

Citation: *R. v. Massetoe*, 2014 YKTC 28

Date: 20140213
Docket: 13-10028
13-10028A
13-10028B
Registry: Watson Lake

TERRITORIAL COURT OF YUKON
Before His Honour Judge Chisholm

REGINA

v.

DESMOND MASSETTOE

Publication of information that could disclose the identity of the complainant or witness has been prohibited by court order pursuant to sections 486.4 and 486.5 of the *Criminal Code*.

Appearances:
Bonnie Macdonald
Gordon Coffin

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCING

[1] CHISHOLM T.C.J. (Oral): Mr. Desmond Massetoe has entered guilty pleas to offences contrary to s. 271 and 145(3) of the *Criminal Code*.

[2] I should note, before starting, that I will order a Publication Ban on information that could disclose the identity of the victim, pursuant to s. 486.4 of the *Criminal Code*.

[3] On the evening of June 6th, 2013, in the community of Upper Liard, Mr. Massetoe sexually assaulted the victim while she was passed out due to alcohol consumption. A third party interrupted the assault and put an end to it. The assault

consisted of oral sex and fondling of the victim's breast. She reported soreness in her genital area as a result of the assault.

[4] Mr. Massetoe was released on court process, including a condition that he abstain from the possession or consumption of alcohol. He breached that abstention condition on February 11, 2014. As an aggravating factor, the Crown has outlined an incident on January 2, 2014, when Mr. Massetoe was also intoxicated.

[5] The Crown seeks a period of incarceration of 18 months plus 18 months' probation, as well as certain ancillary orders. It should be noted that the Crown proceeded by indictment in this matter.

[6] The defence does not take dispute with respect to a probationary period but argues that a lesser period of incarceration would be appropriate, considering all of the facts of this case and the circumstances of the offender.

[7] The victim has not filed a Victim Impact Statement but she undoubtedly suffered as a result of the sexual assault. It was a violation of her bodily integrity at a time when she was most vulnerable. As described to me, she has had a difficult life and suffers from addiction issues. Her parents, who had attended residential schools, encountered similar substance abuse issues.

[8] Mr. Massetoe is 32 years of age and is a member of the Kwadacha First Nation of Fort Ware, British Columbia. I have the benefit of a *Gladue* report, as well as a pre-sentence report. Mr. Massetoe's home community is a troubled one and he was subject to a difficult upbringing. His mother died in her thirties due to complications from

alcohol abuse. His father died from cancer when Mr. Massetoe was a child. He lived at times with his grandparents; at other times with different family members. An uncle and aunt with whom he lived were alcoholics and were physically abusive to one another. Mr. Massetoe was sexually assaulted twice as a boy. He never reported these incidents which have clearly affected him. He reports once having attempted to take his life. It appears that Mr. Massetoe suffers from some cognitive issues. He has trouble reading and writing. He believes his mother drank while she was pregnant with him. He would like to undergo an assessment for Fetal Alcohol Spectrum Disorder. Mr. Massetoe suffers from substance abuse issues, namely alcohol. He was very intoxicated when he committed the sexual assault in question and reports to having little, if any, recollection of it. He has received treatment for alcohol abuse in the past.

[9] The decision in *R. v. White*, 2008 YKSC 34 discusses the range of sentence typical for this type of a sexual assault. Justice Gower, in a lengthy decision, concluded the range of sentence was between one and two-and-a-half years.

[10] It is clear from case law that sentencing is a very individualistic process. Having considered all factors, the Court is to render a fit and proper sentence taking into account the circumstances of the offence, offender, and the victim. In coming to a decision on this matter, I have taken into account the purposes and principles of sentencing as outlined in the *Criminal Code*. Sexual assaults are a plague on Yukon communities and the principles of denunciation and deterrence are important in this sentencing.

[11] At the same time, I must consider the individual circumstances of Mr. Massetoe. I am cognizant of his First Nations status and of his troubled upbringing. As indicated in *R. v. Ipeelee*, 2012 SCC 13, this does not in and of itself amount to a reduction in sentence. It does, however, assist in understanding how it is that Mr. Massetoe comes before me today facing a term of imprisonment for a very serious offence. The background and systemic factors which have impacted Mr. Massetoe do bear on his culpability.

[12] In terms of aggravating factors, as I have pointed out, this is a serious offence where there was a violation of the bodily integrity of the victim. The victim was in a vulnerable situation at the time that this occurred. That being said, there are an absence of a number of aggravating factors as seen in the *White* decision, for example.

[13] In terms of mitigation, Mr. Massetoe entered a guilty plea, even if it was late in the day. He has a limited criminal record. Despite his difficulty in accepting responsibility for the offence, I do understand him, from his comments today, to be remorseful for the harm he has caused.

[14] I also consider, because of his personal circumstances, that he is less morally culpable than certain other offenders.

[15] Mr. Massetoe, I sentence you to a period of imprisonment of 14 months on the s. 271 charge. In addition to that, there will be an 18-month period of probation. The statutory terms are:

1. You are to keep the peace and be of good behaviour.

2. You are to appear before the Court when required to do so by the Court.
3. You are to notify the Probation Officer in advance of any change of name or address, and promptly notify the Probation Officer of any change of employment or occupation.
4. You are to report immediately upon your release from custody to a Probation Officer and thereafter when and in the manner directed by the Probation Officer.
5. You are to reside as directed by your Probation Officer.
6. You are to have no contact with TJ. That means that you shall have no contact, directly or indirectly, or communication in any manner with her. You are not to attend at her residence or workplace.
7. You are to take such programming, assessment, and counselling as directed by your Probation Officer.
8. You are not to attend any bar, tavern, off-sales, or other commercial premises whose primary purpose is the sale of alcohol.
9. You are not to consume alcohol in the presence of females and you are not to be in the presence of females after having consumed alcohol.
10. You are to provide your Probation Officer with consents to release information with regard to your participation in any programming,

counselling, employment, or educational activities that you have been directed to do pursuant to this Probation Order.

[16] In terms of ancillary orders:

1. You are ordered to provide a DNA sample, pursuant to s. 487.051 of the *Criminal Code*.
2. You are subject to a Sex Offender Registry Order for a period of 20 years, pursuant to s. 490.013 of the *Criminal Code*.
3. You are prohibited from possessing any weapons, ammunition, or explosives for a 10-year period following your release from custody, pursuant to s. 109 of the *Criminal Code*.

[17] With respect to the s. 145(3) charge, you are sentenced to a period of incarceration of 30 days. That will be consecutive to the 14-month period of incarceration on the s. 271 charge. In coming to this sentence, I have taken into account the eight days that you have previously served in custody.

[18] In terms of the Victim Fine Surcharge for these offences...?

[19] MS. MACDONALD: Certainly, the Crown is agreeable to it being waived on the s. 271. With respect to the s. 145(3), I note that it comes after the changes to the *Code* but perhaps with a time to pay of forthwith that might --

[20] THE COURT: Yes.

[21] MS. MACDONALD: -- be the way to deal with it.

[22] THE COURT: Mr. Coffin?

[23] MR. COFFIN: Yes.

[24] THE COURT: The Victim Fine Surcharge with respect to the s. 145(3) offence is \$100 and is payable forthwith.

[25] MS. MACDONALD: Your Honour, the Crown enters a stay of proceedings on the charge contrary to s. 145(5.1) dated January 2nd.

[26] THE COURT: Thank you.

[27] Is there anything further?

[28] MS. MACDONALD: No, Your Honour.

[29] THE COURT: Thank you.

CHISHOLM T.C.J.