

SUPREME COURT OF YUKON

Citation: *R. v. Hockley*, 2010 YKSC 31

Date: 20100528
Docket S.C. No.: 07-00551
09-01500
09-01501
Registry: Whitehorse

BETWEEN:

HER MAJESTY THE QUEEN

AND:

DOUGLAS NORMAN HOCKLEY

Before: Mr. Justice R.S. Veale

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

Appearances:
John Phelps
André Roothman

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCING DELIVERED FROM THE BENCH

[1] VEALE J. (Oral): Mr. Hockley has been convicted of one count of sexual assault causing bodily harm relating to an event on September 30, 2007; and has entered a guilty plea to a lesser offence under s. 271(1)(a) relating to an event on October 30, 2007. The incident on October 30, 2007, from the facts read in, was a truly horrific sexual assault and Mr. Hockley today has apologized for that sexual assault.

[2] The Crown and the defence have made a joint submission with respect to sentencing, and the joint submission is that there should be a long-term offender designation under s. 753.1 of the *Criminal Code*. I am going to accept the terms of the sentence submission that have been made by the Crown and the defence.

[3] The sentence for the s. 271(1)(c), sexual assault causing bodily harm, that occurred on September 30, 2007, is four years custody.

[4] The sentence for the sexual assault under s. 271(1)(a) of the *Criminal Code* that occurred on October 30, 2007, is an eight year custodial sentence, which is consecutive to the sentence of four years.

[5] With respect to the mischief charge under s. 430(4), there will be a sentence of 90 days in jail, which will be concurrent to the previous sentences.

[6] The total custodial sentence is 12 years, less time served, which I will address in a moment.

[7] Mr. Hockley will be designated as a long-term offender pursuant to s. 753.1 for a period of ten years following the custody of 12 years. The terms of the ten-year supervision are determined by the Parole Board.

[8] I am going to make a DNA order pursuant to s. 487.051.

[9] There will also be a mandatory firearms prohibition pursuant to s. 109, and that order will be for life.

[10] There will also be an order under s. 490.021 of the *Criminal Code* requiring Mr. Hockley to comply with the *Sex Offender Information Registration Act*, S.C. 2004, c. 10, and the length of that order is 20 years.

[11] With respect to the submissions on credit for time served, Mr. Hockley has spent two years and seven months in jail prior to sentencing. The Crown has made a submission that the credit should be between 1.5 and two years; in other words, a submission that he receive credit for four years and six months. The defence submits that it should be a credit of five years and two months; in other words, two for one for time served.

[12] I acknowledge that there has been a delay since the finding of guilt in November of 2009, and there is no question that Mr. Hockley has been anxious to serve his time in a penitentiary, where the programming will be superior to the programming that he has received at the Whitehorse Correctional Institute. There is the issue of his behaviour, and I am going to read from the letter of Clara Northcott dated May 19, 2010:

Mr. Hockley's management at Whitehorse Correctional centre has not been without challenges. At times he was very difficult to manage especially in the first several months of his remand. Upon reviewing the file for the purposes of writing this report it was noted that there are over 200 negative information reports on his file. The reports range from belligerent behaviour, contraband, officer assaults, damage to correctional property, assaults on other inmates, and failure to follow direction. He has been found guilty of 43 internal charges. These charges have resulted in periods of time in segregation and loss of privileges. However, in the past six months or so Mr. Hockley has been showing improvement in managing his behaviour and impulsivity. There have also been fewer altercations with staff and other inmates.

In my view, given that record that I have just read, it would not be appropriate to have a two for one credit. I am going to order that there be a credit of four years and six months for the time served.

[13] I have indicated to counsel that I am giving this bare-bones sentencing on the understanding that there will be a written judgment filed in due course. This will permit the procedures to take place for Mr. Hockley to be transferred to a federal institution.

[14] MR. PHELPS: If I may address the Court on one minor issue. With respect to court file 09-01501, there are actually two counts there, the s. 348 as well. It's the Crown's recommendation --

[15] THE COURT: Sorry, under 0551?

[16] MR. PHELPS: Yes.

[17] THE COURT: Yes, you say they are -- are they two counts of 430(4)? Which one are you referring to?

[18] MR. PHELPS: Under the Supreme Court matter, yes. So those could run eight years concurrent to one another but consecutive to the previous.

[19] THE COURT: Thank you for pointing that out. That is the breaking and entering charge you are referring to, yes.

[20] MR. PHELPS: Yes.

[21] THE COURT: Yes, the eight years custody consecutive is for two offences, s. 271(1)(a) and the breaking and entry, s. 348(1)(b). The sentence under

those two sections will be concurrent, but the total sentence will be consecutive to the first offence.

[22] MR. PHELPS: Thank you. I believe there would be an issue with victim fine surcharges.

[23] THE COURT: The victim fine surcharge will be waived under the circumstances.

[24] MR. PHELPS: Will be waived. Thank you.

[25] THE CLERK: Count 3 on the 1501 file?

[26] MR. PHELPS: Oh, yes. By agreement to be stayed.

[27] THE COURT: It is called s. 351?

[28] MR. PHELPS: Yes.

[29] THE COURT: That is stayed, thank you. Thank you, Mr. Clerk.

VEALE J.