

Citation: *R. v. Taylor*, 2010 YKTC 2

Date: 20091215
Docket: 08-00793B
08-00793C
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Judge Cozens

REGINA

v.

DAVID PETER TAYLOR

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

Appearances:
Judy Bielefeld
Kim Hawkins

Counsel for Crown
Counsel for Defence

REASONS FOR SENTENCING

[1] COZENS T.C.J. (Oral): David Taylor has entered guilty pleas to two offences.

The first is an offence under s. 271 of the *Criminal Code*.

[2] On February 18, 2009, Mr. Taylor and another male met up with the complainant, S.B., and a friend of hers, at the Salvation Army. Mr. Taylor obtained some alcohol at the request of the two girls and they drank the alcohol. S.B. was intoxicated. There is evidence that Mr. Taylor may have thought she was 17 years of age but that he had been told at one point by the friend of S.B. that she was only 14.

[3] S.B. consumed enough alcohol that she was blacking out on and off. She ended up waking up in bed with her and Mr. Taylor having their pants down and having intercourse together.

[4] S.B. is 14 years of age. Consent is not available as a defence in law and it is also coupled with the fact that she was pretty intoxicated and consent may have not been available in any event. Mr. Taylor basically admitted to the police his responsibility very early on for this offence, so this can be treated as an early guilty plea.

[5] There is a s. 145(3) charge as well. Mr. Taylor was on an undertaking that required him to abstain from the consumption of alcohol and he was observed in public on July 31, 2009, intoxicated by alcohol.

[6] Crown is suggesting that, in these circumstances, and after a review of the pre-sentence report, that a sentence of six to 12 months would be appropriate, again, giving recognition to some of the special circumstances that Mr. Taylor finds himself in, the overall facts of this case and his acceptance of responsibility in it, as well as his criminal record, which is primarily composed of youth entries but nothing related to the index offence here. Crown is suggesting that if the sentence is to be served conditionally in the community, it should be on the higher end of the range that is suggested, and is not opposed, in the circumstances of what is a positive pre-sentence report and Mr. Taylor's antecedents, to the sentence being served in the community. Defence counsel is saying that the range of sentence is appropriate and is asking that the sentence be served conditionally in the community.

[7] Obviously, the statutory requirements with respect to the imposition of a conditional sentence are met in that this is an offence prosecuted by summary conviction. A sentence of less than two years can be imposed, and a conditional sentence is available. I need to be satisfied that the sentence being served in the community will not endanger the safety of the community and would be consistent with the fundamental principles and purposes of sentencing set out in ss. 718 to 718.2.

[8] Mr. Taylor's personal circumstances are that he is now a 23-year-old member of the Kwanlin Dun First Nation. He has been assessed as a youth as having significant learning disabilities. He comes from a home that is clearly highly dysfunctional. He has spent time in group homes and in foster homes. He has a grade seven education and there is information that he has enrolled in a House of Learning program that is intended to commence in January of 2010.

[9] His employment history is sporadic. He is currently unemployed; has short-term work, primarily. He has two young children that he assumes responsibility for on weekends, as I understand. He is in a not acrimonious relationship with the mother of the children and so they are able to cooperate, it appears, to some extent with respect to the raising of the children and their own interpersonal relationship.

[10] Mr. Taylor's criminal history appears to have all been related to his alcohol consumption. He is remorseful for what took place and has no ill feelings towards anyone. His Criminogenic Risk Assessment places him at a high range, 73 percent probability of re-offending. The issues, of course, are limited education and employment, criminal history, which is a static indicator, and his companions in drinking.

In other words, in order for Mr. Taylor to not pose a threat to the community, he cannot drink alcohol and he needs to better educate himself and obtain better employment. Hopefully by doing that, he would also have better companions to spend time with.

[11] He has been on fairly strict release conditions since shortly after the occurrence of the offence, and, other than the one indication in July, appears to have done quite well. These include a curfew from 9:00 p.m. to 7:00 a.m. The pre-sentence report indicates that Mr. Taylor has done well with reporting and staying sober. There is some support for the position that he has not consumed any alcohol since the breach in July. He has a supportive sister that he is living with right now, and the author of the pre-sentence report believes that he would likely do well under a term of community supervision.

[12] I agree with the range of sentence put forward; I agree that the sentence can be served conditionally in the community.

[13] When I look at the purpose and the principles of sentencing as set out in s. 718.2(e), and when I look at the nature of this offence and this offender, and without diminishing in any way the seriousness of this offence, this is, notwithstanding, to some extent, her participation as an intoxicated 14-year-old - so I am qualifying the word "participation" - this is a significant and serious offence for which deterrence and denunciation need to be present. There is a responsibility on older males to ensure that any sexual contact with a female is with a female of an appropriate age and an appropriate level of sobriety.

[14] Rehabilitation remains, in this case, a significant factor, and all the recommendations point towards rehabilitation being something that is very positive for Mr. Taylor. The principle set out in s. 718.2 points out as aggravating, the fact that the complainant in this case was under the age of 18.

[15] The principle of restraint in s. 718.2(d) (e), requires that:

- (d) an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances, and;
- (e) all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of aboriginal offenders.

[16] I do not have a lot of information before me that provides me the detail that would be received in a *Gladue* report with respect to what the aboriginal status of Mr. Taylor and his parents may have, chronologically and historically, contributed to the offence and the circumstances he finds himself in today, but I have enough before me that I am satisfied that there is clearly some role and s. 718.2(e) needs to be applied. When I look at the deprivation of liberty and restraint, while not losing sight of the fact that a conditional sentence is a jail sentence, however, how that conditional sentence is applied in the community still can balance the principles of restraint, rehabilitation and the need for denunciation and deterrence.

[17] The term of the conditional sentence will be ten months. The terms will be as follows:

1. Keep the peace and be of good behaviour;
2. Appear before the Court when required to do so by the Court;

3. Report to a Supervisor immediately and thereafter when required by the Supervisor and in the manner directed by the Supervisor;
4. Remain within the Yukon Territory unless you have written permission from your Supervisor or the Court;
5. Notify the Supervisor or the Court in advance of any change of name or address, and promptly notify the Court or the Supervisor of any change of employment or occupation;
6. Reside as approved by your Supervisor and not change that residence without the prior written permission of your Supervisor;
7. For the first three months of this order you are to remain within your place of residence at all times except with the prior written permission of your Supervisor. You must present yourself at the door or answer the telephone during reasonable hours for curfew checks. Failure to do so will be a presumptive breach of this condition.
8. For the remainder of the conditional sentence you will abide by a curfew by remaining within your place of residence between the hours of 9:00 p.m. and 6:00 a.m. daily except with the prior written permission of your Supervisor. You must present yourself at the door or answer the telephone during reasonable hours for curfew checks. Failure to do so will be a presumptive breach of this condition.
9. You are to abstain absolutely from the possession or consumption of alcohol and controlled drugs or substances except in accordance with a prescription given to you by a qualified medical practitioner;

10. You are not to attend any bar, tavern, off-sales or other commercial premises whose primary purpose is the sale of alcohol;
11. You will take such alcohol assessment, counselling or programming as directed by your Supervisor;
12. You will take such other assessment, counselling and programming as directed by your Supervisor;

So there are two clauses.

13. You are to have no contact, directly or indirectly, or communication in any way with S.B.;
14. You are to participate in such education or lifeskills programming as directed by your Supervisor;
15. You are to make reasonable efforts to find and maintain suitable employment and provide your Supervisor with all necessary details concerning your efforts;
16. You are to provide your Supervisor with consents to release information with regard to your participation in any programming, counselling, employment or educational activities you have been directed to do pursuant to this conditional sentence order.

[18] There will be a DNA order. It is a primary designated offence. I see no reason not to impose a *SOIRA* order, so there will be one under s. 490. This *SOIRA* order will be for a period of ten years from the date of the order, and that is an order that will require your registration, Mr. Taylor. I am not certain; have you gone through that with your client at all?

[19] MS. HAWKINS: We discussed -- yes, we discussed the registration.

[20] THE COURT: That order begins today and continues, as indicated, for ten years.

[21] There will not be a s. 161 order in these circumstances with respect to non-attendance in certain places where individuals are under the age of 16, I believe.

[22] With respect to the s. 145(3) charge, that will be one day deemed served.

[23] The victim fine surcharges, I am inclined to waive them. I am not quite finished yet, I am going to go back to probation in a minute, but I am going to waive those.

[24] With respect to the probation, there will be a one-year probation to follow. The terms of the probation will be the statutory terms, 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 the Court or Probation Officer in advance of any change of name or address and promptly notify the Court or Probation Officer of any change of employment or occupation.

The remaining terms with respect to reporting, residing, abstention, not attending, alcohol programming, general programming, no contact, education, employment and release of information will apply to the Probation Order. What is removed is the curfew that will expire at the end of the conditional sentence order, unless it is changed on an application at an earlier date.

[25] Does that cover all the terms that we considered appropriate in the Probation Order?

[26] MS. HAWKINS: I believe so, Your Honour.

[27] THE COURT: Does that conclude everything here? There will be some paperwork for you, Mr. Taylor, to sign. If you have any questions, speak to your counsel. You will wait for the paperwork.

[28] You are going to be pretty significantly restricted unless you have permission from your Conditional Sentence Supervisor for the first three months. That permission will be granted, I would expect, in all circumstances, if it relates to positive activity on your part for education or for work, or other legitimate purposes. You need to maintain a good relationship with your Conditional Sentence Supervisor, which I believe you will, based on your past relationship, and I wish you the best.

COZENS T.C.J.