

IN THE SUPREME COURT OF THE YUKON TERRITORY

Citation: *R. v. Morgan*, 2007 YKSC 39

Date: 20070614
Docket: S.C. No. 06-01507B
Registry: Whitehorse

BETWEEN:

HER MAJESTY THE QUEEN

AND:

CLINTON LANCE MORGAN

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*.

Before: Mr. Justice L.F. Gower

Appearances:
Noel Sinclair
Keith Parkkari

For the Crown
For the Defence

**REASONS FOR JUDGMENT
DELIVERED FROM THE BENCH**

[1] GOWER J. (Oral): Mr. Morgan is before me on a second breach of a conditional sentence, which I imposed on March 23rd of this year, for a charge of sexual assault on a young girl. I am just going to read to you part of the original sentencing decision at para. 63:

As the first three criteria for the imposition of a conditional sentence have been satisfied, I must now give serious consideration to the imposition of such a sentence, taking into account whether it would be consistent with the fundamental purposes and principles of sentencing. I recognize that general deterrence and denunciation are the primary sentencing principles in a case involving sexual

assault by an adult upon a young child, particularly when there is an element, as there is here, of breach of trust. In addition, because this accused has a prior related conviction on his record, specific deterrence must also be considered. Having said that, I am satisfied that an appropriately crafted set of conditions, coupled with a lengthy term, can meet those sentencing objectives in this particular case.

I would like to emphasize the following words, Mr. Morgan:

I also take some solace from the knowledge that if Mr. Morgan should breach any of the conditions I impose, he will immediately be taken into custody and would most likely spend the rest of his sentence behind bars, without the benefit of statutory remission or parole. In simple terms, I expect that will be a significant hammer hanging over Mr. Morgan's head.

[2] Mr. Morgan, I would say to you that by being given a conditional sentence in the first instance, you were already given a break. I warned you at that time that there would be little or no tolerance for any breaches and that any breaches could result in you being taken into custody and serving the rest of your sentence behind bars. That warning is every bit as alive now as it was when I imposed the sentence. The fact that you have not been taken into custody and held there, and the fact that your sentence has not been terminated to date, is largely because of the reasonable positions taken by the Crown.

[3] There is no "three strikes and you are out" rule in this Territory. The fact that accused persons such as yourself are periodically given breaks for minor breaches is because the Crown is not seeking termination of the sentence. If they were, I would give serious consideration to it. You are very lucky today that Mr. Sinclair, on behalf of the Crown, is not seeking that. These are very, very serious consequences which can befall you for not obeying the terms of this sentence.

[4] Now, I agree that you have a condition in your sentence to make reasonable efforts to find and maintain suitable employment. That, to be clear, does not trump, it does override, your need to obey the curfew and your house arrest conditions, all right? Those come first and foremost. If you do not have permission by Mr. Hyde, then you have to go back to the ARC, according to what the original plan was, okay? There is no question about that. It is black and white.

[5] If your employer is riding you hard and putting pressure on you, and if they are even threatening to lay you off or terminate you because of the fact that you cannot be there when you are needed, that is tough, okay? It is tough. You are going to have to say to your employer, "I'm sorry, my first responsibility is to abide by the curfew and be back at the ARC on time." That is the simple message that I want to put to you today. If he fires you, there is not much that you can do about that. Your first responsibility is to abide by that curfew. The very next day, if you are fired, then, of course, you have an obligation to go out and try and find another job, because that is what condition 20 is talking about. You are not going to be breached for not having a job because you were obeying your curfew. I cannot see that happening. Curfew comes first, okay?

[6] THE ACCUSED: Yes, sir.

[7] THE COURT: If this employer does not like to live with you as an employee under a conditional sentence, that is tough. Then you are going to have to find another job with another employer who is more flexible. There are other employers in town besides Pioneer R.V. Park. You are a man with considerable talents in many areas. I know that from what I heard at your sentencing hearing. You can find other

employment. Mr. Hyde will, I am sure, be helpful and supportive in that regard, but he will not tolerate, and what I will not tolerate, and what the Crown will not tolerate, is breaches of curfew and not obeying the rules. When you are supposed to be in a certain place at a certain time, you be there. Do you understand that?

[8] THE ACCUSED: Yes, sir.

[9] THE COURT: Okay. These remarks will probably be transcribed. They will be on the record, as will my comments from the last breach. If you are before me again with this kind of a problem, do not expect to get out. Am I clear on that?

[10] THE ACCUSED: Yes, sir.

[11] THE COURT: And you understand?

[12] THE ACCUSED: Yes, sir.

[13] THE COURT: Thank you very much. I take it that the consequence is that no action will be taken?

[14] MR. SINCLAIR: I suppose. I mean we referred to the time that he spent in custody and I suppose that notionally he could serve one day.

[15] THE COURT: Where is the provision again?

[16] MR. SINCLAIR: Section 742.6(4). The sentence can be suspended.

[17] THE COURT: For the time that he was held in custody, but it would only be part of the day.

[18] MR. SINCLAIR: It would be time served, yes. It is a distinction, really, without a difference. We will be in front of you for any further breaches.

[19] THE COURT: I think these remarks will be recorded and transcribed. They will be on the record. There will be no question as to what my intention is. I am going to order pursuant to s. 742.6(9)(a) that there be no action taken as a result of this breach.

[20] Anything further from counsel?

[21] MR. PARKKARI: No, My Lord.

[22] THE COURT: Mr. Sinclair?

[23] MR. SINCLAIR: No, thank you.

[24] THE COURT: Thank you.

GOWER J.