Citation: *R. v. Parker*, 2023 YKTC 55

Date: 20231109
Docket: 20-00869
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20-00869D
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before His Honour Judge Phelps

REX

v.

PATRICK ALLAN PARKER

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

Appearances:
Neil Thomson — Counsel for the Crown
Kevin W. MacGillivray — Counsel for the Defence

REASONS FOR SENTENCE

[1] PHELPS T.C.J. (Oral): Patrick Allan Parker is before the Court having been found guilty after trial for two offences that occurred on/or between February 1, 2020 and February 28, 2020, the first being an offence contrary to s. 151 of the *Criminal Code*, that he did for a sexual purpose touch a person under the age of 16 years directly with a part of his body, to wit: his penis; and the second being an offence contrary to s. 286.1(2) of the *Criminal Code*, that he did in a public place obtain for consideration the sexual services of a person under the age of 18 years old.

[2] Mr. Parker is also before the Court with respect to one count contrary to s. 145(2)(a) of the *Criminal Code* for failing to attend court on June 8, 2022.

[3] The facts with respect to the substantive offences are set out in detail in the decision *R. v. Parker*, 2023 YKTC 42. A brief summary, being that the allegations against Mr. Parker, a 32-year-old, are that, in February of 2020, the then 15-year-old complainant, C.G., along with her older male friend, S.G., contacted him by text messaging in an attempt to try and get some crack cocaine from him on credit.

[4] During the text messaging exchanges, S.G. made the offer to Mr. Parker while, pretending to be C.G., to "suck his dick" for the crack cocaine. Mr. Parker accepted the proposition and met C.G. in downtown Whitehorse. He and C.G. walked to a secluded area, and he explained to C.G. that she would have to make him "finish" before she would get the drugs, and they could go their separate ways.

[5] Once at the secluded location, they shared a joint of marijuana. C.G. was nervous and at one point changed her mind about the encounter and attempted to leave. Mr. Parker blocked her and advised her that she could not go until he finished, meaning that she completed the act of oral sex on him until he ejaculated. At that point, she did as he asked. Mr. Parker was standing, and C.G. was kneeling in front of him. Once the sexual act was finished, Mr. Parker pulled up his pants and gave the drugs to C.G., amounting to approximately $150 worth of crack cocaine.

[6] With respect to the s. 145(2)(a) offence, the facts are that he was required to attend court on June 8, 2022, and he failed to do so.

[7] The victim, C.G., was 19 years old at the time of trial and she has filed a Victim Impact Statement with the court. I will quote briefly from her statement, wherein she states:

> …
>
> Emotionally, I can say with certainty that this has caused me extreme anxiety and depression. Cognitively it's hard for me to focus on things or process things when I start to feel overwhelmed with anxiety. I'm terrified to have to run into Patrick even now I'm worried that I'll see him around town, it's obviously nearly impossible to expect to never see someone in this small town. This takes a lot of my emotional energy to feel guarded like this every single day and has caused unmanageable anxiety for me.
>
> I have been physically sick from this and more so when it comes to the thought of him be released or a trial date being set. I have felt as though there was a weight on my chest and I'm unable to breath, I've also experienced trouble with sleep around these dates due to the thought of having to interact with him but also having to re-live this entire experience over again.
>
> …

[8] She goes on to indicate that she lost a job that required her to interact with the general public due to the offences before the Court.

[9] Understandably, given her age of 15 at the time of the offence, the offences before the Court had a significant impact on her and will likely do so for years to come.

[10] The Crown has pointed out sections in the *Criminal Code* that require me to apply the principles of denunciation and deterrence with respect to the offence before me. Section 718.01 reads as follows:

> When a court imposes a sentence for an offence that involved the abuse of a person under the age of eighteen

> years, it shall give primary consideration to the objectives of denunciation and deterrence of such conduct.

[11] Counsel also pointed to s. 718.04 of the *Criminal Code*, acknowledging that the complainant was a vulnerable person, given her age and life situation at the time, including being addicted to crack cocaine. Section 718.04 states:

> When a court imposes a sentence for an offence that involved the abuse of a person who is vulnerable because of personal circumstances — including because the person is Aboriginal and female — the court shall give primary consideration to the objectives of denunciation and deterrence of the conduct that forms the basis of the offence.

[12] I will come back to s. 718.01 in a few moments.

[13] Mr. Parker comes before the Court with a prior criminal record. It dates from 2011 through to 2019. He has numerous offences on his criminal record of violence and failing to comply with court orders.

[14] The offence contrary to s. 151 of the *Criminal Code*, of course, being an offence of violence.

[15] Crown counsel has made the submission the appropriate sentence for this Court to impose on Mr. Parker in the circumstances, citing the decision of *R. v. White*, 2008 YKSC 34, from our Supreme Court; the decision of *R. v. Friesen*, 2020 SCC 9, from the Supreme Court of Canada; as well as the case of *R. v. Deuling*, 2023 YKTC 11, from this Court in 2023, that the fit sentence would be a period of 48 months. Breaking that down is three and one-half years on the s. 151 offence, a further six months on the s. 268.1(2) offence, as well as 15 days concurrent for the s. 145 offence.

[16] Crown counsel noted no known mitigating factors in his submission. As aggravating, the four previous violence offences on his criminal record, six previous offences for failing to comply with court orders, and as previously noted, the requirements in 718.01 and 718.04 of the *Criminal Code*.

[17] Crown counsel filed the *Deuling* decision primarily for the review of the law in this area and the conclusion of the judge, wherein he stated:

> 48 … I am satisfied that the possible range of sentence applicable in this case is between 30 and 48 months, within the general ranges submitted by counsel.

[18] As pointed out by counsel for Mr. Parker, the facts are quite distinguishable in *Deuling*, as Mr. Deuling was a schoolteacher who groomed the victim before committing the assault in question.

[19] Counsel for Mr. Parker outlined a number of factors: he is 32 years old; he is a Tahltan citizen, a First Nation located in Northern British Columbia with territory overlapping in the Yukon; he has one sister, aged 38 years old, who, despite perhaps a past rocky relationship, is a supporter of Mr. Parker; and both of his parents are here in court in support of him for the sentencing.

[20] Counsel reviewed some *Gladue* factors that apply to Mr. Parker, providing a detailed outline of his heritage, but did note that, overall, Mr. Parker did benefit from a positive upbringing.

[21] Mr. Parker is a graduate from the Independent Learning Centre. There is considerable information that was reviewed by defence counsel with respect to

Mr. Parker suffering from learning disabilities, including a diagnosis of Attention Deficit Hyperactivity Disorder ("ADHD") that has had a significant negative impact on him. Defence counsel also outlined that Mr. Parker had an injury at a relatively young age and a surgery on his knee at the age of 18 years old, subsequent to which he was prescribed opioids that transitioned into an addiction and has been a problem for him throughout his adult life.

[22] I was advised of some work history that he has had since high school, indicating that he has had some success of being a contributing member of society. However, due to the drug use and intervening criminal activity, that has been somewhat sporadic.

[23] I am further advised that Mr. Parker feels terrible about the offence that is before the Court and the impact of his actions on the victim, C.G.; and, further, that he has made efforts to develop a plan moving forward to help him stabilize and address his addiction issues, all of which was outlined by his counsel.

[24] A substantial amount of time has been spent in custody. Mr. Parker has taken advantage of some opportunity to attend counselling while in custody, some programming offered through Yukon University and he has connected with an Elder. While in custody, he is spending time beading and making moccasins. It is of note, however, that his ability to attend programming would have been interrupted by virtue of the fact that a lot of his time in custody was spent during COVID.

[25] Taking into account some of the *Gladue* factors, he has issues with respect to learning disabilities and his challenges with respect to addictions. Defence counsel submits, effectively, a sentence of time served of two years and seven months plus an

additional 60 days of custody, and one year of probation. He agrees with the 15-day concurrent sentence on the s. 145 offence.

[26] A casebook was filed on behalf of Mr. Parker. There are four cases in it.

[27] *R. v. Charlie*, 2021 YKTC 54, was filed. The facts, quite briefly, are that a youth was in her home trying to sleep in the basement when Mr. Charlie got into bed with her, put his arms around her neck, and whispered, “move over babe”, then put his hands down her pants and began to kiss her. When his hands were down her pants, he was touching her vagina. He got up and went upstairs, only to return a few minutes later. He removed her pants and performed oral sex on her while rubbing her chest. He left again, came back a third time, and performed oral sex on her again. He then got up and removed his pants and climbed on top of her and said, “I’m going to fuck you.” Mr. Charlie was unable to get an erection, and the youth was able to escape the situation. There was a guilty plea in the *Charlie* case, substantial remorse on his behalf; he received 20 months and probation for the offence.

[28] Cozens C.J. in that case reviewed the case law quite thoroughly, including *R. v. Charlie*, 2021 YKTC 48, by Ruddy J., which he describes as follows:

> 58 The recent decision of Ruddy J. in *R. v. Charlie*, 2021 YKTC 48, involved a 41-year-old Indigenous offender at the time of sentencing, who had woken up the intoxicated and sleeping Indigenous 16-year-old female by penetrating her anus with his penis. She was awakened by a “stinging, almost tearing”, pain in her anus. The sexual assault stopped after she woke up. The offender was convicted after trial. The victim had been required to testify twice: first at the preliminary inquiry; and then again in Territorial Court at trial after re-election with Crown consent to have the matter tried in that court.

> 59 At the time of sentencing, the offender maintained his denial of having committed the offence. Mr. Charlie had a mostly dated criminal record, although there was a 2020 conviction for a s. 267(b) offence.

[29] Cozens C.J. notes that *Gladue* factors were prevalent, and he had taken significant steps towards rehabilitation. Ruddy J. imposed a sentence of 32 months in that case.

[30] The case of *R. v. Dick*, 2016 YKTC 25, was filed. It pre-dates the implementation of the *Friesen* decision. The offender in this case was 56 years old and Indigenous. The facts being:

> 2 Mr. Dick was found guilty after trial. He committed the assault in December of 2013, in Ross River. The victim of this offence is a young person, who was 13 years of age at the time of the sexual assault. She was at Mr. Dick's home visiting his daughter. Mr. Dick pulled her into the bathroom, pulled down her pants and underwear, and placed one hand over her mouth. He used his other hand to put one of her hands on his penis. He placed his penis on her buttocks, close to her vagina. The victim struggled free of his hold and left the bathroom and the home.

[31] Despite pre-dating *Friesen* on those facts, the sentence was two years less one day plus probation. He did, however, have a prior offence.

[32] The case of *R. v. T.J.H.*, 2022 YKSC 45, was filed, from the Supreme Court of Yukon, primarily for the purpose of outlining how the Court should deal with *Gladue* factors in cases such as the one before the Court. There were *Gladue* factors present for the offender. He had completed treatment. He was taking ongoing counselling and

had a supportive family. He received 18 months of imprisonment and three years' probation. The imprisonment was converted to a conditional sentence in this decision.

[33] The case of *R. v. Rowat*, 2023 YKTC 21, was also filed. It is a case in which a 32-year-old male received a four-year sentence on two offences contrary to s. 151 of the *Criminal Code* relating to two separate victims, and one offence of child pornography. The child pornography sentence being concurrent and the two convictions under s. 151 amounted to 48 months. I note that there were guilty pleas and other mitigating factors in that case.

[34] Both counsel referred to *R. v. Friesen*, 2020 SCC 9, from the Supreme Court of Canada. I am going to quote some paragraphs from this decision because it is of assistance with respect to the sentencing before the Court. In addressing the issue of marginalized youth, the Court, at para. 70, states:

> Children who belong to groups that are marginalized are at a heightened risk of sexual violence that can perpetuate the disadvantage they already face. This is particularly true of Indigenous people, who experience childhood sexual violence at a disproportionate level (Statistics Canada, *Victimization of Aboriginal people in Canada, 2014* (2016), at p. 10). Canadian government policies, particularly the physical, sexual, emotional, and spiritual violence against Indigenous children in Indian Residential Schools, have contributed to conditions in which Indigenous children and youth are at a heightened risk of becoming victims of sexual violence (see British Columbia, Representative for Children and Youth, *Too Many Victims: Sexualized Violence in the Lives of Children and Youth in Care* (2016), at p. 8 ("*Too Many Victims*"); *The Sexual Exploitation of [page468] Children in Canada: the Need for National Action*, at pp. 29-33). In particular, the over-representation of Indigenous children and youth in the child welfare system makes them especially vulnerable to sexual violence (*Too Many Victims*, at pp. 11-12). We would

> emphasize that, when a child victim is Indigenous, the court may consider the racialized nature of a particular crime and the sexual victimization of Indigenous children at large in imposing sentence (T. Lindberg, P. Campeau and M. Campbell, "Indigenous Women and Sexual Assault in Canada", in E. A. Sheehy, ed., *Sexual Assault in Canada: Law, Legal Practice and Women's Activism* (2012), 87, at pp. 87 and 98-99).

[35] I rely on this quote not because the victim has been identified as Indigenous, but because the victim in this case, as was understood at trial, was from a very broken home and living on the streets on and off, addicted to drugs, and extremely vulnerable at the time of the offence.

[36] The Court goes on to discuss that a sentence must reflect a modern understanding of harm caused:

> 74 It follows from this discussion that sentences must recognize and reflect both the harm that sexual offences against children cause and the wrongfulness of sexual violence. In particular, taking the harmfulness of these offences into account ensures that the sentence fully reflects the "life-altering consequences" that can and often do flow from the sexual violence (*Woodward*, at para. 76; see also, *Stuckless (2019)*, at para. 56, per Huscroft J.A., and paras. 90 and 135, per Pepall J.A.). Courts should also weigh these harms in a manner that reflects society's deepening and evolving understanding of their severity (*Stuckless (2019)*, at para. 112, per Pepall J.A.; *Goldfinch*, at para. 37).

[37] The Court speaks to the degree of responsibility of offenders in such cases at paras. 87 and 88 as follows:

> 88 Courts must also take the modern recognition of the wrongfulness and harmfulness of sexual violence against children into account when determining the offender's

> degree of responsibility. They must not discount offenders' degree of responsibility by relying on stereotypes that minimize the harmfulness or wrongfulness of sexual violence against children (Benedet, at pp. 310 and 314).
>
> 89 Intentionally applying force of a sexual nature to a child is highly morally blameworthy because the offender is or ought to be aware that this action can profoundly harm the child. In assessing the degree of responsibility of the offender, courts must take into account the harm the offender intended or was reckless or wilfully blind to (*Arcand*, at para. 58; see also *M. (C.A.)*, at para. 80; *Morrisey*, at para. 48). For sexual offences against children, we agree with Iacobucci J. that, save for possibly certain rare cases, offenders will usually have at least some awareness of the profound physical, psychological, and [page476] emotional harm that their actions may cause the child (*Scalera*, at paras. 120 and 123-24).

[38] The Court references the addition of s. 718.01 of the *Criminal Code*, which I have already quoted, and states at para. 101 as follows:

> Parliament's decision to prioritize denunciation and deterrence for offences that involve the abuse of children by enacting s. 718.01 of the *Criminal Code* confirms the need for courts to impose more severe sanctions for sexual offences against children. In 2005, Parliament added s. 718.01 to the *Criminal Code* by enacting Bill C-2. In cases that involve the abuse of a person under the age of 18, s. 718.01 requires the court to give "primary consideration to the objectives of denunciation and deterrence of such conduct" when imposing sentence.

[39] They continue at para. 105:

> Parliament's choice to prioritize denunciation and deterrence for sexual offences against children is a reasoned response to the wrongfulness of these offences and the serious harm they cause. The sentencing objective of denunciation embodies the communicative and educative role of law (*R. v. Proulx*, 2000 SCC 5, [2000] 1 S.C.R. 61, at para. 102). It reflects the fact that Canadian criminal law is a

> "system of values". A sentence that expresses denunciation thus condemns the offender "for encroaching on our society's basic code of values"; it "instills the basic set of communal values shared by all Canadians" (*M. (C.A.)*, at para. 81). The protection of children is one of the most basic values of Canadian society (*L. (J.-J.)*, at p. 250; *Rayo*, at para. 104). As L'Heureux-Dubé J. reasoned in *L.F.W.*, "sexual assault of a child is a crime that is abhorrent [page484] to Canadian society and society's condemnation of those who commit such offences must be communicated in the clearest of terms" (para. 31, quoting *L.F.W. (C.A.)*, at para. 117, per Cameron J.A.).

[40] Finally, I am going to quote from para. 143 of the *Friesen* decision. It addresses the fact that harm does not equate to the type of physical activity in question. The quote is as follows:

> The decision of the Ontario Court of Appeal in *Stuckless (2019)* provides an example of judicial recognition that harm to the victim is not dependent on the type of physical activity involved. In that case, the offender digitally penetrated certain children, sexually touched others, and subjected others [page501] to fellatio. The sentencing judge determined the appropriate sentence for each offence largely by reference to the type of physical act involved. The majority found that the sentencing judge had erred in doing so because the sexual violence was "no less harmful to the victims" simply because it involved sexual touching or fellatio rather than penetration (paras. 68-69, per Huscroft J.A., and paras. 124-25, per Pepall J.A.). As Pepall J.A. wrote, "if sentencing courts are to focus on the 'harm caused to the child by the offender's conduct' ..., distinctions among these forms of sexual abuse may be unhelpful and are not determinative of the seriousness of the offence" (para. 124, quoting *Woodward*, at para. 76).

[41] Counsel have submitted before me that Mr. Parker has spent a total of 618 days in custody to date. Grossed up at 1.5:1, that represents 927 days, which was calculated as two years and seven months in submissions.

[42] In sentencing Mr. Parker today, I take into account the sentencing principles I have highlighted in the quotes from the *Friesen* decision. I note the significant aggravating fact that the complainant wanted to leave the location and was prevented from doing so by Mr. Parker at the time of the offence, the statutory aggravating factors of her age and being a vulnerable person. I note that it is not an aggravating factor that this matter proceeded to trial but there is the lack of the mitigating factor of a guilty plea, the additional strain on the complainant of having to testify at trial in this matter, and the significant impact of the offence on her.

[43] Balancing this against the *Gladue* factors, the supportive family that is here in court today, the genuine desire of Mr. Parker to turn his life around and being mindful of the paramountcy of denunciation and deterrence; on the s. 151 offence, Mr. Parker, I sentence you to a period of custody of 31 months. On the s. 286.1 offence, noting the mandatory minimum sentence of six months, there will be a further six months of custody consecutive.

[44] A total sentence of 37 months less the 31 months that you have already served in custody leaves you six months left to serve.

[45] I am placing you on probation. I am doing so partly in the spirit of denunciation and deterrence but primarily in the spirit of rehabilitation, given the submissions that I heard through your counsel.

[46] You will be subject to a probation order following your period of custody. The probation order will attach to the s. 286.1 offence. It will be for a period of 18 months. You will be required to abide by the following conditions:

1. Keep the peace and be of good behaviour;

2. Appear before the court when required to do so by the court;

3. Notify your Probation Officer in advance of any change of name or address, and promptly of any change in employment or occupation;

4. Have no contact directly or indirectly or communication in any way with C.G. except with the prior written permission of your Probation Officer in consultation with Victim Services;

5. Do not go to any known place of residence, employment or education of C.G.;

6. Report to your Probation Officer immediately upon your release from custody, and thereafter, when and in the manner directed by your Probation Officer;

7. Reside at 1411 Alder Place in Whitehorse, Yukon Territory, and not change that residence without the prior written permission of your Probation Officer;

8. Not possess or consume alcohol and/or illegal drugs that have not been prescribed for you by a medical doctor;

9. Not attend any premises whose primary purpose is the sale of alcohol, including any liquor store, off sales, bar, pub, tavern, lounge or nightclub;

10. 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:

    substance abuse,

    psychological issues,

    any other issues identified by your Probation Officer,

    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;

11. Participate in such educational or life skills programming as directed by your Probation Officer and provide your Probation Officer with consents to release information in relation to your participation in any programs you may have been directed to do pursuant to this condition; and

12. Make reasonable efforts to find and maintain suitable employment and provide your Probation Officer with all necessary details concerning your efforts.

[47] In addition, there are some orders that I am required to make, given the nature of the charge that you have been convicted of.

[48] Pursuant to s. 487.051 of the *Criminal Code*, you are required to provide a sample of DNA suitable for testing and analysis.

[49] There will be an order for compliance with the *Sex Offender Information Registry Act,* S.C. 2004, c. 10, pursuant to s. 490.013 of the *Criminal Code* for a period of 20 years.

[50] You will be prohibited from possessing any firearm, crossbow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition, and explosive substance for a period of 10 years pursuant to s. 109 of the *Criminal Code*.

[51] I am required to consider additional conditions against you pursuant to s. 161 of the *Criminal Code*. Having heard submissions from counsel, I have considered it and decline to make any additional orders.

[52] Pursuant to s. 743.21 of the *Criminal Code*, you will have no contact with the named complainant, C.G., while you are in custody.

[53] Your counsel has requested the waiver of the victim surcharge with respect to the three counts that are before the Court. I will waive the victim surcharges, as requested.

[54] Counsel, is there anything further?

[55] MR. THOMSON: Crown would apply to withdraw all remaining counts, please.

[56] THE COURT: Thank you.

[57] MR. MacGILLIVRAY: I don’t think you rendered sentence on the FTA, Your Honour.

[58] THE COURT: Thank you. I will adhere to the submission of both counsel of 15 days concurrent on that Information.

[59] Your friend, Mr. MacGillivray, has withdrawn the remaining Informations here before the Court.

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PHELPS T.C.J.