IN THE SUPREME COURT OF THE YUKON TERRITORY

Citation: *R.* v. *D.C.*, 2005 YKSC 30

Date: 20050503
Docket: S.C. No. 04-01545
Registry: Whitehorse

BETWEEN:

HER MAJESTY THE QUEEN

AND:

D.C.

Publication of information that could disclose the identity of the complainant or witness has been prohibited by court order pursuant to s. 486(3) of the *Criminal Code*.

Before: Mr. Justice L.F. Gower

Appearances:
Susan E. Bogle — For the Crown
Gordon R. Coffin — For the Defence

MEMORANDUM OF SENTENCING
DELIVERED FROM THE BENCH

[1] GOWER J. (Oral):

INTRODUCTION

[2] D.C. has pled guilty to a charge of aggravated sexual assault on his common-law spouse, J.D. The guilty plea was entered after D.C. was committed to stand trial following the completion of his preliminary inquiry.

[3] The maximum punishment for this offence under s. 273(2)(b) of the *Criminal Code* is life imprisonment. D.C. has been in custody since his arrest on October 22, 2004, being the date of the offence. Thus, as of the date of the sentencing hearing on April 29, 2005, D.C. has spent a little over six months in pre-sentence custody.

[4] Crown counsel seeks a term of imprisonment of 30 to 36 months, which, after credit for pre-sentence custody, would result in a prison term of 18 to 24 months to be followed by a lengthy period of probation.

[5] Defence counsel seeks a conditional sentence in the range of 18 months plus probation.

[6] The Crown is opposed to a conditional sentence on the basis that D.C. is a danger to the community and is likely to re-offend.

FACTS

[7] An agreed statement of facts was filed by counsel. The essential facts are as follows: In October 2004, D.C. and J.D. had been in a common-law relationship for approximately four years. On October 21st, D.C. and J.D. spent the afternoon in downtown Whitehorse drinking. They were with J.D.'s sister and her boyfriend. They all returned to the residence of D.C. and J.D. in the Kwanlin Dun First Nation Village area of Whitehorse.

[8] J.D.'s sister and her boyfriend left the residence at approximately ten o'clock. D.C. and J.D. decided to go to their bedroom to sleep and ended up watching a movie in their bedroom while lying on the bed. They were not wearing any clothing at that

point. While lying on the bed, D.C. became angry with J.D. and accused her of cheating on him, as she had been away from the house for a number of days prior.

[9] D.C. and J.D. began to wrestle on the bed and he pinched and bit her breasts. He also bit into her arm. He then stuck his fingers up J.D.'s vagina. She struggled to get away and they both ended up on the floor. D.C. continued to keep his finger in her vagina and her vagina began to bleed a great deal. She was able to get away and run down the hall to the bathroom where she screamed to D.C. to bring her some panties. He threw her a pair of his underwear and she put them on with a sanitary pad to catch the blood.

[10] J.D. then went back to the bedroom to put on some more clothes so that she could leave the residence. D.C. threw her down on the floor and started to choke her from behind with two hands. She told him, "Why are you doing this? Don't you know that I love you?" She struggled to get away, but he grabbed her again and continued to choke her to the point where she could hardly breathe and was starting to black out. She took a bite out of D.C.'s arm and he let go of her.

[11] At that point, a neighbour began to knock on the door. J.D. told her to call the police and she was able to escape the house and run across the street to her in-laws' residence. She was still bleeding profusely from her vagina. An ambulance took her to the hospital and the police were called to investigate.

[12] The following injuries were noted by a medical doctor: bruising on the right neck, bite marks over a large area of the neck, red marks and bruises on the central and left neck area, small bruises across the chest and very deep bruising and bite marks on the

entire right upper breast, bruising on the right hand and forearm, bruising and bite marks on the left upper arm, bruising and redness over both knees, bruising on the right upper back, and a small laceration on the left vaginal wall near the entrance of the vagina. J.D. did not require further hospitalization, but had difficulty walking and sitting down for five or six days after the incident.

[13] D.C. was arrested at approximately 2:51 a.m., and a breath sample taken from him at 3:30 a.m., which produced a reading of 157 milligrams of alcohol.

CIRCUMSTANCES OF THE OFFENDER

[14] A pre-sentence report and a psychological assessment were filed. Those indicate that the circumstances of the offender are as follows: He is 34 years old. He is the third oldest child of R.C. and R.B. and has five siblings. His mother consumed alcohol while pregnant with D.C., and he has been diagnosed with FASD or fetal alcohol spectrum disorder. However, his parents apparently ceased their alcohol use several years ago.

[15] D.C. described his upbringing in the Whitehorse area as a good one. He currently has a good relationship with his family and says that they are very supportive. He had been in a relationship with J.D. for approximately four years to the date of the offence. The couple have two daughters, aged three and two. The children were apparently apprehended by Family and Children's Services and are currently residing with D.C.'s parents. I am told that they will continue to do so until D.C. demonstrates an extended period of sobriety.

[16] D.C. got as far as grade 8 or 9 in school. He has only worked sporadically in the past, including a period with the Challenge Employment Agency, which employs persons with disabilities or barriers that prevent them from participating in the mainstream job market.

[17] D.C. is an aboriginal person. He and J.D. live in a home across the street from his parents in the Kwanlin Dun First Nation Village area in Whitehorse. He has had an alcohol problem for a number of years and has also extensively used marijuana, to the point where he craves it regularly. He has been drinking since he was 17 or 18 and has been using marijuana since he was seven or eight.

[18] Based on D.C.'s disclosures, the consulting psychologist reported that, from D.C.'s perspective, his relationship with J.D. has "been problematic due to her infidelity," as well as due to his abusive behaviour and alcohol and drug abuse. D.C. claims to be willing to undertake drug and alcohol assessment, treatment and counselling.

[19] D.C. has a criminal record consisting of property offences from 1989, 1993, and 1994, as well as failures to appear in 1994 and 2002, a breach of recognizance in 2002, an assault in 2002 and a charge of uttering threats in 2002. Most recently, he was convicted of two counts of breach of probation in May of 2002.

[20] Crown counsel advises that the prior assault was upon J.D. in October 2001. The facts there again involved D.C. suspecting J.D. of cheating on him. He hit her with his hand and drew blood. Following his arrest, he was released on a recognizance with a condition to abstain from the possession or consumption of alcohol. He breached that

condition by becoming intoxicated and threatening to kill J.D. with a knife. That incident was interrupted by an unknown male.

[21] According to the consulting psychologist, D.C. has demonstrated "a minimal amount of concern for the victim." In the pre-sentence report, he stated that his main goal is to get out of jail so that he can be with his children. There is no reference in either the pre-sentence report or the psychological assessment to D.C. being remorseful or accepting responsibility for the offence in any specific way. He told the psychologist, "I guess I did it, but I was blacked out from drinking too much. I guess I hurt her private parts, but I don't know how." D.C.'s claim to have been blacked out is suspect in view of the fact that his blood alcohol content shortly after the offence was only 157 milligrams, or less than two times the legal limit, and the fact that he remembered what he was doing before and after the assault.

[22] D.C. was assessed for future risk in three separate tests by the consulting psychologist. These tests probed the risk that D.C. would offend generally and specifically in a sexual manner. They also probed how likely he was to be violent towards his spouse and others. Overall these risk assessments indicate that D.C. is in the "moderate to high risk for spousal and/or sexual assault." It is also reported that his low level of intellectual functioning combined with the inherent impulsivity of individuals with FASD "increases this estimate to high." Risk factors identified include substance abuse, D.C.'s jealousy of his spouse and other relationship problems.

[23] D.C.'s mother recognizes that he will need support and guidance for the rest of his life due to his cognitive difficulties.

THE AGGRAVATING CIRCUMSTANCES

[24] The aggravating circumstances are as follows: This was an incident of severe spousal violence, which under s. 718.2(a)(ii) of the *Criminal Code,* is specifically noted as an aggravating circumstance which the Court must take into account. The violence was serious and prolonged, resulting in multiple physical injuries. It was interrupted and then continued by the offender. The victim almost blacked out. The offender did not stop the violence by himself, but only because J.D. managed to get away when a neighbour intervened. It involved an attack upon the sexual integrity of J.D. and left her with a vaginal injury and four to six days of discomfort.

[25] There is also an element of D.C. having abused his position of trust as a common-law husband. But for the fact that D.C. and J.D. were a common-law couple, he would not have been naked on the bed with her, which facilitated the opportunity to commit the offence. That also is specifically noted as an aggravating factor under s. 718.2(a)(iii) of the *Criminal Code*.

[26] The offender also has a prior and directly related criminal record.

THE MITIGATING FACTORS

[27] The mitigating factors are the guilty plea, albeit after the preliminary inquiry, which is some indication of the offender's willingness to take responsibility for the offence. Also mitigating is D.C.'s willingness to take drug and alcohol treatment and counselling.

[28] I view the offender's FASD diagnosis as a neutral factor for the most part. While it helps to explain his impulsivity and cognitive defects, it is not an excuse for his behaviour any more than his voluntary intoxication can be taken as an excuse. This is not a case where D.C. claims to be not criminally responsibility by reason of mental disorder.

[29] On the other hand, I note the recent decision of *R.* v*. D.J.M.*, 2005 YKTC 25, where Ruddy T.C.J. at paragraph 11 quoted from the pre-sentence report in that case about FASD:

> "However, research shows that the part of the brain most damaged in people with FAS is the prefrontal cortex which controls executive functions. Executive functions include inhibition, problem solving, sexual urges, planning, time perception, internal ordering, working memory, self-monitoring, verbal self-regulation, regulation of emotion and motivation. The effects of alcohol exposure on behaviours related to executive functions result in socially inappropriate behaviour as if inebriated, inability to figure out solutions spontaneously, inability to control sexual impulses especially in social situations, inability to apply consequences from past actions, storing and/or retrieving information, and moody rollercoaster emotions. People with FAS need external assistance and constant reminders, frequent cues and consistent monitors. Without the external assistance, people with FAS cannot manage safely in the community."

[30] She went on to say, at paragraph 22, that she considered Mr. D.J.M.'s "severe cognitive disabilities" a mitigating factor and noted that:

> "… s. 718.1 requires that a sentence must be proportionate to the gravity of the offence and the degree of the responsibility of the offender. In my view, Mr. D.J.M.'s cognitive disabilities and their impact on the executive functions of his brain does affect the degree of his moral culpability and must be considered …"

However, the offender in that case was described at paragraph 9 as "profoundly challenged, with an I.Q. of 74," and displaying overwhelming evidence of significant brain injury.

ANALYSIS

[31] The purpose and principles of sentencing are set out in s. 718 of the *Criminal Code*. Section 718 states:

> "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 following objectives:
>
> (a) to denounce unlawful conduct;
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> (b) to deter the offender and other persons from committing offences;
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> (c) to separate offenders from society, where necessary;
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> (d) to assist in rehabilitating offenders;
>
> (e) to provide reparations for harm done to victims or to the community; and
>
> (f) to promote a sense of responsibility in offenders, and acknowledgement of the harm done to victims and to the community."

[32] Section 718.1, which I noted earlier, states:

> "A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender."

[33] In *R.* v*. D.B.M*., 2002 YKTC 81, at paragraph 19, Lilles C.J.T.C. reviewed the case law for the offence of aggravated assault. He noted that these authorities had been reviewed at length in *R.* v*. D.L.,* [2002] B.C.J. No. 1987, and was satisfied that the range of sentence is generally between six months and six years imprisonment. I note that the maximum punishment for aggravated assault is 14 years imprisonment. However, the maximum punishment for aggravated sexual assault is life imprisonment. Therefore, it is logical to conclude that the range of sentence for aggravated sexual assault should be somewhat higher than for aggravated assault. Unfortunately, however, Crown counsel informed me that she was unable to obtain more than a few sentencing precedents specifically for aggravated sexual assault.

[34] *R.* v*. Wells*, 2000 S.C.C. 10, was a case of sexual assault where there was medical evidence of vaginal abrasions. The sentencing judge described the assault as "near major" or "major," which description was deferred to by the Supreme Court of Canada. The appellant had two prior convictions of assault and there was no evidence of remorse. The pre-sentence report was generally favourable and recommended a conditional sentence. The appellant had completed a 28-day program for alcohol abuse and was assessed as posing no threat to the community as long as he abstained from alcohol use. Fresh evidence was presented at the Court of Appeal that he had applied for a second session at residential alcohol treatment. His sentence of 20 months incarceration was upheld by the Supreme Court of Canada. At paragraph 42, Iacobucci J., speaking for the court, said:

> "Notwithstanding what may well be different approaches to sentencing as between aboriginal and non-aboriginal conceptions of sentencing, it is reasonable to assume that for some aboriginal offenders, and depending upon the nature of the offence, the goals of denunciation and deterrence are fundamentally relevant to the offender's community. As held in Gladue [which was a previous case decided by the Supreme Court of Canada], at para. 79, to the extent that generalizations may be made, the more violent and serious the offence, the more likely as a practical matter that the appropriate sentence will not differ as between aboriginal and non-aboriginal offenders, given that in these circumstances, the goals of denunciation and deterrence are accorded increasing significance."

[35] At paragraph 44, Iacobucci J. continued:

> "Let me emphasize that s. 718.2(e) requires a different methodology for assessing a fit sentence for an aboriginal offender; it does not mandate, necessarily, a different result. Section 718.2(e) does not alter the fundamental duty of the sentencing judge to impose a sentence that is fit for the offence and the offender. Furthermore, in Gladue, as mentioned, the Court stressed that the application of s. 718.2(e) does not mean that aboriginal offenders must always be sentenced in a manner which gives greatest weight to the principles of restorative justice and less weight to goals such as deterrence, denunciation, and separation … As a result, it will generally be the case, as a practical matter, that particularly violent and serious offences will result in imprisonment for aboriginal offenders as often as for non-aboriginal offenders …"

[36] In order to consider the imposition of a conditional sentence, I must first be satisfied under s. 742.1 of the *Criminal Code* that: (a) I am considering a sentence of less than two years, and (b) that serving the sentence in the community would not endanger the safety of the community and would be consistent with the fundamental purpose and principles of sentencing set out in ss. 718 to 718.2.

[37] Here I am satisfied that, after taking into account the credit given to D.C. for the approximate amount of six months that he has spent in pre-sentence custody at two-for-one, even if I was to initially consider a sentence in the range of 36 months, it should be reduced to one of less than two years.

[38] Here I note, incidentally, that there is some debate between the Courts of Appeal in this country as to whether pre-sentence custody can be taken into account before determining the length of sentence as part of the consideration of a conditional sentence. I propose to follow the guidance of the British Columbia Court of Appeal and the Ontario Court of Appeal, which allows the court to do that, although I note that one of those cases is soon to be decided by the Supreme Court of Canada.

[39] As for the risk assessment under s. 742.1(b) in this case, it is my respectful view that this must largely be done prior to considering the matter of the enforcement of a conditional sentence order. I say that because defence counsel repeatedly suggested that the risk here is acceptable, because D.C. will be under the threat of immediate arrest and incarceration if he were to breach the conditional sentence order he seeks. I feel uncomfortable with that approach in this case. It strikes me as a type of "trust me", or more accurately "trust D.C.", approach. The problem is that if D.C. breaches the conditional sentence order, then it seems to me that there is a significant risk that he will commit yet another serious criminal offence, very likely upon the same victim. Indeed, given the escalation between the incident from October 2001 to the current offence, it is conceivable that if the circumstances repeat themselves, namely, D.C.'s intoxication, his jealousy and impulsivity, and absent the intervention of a third party, the victim, J.D., may well be in mortal danger on a future occasion. I am not able to accept that risk.

[40] Specifically, the risk factors here include the fact that the offender is unemployed. Being unemployed, there is a greater risk of temptation to drink or do drugs to bide his time. There also does not seem to be any evidence of D.C. being genuinely interested in finding or maintaining employment. For example, he was previously employed through the Challenge program, but for some unexplained reason, he discontinued that employment and has not returned to it or since sought any new employment with Challenge, even though that is a program specifically tailored to persons with his special cognitive needs.

[41] There is also a concern about the victim's own abuse of alcohol and the possibility of her reconciling with D.C.. As D.C.'s mother was noted to say in the pre-sentence report, "When he and J.D. would receive their social assistance cheques, they would disappear for a couple of days," presumably on a binge, and leave their children with her.

[42] D.C.'s lack of apparent remorse and understanding of his role in the commission of the offence indicates to me that he has not fully accepted responsibility for what he did and is attempting to excuse his behaviour by his state of intoxication. The fact that Family and Children's Services has not seen fit to return D.C.'s children to him and J.D. is an objective indicator that D.C. and J.D. are not yet sufficiently stable and sober to act as parents.

[43] According to the consulting psychologist, D.C. still believes J.D. is not being faithful to him. This coupled with what the psychologist referred to as "his cognitive distortions related to jealousy and power and control" and the fact that jealousy in

relationship problems are identified as risk factors under the risk assessments which were performed by the psychologist, cause me genuine concern. This concern is heightened by the fact that jealousy was the motive for the earlier assault upon J.D. in October 2001. I am also worried that the offender did not stop on his own accord on the current offence. Rather it is apparently only due to the neighbour knocking on the door that J.D. was able to escape and obtain medical treatment. Similarly, it is also apparent that when D.C. threatened to kill J.D. while carrying a knife and while intoxicated, he did not proceed further only because he was stopped by an unknown male. There is also the fact that D.C. has five prior convictions for failing to obey court orders.

[44] D.C.'s admitted problem with alcohol is a key risk factor. While his current willingness to attend for assessment, treatment and counselling is encouraging, I have to presume that such willingness was expressed earlier when D.C. was placed on probation for uttering threats in February 2002. I am given to understand that it was a condition of that probation order that he take such counselling as directed, and that he was breached for not doing so. This calls into question the sincerity of D.C.'s current willingness in that regard.

[45] I have not ignored the fact that D.C. is an aboriginal male and is entitled to the application and consideration of s. 718.2(e). However, there is little unique about D.C. as an aboriginal person. The pre-sentence report makes virtually no reference to his aboriginal heritage and the psychological assessment says he is "only loosely connected" with First Nation cultural activities.

[46] The seriousness of domestic violence has been recognized increasingly in Canada. In *R.* v*. Lavallee* (1990), 55 C.C.C.(3d) 97, Wilson J. of the Supreme Court of Canada spoke about the prevalence, gravity and tragedy of domestic violence in recent years. In *R.* v*. Inwood* (1989), 48 C.C.C. (3d) 173, Howland C.J.O. of the Ontario Court of Appeal considered the issue of domestic violence and stated at page 181:

> "…where there is a serious offence involving violence to the person, then general and individual deterrence must be the paramount considerations in sentencing in order to protect the public. In my opinion, this principle is applicable not only to violence between strangers but also to domestic violence…"

[47] In *R.* v*. Taylor*, 2001 YKTC 511, Lilles C.J.T.C., as he then was, said at paragraph 26:

> "Domestic violence is a very serious problem in the Yukon, exacerbated by isolation, limited services in parts of the Territory, a persistence of a macho, frontier-mentality among some and the highest per-capita alcohol consumption in Canada. During the past decade, at least 10 Yukon women have died at the hands of their partners. This is a shocking statistic when one considers the small population base in the Territory."

[48] In *R.* v*. Chénier* (2004), 191 C.C.C. (3d) 512, the Quebec Court of Appeal imposed a sentence of 30 months imprisonment upon a 52-year-old offender who pled guilty to criminal harassment, aggravated assault and several offences. He had broken into the residence of the victim to whom he had previously been married. He attempted to suffocate the victim and she probably would have died if her son and the police had not intervened. She suffered significant psychological trauma as a result. The offender had a lengthy criminal record and the pre-sentence report expressed serious concerns about his dangerousness. At paragraph 31, the Court stated:

> "In the light of respondent's previous conduct and his criminal record, as well as the serious concerns expressed in the pre-sentence report, it is difficult to see how we can be satisfied that respondent would not endanger the safety of the community in general, not to mention the victim's safety. She too is a member of the community and she too is entitled to have her safety assured."

Those comments are generally applicable to D.C., as well.

[49] Defence counsel only tendered one case in support of its position, namely*, R.* v*. M.S.R.,* 2002 BCCA 268. That was a case of aggravated assault, where the accused struck and kicked his estranged wife and stabbed her three times. Both were members of an aboriginal community in Bella Bella, British Columbia. The offender had previous convictions for having assaulted the same victim and a former spouse, as well as for breach of probation and breach of recognizance. He had a long-standing problem with alcohol. The B.C. Court of Appeal reduced the sentence from three years of imprisonment to one of 21 months, to be served conditionally, plus two years probation.

[50] However, there are a number of significant distinguishing factors which make *M.S.R.* of little persuasive force in this case. It was noted that immediately after the attack, the offender realized the seriousness of what he had done and attempted to dress the victim's wounds. The offender had responded to the possibility of a community-based disposition by specifically writing to the local justice committee, indicating his willingness to work with the committee and to abide by conditions they had proposed for his return there. He also apologized for the harm he had done. There were many letters of support from the offender's family and friends in the Bella Bella community, attesting to his success in abstaining from alcohol for two years following

the offence and voicing support for him in dealing with the consequences of his actions. There was also evidence that the offender was a participant in the Alcoholics Anonymous program, which the sentencing judge noted could provide "the kind of peer support which is so critical to [the program's] ongoing benefit to any participant." Finally, the victim of the offence stated that she no longer felt threatened by the offender's presence in the community.

[51] Defence counsel argued that D.C. has had over six months of sobriety while being remanded in custody and that his case is, therefore, comparable to *M.S.R*. I have great difficulty with that submission. Six months of forced sobriety may assist in the long-term recovery of an alcoholic or a drug addict. However, it does little to give the Court confidence that there has been a genuine change of attitude or commitment by the offender, in comparison with two years of voluntary sobriety including participation in Alcoholics Anonymous. Further, defence counsel argued that D.C.'s record is not dissimilar from the offender's in *M.S.R*. While that may be true to an extent, the other distinguishing features of *M.S.R.* take it out of contention as a helpful precedent in this case.

CONCLUSION

[52] Taking into account all the aggravating and mitigating circumstances, the risk factors I have identified, the sentencing principles set out in ss. 718 to 718.2, as well as the sentencing precedents filed in this case, I would be inclined to sentence D.C. to 36 months in jail to be followed by three years probation. However, I am prepared to credit

D.C. with the equivalent of 12 months in jail for his pre-sentence custody and I sentence him to imprisonment for two years less one day.

[53] I am not satisfied that the safety of the community, which includes J.D., would not be endangered if D.C. was allowed to serve that sentence in the community. Accordingly, his application for a conditional sentence is refused.

[54] I would ask that the warrant for committal be endorsed with my strong recommendation that D.C. be considered for temporary absences to attend any assessment, treatment or counselling arranged with the Family Violence Prevention Unit.

[55] Upon his release from jail, D.C. will be under a probation order for three years. It is my intention that the probation conditions be monitored closely and that there should be little tolerance for any breaches. In particular, because of the importance of D.C.'s alcohol and drug abuse as a risk factor, if he is arrested and detained for such a breach, I would recommend to any police officer or court considering his release on bail that he be detained until his trial for that breach, unless there are exceptional circumstances to indicate otherwise.

[56] The terms of his probation will be as follows:

(1) Keep the peace and be of good behaviour and appear before the court when required to do so by the court.

(2) Notify the court or the probation officer in advance of any change of name or address.

(3) Promptly notify the court or the probation officer of any change of employment or occupation.

(4) Report to a probation officer immediately upon release from jail and thereafter when required by the probation officer and in the manner directed by the probation officer.

(5) Remain within the jurisdiction of the court unless written permission to go outside the jurisdiction is obtained from the court or the probation officer.

(6) Take such psychological assessment, counselling, programming and treatment as and when directed by a probation officer.

(7) Report immediately to the Family Violence Prevention Unit to be assessed and, if so directed, attend, participate in and successfully complete the batterers' or assaultive husbands' program as directed by your probation officer.

(8) Take such other assessment, counselling, programming and treatment as directed by your probation officer, including but not limited to sex offender treatment and residential alcohol and drug treatment.

(9) Take such steps towards upgrading your education and life skills as directed by your probation officer.

(10) Take such alcohol assessment, counselling, programming, treatment, including attendance at a residential alcohol treatment

program as and when directed by a probation officer and abide by the rules of that residence.

(11) Abstain absolutely from the possession, consumption or purchase of alcohol, non-prescribed drugs and other intoxicating substances and submit to a breathalyzer, urine analysis, bodily fluids or blood test upon demand by a peace officer or a probation officer who has reason to believe that you have failed to comply with this condition.

(12) Have no contact directly or indirectly with J.D., except as approved by the probation officer in consultation with Victim Services.

(13) Make reasonable efforts to find and maintain suitable employment and provide the probation officer with all necessary details concerning your efforts.

(14) Reside in a residence as directed by the probation officer and abide by the rules of the residence and not change that residence without the prior written permission of the probation officer.

(15) Abide by a curfew by remaining within your place of residence within the hours of 10:00 p.m. and 7:00 a.m. daily, unless with the prior written permission of the probation officer.

(16) You must also answer the door or the telephone for the purposes of a random curfew check.

(17) You are not to have in your possession any firearms, hunting knife or other weapon or ammunition or explosive substance.

(18) Take such anger management, assessment, counselling and treatment as and when directed by the probation officer.

(19) Attend for review of this probation order as directed by the court or your probation officer.

[57] Those are the technical words for the conditions. I will now repeat those conditions in more simplified language, which I will ask to be attached to the probation order as Appendix A.

[58] D.C., please listen to me. These are the simple terms of your probation order. You will have this read over to you and explained to you by the clerk and by your lawyer and as soon as these reasons are published, you will have a copy of this list that you will be able to take with you and keep with you at all times:

(1) Stay out of trouble with your probation officer and with the police.

(2) Come to court when your probation officer tells you to.

(3) Don't leave the Yukon without your probation officer's permission.

(4) Go to any counselling your probation officer tells you to go to and do not miss any appointments.

(5) Take life skills and upgrading, if your probation officer tells you to.

(6) Do not drink alcohol or use drugs.

(7) Give a sample of your breath, urine or blood, if asked to by your probation officer or a police officer.

(8) Try to get a job and keep it, if your probation officer tells you to, including work at Challenge.

(9) Do not talk to J.D. or pass her messages, unless your probation officer says it is okay.

(10) Live where your probation officer tells you to live and follow the rules of that place.

(11) Stay in your home from 10:00 at night to 7:00 in the morning, unless you have your probation officer's permission to go out.

(12) Answer the door or the phone while you are in your home at night, so your probation officer or the police can check on you.

(13) Do not handle or use any guns, hunting knives or other weapons.

[59] In addition, there is a mandatory order required by s. 109(1) of the *Criminal Code* which will result in D.C. being prohibited from possessing any firearms, ammunition or explosives or the other items listed in that subsection for a period of ten years.

[60] Crown has asked for and I am prepared to order that D.C. be required to provide samples for the purposes of DNA analysis and that he will comply under an order with the *Sex Offender Information Registration Act*. The forms of the orders have been provided by Crown counsel.

[61] Thank you.

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GOWER J.