

Citation: *R. v. Labonte-Dubois*, 2016 YKTC 60

Date: 20160805
Docket: 15-11045A
15-11045C
15-11052A
Registry: Dawson City
Heard: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before His Honour Judge Cozens

REGINA

v.

GABRIEL LABONTE-DUBOIS

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

Appearances:
Jennifer Grandy
Nils F.N. Clarke

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCE

[1] Cozens J. (Oral): Gabriel Labonte-Dubois has entered guilty pleas to having committed offences contrary ss. 349(1), 145(5.1), and 271 of the *Criminal Code*.

[2] Circumstances are that on December 11, 2015, in Dawson City, E.S. returned to her home, after having been gone for only 15 minutes, to find her door broken and Mr. Labonte-Dubois passed out on her couch. She did not know who he was. She called the RCMP, who came to awaken him. He was extremely difficult to awaken,

being extremely intoxicated, and, once awoken, was somewhat difficult and not cooperative, largely, I expect, as a result of his severe level of intoxication.

[3] He was released the following morning on an undertaking to a peace officer that had a condition that he report to a bail supervisor, along with other conditions. He did not report at all as he had been directed to do.

[4] Subsequently, on the evening of January 25th and the morning of January 26th, he was at a house party in Dawson City.

[5] The victim in this case, Y.W., who was friends with Mr. Labonte-Dubois and, as I understand it, at times in an intimate relationship with him, had been drinking. She did not want to return to her home, which was outside of Dawson City, and asked Mr. Labonte-Dubois if she could sleep at his house, which he granted her permission to do. She went to the home alone and fell asleep in the basement.

[6] Mr. Labonte-Dubois showed up some time later, came to where she was, and awoke her. He was biting her face. It was painful. This resulted in bruising. He asked her to punch him in the face and then he punched himself. He continued biting her face and then her breasts, and then he held her down and had forced intercourse with her. He also penetrated her digitally with his finger. She suffered bleeding both in her vaginal area and in her anal area. She had bruising to her neck, face, and thighs. She believed that he ejaculated during the intercourse. When he finished, she was able to get her clothes and leave. She subsequently sought medical attention and assistance for what had taken place.

[7] Mr. Labonte-Dubois has one prior conviction in 2007 for a s. 348 offence for which he received a suspended sentence of one year.

[8] He is 28 years of age. He comes from Québec City. He has a child. His parents are separated. He witnessed domestic violence in the home.

[9] Mr. Labonte-Dubois has been able to sustain himself through the years working a number of different occupations, generally, what I would describe, in whatever area it was, as basic labouring. His lawyer put it as a "hardscrabble existence" of going from job to job with a limited Grade 10 education, from Québec to British Columbia, to coming up to Dawson City. He had been working in Dawson City until the season closed down due to the weather.

[10] He has struggled historically with alcohol and drugs. Since 2012, it has been alcohol. At this point in his life, with the lack of work and loss of social structure, he became depressed. His drinking increased and, on the night of both, the s. 349(1) and the s. 271 offences, he was significantly intoxicated to the point that he has no recollection of events. His counsel summed this up as "the conclusion of a negative and downward spiral."

[11] The victim in this case has provided a Victim Impact Statement and has been involved in the proceedings. The resolution that is being put forward before me today in the form of a joint submission is something that I understand accords with the wishes and interests of the victim. From her Victim Impact Statement, it is clear that the breach of trust involved in this, in that she had trusted Mr. Labonte-Dubois enough to ask to stay at his house and thought she would be safe there, has caused her considerable

pain and hardship. It is a very frank and heartfelt Victim Impact Statement as to the consequences upon her, which she puts forward in a very compelling way without demonstrating any real sense of wanting to see Mr. Labonte-Dubois punished. She simply wants him to know what his actions did to her and caused her to feel.

[12] I accept, from what Mr. Labonte-Dubois has said in court today and what I see, that he is very remorseful for what he has done and sorry for the harm that he has caused Y.W. and he recognizes that what he has done has had a serious and significant impact on her.

[13] The joint submission that is before me today is one that will take into account the six months of pre-trial custody that he has served. There was a s. 524 application so he is only receiving 1:1 credit for this time which results in a sentence of two years less one day going forward.

[14] I have experienced counsel before me who have obviously put a lot of time and effort into reaching this resolution. The case law that has been filed before me, *R. v. White*, 2008 YKSC 34 and *R. v. Tronson*, 2009 YKTC 88, certainly show that the sentences being proposed is clearly within the range of sentence for such an offence.

[15] Obviously, the aggravating factors are the nature of the offence itself and the breach of trust involved in the nature of the relationship between the parties. The criminal record is very limited and somewhat related to the s. 349(1) offence, but it is also quite dated and I do not find that to be particularly aggravating.

[16] Mitigation is, of course, the acceptance of responsibility and guilty plea that has been put forward.

[17] I have reviewed what Mr. Labonte-Dubois has done at Whitehorse Correctional Centre in the report that was filed. While there are some minor infractions, overall, the report indicates that he had been able to maintain employment in there. He has been involved in programming and he has referrals to further programming. He has worked hard to get himself into shape and to complete his GED, which he hopes to do in the near future, as he has been working towards that. He also wishes to enrol and work in the carpentry program that Yukon College offers.

[18] Certainly it appears to me that what has taken place here has delivered a very clear and strong message to Mr. Labonte-Dubois that he needs to make better choices in the future and not put himself in a situation through consumption of alcohol that he therefore victimizes and harms other people.

[19] I am satisfied the joint submission is appropriate.

[20] With respect to the s. 271 charge, the sentence will be 28 months less 6 months' credit for time in custody. Thus, a sentence of 22 months remains to be served.

[21] There will be a sentence of two months less one day with respect to the s. 349(1) offence. That will be consecutive.

[22] That brings the sentence up to two years less one day.

[23] With respect to the s. 145(5.1) offence, there will be 15 days concurrent time on the s. 349(1) offence served.

[24] There will be a period of probation of one year. It will attach itself to the s. 349(1) and s. 271 offences.

[25] The terms of the probation order, subject to anything counsel may say, will require you to:

1. Keep the peace and be of good behaviour;
2. Appear before the court when required to do so by the court;
3. Notify your Probation Officer in advance of any change of name or address, and promptly of any change of employment or occupation;
4. Have no contact directly or indirectly or communication in any way with E.S. or Y.W.;
5. Not go to any known place of residence, employment, or education of E.S. or Y.W.;
6. Report to your Probation Officer immediately upon your release from custody and, thereafter, when and in the manner directed by your Probation Officer;
7. Reside as directed by your Probation Officer and not change that residence without the prior written permission of your Probation Officer;

8. Not possess or consume alcohol and/or controlled drugs or substances that have not been prescribed for you by a medical doctor;
9. Attend and actively participate in all assessment and counselling programs as directed by your Probation Officer, and complete them to the satisfaction of your Probation Officer, for the following issues:

alcohol abuse,

any other issues identified by your Probation Officer,

and provide consents to release information to your Probation Officer regarding your participation in any program you have been directed to do pursuant to this condition.

[26] Of course, given the fact that this is a sexual offence, any counselling with respect to sexual behaviour and violence in the context of a sexual relationship will be caught in the term that allows for any other issues, just so that is clear. While I have not specified those, I expect that there will obviously be the appropriate consideration to a direction to attend in that kind of programming. It is simply not listed in the terms that are before me.

[27] Those, I believe, are all the terms that counsel had agreed to in the probation order.

[28] There will be, of course, the mandatory firearms prohibition under s. 109 of 10 years.

[29] There will be an order that you provide a sample of your DNA, as this is a primary designated offence.

[30] There will be a *SOIRA* order under s. 490.012. The duration of that order, given the nature of this offence and the indictable election, is 20 years.

[31] There are fine surcharges. There is a total of \$400: \$200 on the s. 271; \$100 on each of the others. These will be ordered payable forthwith. I will note Mr. Labonte-Dubois in default of payment and I will order that any time served in default of payment be served concurrent to the time that he is serving in custody.

[32] Remaining counts?

[33] MS. GRANDY: If they could be marked as withdrawn, please?

[34] THE COURT: Withdrawn.

[35] I believe that covers everything.

COZENS T.C.J.