

Citation: *R. v. Lennie*, 2018 YKTC 52

Date: 20180319
Docket: 16-00618
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before His Honour Judge Faulkner

REGINA

v.

PETER JAMES LENNIE

Publication, broadcast or transmission of any information that could identify the complainant or a witness is prohibited pursuant to s. 486.4 of the *Criminal Code*.

Appearances:

Leo Lane
David A. McWhinnie

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCE

[1] FAULKNER T.C.J. (Oral): The accused, Peter James Lennie, was convicted after trial on a charge of sexual assault. An alternative charge of sexual interference was conditionally stayed. Mr. Lennie was also found guilty on two counts of breach of an undertaking.

[2] Very briefly stated, the facts are that the then 14-year-old complainant, R.A., was babysitting at Mr. Lennie's home. Mr. Lennie and his wife ended up staying out very late and R.A. spent the entire night at Mr. Lennie's house. In the morning, R.A. awoke

to find the offender attempting to touch her in the vaginal area. She jumped up and confronted him. The assault ended at that point. R.A. was unclear in her evidence as to whether the touching was above or beneath her clothing, and it must therefore be assumed, as I indicated in my reasons for judgment, to be above the clothing.

[3] This case raises some interesting issues, particularly with respect to the constitutionality of the six-month minimum sentence for sexual assault. However, Mr. Lennie has already served seven months — or the equivalent thereof in pre-trial custody — allowing time and one half for the days he has served, as the Crown concedes is appropriate.

[4] Since the Crown seeks a nine-month sentence and Mr. Lennie concedes that a six-month sentence would be appropriate, any further delay in disposition of the matter would simply be wrong. It would be unacceptable to further adjourn to provide learned reasons for judgment at a time when Mr. Lennie would then have already served time in excess of the sentence he would then receive. The best course is to proceed now, leaving for another day the nice questions of the constitutionality of minimum sentences, inflationary floors, and the like.

[5] With respect to the case before us, I would note that it was a brief and relatively minor assault, as things of this matter go, but it is also the case, that it was, as the Victim Impact Statement reveals, very upsetting for R.A., who now feels vulnerable, afraid, and upset because of blaming by others. It is also fair to say that the assault, though brief and relatively minor, is aggravated by the circumstances — and that is that the victim was in the accused's home by herself and in a somewhat vulnerable position.

[6] With respect to the defendant, Mr. Lennie is now 29 years of age. He has no prior criminal record. There was a thorough *Gladue* report prepared and provided to the Court. It does reveal that there have been some significant losses by death in Mr. Lennie's family through the years, which undoubtedly has had an impact, but it also reveals that Mr. Lennie was involved in a very serious motor vehicle accident that required a lengthy rehabilitation and may well have left Mr. Lennie with permanent cognitive deficits.

[7] As I have indicated already, the Crown seeks a nine-month sentence. The defence seeks a six-month sentence. Given the need to proceed with dispatch, I will not attempt any lengthy analysis of the sentencing precedents provided, except to note that in each case there was a more lengthy or intrusive assault, at least to some degree, and many of the offenders had prior records.

[8] At the end of the day, none of these precedents would persuade me that the range of sentence for this offender and this offence would be outside the six- to nine-month range contended for by counsel. If anything, Mr. Lennie's case, in my view, would fall at the lowest end of that range.

[9] Accordingly, with respect to the charge of sexual assault, Mr. Lennie, you are sentenced to a period of imprisonment of six months deemed served.

[10] On the breach charges, 15 days on each count consecutive to any other sentence and consecutive to each other but also deemed served.

[11] The surcharges total \$300 dollars.

[12] Following your release from imprisonment, you will be subject to a probation order for a period of 18 months. The terms will be that you:

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 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. Have no contact directly or indirectly or communication in any way with R.A.;
5. Remain 30 metres away from any known place of residence, employment or education of R.A. This no contact will be absolute except with the prior written permission of the Probation Officer in consultation with Victim Services and/or Family and Children's Services;
6. Report to a Probation Officer immediately upon your release from custody, and thereafter, when and in the manner directed by the Probation Officer;
7. Reside as approved by your Probation Officer;
8. 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,

psychological issues,

sexual offending,

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; and

9. Have no contact directly or indirectly, nor be alone in the presence of, any person you know to be, or who reasonably appears to be under the age of 16 years. However, this prohibition will not apply to your own children and may be waived with respect to others with the prior written permission of your Probation Officer.

[13] In addition, you will provide samples of bodily substances for the purpose of DNA analysis and banking, and you will comply with the provisions of the *Sexual Offender Information Registration Act*, SC 2004, c. 10, for a period of 10 years.

[DISCUSSIONS]

[14] Six months time to pay.

[15] THE CLERK: Will I attach the probation to the s. 271 charge?

[16] THE COURT: It should attach to all.

FAULKNER T.C.J.