

Citation: *R. v. Farr*, 2005 YKTC 81

Date: 20051208
Docket: T.C. 05-11050
T.C. 05-11053
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: Her Honour Judge Ruddy

REGINA

v.

MARTIN DRIEIER FARR

Appearances:
Kevin Drolet
Nils Clarke

Counsel for Crown
Counsel for Defence

REASONS FOR SENTENCING

[1] RUDDY T.C.J. (Oral): Martin Farr has plead guilty to three separate sexual offences which occurred in Dawson over a six-month period.

[2] The facts of all three are disturbingly similar. Each involved a complainant who had passed out as a result of alcohol consumption. Mr. Farr took advantage of their condition, having sexual intercourse with each of them without their consent. I have before me victim impact statements from one complainant and from the parents of another. They speak to the devastating effect that these have had on the complainants

and on their families. There will be effects that they will be suffering through for some time to come, if not indefinitely, and that cannot be underestimated.

[3] These are extremely serious offences and they are deserving of significant denunciatory terms. As noted by counsel, the appropriate range for these offences is roughly four to six years in jail. In determining the appropriate sentence, I must have regard to the circumstances of the offender, as well as the circumstances of the offence. Counsel has jointly submitted that given Mr. Farr's personal circumstances, a sentence at the low end of the range is appropriate. Following credit for remand at six months, they have jointly submitted that a sentence of three and one half years is appropriate. At the sentencing hearing, I expressed concern that the joint submission was low, in my view. I reserved to consider the matter further.

[4] Fortunately, in the interim, Probation Services has provided me with a number of documents concerning Mr. Farr, including two old pre-sentence reports, a number of psych assessments and a neuropsychological assessment. This information has been extremely helpful in my deliberations and I am indebted to Mr. Hyde for his efforts in pulling everything together in so timely a fashion.

[5] The information provided assures me that Mr. Farr is an individual with serious cognitive impairments. In the neuropsychological assessment, Dr. Brodie indicates a strong suspicion that Mr. Farr suffers from F.A.S.D., but cannot confirm, due to a lack of prenatal information. He does confirm, however, that A.D.H.D. is a clear factor for Mr. Farr, a condition which predisposes him to acting out and reacting to situations in an essentially impulsive, unreflective and poorly considered manner.

[6] In short, he clearly demonstrates problems with impulse and behavioural control consistent with F.A.S.D. These concerns are further complicated by the presence of a schizoid personality disorder and a significant substance abuse problem. Mr. Farr is an individual with serious mental health issues and is clearly in need of specialized treatment. Such treatment is available within the federal system in the form of the North Star Program.

[7] In terms of additional background, Mr. Farr is currently 49 years of age and is a member of the Tr'ondek Hwech'in First Nation. He appears able to perform labouring type positions, but lives a somewhat isolated existence. He has entered guilty pleas to all three offences and indeed provided admissions to the RCMP at an early stage in the investigation. He has a prior criminal record, including offences of violence, but there are no sexual offences and there have been no convictions registered since 1996, a gap of some nine years.

[8] In considering the joint submission, I have revisited the totality principle over the past week and I have also considered my previous decision in the *R. v. D.J.M.* case, [2005] Y.J. No. 18 (QL), in which I referred to the issue of culpability as it relates to individuals with serious cognitive impairments.

[9] Being mindful of both of those issues and considering Mr. Farr's personal circumstances, I have been persuaded that the joint submission is appropriate in this particular case.

[10] Accordingly, there will be a sentence of three and one half years and I will direct that the record reflect that I have credited the remand time at two to one for a total of six

months credit. I also direct that the warrant of committal be endorsed, with my recommendation that Mr. Farr be assessed as soon as possible for participation in the North Star Program.

[11] Lastly, I make the mandatory firearms prohibition pursuant to s. 109 for a period of ten years. That prohibition will include all items listed in s. 109. I also make the mandatory DNA order requiring Mr. Farr to provide such samples of his blood as are necessary for DNA testing and banking. The victim fine surcharges are waived in the circumstances.

[12] MR. DROLET: Three and one half years on each charge concurrent?

[13] THE COURT: Yes. Unless, counsel, in reflecting on the joint submission, prefers it to be reflected in some other way?

[14] MR. CLARKE: Just a moment, Your Honour. Your Honour, given that Mr. Farr would have been sentenced today with respect to all matters and will likely -- his matters will be reviewed at the same time and in my respectful submission, it likely does not matter as far as defence is concerned.

[15] THE COURT: Then there will be three and a half years on each concurrent to each other. Mr. Farr, there is some really good programming available for you in the system and I really urge you take advantage of that. I think you will find that it helps you out a lot. Okay?

[16] THE ACCUSED: Yes.

[17] THE COURT: Okay, good luck. Anything further?

[18] MR. DROLET: No, thank you, Your Honour.

[19] THE COURT: Thank you.

RUDDY T.C.J.