

Citation: *R. v. Caesar*, 2014 YKTC 6

Date: 20140124
Docket: 12-10165
Registry: Watson Lake
Heard: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Judge Luther

REGINA

v.

GERALD ANDREW CAESAR

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

Appearances:
Terri Nguyen
Lynn MacDiarmid

Counsel for the Territorial Crown
Counsel for the Defence

REASONS FOR SENTENCING

[1] LUTHER T.C.J. (Oral): The facts of this case are well set out in my reasons for judgment, which was given orally back in Watson Lake in the fall, and recently filed in writing.

[2] The Court is well aware of the purpose and principles of sentencing, as they are contained in s. 718, s. 718.1, and s. 718.2, and in particular (a)(ii.1), (a)(iii.1), (b), (d), and (e) of s. 718.2. Furthermore, the Court is well aware of the Supreme Court of Canada decisions in *R. v. Proulx*, 2000 SCC 5, *R. v. Gladue*, [1999] 1 S.C.R. 688, and

R. v. Ipeelee, 2012 SCC 13.

[3] We are dealing with a 44-year-old man who is a member of the Liard First Nation. This is referenced in the *Gladue* Report:

Gerald Caesar is 44 years old. He resides in Upper Liard and is a member of the Liard First Nation and follows his mother Rose Caesar's Kaska traditional lifestyle. The LFN is one of five Kaska Dena communities. ...

Gerald's father George Jackson is a First Nation Tlingit from Teslin, Y.T. George moved to Watson Lake years ago and lives off the land, hunting, fishing and camping in the Kaska traditional territory.

[4] Based on the facts as I found them, having done the trial, there are a number of aggravating factors here on sentence, including the very serious nature of the offence, a major sexual assault, previously known as rape. We were dealing with a vulnerable, disadvantaged victim who was terrified more than we can imagine, and who was all alone. The impact on her life has been staggering. Now that a public trial has been held in Watson Lake, in which she was believed, she may better be able to move ahead with her life. That is certainly the hope of the Court.

[5] The Victim Impact Statement was very strong in its language, spewing out feelings of hate and unforgiveness to the offender. Remarkably, she was not seeking vengeance. "I hate you! There is no forgiveness in me. I don't care what the courts decide. You are a rapist Gerald Caesar." Those were her concluding remarks. In the Victim Impact Statement, however, she does implore me to keep the offender away from her as long as possible.

[6] Another aggravating factor is the deliberate nature of the offence, and that the

offender has not taken full responsibility for it, although he seems to have some general feelings of remorse for the pain to the victim and what she went through, as that was obvious to all who were in Court in Watson Lake on the day of the trial.

[7] The mitigating factors would include the present circumstances of the offender, now 25 years after the offence. He does have strong family supports, despite residential school issues of both of his parents, and the impact that that even had on his own life when he was removed from his family at a young age.

[8] Defence counsel has drawn my attention to page 8 of the *Gladue* Report, and it is stated:

...The Lower Post Residential School experience dramatically changed the lives of First Nations people. It caused social, physical, mental and spiritual devastation which still plagues us today and has perpetuated a victim mentality. These affects continue to be seen in our communities today in the form of: high rates of premature deaths due to suicide, alcohol related accidents and illnesses, sexual, physical and mental abuse; substance abuse; hopelessness; depression; loss of culture and identity; loss of parenting skills; and, family and community dysfunction. ...

Despite that gloomy picture, we do see strong signs of progress from people who have taken steps to deliberately turn their lives around, and these would definitely include Rose Caesar and George Jackson, and also the present offender, Gerald Andrew Caesar.

[9] The letters of reference, the two letters that were filed, plus the accounts of support in the *Gladue* Report, are certainly favourable to the offender. I would like to quote from the letter of support from Ann Raider, the last two paragraphs:

While I do not condone any acts of violence past or present attributable to Gerald, I offer my support for him based on the recognition that offenders can take steps to change their lives.

In closing, I extend my heartfelt compassion to the individual who was violated. I bless her for her courage and pray that both may find the space and the healing to move forward.

And then the last paragraph from the letter of Rose Caesar:

Through my own struggles I can't help but feel scared of the possibilities that could happen as a result of the January 24th sentencing. I plead with the courts to fully consider their impact on Gerald, and all the growth he has done, as a provider, a father, a caregiver, and as a son. No matter what happens I will always love and support my son for his strength and determination to be a better person.

[10] Despite a low education, the offender works often, while not regularly, and he does possess many certificates that he has acquired in terms of specialized training. He is alcohol free for seven years and drug free for six. He is now the primary childcare provider for his own children, ages one and three. The reports indicate that he is a low risk to reoffend.

[11] As to the cases that were cited by the defence, obviously the case of *R. v. Yusuf*, 2011 BCSC 626, was much worse than the present case. Notwithstanding that, the Supreme Court Judge, Madam Justice Griffin, back in 2011, imposed a conditional sentence order of two years less a day.

[12] In my opinion, and I am inclined to agree with the Crown, the facts in *R. v. Sidney*, 2008 YKTC 62; *R. v. R.P.B.*, 2011 YKTC 12; and *R. v. Bremner*, 2000 BCCA 345, are less serious than in the present case. In the *Sidney* case, Judge Lilles took a close look at *R. v. Proulx*, as of course the other judges did in their cases as well. At

paras. 11 and 12, he wrote:

The fourth criteria requires that a conditional sentence must be consistent with the fundamental purposes and principles of sentencing as set out in the *Criminal Code*. That would include both specific and general deterrence. Because of the seriousness and frequency of sexual assaults involving vulnerable victims in this jurisdiction, the sentence imposed must also be denunciatory. The Supreme Court of Canada has stated that an appropriately crafted conditional sentence can still provide a significant amount of deterrence and denunciation.

In *Proulx, supra*, Lamer C.J. stated at page 105:

The stigma of a conditional sentence with house arrest should not be underestimated. Living in a community under strict conditions where fellow residents are well aware of the offender's criminal misconduct can provide ample denunciation in many cases. In certain circumstances, the shame of encountering members of the community may make it even more difficult for the offender to serve his or her sentence in the community than in prison.

[13] I think those remarks ring very true in a community like Watson Lake, because of its location, its size, and the close-knit nature of the community. Those remarks of Chief Justice Lamer would, in my view, be less compelling in large cities.

[14] The reports indicate, as I indicated earlier, that this offender has a low risk to reoffend. The offence goes back 25 years. It is the only sexual offence on his record. In fact, at the time of the trial there was only one offence on his record - or perhaps soon to be on his record - and that was the assault on his aunt for which he was placed on probation. There have been a few offences since then, none specifically of violence and certainly none of a sexual nature.

[15] The victim in this case has taken great pains, as she explained to us in the trial, to avoid contact with the offender in a small community. This took considerable effort on her part but she was successful. To bolster her major concern that she have no further contact with the offender, I will be making a lengthy order in that regard.

[16] I am also aware of the remarks of Madam Justice Southin in the case of *Bremner, supra*, as they pertain to historical sexual assaults.

[17] I believe that a fit and proper sentence in this case is a sentence of 18 months in custody, which I feel, based on the analysis in *Proulx, supra*, and the cases provided by defence counsel, can be served conditionally in the community. I know that the Crown never specifically spoke to the types of conditions. Before I impose the conditions, did you want to say anything?

[SUBMISSIONS BY COUNSEL RE CONDITIONAL SENTENCE TERMS]

[18] THE COURT: Okay, I will incorporate the words of Mr. Justice Gower, who was serving as a territorial court judge, and that is found on page 11 of the decision in *R. v. R.P.B., supra*, and particularly term number seven, dealing with the house arrest. The only thing that I will change is clause (c), "To stop for groceries and items required for daily living for no more than two hours once a week," adding: "between 12:00 p.m. and 2:00 p.m." I do not want him out late at night in the event there is a convenience store open until ten o'clock.

[19] The Conditional Sentence Order is in effect for 18 months.

1. Report to your Supervisor within two working days;

2. Reside as approved by your Supervisor;

House arrest we have just discussed:

3. Remain inside your residence (this means house arrest), unless you have the prior written permission of your Supervisor for any of the following purposes:
 - a) To meet with your Supervisor at a pre-arranged appointment;
 - b) For medical treatment for yourself or your immediate family;
 - c) To shop for groceries and items required for daily living for no more than two hours, once a week [between 12:00 p.m. and 2:00 p.m.];
 - d) For the purposes of your employment, between the times indicated in writing by your Supervisor, as specified by your Supervisor, including looking for such employment;
 - e) To meet with any person or group approved in advance by your Supervisor for assessment, counselling and programming, including attendance at Alcoholics Anonymous meetings, providing your Sentencing Supervisor has specified in writing the place, time and duration of such meetings; and
 - f) During such other times and for such other purposes as may be approved in writing by your Supervisor;
4. The abstention is total: to abstain absolutely from the possession or consumption of alcohol and controlled drugs or substances except in accordance with a prescription given to you by a qualified medical practitioner;
5. Provide a sample of your breath for purposes of analysis upon demand by a Peace Officer who has reason to believe that you may have failed to comply with this condition;
6. Not attend any bar or tavern, off-sales or other commercial premises whose primary purpose is the sale of alcohol;

7. To take such other assessment counselling and programming as directed by your Supervisor;
8. Have no contact directly or indirectly or communication in any way with R.C., with no exceptions;
9. Not to attend at or within 100 metres of the residence or workplace of R.C.;
10. Participate in such educational or life skills programming as directed by your Supervisor;
11. Make reasonable efforts to find and maintain suitable employment and provide your Supervisor with all necessary details concerning your efforts.

That is in effect for 18 months.

[20] Following that, there will be a Probation Order for three years. It is only going to be restrictive in the sense that we are providing extra protection to R.C. The statutory terms are as follows:

1. Keep the peace and be of good behaviour.
2. Appear before Court when required to do so by the Court.
3. Notify your Probation Officer in advance of any change of name or address; report to your Probation Officer for the first six months;
4. Reside as approved by your Probation Officer;
5. Take such other assessment, counselling and programming as directed by your Probation Officer;
6. Most importantly, have no contact directly or indirectly or communication

in any way with R.C. No exceptions.

7. Do not attend at or within 100 metres of the residence or workplace of R.C. No exceptions.

[21] With regard to the victim surcharge, I am going to impose a victim surcharge of \$100. Given his lack of means at the moment, I will give him a period one year to pay that.

[22] The Court is not going to order the SOIRA order, largely for the reasons set out by the judge in the Alberta case which was filed.

[23] There will be a firearms prohibition, pursuant to s. 109 of *Criminal Code*. It will be in effect for ten years. Pursuant to s. 113(2) of the *Criminal Code*, this offender does have my permission to apply for an exemption at the appropriate time should he find it necessary for sustenance hunting or otherwise. There will also be a DNA order.

LUTHER T.C.J.