SUPREME COURT OF YUKON

Citation: *R. v. Townsend*, 2013 YKSC 5

Date: 20130201
S.C. No. 10-01521
Registry: Whitehorse

Between:

HER MAJESTY THE QUEEN

And

JOSEPH TOWNSEND
ALSO KNOWN AS
JOSEPH DESJARLAIS

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

Before: Mr. Justice R.S. Veale

Appearances:

Ludovic Gouaillier — Counsel for the Crown
Lynn MacDiarmid — Counsel for the accused

REASONS FOR SENTENCING

INTRODUCTION

[1] On November 23, 2011, a jury found Joseph Townsend guilty of sexually assaulting G.S. (the "victim") on July 24, 2010. The victim is the adult daughter of Mr. Townsend's common-law partner. Mr. Townsend was previously convicted of sexually assaulting the same victim in January 2004.

[2] The Crown has applied for an assessment under s. 752.1 of the *Criminal Code* to determine if Mr. Townsend might be found to be a dangerous offender under s. 753 or a

long-term offender under s. 753.1 before sentence is imposed. Dr. Lohrasbe provided a written report dated April 9, 2012, and a further report at the request of Mr. Townsend dated December 28, 2012.

[3] The Crown and defence have made a joint submission that the appropriate disposition is to presume that Mr. Townsend is a dangerous offender under s. 753(1.1) of the *Criminal Code*. Crown and defence are also in agreement that s. 753(4)(b) applies and they agree that there should be a long-term supervision order of 10 years following the sentence for the jury conviction on November 23, 2011, which must be a minimum punishment of imprisonment for a term of two years. Crown and defence disagree on the length of the sentence to be imposed. The Crown submits 8 to 10 years is appropriate and the defence submits 5 or 6 years is appropriate.

[4] These reasons will focus on proportionality and the *Gladue* analysis of s. 718.2(e), which requires the Court to consider for aboriginal offenders “all available sanctions other than imprisonment that are reasonable in the circumstances.”

The 2010 Sexual Assault

[5] The Joint Submission of the Crown and defence is as follows:

1. The accused, Joseph Townsend, is 58 years old.
2. On November 23, 2011, a jury found him guilty of sexually assaulting the victim on July 24, 2010.
3. The victim is the adult daughter of Mr. Townsend’s common law partner.
4. The theory of the Crown, based on the evidence led at trial, was that Mr. Townsend had sexual intercourse with the victim on the date of the

offence while the victim was incapable of consenting because she was not conscious at the time.

5. The jury, during the trial, heard evidence that the victim had consumed alcohol on the night of the events and appeared to be intoxicated to witnesses around the time when the offence would have been committed. The jury also heard that the victim was alone with Mr. Townsend and another individual in the bedroom of a local residence for a period of time. The victim testified that at some point in the early hours she went to sleep in a tent in her mother's yard, and woke up with her pants and underwear down and Mr. Townsend present in the tent. Mr. Townsend admitted that his DNA was in the underwear and the vagina of the victim, as confirmed by samples taken shortly after the incident.
6. There was no direct evidence of intercourse presented to the jury.
7. Mr. Townsend did not testify, and there was no other defence evidence at trial.

Criminal Record of Joseph Townsend

[6] Mr. Townsend has a criminal record of some 75 or more convictions dating back to 1971, including three sexual assaults, a number of spousal and common assaults, impaired driving, possession of weapons and breaking and entering, as well as 13 process-related breaches.

[7] I will describe the most serious offences and rely on Dr. Lohrasbe's report for some of the details and Mr. Townsend's view of the convictions.

[8] From 1971 to 1981, he was convicted of common assault, theft under, auto theft, theft over and possession of a weapon. Even at this early date, he received sentences ranging from 10 days to 6 months and ultimately one year.

[9] In 1984, he was convicted of sexual assault with a weapon and received a sentence of seven years. This was a violent sexual assault.

[10] Mr. Townsend was released on mandatory supervision in 1989, and was recommitted 24 days later when he violated the mandatory supervision.

[11] Between 1990 and 1991, Mr. Townsend was convicted of possession of a weapon, assault, breaking and entering and being unlawfully at large.

[12] In 1992, he was convicted of sexual assault and received a 2-month sentence. He now claims that this was consensual sexual intercourse but he was advised to plead guilty.

[13] Between 1993 and 2004, he was convicted of a variety of thefts, weapon possession and assaults including an assault causing bodily harm in 1995 for which he received a sentence of 15 months. He was also convicted of process offences, forgery and theft under $5,000.

[14] His sexual offence history from 1983 to 1992 was described as follows by Al Munroe in a psychological assessment dated July 14, 1999:

> That situation continues to the present time; Mr. Townsend remains an untreated sex offender. He adamantly denies having sexually assaulted the 10 year old girl on 11 August 1983. He states that he was misidentified by the victim and that at no time did he have any sexual contact with her. Currently, Mr. Townsend also denies having committed a sexual assault on 4 April 1992 for which he was later convicted. In his account, the sexual contact between him and [the victim] was entirely consensual. Hence, nearly three decades later, we are no further along in any kind of

> understanding of the factors that went into that very violent sexual offense. The victim in 1983 offense was a prepubertal child, raising the possibility of sexual deviance (pedophilia). Mr. Townsend used threats, held a knife against the victim's throat, forced fellatio, digitally penetrated her vagina, punched the victim when she began to cry, and then forced penile-vaginal intercourse while repeatedly threatening to kill her. These features of that long-ago sexual assault remain unexplored and are extremely troubling; they speak to the potential 'seriousness' facet of risk if Mr. Townsend reoffends with a violent sexual assault in the future. (Most sexual offenses involve relatively superficial contact, and do not involve threats, weapons, or overt violence.) Hence, not only is Mr. Townsend an untreated sexual offender but he is an untreated sexual offender who committed an unusually intrusive and violent sexual offense, albeit a long time ago. (my emphasis)

[15] Mr. Townsend met his spouse at a treatment centre in Alberta in 2000. She is 57 years old and he has resided with her in the Yukon.

[16] On August 15, 2003, he plead guilty to a charge of sexual assault on the victim in this case, the then-26-year-old daughter of his spouse. The plea was a significant mitigating factor in the sentence of 3 1/3 years, which included double credit for remand time of five months and seven days. The admitted facts are that Mr. Townsend took the victim into the bedroom at his spouse's home while she was away. He choked her and threw her on the bed and used his other hand to cover her mouth. The victim struggled throughout. Mr. Townsend was able to pull her pants down but it is not clear whether he penetrated her vagina. The victim's aunt heard the struggle and entered the bedroom where she saw Mr. Townsend on top of the victim with both their pants down. Mr. Townsend pulled his pants up and left after being confronted by the aunt. The victim was distraught and emotional and had some bruising and scratch marks on her neck.

[17] Justice Gower, the sentencing judge, indicated that a sentence of five to seven years would have been appropriate had there been no guilty plea, due to the violence in addition to the sexual assault and the accused's long criminal record. There was also evidence that the victim was traumatized and had received significant pressure not to testify from supporters of Mr. Townsend.

[18] Mr. Townsend's view of that 2003 sexual assault has since changed and Dr. Lohrasbe reports:

> Mr. Townsend, during the interviews with me gave me this account, "*Her old man choked her all the time. She asked me if she can get away from that. She asked me to show her how"*. Hence, Mr. Townsend's position is that the choking that occurred was a demonstration at [the victim]'s request, to assist in her self defense. Additionally, Mr. Townsend denies any forced sexual encounter with [the victim], and states that by August 2003, he had an ongoing sexual relationship with [the victim]. He insists that the accusation of sexual assault arose only because of the sudden arrival of [the victim]'s aunt, on the scene of a consensual sexual encounter. He added that [the victim] "*made up*" the allegation of sexual assault in order to avoid acknowledging their ongoing sexual relationship. Mr. Townsend also states that he pled guilty under pressure from his then lawyer who told him, *"You'll spend the rest of your life in jail. Crown will put you away*".

[19] Mr. Townsend has a similar view of the 2010 sexual assault. All the parties at the scene were extremely intoxicated. He says that the victim initiated the sexual encounter, which was consensual.

Dr. Lohrasbe's Report

[20] Dr. Lohrasbe summarizes Mr. Townsend's current position on his past sexual violence as a denial that he committed any sexual violence ever against any adult or child. He does not see himself as a sexual offender or as a violent man.

[21] Dr. Lohrasbe diagnosed Mr. Townsend with an Anti-Social Personality Disorder whose essential feature is “repeated law breaking, often associated with irritability, aggression, recklessness, impulsivity, deceitfulness and irresponsibility with commitment to others.”

[22] Dr. Lohrasbe considers his sexual assaults more as personality dysfunction rather than sexual deviancy. It is a feature of “his opportunistic and aggressive misuse of others.”

[23] Dr. Lohrasbe also diagnosed Mr. Townsend with Substance Abuse/Dependency.

[24] Because of his denial of any of the four sexual assaults for which he has been convicted, Dr. Lohrasbe concludes that “Mr. Townsend is an unrepentant, essentially untreated sexual offender.” Also, because there has been repetitive behaviour over extended periods of time, there is a high risk of further violence.

[25] Mr. Townsend’s lack of empathy for his victims and his high opinion of himself is reflected in the following description by Dr. Lohrasbe:

> I asked Mr. Townsend to reflect on the harm that he has done during the course of his life. He appeared taken aback by the question and stated, *“You mean … Who have I harmed the most?”.* When I confirmed that such was what I meant, he paused and then stated, *“Myself”*. He spoke of the number of years he has spent in prison. He did not spontaneously mention any other person he has harmed. I then asked him to specifically think about whether he had harmed others. He paused, then stated, *“My family, my mom, my dad”*. Asked to consider any others he has harmed, he stated, *“My people, [my spouse], my sister, my brother”*. Hence, in Mr. Townsend’s current perceptions of the harm he has done to others, what could be termed ‘secondary victims’ come to his mind. He did not mention a single ‘primary’ victim, despite ample opportunity to do so.
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> Mr. Townsend has a robust self-image. Despite his lengthy criminal record he sees himself as a generally decent, kind,

> and non-violent person. He considers himself to be very attractive to females. He believes he has much to teach others, especially those struggling with substance abuse. There is a quality of inflated self-esteem, or grandiosity, to his self-appraisal. He is not a modest man and has difficulty identifying failures and faults within himself. Asked to reflect on what he does not like about himself or how he has lived his life, he could only identify *"my problem with alcohol"*. Without that problem, in Mr. Townsend's view, he is a good man. When asked to reflect on the morality of having a sexual relationship with his common law partner's daughter, Mr. Townsend deflected responsibility from himself and spoke of [the victim]'s promiscuity. For a man of his age, the lack of self-criticism is startling. He is not an introspective, self-aware, or psychologically-minded man. He is glib, superficial, and skilled at avoiding threats to his self-appraisal. His insight is poor. Given his positive self-regard and denial of his sexual offenses, the degree of self-deception is perhaps not surprising, but is disheartening at his age. At a time when many men with histories of violence attempt to move toward acceptance and redemption, he remains securely ensconced in his self-centeredness, with very little overt guilt, shame, or remorse.

[26] The only reason for optimism is that Mr. Townsend is approaching 60 years of age, which points to an expected decline in his potential for reoffending. Dr. Lohrasbe states that his aging can reasonably be expected to impact on his aggressive potential and a decline in the likelihood of serious violence.

[27] However, on the subject of treatability and risk management, his history of personality dysfunction, unhealthy relationships and substance abuse are all well entrenched and Dr. Lohrasbe is not optimistic that Mr. Townsend can effectively address any of them.

[28] Dr. Lohrasbe summarizes his assessment as follows:

1. The risk for sexual violence that Mr. Townsend poses in the foreseeable future is unknowable, given his denials. The specific risk factors that went into his most serious offences remain unexplored.
2. Nevertheless, there appears to have been a declining ‘trajectory of risk’, and it is likely to continue to decline on the basis of aging alone.
3. The prospects for effective reduction of risk using currently available treatment approaches and programs in the foreseeable future are not encouraging.
4. It is not unreasonable, given what is known about the general factors that appear to be of significance in his recent violence, to anticipate that the risk he poses can be managed in the community in the foreseeable future.
5. The longest period of follow-up in the community is recommended to assist in risk management.
6. Risk, treatability, and prospects for management in the community are not unchanging, and will need to be reassessed just prior to any plans being made for his return to the community, so that the particulars of supervision can be customized to his circumstances.

[29] In a second meeting with Dr. Lohrasbe on December 18, 2012, that Mr. Townsend requested, Mr. Townsend expressed “remorse” for his victims despite his denial of sexual violence on any of them.

[30] Dr. Lohrasbe’s diagnosis and risk assessment remained unchanged and he added the following Risk Management Plan for Mr. Townsend’s return to the community “without making any assumption as to when that may occur”:

a. Abstinence from alcohol and drugs should be monitored; it is the most concrete, proximal, known risk factor. If he relapses, it should be assumed that bouts of intoxication will mobilize other, as yet undefined, risk factors that have contributed to his violence.

b. Monitoring of abstinence is more effective if combined with ongoing counseling focused on substance abuse and addictions.

c. Mr. Townsend should avoid all contact with the victim. She is an obvious potential future victim.

d. If possible, Mr. Townsend should have regular (not necessarily frequent) contact with a counselor who is experienced with ‘cycles of abuse’ and provides regular reminders to Mr. Townsend about the boundaries within relationships that he must respect, or face serious consequences.

e. Attempts at ‘depth therapy’ are unlikely to be helpful. His personality is entrenched and insight is improbable in the foreseeable future. Resources are best focused on relatively superficial and concrete area of functioning and lifestyle. A firm and directive approach, with clear expectations and boundaries and no leeway for misinterpretation or misunderstanding will be of assistance. Written contracts, regularly gone over to reinforce his commitments, will be invaluable.

Victim Impact Statement

[31] The victim indicates that she is feeling really hurt and lost. Her family is angry and upset with her, which really hurts her. She is no longer welcome with her family and she feels they will never understand.

[32] She lives in a small community, hears the gossip, and sees the finger-pointing.

[33] She worries about the safety of her kids in the community and hopes that Mr. Townsend does not return. She does not want any contact with him.

[34] She knows it will take a long time to feel free from the hurt and pain and she works at it one day at a time.

The Pre-Sentence Report and *Gladue* Report

[35] The pre-sentence report confirmed that Mr. Townsend does not take any responsibility for his sexually offending behaviour and noted that his partner also blames the victim for Mr. Townsend's behaviour and wants him to return to the community as he helps her around the house. The probation officer reports that his spouse does not believe he committed the sexual assault because there is no evidence or proof that he did it. She also states that Mr. Townsend will need a peace bond against her daughter so she stays away from her mother's home.

[36] The probation officer believes that allowing Mr. Townsend to return to the community will put the victim "at great risk to be further sexually assaulted." He does not believe Mr. Townsend is a good candidate for a community disposition as he indicated that he would rather do jail time than probation.

[37] The *Gladue* Report outlines Mr. Townsend's Métis background from northern Alberta. The writer states that Mr. Townsend's only connection to the community where the offence happened in is his relationship with the victim's mother, and the community cannot support Mr. Townsend as it is supporting the victim. I accept this conclusion despite the one-page support letter dated January 15, 2013, with 25 signatures supporting his return to the community.

[38] Mr. Townsend was raised in the bush until he was seven years old and has good memories of his family. Neither Mr. Townsend nor his family experienced the residential school system.

[39] The family moved to Conklin, Alberta, and that is where Mr. Townsend first got into trouble by being expelled from school. The family moved to Waterways, near Ft. McMurray, where he encountered racism and began his lengthy criminal behaviour. He estimates that he has spent approximately 20 years of his adult life in jail.

[40] Mr. Townsend is not close to his family as he threatened to kill his mother. When he first moved to his current community in the Yukon, he initially stopped drinking but started again, which led to the sexual assaults.

[41] Mr. Townsend has taken a number of programs (unrelated to sex offender treatment) while in remand for approximately 30 months.

[42] He has remained in touch with his partner and he hopes for a sentence that will allow him to stay in the Yukon.

[43] The *Gladue* Report ends by saying that it is unlikely that Mr. Townsend can be supported in the community, as he needs external assistance and close monitoring as indicated by Dr. Lohrasbe. Whitehorse is the only community that might be able to supervise and support to the level he needs.

[44] Significantly, the *Gladue* Report states:

> Although it appears that there might be some support for Joseph from community members ([his spouse] is collecting a list of names of those willing to offer their support), [the First Nation] says it is not in a position to offer any formal supports to Joseph in terms of programming if there is a community component to his sentence. [J.G.], who is the Executive Director of the [First Nation], says that they do not have the therapeutic resources necessary to support

> someone like Joseph on a community disposition. “Our first priority is to [First Nation] members,” he says. “Our budget is strained to the limit. It’s already a challenge meeting the needs of citizens who are incarcerated.”
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> …
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> Others in the community who are supportive of Joseph also realize that there are very few resources in [the community] to deal with the challenges that his return might create. “There’s nothing here for him,” says [B.W.]. “Nobody knows him. He’s not from here.” [B.], a long-time [community] resident who has been a staunch advocate for the inclusion of First Nations’ spirituality and ceremony in the justice system, says that Joseph will always be considered an outsider by other community members. “I know what he feels like,” says [B.]. “I’m not from here either. I feel bad, though. This guy’s life has been totally messed by this.”

[45] It is noteworthy that the funding for the preparation of the *Gladue* Report came from an unrelated First Nation.

[46] The Whitehorse Correctional Centre filed a report covering the period from Mr. Townsend’s admission on July 25, 2010 to date. He has 305 entries in his log, of which 38 are negative. He has been charged with gambling, having razor blades, abusive behaviour to staff and physically assaulting another inmate.

[47] He has also apparently begun to develop his artistic skill and provided copies of his artwork.

[48] He made a statement to the Court setting out the numerous programs he had taken while in remand custody.

Defence Submission

[49] Defence counsel concedes that the principle sentencing factors are deterrence and denunciation in sexual assault matters. But, it is submitted, the sentence must be

proportionate to the gravity of the offence and the degree of responsibility of the offender.

[50] Counsel also submits that the step and jump principles apply to ensure that the escalation of sentence for a similar offence should be in moderate steps rather than dramatically more severe to ensure that the offender is not being re-punished for past offences.

[51] Counsel also submits that *Gladue* considerations apply so that all available sanctions, other than imprisonment, that are reasonable in the circumstances should be considered. Counsel points out that there is no burden on the aboriginal offender to establish a causal connection between their aboriginal background and the offence.

[52] Defence counsel submits the following aggravating and mitigating factors

a) Aggravating factors:

- Mr. Townsend took advantage of the victim while she was sleeping and unable to consent;
- Mr. Townsend's actions had a negative impact on the victim, contributing to issues of hurt and pain, low self-esteem and upset in her family and community;
- Mr. Townsend has a lengthy criminal record, including a recent similar offence on the same victim;
- Mr. Townsend's risk assessment for sexual violence is unknown, as he remains an untreated sex offender.

b) Mitigating Factors:

- There were no aggravating aspects to the offence beyond what was inherent in the offence itself, in other words, there was no evidence of a violent struggle or other aggressive behaviour, such as choking;
- Given his age and circumstances there will likely continue to be a decline in the risk of serious violence;
- Since the offence, Mr. Townsend has taken a number of programs, including: Changing Offender Behaviour Program, Substance Abuse Management Program, Addictions Awareness Program, and is currently enrolled in the Violence Prevention Program. Mr. Townsend has expressed a willingness to engage in sex offender treatment upon his release from custody;
- Mr. Townsend has demonstrated that he can be a contributing member of society when he remains clean and sober; and
- Mr. Townsend has discovered that he is a talented artist and intends to pursue his art career upon his release from custody.

Sentencing Principles for an Aboriginal Offender

[53] Section 718 of the *Criminal Code* sets out a number of principles which include denunciation, deterrence, separation of offenders, rehabilitation, reparation for victims and promoting responsibility in offenders and acknowledgement of harm done. Section 718 states that “the fundamental purpose of sentencing is to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just,

peaceful and safe society by imposing just sanctions" that have one or more of the aforementioned purposes.

[54] In a recent case involving the sentencing of an aboriginal offender, the Supreme Court of Canada stated in *R. v. Ipeelee*, 2012 SCC 13, 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. As Wilson J. expressed in her concurring judgment in *Re B.C. Motor Vehicle Act*, [1985] 2 S.C.R. 486, at p. 533:
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> > It is basic to any theory of punishment that the sentence imposed bear some relationship to the offence; it must be a "fit" sentence proportionate to the seriousness of the offence. Only if this is so can the public be satisfied that the offender "deserved" the punishment he received and feel a confidence in the fairness and rationality of the system.
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> 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. In the Canadian criminal justice system, a just sanction is one that reflects both perspectives on proportionality and does not elevate one at the expense of the other. (my emphasis)

[55] There is a broad discretion in the sentencing process. Section 718.2(e) is one of the remedial provisions of the *Criminal Code* that is designed to ameliorate the serious problem of overrepresentation of Aboriginal people in Canadian prisons, and following

R. v. Gladue, [1999] 1 S.C.R. 688, at para. 93, a sentencing judge is to consider a restorative approach to sentencing for Aboriginal offenders.

[56] Following *Gladue*, at para. 37, *Ipeelee* states at para. 59:

> … When sentencing an Aboriginal offender, a judge must consider: (a) the unique systemic or background factors which may have played a part in bringing the particular Aboriginal offender before the courts; and (b) the types of sentencing procedures and sanctions which may be appropriate in the circumstances for the offender because of his or her particular Aboriginal heritage or connection (*Gladue*, at para. 66). …

[57] The Supreme Court of Canada goes on to say in *Ipeelee*, at para 60:

> … To be clear, courts must take judicial notice of such matters as the history of colonialism, displacement, and residential schools and how that history continues to translate into lower educational attainment, lower incomes, higher unemployment, higher rates of substance abuse and suicide, and of course higher levels of incarceration for Aboriginal peoples. These matters, on their own, do not necessarily justify a different sentence for Aboriginal offenders. Rather, they provide the necessary *context* for understanding and evaluating the case-specific information presented by counsel. …

[58] The point is not that every Aboriginal offender must receive a different sentence than a non-Aboriginal offender, but rather that the circumstances of each Aboriginal offender must be considered in the context of colonialism, displacement and residential schools to provide the context to evaluate case-specific information that may be provided in a *Gladue* report. It is clear that in sentencing Aboriginal offenders, the principle of rehabilitation must be given great consideration but always in the context of the goal of sentencing expressed in *Ipeelee* at para. 68:

> The purpose of sentencing is to promote a just, peaceful and safe society through the imposition of just sanctions that, among other things, deter criminality and rehabilitate

> offenders, all in accordance with the fundamental principle of proportionality.

ANALYSIS

[59] In the case of Mr. Townsend, there is no doubt that the principles of denunciation and deterrence are important. In this particular case though, Mr. Townsend is a Métis from northern Alberta and he has suffered many of the systemic factors of racism, violence, alcohol and drug abuse, and long periods of incarceration.

[60] The particular focus of the fit and proper sentence determination in this case is the appropriate length of sentence prior to Mr. Townsend being released into a long-term supervision for 10 years as a dangerous offender. Crown and defence are agreed on the designation and the supervision order. This is possible pursuant to s. 753(4)(b), if I am satisfied that Mr. Townsend meets the dangerous offender criteria but that there is a reasonable expectation that a long-term supervision order will adequately protect the public against his committing another serious personal injury offence (s. 753(4.1), and see *R. v. Osborne*, 2012 MBQB 174 at para. 12).

[61] As noted, Crown submits the appropriate sentence lies in the 8 to 10 year range, while defence suggests 5 to 6 years would be appropriate. Defence counsel also submits that Mr. Townsend's remand time should be credited at 1.5 pursuant to *R. v. Vittrekwa*, 2011 YKTC 64, which would ensure that Mr. Townsend will remain in custody in the Yukon and remain close to his spouse and community.

[62] The fact is that Mr. Townsend is an unrepentant, untreated sexual offender with a history of sexual offending over a period of 30 years, which has not diminished with age.

[63] He admitted to sexually assaulting his spouse's daughter in 2004, which was given significant weight in his sentence of 3 1/3 years. He now says that he did not

sexually assault the daughter in 2004 and furthermore maintains that by 2003, he had an ongoing sexual relationship with her. He states that the only reason the 2004 sexual assault came to court was the daughter's allegation to avoid acknowledging the sexual relationship. That sexual assault resulted in a very fragile victim who was reluctant to testify because of pressure from supporters of Mr. Townsend in the community.

[64] Mr. Townsend similarly denies this sexual assault and describes the victim, now 35, as "sexually promiscuous, makes up allegations, and has persistently pursued a sexual relationship with him."

[65] The profound impact that this assault has had on the family dynamic must also be considered. The mother's statement to the RCMP following the sexual assault provided the only eyewitness evidence to the sexual assault other than the presence of Mr. Townsend's DNA in her daughter's vagina. However, the mother now recants and blames her daughter and says that if Mr. Townsend returns to the community, he must have a peace bond against her daughter. The damage that Mr. Townsend has caused to this victim and her family is profoundly disturbing. In the context of proportionality, the gravity of this offence is severe. The daughter is essentially isolated and blamed by her family and Mr. Townsend denies that there was an assault.

[66] In my view, the factor of rehabilitation is not in play because Mr. Townsend does not acknowledge any fault and blames the victim. I conclude that the moral blameworthiness of Mr. Townsend is high.

[67] There is no possibility of Mr. Townsend returning to the community because of the threat he poses to the victim. While the mother indicates a willingness to continue her relationship with Mr. Townsend at the expense of her relationship with her daughter,

the mother does not intend to move from her community. The damage Mr. Townsend has done to the victim and her relationship with her family is overwhelming and consideration of rehabilitation and reconciliation is not even remotely possible.

CONCLUSION

[68] I conclude that, in the context of this sexual assault and its repercussions for the victim, and given Mr. Townsend's lack of insight or remorse, or even acceptance of responsibility, I cannot give great weight to restorative justice or rehabilitation objectives which could lead to a lower term of imprisonment.

[69] The only factor that has been identified by Dr. Lohrasbe as a reason for optimism is that Mr. Townsend is approaching the age of 60 years, which may result in a decline in his potential for offending. In other words, the natural decline in his sexual drive due to his age, rather than some semblance of self-awareness or recognition of the damage he has caused, is the only cause to hope he will not reoffend.

[70] In terms of credit for pre-trial custody, his remand time indicates abusive behaviour and a physical assault on another inmate. However, I also accept that he has taken advantage of programming and cultural opportunities. I find credit of 1.3:1 is appropriate in the circumstances.

[71] I am of the view that a fit and proper sentence for Mr. Townsend is eight-and-a-half years. I will credit his thirty months pre-sentence custody at 1.3:1, resulting in 39 months credit. I find that he is a dangerous offender and order that he be placed on a long-term supervision order of 10 years duration on completion of his sentence. I order that a blood sample be taken from Mr. Townsend pursuant to s. 487.051 for the purpose

of forensic DNA analysis. I also order that Mr. Townsend comply with the *Sexual Offender Information Act*, for life pursuant to ss. 490.012(3) and 490.13(5).

VEALE J.