Citation: *R. v. R.W.A.*, 2014 YKTC 12

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Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before: Her Honour Judge Ruddy

REGINA

v.

R.W.A.

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

Appearances:
Bonnie Macdonald — Counsel for the Territorial Crown
Nils Clarke — Counsel for the Defence

REASONS FOR SENTENCING

[1] RUDDY T.C.J. (Oral): R.A. is before me having entered pleas of guilty with respect to four sexual offences committed between 1979 and 2006. Each of the offences was committed against young and vulnerable members of his own family; his own daughter, two nieces, and his granddaughter.

[2] I would like to begin my decision by echoing comments made by Crown counsel and commend each of these four women for their strength and courage in coming

forward. I well recognize how difficult it is to come forward when one has been a victim of a sexual offence. How much more difficult it must be when the perpetrator is a close family member that one has looked to for protection, support, and guidance.

[3] The facts of the offences are set out in detail in the Agreed Statement of Facts. To summarize, the facts show a pattern of Mr. A. taking advantage of young female members of his family, of plying them with drugs and with alcohol, and of taking advantage of them sexually, including numerous instances of full intercourse when they were at their most vulnerable. This pattern has persisted for almost 30 years.

[4] Mr. A. is a 65-year-old member of the Carcross Tagish First Nation. He does come before the Court with a prior criminal record. It includes numerous alcohol-related convictions and three convictions of violence, including one for sexual assault occurring in the 1980s.

[5] Mr. A. has provided a personal statement to the Court, outlining his background, his acceptance of responsibility for his actions, and his remorse. He grew up in chaotic circumstances where he was exposed at an early age to substance abuse and violence. He was himself the victim of sexual abuse as a child, and he has struggled throughout his life with an addiction to alcohol. He has, however, managed to obtain his GED and also to become a respected journeyman welder.

[6] He does have support within his family. His sister-in-law and niece have provided letters of support; his nephew is present in court. They speak to the positive things that Mr. A. has given them and the potential that he has to be a role model to others in his community. Notably, he was instrumental in inspiring and assisting his

niece to become the first female journeyperson welder in the Yukon.

[7] Unfortunately, there is also a darker side to Mr. A., perhaps one born of his own troubled childhood, but one which has had a devastating impact on the lives of these four women.

[8] While no formal victim impact statements have been filed, I have been provided with information through the Crown about the impact Mr. A.'s action have had on each of them. Most have struggled on a daily basis as a result of what was done to them. They have struggled with addictions, have difficulty in maintaining normal relationships, and have considered and attempted suicide on more than one occasion. The impact on them is incalculable; the devastation complete, and the damage irreversible. There is nothing this Court can do to repair that damage. It is my hope, however, that the sentence passed today offers them some comfort in its public recognition and condemnation of what was done to them, and of what they have suffered at the hands of Mr. A. May they find some peace of mind going forward.

[9] Counsel have put forward a joint submission for an eight-year jail sentence in this particular case. My job, in the face of a joint submission, is somewhat different than in a normal sentencing hearing. Rather than determining the appropriate sentence from my perspective, I am asked to consider whether the proposed joint submission is one which would bring the administration of justice into disrepute.

[10] In speaking of joint submissions, there is a well-known case out of the Ontario Court of Appeal, the decision of *R. v. Cerasuolo*, [2001] O.J. No. 359, which, at paras. 8 and 9 states the following:

> This court has repeatedly held that trial judges should not reject joint submissions unless the joint submission is contrary to the public interest and the sentence would bring the administration of justice into disrepute: e.g. R. v. Dorsey (1999), 123 O.A.C. 342 at 345. This is a high threshold and is intended to foster confidence in an accused, who has given up his right to a trial, that the joint submission he obtained in return for a plea of guilty will be respected by the sentencing judge.
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> The Crown and the defence bar have cooperated in fostering an atmosphere where the parties are encouraged to discuss the issues in a criminal trial with a view to shortening the trial process. This includes bringing issues to a final resolution through plea bargaining. This laudable initiative cannot succeed unless the accused has some assurance that the trial judge will in most instances honour agreements entered into by the Crown. …

[11] In this case, I cannot say that the joint submission which has been put before me would be contrary to the public interest, or would bring the administration of justice into disrepute. It fairly recognizes, in my view, the mitigating factors of Mr. A.'s remorse and his Aboriginal heritage. It fairly recognizes his guilty plea, which has eliminated the necessity for a trial. This is, of course, a benefit to the system in terms of saved resources, but more importantly, in my view, it means that his four victims will not be put through the difficult - and in circumstances such as these - no doubt traumatic experience of having to testify.

[12] The joint submission also fairly recognizes the seriousness of the offences and the applicable sentencing principles, most notably denunciation and deterrence. It is a sentence which does, in my view, express society's abhorrence of Mr. A.'s behaviour, and it is also a sentence which is entirely in line with the authorities.

[13] I have been provided with a number of cases, sadly similar cases, each of which indicate a sentencing range of about six to twelve years. So what is being proposed is

entirely consistent with sentences in similar cases. For that reason, I am prepared to adopt the joint submission that has been put forward.

[14] The sentences, with respect to the four offences to which guilty pleas have been entered, will be as follows. The offence contrary to s. 150, as it then was, which relates to Ms. J., will be a sentence of five years. The sentence with respect to the offence contrary to s. 146, as it then was, which relates to Ms. J., will be a sentence of three years to be served consecutively. The offence contrary to s. 271 which relates to Ms. G. will also be a sentence of three years. That sentence will be served consecutive to the five year term but concurrent to the three-year term. Finally, the s. 271 offence which relates to Ms. W. will also be a sentence of three years; again, consecutive to the five year term, concurrent to the two other three-year terms.

[15] That leaves us with a global sentence with respect to all matters of eight years. That sentence of eight years will, in turn, be reduced by credit for four months spent in pretrial custody, which will leave us with an actual sentence of seven years and eight months still to be served. The first sentence will be one of four years and eight months; the others will each be three years concurrent to each other, but consecutive to the four year and eight month sentence on the s. 150.

[16] In addition to those jail terms, there are a number of ancillary orders which have been agreed to and which are, in my view, entirely appropriate in the circumstances. A couple of those are mandatory orders. They include an order pursuant to s. 109 of the *Criminal Code* which would prohibit Mr. A. from having in his possession any firearm, ammunition or explosive substance for a period of 10 years. In addition, this is a

mandatory situation in relation to the DNA provisions. There will be an order requiring Mr. A. to provide such samples of his blood as are necessary for DNA testing and banking.

[17] In addition to those orders, counsel are suggesting an order pursuant to s. 161. As each of these offences occurred when the victims were children, I am satisfied that that is appropriate as well. So there will be an order prohibiting Mr. A. from having any contact, including communicating by any means, with a person who is under the age of 16 years, unless he does so under the supervision of a person whom the Court considers appropriate.

[18] Similarly, there will an order pursuant to s. 743.21, prohibiting Mr. A. from having any contact with the four victims. There will be an order that he have no contact directly or indirectly or communication in any way with M.J., C.J., C.W., and/or F.G., except with the prior written permission of a caseworker or parole officer, after having consulted with the Victim Services Office located in Whitehorse, Yukon.

[19] Lastly, there will be an order requiring that Mr. A. comply with the provisions of the *Sex Offender Information Registration Act* (SOIRA), S.C. 2004, c. 10, for a period of 20 years.

[20] Any submissions as it relates to the victim fine surcharge, given his financial circumstances?

[21] MS. MACDONALD: The Crown consents to waive it.

[22] THE COURT: The victim fine surcharge will be waived, given his custodial status.

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RUDDY T.C.J.