

# IN THE SUPREME COURT OF THE YUKON TERRITORY

Citation: *R. v. Rodrigue*, 2007 YKSC 48

Date: 20070920  
S.C. No. 04-01540  
Registry: Whitehorse

Between:

**HER MAJESTY THE QUEEN**

And

**KAREN RODRIGUE**

Before: Mr. Justice D.R. O'Connor

Appearances:

David McWhinnie  
Gordon Coffin

Counsel for the Crown  
Counsel for the defence

## REASONS FOR JUDGMENT

### INTRODUCTION

[1] Ms. Rodrigue is charged with second degree murder. After she was tried and convicted, the Court of Appeal allowed her appeal and ordered a new trial. She is applying for release pending her re-trial.

[2] Ms. Rodrigue has now been in custody for over three years. I am told that the court will make every effort to schedule an early trial date.

[3] The facts giving rise to the charge are very disturbing. Ms. Rodrigue had known the victim for some time. Late one evening she called him to borrow money to purchase

cocaine. She ended up in his apartment. She testified that the victim sexually assaulted her. She says an argument ensued and she stabbed the victim twice in the back.

[4] After the stabbing, Ms. Rodrigue made no effort to obtain help. She got dressed, covered the body, cleaned the blood with a sheet and wrote a note stating the victim had gone to British Columbia for two weeks. She took a beer from the fridge, the victim's car keys, a 22 rifle and a knife. She padlocked the door and left the house taking the victim's car. On her way home, she threw out a bag which contained the knife and her socks. She did this to conceal what she had done. There is evidence that the next day she attempted to use the victim's bank card to obtain cash.

[5] During the following days, she continued drinking and using cocaine. She did not tell anyone about the killing. She went to the victim's residence and took a couple of chainsaws which she pawned. Eventually, the body was found and Ms. Rodrigue was charged. Only after her arrest did she mention the alleged sexual assault.

[6] At her trial, she entered a plea of guilty to manslaughter. However, the Crown would not accept the plea, the case proceeded and she was convicted of second degree murder.

[7] Given the nature of the charge, Ms. Rodrigue bears the burden of showing that her detention is not justified under s. 515(10) of the *Criminal Code*.

[8] Ms. Rodrigue's background is described in a Bail Assessment Report prepared by Clara Northcott, a probation officer in Whitehorse. Ms. Rodrigue is now 38 years of age. She has a criminal record dating back to 1988. Her record includes a number of

convictions for breaching court release orders and convictions for assault with a weapon and two forgery related offences.

[9] Ms. Rodrigue is currently single. She has four children, three of whom have been in the care of Family & Children's Services. At the time of her arrest for this charge, she was living with a common-law partner and was employed as a chambermaid in a local hotel.

[10] Ms. Rodrigue has a long history of abusing alcohol, cocaine and marihuana. Her substance abuse addictions lie at the core of her problems with the law and her difficulties in raising her children. On previous occasions she has been unable to comply with conditions in court orders requiring her to refrain from drinking and using drugs.

[11] The Crown accepts that absent her substance abuse problems, Ms. Rodrigue would be a good candidate for release on the primary and secondary grounds. It seems clear that Ms. Rodrigue's problems in the past, including her involvement in the events leading up to this charge, were connected with substance abuse.

[12] In her Bail Assessment Report, Ms. Northcott sets out the significant steps that Ms. Rodrigue has taken to address her alcohol and drug problems during the three years she has been in custody.

[13] Ms. Rodrigue says she has been clean and sober while in custody despite being offered drugs in both the Federal penitentiary and the Whitehorse Correctional Centre. She was subject to one random drug test which was negative. She says she is determined to stay clean and sober.

[14] While in custody, Ms. Rodrigue completed a number of programs that addressed substance abuse. In the Federal penitentiary, she availed herself of opportunities to address her abuse and behaviour problems. She completed various programs including the Dialectical Behaviour Therapy Program, the Women Offender Substance Abuse Program, and the Circle of Change Program. When she came back to the Whitehorse Correctional Centre, she contacted an addiction counsellor, a counsellor at the Family Violence Prevention Unit and a spiritual counsellor.

[15] I am satisfied that Ms. Rodrigue does not present a flight risk. The likelihood of her reoffending if released, depends almost entirely on her ability to stay sober and free of drug abuse. In the past, she has not been able to do so. However, I accept that she has made genuine efforts to address those problems while in custody. It seems to me that the most one can say is that her chances this time of remaining free of substance abuse are better than they were in the past. Were it not for the tertiary ground, I may have released Ms. Rodrigue on very strict conditions, such as those proposed by Ms. Northcott.

[16] Under s. 515.10(c), I must determine whether a reasonable and informed member of the community would be of the view that denial of bail is necessary to maintain confidence in the administration of justice. In this respect, I am required to consider all of the circumstances, including the apparent strength of the Crown's case, the gravity and nature of the offence, the circumstances surrounding its commission and the potential for a lengthy term of imprisonment.

[17] Clearly Ms. Rodrigue is charged with a very serious offence and there is the potential for a lengthy prison term. The Crown's case for manslaughter seems overwhelming and appears to be very strong for murder.

[18] The circumstances of the offence are serious. The victim was stabbed twice in the back and left to die. While, from an evidentiary standpoint, one must be careful about how to use Ms. Rodrigue's conduct after the offence, that conduct, nonetheless, adds to the gravity of the offence when considering the tertiary ground. One can imagine how the community at large views Ms. Rodrigue's seemingly callous and calculated conduct after she had stabbed and killed the victim, a long time acquaintance.

[19] It is relevant as well that Ms. Rodrigue sought to plead guilty to manslaughter at her first trial. While it is theoretically possible that she will be acquitted at a second trial, that seems most unlikely. She did not seek an acquittal the first time. A reasonable and well informed member of the public would no doubt view this case against that background. Thus, while Ms. Rodrigue will have been in custody for a considerable amount of time before her second trial, it is doubtful that the amount of time in pre-trial custody will be greater than the sentence that would likely be imposed even if she is only convicted of manslaughter.

[20] In these circumstances, I am satisfied that releasing Ms. Rodrigue at this point may reasonably erode the public's confidence in the administration of justice.

Whitehorse is a relatively small community. The public is well aware of this case,

including the disturbing circumstances surrounding the offence and the earlier proceedings at which Ms. Rodrigue wished to plead guilty to manslaughter.

[21] The steps Ms. Rodrigue has taken while in custody are important. However, I do not think that they sufficiently ameliorate the gravity of the offence to warrant release. On earlier occasions, courts had given Ms. Rodrigue opportunities to address her substance abuse problems. She was not successful and ultimately she became involved in the events that led to a tragic death.

[22] In my view, the predominant considerations with respect to the tertiary ground in this case are the seriousness of the offence, the gravity of the circumstances surrounding its commission and the strong likelihood of conviction. Those factors lead me to conclude that Ms. Rodrigue should not be released at this point.

[23] I suggest that counsel attempt to arrive at an early trial date.

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O'CONNOR J.