

Citation: *R. v. Torres*, 2013 YKTC 5

Date: 20130228
Docket: 11-00618
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before: His Honour Chief Judge Cozens

REGINA

v.

RODRIGO MORENO TORRES

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

Appearances:
Keith Parkkari
Robert Dick

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCING

[1] This matter was before me on January 10, 2013. At that time I gave oral reasons and indicated that written reasons were to follow. These are my written reasons:

[2] Rodrigo Torres was convicted after trial of having sexually assaulted L.W. contrary to s. 271 of the *Criminal Code*. In the early morning of December 3, 2011, Mr. Torres, who was operating a taxi in Whitehorse, picked up L.W. as a fare, drove her firstly to her home but then drove to a nearby bus turnaround where he had sexual intercourse with her without her consent. L.W. was intoxicated and Mr. Torres made a

somewhat spontaneous decision to take advantage of the situation and sexually assault her. The issue at trial was whether the sexual intercourse was consensual, as there was no dispute that the sexual intercourse had in fact occurred. L.W. testified that she had blocked out most of the circumstances of the assault, and there is no evidence that she physically or verbally resisted the assault. I found, however, that L.W. did not consent to the sexual intercourse and that Mr. Torres did not take the necessary steps to ensure that he had her consent prior to having sexual intercourse with her and, as such, he had committed the offence of sexual assault.

Positions of Counsel

[3] Crown counsel submits that the appropriate range of sentence should be between three and a half to four years.

[4] Defence counsel submits that a sentence of 18 to 24 months would be appropriate.

Personal Circumstances of Mr. Torres

[5] Mr. Torres is 41 years old. He is a Mexican citizen who has been in Canada on a work visa since 2008. His work visa has been revoked as a result of his conviction for this offence.

[6] He has no criminal record in Canada and says that he has no criminal record in Mexico; a statement that is uncontradicted.

[7] Most of Mr. Torres' family reside in Mexico, including two sons aged 9 and 13, as well as the majority of his friends. Mr. Torres has returned to Mexico for several months

each year since coming to Canada. Mr. Torres was married to a Whitehorse resident in October 2011 and they have a one year old daughter. His wife also has two other children. Mr. Torres and his wife separated approximately one month after the marriage. They maintained contact until he was recently incarcerated after being convicted of this offence.

[8] Mr. Torres has a high school certificate and he has completed the first year of a two year accounting course. He has not completed the course due to the difficulties associated with working full-time and attending school. He plans to further his education.

[9] Mr. Torres has been working in one capacity or another since he was eight years old. He worked as a taxi driver for the same company in Whitehorse from 2008, until the terms of his release conditions imposed December 7, 2011 made continued work as a taxi driver not feasible for him. I understand that he has been, by his own admission, working illegally since then. He has been described by his former employer, Mr. Jackson, as “a hard worker who was honest, trustworthy and punctual”. Mr. Torres resided with his employer and his family for a period of time and was further described as being respectful to his employer and the employer’s family. Mr. Jackson filed a letter of support for Mr. Torres and was present in court at the sentencing.

[10] Mr. Torres has been “clean and sober” for many years. He continues to attend AA meetings while incarcerated in the Whitehorse Correctional Centre. Mr. Torres was assessed as being at a low risk for re-offending, using the LS/CMI assessment tool. The only elevation to his level of assessed risk is related to his attitude and beliefs

surrounding his responsibility for the sexual assault. Mr. Torres continues to maintain his position that he is not guilty of the offence for which he was convicted.

Victim Impact Statement

[11] A Victim Impact Statement (VIS) was filed. L.W. states that the sexual assault has left her an emotional wreck and depressed with suicidal thoughts. She states that she left her employment due to the impact of the stress upon her.

Law

[12] Several cases were provided to the court by counsel regarding the range of sentences for sexual assault, including cases where the offender was a taxi driver.

[13] In *R. v. White*, 2008 YKSC 34, Gower J. examined in detail the Yukon case law with respect to sexual assaults committed against unconscious or passed out victims, as well as jurisprudence from other jurisdictions. He concluded in paras. 85 - 87 that:

...the current range in the Yukon for non-consensual sexual intercourse with a sleeping or unconscious victim, which is admittedly a very broad description of a type of sexual assault, with some exceptions, is roughly from one year, at the lower end, to penitentiary time in the vicinity of 30 months, at the higher end.

I note that the upper end of this range is slightly lower than the upper end of the range for similar circumstances in sentences imposed in the Northwest Territories and elsewhere in western Canada. However, that is a matter for consideration by our Court of Appeal and not one for this Court to pass judgment on.

Further, as noted in *Bernier* [*R. v. Bernier*, 2003 BCCA 134], I am not suggesting this range is conclusive. Greater or lesser sentences will be justified where circumstances warrant. This range is only suggested as a shorthand way of describing what the courts in Yukon have done in previous cases where the offence and the offender were similar to those in the case at bar.

[14] **White** involved a conviction after trial. The circumstances were as follows: the victim had been drinking with Mr. White and others to the point where she was “pretty intoxicated”. She left the bar with Mr. White, who had assured a concerned friend of the victim that she would be “okay” with him and he could be trusted. The victim ended up in the offender’s bed in his residence at Yukon College. Both the victim and Mr. White attended classes at the College. The victim and Mr. White were kissing, while fully clothed, until the victim told Mr. White that she wanted to sleep on her side of his bed, to which Mr. White told her that was okay and she did not have to worry. The victim awoke later to find that her pants and underwear had been removed. Mr. White was on top of her trying to have sexual intercourse. He ignored her repeated protestations and continued to attempt to have intercourse for a further 10 minutes or so until abandoning the effort.

[15] Mr. White was a 39 year old aboriginal offender who continued to deny having committed the offence. He had a prior, albeit dated, criminal history, including a conviction for aggravated assault. He was assessed as being at a high risk for re-offending in general and as being at a moderate risk for re-offending sexually.

[16] Justice Gower found that there were several aggravating circumstances:

- There was an element of a breach of trust in that the victim knew Mr. White and he provided assurances to her, and to a friend, that he could be trusted;
- Mr. White took advantage of the victim while she was asleep and unable, at least initially, to consent or resist;
- Mr. White did not stop the assault despite the victim’s protestations;

- The victim suffered some injury to her perineal area;
- Mr. White had a prior criminal record for 10 offences, including one of violence;
- Mr. White's high and moderate risk assessment;
- Mr. White's serious alcohol and drug addiction problem for which he refused treatment, thus increasing his risk for future re-offending.

[17] The mitigating factors were Mr. White's aboriginal status and associated dysfunctional upbringing, including abuse, his attempts to upgrade his education despite suffering from learning disabilities, and the positive reports of his helpfulness and volunteer work.

[18] Neutral factors included the lack of proof of actual penetration during the attempted intercourse, the denial of responsibility for the commission of the offence and the 16 year age difference between Mr. White and the victim.

[19] Gower J. concluded that the principles of deterrence and denunciation were paramount and sentenced Mr. White to incarceration for a period of 26 months.

[20] Several other cases were provided from non-Yukon jurisdictions involving sexual assaults by taxi drivers against passengers.

[21] In *R. v. Aulakh*, 2010 BCSC 1194, the taxi driver stopped his cab and sexually assaulted the highly intoxicated 19 year old victim, who suffered vaginal injuries either from penetration of his penis or fingers, as well as additional non-vaginal bruising, an abrasion and a laceration. Mr. Aulakh further used the victim's debit card and pin number she provided to subsequently make unauthorized cash withdrawals from her bank account. Mr. Aulakh was 46 years old, was the sole breadwinner for his family

and had numerous positive letters of support. He had one prior dated criminal conviction for theft. Mr. Aulakh denied having committed the sexual assault, although he plead guilty to the two theft charges part-way through trial and expressed remorse about having used her debit card. A sentence of four years was imposed on the sexual assault charge and nine months concurrent on each of the theft charges. Ehrcke J. stated the following in para. 36:

...When a passenger enters a taxi cab, he or she is entitled to assume that they are entering a place of relative safety. That is one of the reasons for taking a taxi cab. Indeed, the circumstances of the present case illustrate that very point. Both the complainant and her friend assumed that taking a taxi was the responsible and safe way of dealing with the situation they were in, namely, having to get the complainant home without harm, despite her intoxicated condition. They were entitled to rely on the integrity of the taxi driver to deliver her to her destination by a direct route free from molestation. Instead, the accused in this case took advantage of the extreme vulnerability of an intoxicated 19 year old. He sexually assaulted a defenceless young woman less than half his age in a forceful and degrading fashion. The degree of force he used is illustrated by the injury he caused to her vaginal area. This was a shameful and cowardly act.

[22] Ehrcke J. also referred in paras. 39 and 40 to the following quotes from *R. v. Savard* (1979), 55 C.C.C. (2d) 286 (Que. C.A.), and *R. v. Dale*, [1998] B.C.J. No. 235 (S.C.), both of which involved sexual assaults by taxi drivers upon victims that were passengers in their cabs:

39 ...

There is no doubt in my mind that taxi drivers (as, indeed, others in similar occupations) occupy positions of trust. Citizens must feel safe in hailing cabs, especially at night (when this might be the only means of transport), and

incidents of this nature must be prevented, insofar as it is within the power of the courts to do so. That by itself would warrant a sentence which, one would hope, will deter others... (**Savard**)

40 ...

In considering an appropriate sentence for the accused, the aggravating factors loom large. The accused stood in a position of trust in relation to the young complainant. He had a duty to protect her, to offer her a safe haven, and to convey her safely from one location to another. All members of the public rely on taxis as a safe means of transport, particularly when they have consumed alcohol or when the hour is late. Young people are encouraged to take a taxi rather than endanger their safety by walking the streets alone at night. The accused abused this position of trust to enable himself to commit the heinous crime of sexually assaulting an innocent teenage girl. (**Dale**)

[23] **Aulakh** involved a significant degree of premeditation as Mr. Aulakh stopped his taxi several times before turning off the internal camera and then committing the sexual assault.

[24] In **R. v. Singh**, 2012 BCSC 466 a 26 year old taxi driver was convicted at trial of sexually assaulting an extremely intoxicated victim by taking her to his residence instead of her boyfriend's house, and inserting his penis into her mouth. The trial judge stated that "The entire community feels at risk when the well-used and relied upon safety of a taxi ride home after a night of drinking becomes a potentially predatory opportunity for sex assault". (para. 4)

[25] Mr. Singh had no prior criminal record and no history of sexual offending and was initially assessed at being of a low to moderate risk for future re-offending. By the time

of sentencing, Mr. Singh had acknowledged that he took advantage of the situation and that what he did was morally wrong, although he struggled with accepting that it was also aggressive, violent and criminal. His risk for future sexual re-offending was assessed as being very low.

[26] After canvassing numerous authorities regarding sexual assaults by taxi drivers against individuals who were in the cab as fares, including **Savard, Dale** and **Aulakh**, Mr. Singh was sentenced to incarceration for a period of two years less a day plus one year of probation. The aggravating factors were the breach of trust of a taxi driver taking advantage of a very drunk female passenger and the excessive and profound impact on the victim. In mitigation was the absence of a criminal record, his youth, his work ethic and his realization of the jeopardy his crime posed to his status in Canada, his low risk to re-offend and his expression of some remorse.

[27] In sentencing Mr. Singh, the trial judge stated the following in para. 19:

...The principles of general deterrence and denunciation of this conduct are important sentencing factors here when the situation involves a serious breach of trust. Taxi drivers are recognized to hold a special position of trust to the travelling general public who rely upon taxis late at night as a safe means of transportation home. This is especially so when the passenger is intoxicated and young. ...

[28] In **R. v. Malik** 2012 BCSC 502, a 47 year old taxi driver took a 17 year old intoxicated passenger to his home after dropping off her more intoxicated friend. In his home he changed into a bathrobe and forcibly attempted to put his penis into the victim's mouth and to remove her bra and dress. The victim resisted and, at one point

in the struggle, she ended up on the floor with Mr. Malik on top of her. She was subsequently able to escape without further sexual assault.

[29] Mr. Malik had no criminal record, was well educated, had a solid work history and was very involved in the community through coaching and volunteer work. The trial judge noted as aggravating the position of trust he was in as a taxi driver, the age of the youth and her intoxicated state. In mitigation were his family circumstances and otherwise spotless, perhaps even exemplary community circumstances, as well as the public shame already in effect through media coverage. Mr. Malik did not demonstrate any remorse or show any insight into his behaviour, therefore there was no mitigation in that respect.

[30] In stressing the importance of the sentencing purposes of denunciation and deterrence, Blok J. stated in para. 43 that: “All women – all people for that matter, but women in particular – must be able to feel safe in a taxicab.”

[31] The sentencing judge described Mr. Malik’s behaviours as being more opportunistic in nature rather than predatory or pre-planned.

[32] Mr. Malik was sentenced to 18 months incarceration followed by two years probation.

[33] In **Dale**, a 39 year old taxi driver was transporting a moderately impaired 17 year old passenger from a residence to a store where she made some purchases, and then back to the same residence. She was celebrating her high school graduation with friends. After leaving the store, Mr. Dale drove to a dark residential area unknown to

the victim. He offered her money, inserted her fingers into her vagina and then had sexual intercourse with her without her consent and despite her protestations. The victim did not try to fight him off because she was afraid that "...if she screamed, or tried to escape, or did anything that would make him mad, he would hurt or kill her." (para. 4). He took her back to the residence where he flicked a \$20.00 bill on her. The negative impacts on the physical, emotional and psychological areas of the victim's life were significant. The accused had no criminal record and was a landed immigrant in Canada who was married with one child. The aggravating factors were the breach of trust, the predatory nature of the offence, given the victim's age and level of intoxication, and the devastating impact that the offence had on the victim. The accused had demonstrated no remorse for or insight into his crime and the court found that there were no mitigating factors. Mr. Dale was sentenced to five years in custody. (I note that the Crown position was for a sentence of two and a half to four years).

[34] In **Savard**, a 31 year old taxi driver raped his female passenger over a period of almost two hours before taking her to her destination. The victim was subjected to threats and a fear of injury. Mr. Savard had nine previous convictions, including one for indecent exposure, and was on probation for an aggravated assault at the time he committed this offence. The sentencing judge considered this prior record as an aggravating factor in that it showed "a total disregard for law and order". Mr. Savard was sentenced to five years custody.

[35] In **R. v. Randall**, 2012 NBCA 25, the New Brunswick Court of Appeal upheld a sentence of 30 months imposed by the trial judge on a taxi driver, who was convicted after trial of taking a highly intoxicated 18 year old passenger to his residence and

having sexual intercourse with her without her consent. The accused had no criminal record and was a single parent.

[36] Other cases provided to the court illustrate sentences imposed for sexual assault not involving taxi drivers.

[37] In *R. v. G.E.W.*, [1993], 28 B.C.A.C. 189 a sentence for sexual assault was increased from two years to four years on appeal. The 26 year old accused brutally assaulted his girlfriend shortly after she ended the relationship, forcing her to perform oral sex on him and to engage in sexual intercourse. The accused had a significant criminal record, including a conviction for sexual assault with a weapon in 1983 for which he received a four year jail sentence. This prior sexual assault also included a high degree of violence. The present offence was committed just 10 months after the period of mandatory supervision for this prior sexual assault had concluded. The accused denied responsibility for the offence and was considered to be a poor candidate for rehabilitation.

[38] In *R. v. Le*, 2003 BCCA 545, a sentence of three and a half years for sexual assault was upheld for a then 48 year old offender against a 22 year old victim. Mr. Le was the landlord of the building the victim intended to move into. Mr. Le came to the victim's then-current residence at her request, ostensibly to bring her the keys for the new apartment she intended to move into. After she rebuffed his advances, he had forced sexual intercourse with her. He had three prior convictions for assault involving family members and one additional conviction for assault against a family member that occurred between the date of the commission of the sexual assault and the date of

sentencing. The court of appeal found that the trial judge properly took into account the prospective relationship between Mr. Le and the victim as being trust-like to the extent that the victim was in a vulnerable position. Mr. Le's actions were considered to be predatory in nature.

[39] I note also the Yukon case of **R. v. Poor**, [1999] Y.J. No. 45 (T.C.). Mr. Poor, who was 33 years old, offered the 19 year old victim a ride at approximately 2:30 a.m. to find the person he said he saw steal her bike which she had left unattended temporarily outside the bar. He and the victim were unknown to each other. Instead of taking her home, he drove her around in his vehicle, ignoring her requests to return her to town where her friends were. He stopped in a remote area of Whitehorse and had forced sexual intercourse with her. He choked her and threatened to kill her. After the sexual assault, he continued to drive into another remote area where the victim was able to flee from the vehicle to the safety of a cadet camp she was aware was located there. The sentencing judge described the assault as being "extremely serious" and noted that the victim had been traumatized as a result. The victim suffered scrapes and bruises over numerous areas of her body. Mr. Poor was married with children and described as a "hard-working man". He had been convicted 10 years earlier of a sexual offence for which he had been sentenced to one year in jail. For the current offence for which he had entered a guilty plea, he received a sentence of 42 months, after being given credit for his six months in pre-trial custody. While the credit given for the remand time was not clearly stated in the judgment, the sentencing judge noted that remand time was often credited at two to one due to the loss of statutory remission and the generally accepted tendency to consider remand time as being more difficult than post-sentence

time in custody. Therefore the effective sentence was between 48 and 54 months, most likely towards the higher end of that range. (Many of the above-noted facts were obtained from an Agreed Statement of Facts that had been filed and not from the sentencing judgment).

[40] In *R. v. Anderson*, 2011 YKSC 6, a sentence of four years was imposed by Justice Veale for a 58 year old First Nation offender convicted after trial of a sexual assault upon a 56 year old friend who was either blacked out or passed out. The victim was quite intoxicated and was given a ride to her home by Mr. Anderson. She believed she could trust him because they worked together and she was lifelong friends with his wife. Mr. Anderson had sexual intercourse with her without her consent, being fully aware of her excessive consumption of alcohol and her inability to consent. Mr. Anderson had two prior convictions for sexual assault in 1991 and another conviction for sexual assault in 2009 (for an offence committed in 2006). The 1991 convictions involved the sexual touching over the clothes of a 10 year old girl and the 2009 conviction for an under-the-clothes touching of a 10 year old girl. The 2009 conviction was for an incident that pre-dated the 2008 offence for which he was presently being sentenced. Mr. Anderson, who was found to have some limited cognitive disabilities, was considered to be a high risk for future sexual re-offending. The aggravating circumstances included his prior criminal history and his high risk for re-offending as an “untreated sexual offender whose risk factors are ‘not transient and situational but entrenched and internal’”. Also aggravating was the fact that the present offence was considered to be:

... a planned and calculated sexual assault upon a woman he has been friends with for almost 40 years. Although not amounting to a breach of trust in the classic sense, it was a betrayal of trust to a woman who sought his assistance in getting a drive home. ...

[41] Mitigating factors were his diminished cognitive capacity and his desire for treatment. The protection of the public was the paramount consideration noted by Justice Veale in imposing sentence.

[42] Mr. Anderson was also declared a long-term offender and ordered to be subject to a supervision order for 10 years.

Application to Present Case

[43] This sexual assault is serious. The aggravating feature is the position of trust Mr. Torres was in as a taxi driver. I concur with the comments of the sentencing judges in ***Aulakh, Savard, Dale, Singh*** and ***Malik*** with respect to the trust relationship that exists between a taxi driver and the passenger or passengers they carry. When an individual steps into a taxi, there is an expectation that the taxi driver will transport that individual safely to the requested destination. This is not only the expectation of the passenger, but that of society as well. In a community such as Whitehorse, with long and often cold winters, somewhat remote areas, and limited bus service, travel by taxi is a commonly-used form of transport for many people, including young, intoxicated, and vulnerable women, such as the victim in this case. When a passenger steps into a taxi, the last thing they, or the friends or family who place them there, should have to worry about is that they will be victimized by the taxi driver. Therefore, a breach of this trust

relationship by a taxi driver is to be treated as being extremely serious. (See also **R. v. Abdullahi**, 2010 YKTC 76 at para. 6)

[44] In my opinion, this trust relationship is greater than the trust relationship that existed in **White** and some of the other cases referred to therein, where an individual offers a victim a place to sleep and then sexually assaults them while they are sleeping, passed out or unconsciousness, **Anderson** being somewhat of an exception due to the long-term relationship between the offender and the victim and thus a greater element of trust. Therefore, a breach of this trust relationship by a taxi driver is presumptively more aggravating.

[45] In the present case, the victim was young and intoxicated, and her resulting vulnerability is a factor for consideration when I look at the aggravating nature of the breach of trust.

[46] In mitigation, Mr. Torres has no criminal history, has a positive work record and is considered to be at a low-risk for re-offending.

[47] Mr. Torres' continued denial of having committed this offence is a neutral factor. He simply is unable to obtain any of the benefit he would have received in mitigation had he accepted responsibility at an early date or even since his conviction. This also makes rehabilitation less of a factor for consideration in sentencing.

[48] I also consider the evidence of minor bruising provided by L.W. to be a neutral factor, as the evidence in this regard was inconclusive with respect to necessarily associating it with this offence.

[49] A further factor to be considered is the impact of the sentence on Mr. Torres' status in Canada. He is a temporary resident of Canada (equivalent to a foreign national) and will, in all likelihood, be deported as a result of having committed this offense. A right to appeal any such deportation order will not exist if the sentence imposed is two years or more. Therefore a sentence of two years or more, including any credit for time already served in custody on remand, will likely have the effect of preventing Mr. Torres from residing in Canada in future.

[50] It is clear from the case law that has been filed that the impact of a criminal conviction and sentence upon an individual's status in Canada is a factor that can be considered by a sentencing judge. (See *R. v. Doradea*, 2010 BCCA 423; *R. v. Leila*, 2008 BCCA 8; *R. v. Kanthasamy*, 2005 BCCA 135). As stated in *R. v. Hamilton* (2004), 186 C.C.C. (3d) 129 (Ont. C.A.) at para. 156:

The case law referable to the relevance of deportation in fixing an appropriate sentence addresses two very different situations. In the first situation, it is acknowledged that imprisonment is the only appropriate sentence and that deportation from Canada will inevitably follow upon completion of sentence. In the second situation, it is argued that a certain kind of sentence should be imposed to avoid the risk of deportation from Canada. In the first situation, the certainty of deportation may justify some reduction in the term of imprisonment for purely pragmatic reasons: *R. v. Critton*, [2002] O.J. No. 2594 at paras. 77-86 (Sup. Ct.). In the second situation, the risk of deportation cannot justify a sentence which is inconsistent with the fundamental purpose and principles of sentencing identified in the Criminal Code. The sentencing process cannot be used to circumvent the provisions and policies of the Immigration and Refugee Act. As indicated above, however, there is seldom only one correct sentencing response. The risk of deportation can be a factor to be taken into consideration in choosing among the appropriate sentencing responses and tailoring the sentence to best fit the crime and the offender: *R. v. Melo* (1975), 26 C.C.C. (2d) 510 at 516 (Ont. C.A.).

[51] With respect to the first situation stated in *Hamilton*, if the sentence I impose is to be in excess of two years, I can consider the impact upon Mr. Torres of his deportation such as to temper the overall length of the sentence somewhat.

[52] With respect to the second situation, if the sentence I intend to impose in accordance with the fundamental purpose and principles of sentencing is two years, or close to it, I can, in appropriate circumstances, reduce it to under two years in consideration of the impact of deportation. I cannot, however, reduce a sentence substantially, solely for the purpose of militating against the consequential effect of deportation, unless the circumstances are such that the overall effect is a sentence that accords with the fundamental purpose and principles of sentencing. As stated in *R. v. Daskalov*, 2011 BCCA 169 at para. 24:

It is not disputed that immigration consequences of a sentence may be a relevant consideration in crafting a fit sentence. This Court has held that a sentencing judge may consider immigration consequences to the limited extent of ensuring that a sentence does not create serious and unintended immigration consequences that would result in a disproportionate sentence for the circumstances of the offence and the offender.

[53] I note that in the cases filed regarding the appropriateness of considering the impact of deportation upon the individual being sentenced, that where the courts did so by reducing the sentence or imposing a sentence of less than two years as a result, the individual was either a permanent resident or otherwise had significant ties to Canada, and/or was likely to be at risk for safety if required to return to their former country. Generally, the reduction in the sentence was by a matter of days or weeks and not

months. (See **Kanthasmy** at para.16; **Hamilton** at paras. 19 – 24; **Doradaea** at paras. 10-11; **Leila**, at para. 4)

[54] Sentencing is, and should be, a process that recognizes and gives effect to all the varying and the similar factors in each case. As stated by Justice Veale in **Anderson** at para. 37:

...Sentencing requires an individualized approach that challenges any suggestion that ‘one size fits all’. The best description of the crafting of a sentence is set out in *R. v. C.A.M.*, [1996] 1 S.C.R. 500, at para. 92:

...It has been repeatedly stressed that there is no such thing as a uniform sentence for a particular crime [Citations omitted]. Sentencing is an inherently individualized process, and the search for a single appropriate sentence for a similar offender and a similar crime will frequently be a fruitless exercise of academic abstraction. As well, sentences for a particular offence should be expected to vary to some degree across various communities and regions in this country, as the “just and appropriate” mix of accepted sentencing goals will depend on the needs and current conditions of and in the particular community where the crime occurred. ...

[55] This case requires the same individualized approach. It is not enough to say that it is a sexual assault by a taxi driver against a young woman and impose a sentence that other courts have for sexual assaults committed by a taxi driver without considering any aspects of this case that cause it to differ from other cases.

[56] A sexual assault is an offense of violence against the victim committed by the offender. The nature of the offense is an act of violence and, in the present case, significant violence. Outside of the violence inherent in the act itself, there was no evidence in this case to support a finding that Mr. Torres otherwise struck or assaulted

L.W. There is no evidence that he made any threats against her, forcibly confined her, or otherwise intimidated her.

[57] This sexual assault appeared to take place over a relatively brief period of time and after a short detour, rather than a long and protracted trip to unknown and remote places.

[58] In this case, the sexual assault was more opportunistic in nature and less of a pre-planned, predatory act. These are all factors which distinguish this case from many of the others.

[59] Clearly, general deterrence and denunciation are the paramount considerations in this case in sentencing.

[60] The sentences imposed in the above cases in the three and a half to five year range all involved sexual offences committed in circumstances, either of the offense or the offender, which in one way or the other, or both, were more aggravated than in the present case.

[61] The sentences of 18 months and two years in **Malik** and **Singh** did not involve sexual intercourse. In **Singh** there was an expression of some remorse and insight by the youthful offender prior to sentencing.

[62] Mr. Torres is a first-time offender convicted of a serious offense of sexual assault against a young and vulnerable woman in a breach of trust situation. He has, by all accounts, lived a pro-social life prior to the commission of this offense and is considered to pose a low risk for re-offending.

[63] I find that a consideration of the case law, the circumstances of this offense and this offender, the impact upon the victim and all the aggravating, mitigating and other factors, including the impact of deportation, requires that a sentence of 28 months be imposed. I do not believe that the circumstances of this case would justify me reducing what I consider the fit sentence to be to less than two years in order to minimize the immigration consequences.

[64] Mr. Torres has been in pre-trial custody for a period of 107 days. Based upon the information provided to me regarding Mr. Torres' activities during time in custody on remand, the time required for the preparation and review of the Pre-sentence Report, the time required to consider and render this decision, and the submissions of counsel on this point, I will credit Mr. Torres at 1.5:1 for this time. This is the equivalent of five and one-third months, thus leaving Mr. Torres 22 and two-thirds months to serve.

[65] I make the following mandatory orders:

1. Pursuant to s. 487.051 of the *Criminal Code* Mr. Torres will provide a sample of a bodily substance for the purpose of DNA analysis.
2. Pursuant to s. 109 of the *Criminal Code*, Mr. Torres is prohibited from possessing any firearm, cross-bow, restricted weapon, ammunition, and explosive substance for a period of 10 years, and any prohibited firearm, restricted firearm, prohibited weapon, prohibited device and prohibited ammunition for life.

3. Pursuant to s. 490.012 of the *Criminal Code*, Mr. Torres is required to comply with the requirements of the *Sex Offender Registration Act* for a period of 20 years.

[66] The Victim Fine Surcharge is waived.

COZENS C.J.T.C.