;
- There will be a lifelong SOIRA order; and

- There will be a s. 760 order disclosing all available documents and CDs of the evidence to the Correctional Service of Canada.

[35] Despite my finding that Mr. Anthony Charlie Skookum is a dangerous offender, I recommend in the strongest terms possible to the CSC that this young man, who has never served a penitentiary sentence before, not be classified as a maximum security risk and, furthermore, that on a best efforts basis, the CSC Pacific Region will ensure that the programming he needs will be made readily available to him as soon as possible.

[36] I would like to thank both counsel, Ms. Bogle and Ms. MacDiarmid for their fine work, their hard work on this difficult case.

[DISCUSSIONS]

[37] Mr. Skookum, would you stand, please?

[38] I am really trusting that you will be able to put this behind you and that you will be able to move forward with your life. We have talked about some good plans that you have for the future but we cannot overlook the harm that you have caused to these three women, one of whom was a little girl. But I do not want you to continue feeling guilty forever. I want you to get totally immersed in this program. We have seen what the program is all about and I am convinced, as is Dr. Lohrasbe, that if you fully apply yourself to this and you are fully motivated, you essentially can come out a new man.

You have a lot of potential and you can make a good life for yourself and achieve the things which you talked about when you were on the stand here a short while ago.

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LUTHER T.C.J.