

Citation: *R. v. Dickson*, 2005 YKTC 59

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Docket: T.C. 04-10055  
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04-10055B  
03-10052  
03-10052A  
Registry: Watson Lake

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

REGINA

v.

GORDON WAYNE DICKSON

**Publication of information that could disclose the identity of the complainant of witness has been prohibited by court order pursuant to section 486 of the *Criminal Code*.**

Appearances:  
Edith Campbell  
Gordon Coffin

Counsel for Crown  
Counsel for Defence

**REASONS FOR SENTENCING**

[1] FAULKNER C.J.T.C. (Oral): Gordon Wayne Dickson is before the Court to be sentenced for a charge of sexual assault, a further charge of assault on his common-law partner and two charges of breach of undertaking.

[2] With respect to the charge of sexual assault, the Crown proceeded by indictment. The circumstances of that matter are, unfortunately, all too common in this jurisdiction.

Some indication of the prevalence can be gleaned from referring to a large number of sentencing precedents that were available to the Court. What occurred was the victim, a young woman 18 years of age, was at Mr. Dickson's house where she and the offender drank a considerable amount and for a considerable period of time. Eventually, the victim passed out and while she was in a comatose condition, Mr. Dickson removed her clothing and had sexual intercourse with her.

[3] The circumstances of the assault charge are that the offender and his common-law wife were drinking heavily and disagreement ensued during the course of which Mr. Dickson slapped and punched his wife in the face and body, resulting in a number of bruises.

[4] With respect to the breach charges, those were two situations in which Mr. Dickson was found highly intoxicated in contravention of no alcohol clauses in undertakings he had entered into following his release on the principal offences.

[5] A common thread in all of these situations is excessive alcohol consumption. Mr. Dickson, who is now 47 years of age, has amassed a considerable criminal record and if one looks at it, it is obvious that much of it is related to alcohol abuse. As well, it must be mentioned that there are prior convictions for spousal assault; however, none are related to the sexual assault and the last of the entries was in 1992.

[6] Although the offences are serious, Mr. Dickson has a number of things that could be said in his favour. In my mind, first and foremost is the fact that he has entered early guilty pleas to the charges, sparing his victims the ordeal of a trial.

[7] Secondly, there is some evidence that Mr. Dickson has taken some steps towards obtaining treatment. He has been involved in some alcohol assessments and counselling in recent months and did undertake and complete the spousal abuse program. However, with respect to that matter, it is noteworthy that he was not able to do that, despite a number of false starts, until he was on a condition to reside at the Yukon Adult Resource Centre in Whitehorse. Once resident there, he was able to attend and complete the program. As I mentioned, he has been involved in alcohol treatment both recently and in the past, although to date he has not been successful in maintaining sobriety over the long term.

[8] As indicated earlier, both the Crown and the defence referred to a significant number of sentencing precedents. Those precedents essentially establish two things. Firstly, given the egregious nature of the offence and the need to denounce and deter such conduct, a custodial sentence is clearly called for.

[9] Secondly, the cases establish that the range of sentence is from one to two years, depending on the circumstances of the offence and of the offender.

[10] The only serious issue between the Crown and the defence was whether or not the ends of justice would be met by ordering that the sentence be served conditionally in the community.

[11] As the Supreme Court of Canada has made clear, conditional sentences are not foreclosed for any particular class of offence. So long as the custodial sentence being contemplated is less than two years, a conditional sentence can and must be considered. Nevertheless, it is obvious that a conditional sentence will be more likely in

the case of certain classes of offences than in others. For example, non-violent offenders would be more likely to be considered suitable candidates than will be violent offenders, simply because the latter category of offenders pose more of a risk to public safety.

[12] As well, as was pointed out by Mr. Justice Veale in *R. v. Tom*, [2003] Y.J. No. 169 (QL), and by this Court in many cases, a conditional sentence must also be consistent with the fundamental purposes and principles of sentencing as set out in s. 718 and s. 718.2 of the *Code*. In the case of sexual assault, of the kind committed here, denunciation and deterrence are certainly included in these principles and, indeed, must be at the forefront of them.

[13] The Court must also, of course, consider the degree of risk posed by the particular offender before the Court. This is quite a different question than contemplation of simply the type of offence that has been committed. As Mr. Coffin has ably pointed out, both the probation officer, Mr. Essler, and the psychologist, Mr. Dempsey, scored Mr. Dickson as at low to moderate risk to re-offend and they offered this opinion, it would seem, both with respect to offences of the sexual assault and the spousal assault variety. However, as Mr. Coffin himself had to concede, this low or moderate risk to re-offend is only the case if Mr. Dickson is not drinking. If he is drinking, all bets are off and, indeed, the opinion is quite the reverse; there is every indication he is likely to be involved in more offences, and serious offences of violence, at that.

[14] Now looking at Mr. Dickson's track record, it is at once obvious that he has not been able to maintain sobriety for extended periods of time, though he claims to be dry at present. In my view, having reviewed the material before me, not once but several times, I find there is little that would give me assurance that he would be able to remain abstinent in the longer term. The result of all of this is that we have an offender with a substantial prior record, we have an offender who has been convicted of a serious offence calling for a denunciatory sentence and we have an offender who is at high risk to re-offend should he drink, which is essentially what he has done for all of his adult life up until now.

[15] That being the case, I simply cannot be satisfied that a conditional sentence would be appropriate. Having regard to the background to this offender and having regard to the circumstances of the commission of the sexual assault and having regard to the guilty plea that have been entered, with respect to the charge of sexual assault, Mr. Dickson, you are sentenced to a period of imprisonment for 14 months. Following your release from imprisonment, you will be subject to a probation order for a period of 18 months on terms that I will return to.

[16] With respect to each of the charges of breach, I have taken those into account certainly with respect to the sentence meted out to you with respect to the sexual assault charge and also give regard to the global effect. With respect to each of those matters, you are sentenced to a period of imprisonment of 30 days to be served concurrently.

[17] On the charge of assault, I am told that Mr. Dickson served some days in custody, as well, as I have previously mentioned he has now completed the spousal abuse program and in those circumstances with respect to that matter you are sentenced to a period of imprisonment of one day, although the probation order will contain some terms relative to that particular offence.

[18] As well, you are prohibited from having in your possession any firearm, ammunition, explosive substance for a period of 10 years following your release from imprisonment and you are directed to surrender forthwith the RCM Police at Watson Lake any such items now in your possession.

[19] There will also be an order whereby you will provide samples of bodily substances sufficient for the purpose of DNA analysis and banking.

[20] As well, you are directed to comply with provisions of *Sex Offender Information Registration Act* now incorporated into the *Criminal Code*.

[21] The victim surcharge will be waived in the circumstances.

[22] The terms of the probation order will be:

1. That you will keep the peace and be of good behaviour.
2. You will report to the court as and when required.
3. You will report to a probation officer within two working days after the order has come into effect and thereafter when and as directed.

4. You will advise the probation officer in advance of any change of address and promptly notify him of any change of occupation or employment.
5. You will abstain from the possession or consumption of alcohol or controlled drugs or substance except in according with a prescription given to you by a duly qualified medical practitioner.
6. You will submit to a breath testing or testing of bodily fluids when requested by a police officer or probation officer, provided that either has the belief on reasonable grounds that you have failed to abstain as required by the probation order.
7. You will not attend any facility or place of business where alcohol is sold except a restaurant.
8. You will attend for assessment and counselling as directed by a probation officer.
9. You will not be in contact with Freda Nieman if either of you have been drinking alcohol and if either of you have been you must break off contact.
10. You will have no contact directly or indirectly with C. A. C.
11. You will attend relapse prevention program with the Family Violence Prevention Unit as directed by the probation officer.
12. You will continue to further develop your safety plans and supports in the community and continue to update the family violence counsellor and probation officer of his progress.

13. You will attend for sex offender counselling as directed by the probation officers.
14. You will continue to attend Alcoholics Anonymous meetings or other meetings or group supports as directed by the probation officer.

[23] The remaining charges?

[24] MS. CAMPBELL: Crown directs a stay of proceedings.

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FAULKNER C.J.T.C.