

Citation: *R. v. Abel*, 2013 YKTC 45

Date: 20130524
Docket: 12-00484
12-00484A
12-00484B
12-00562
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Chief Judge Cozens

REGINA

v.

PETER JOHN ABEL

Appearances:
Joanna Phillips
Brook Land-Murphy

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCING

[1] COZENS C.J.T.C. (Oral): Peter Abel has entered a guilty plea to having committed a sexual assault, contrary to s. 271 of the *Criminal Code*, and having breached an undertaking to a police officer by failing to abstain from the possession or consumption of alcohol, contrary to s. 145(5.1) of the *Criminal Code*.

[2] The circumstances of the s. 271 charge are that on June 21, 2012, in Whitehorse, bylaw officers contacted the RCMP about two individuals that were having sex out on the wharf. RCMP attended. They observed the complainant. She had her shirt up, pants down to her thighs, and they observed Mr. Abel on top of her with his face at her breasts and his pants down to his ankles. They were able to overhear her saying “No” and him

making comments about wanting to have intercourse with her. The officers removed him. She was highly intoxicated. He was intoxicated as well. She only remembers coming to with him on top of her. He is not in a position to refute the evidence the Crown is putting forward. The Crown has indicated there is no evidence of penetration having occurred.

[3] He was released by a peace officer with a condition to abstain, and on July 6, 2012, he was located outside the Macaulay Lodge intoxicated and in possession of a bottle of alcohol. He was brought into custody at a later date with a charge for failing to attend court. Subsequently, an explanation was given and the Crown is not proceeding on that. However, he ran a show cause and was detained. On October 24th, a s. 524 application was made.

[4] There is a joint submission with respect to a period of custody. The joint submission is a period of 14 months, less seven months' credit for time served. This is not a case in which defence counsel is raising any issues about the constitutionality of s. 524 and its interaction with 719, and it is not one in which I am going to push the issue, given that for what appears to be very close to an attempt at intercourse, sexual assault, a 14-month sentence tends towards the lower end of the range that is available. This is, as I said, simply not a case in which I intend to interfere with the joint submission, and that includes with respect to time in custody.

[5] What I had not mentioned, and because of the length of this sentence it will be included, is that Mr. Abel - and I took this into account in imposing sentence - Mr. Abel comes before the Court, he is 44 years of age, he has a criminal record that starts in

1997, with offences of violence between 1997 and 1999, then some alcohol-related driving and property offences and fail to comply in 2002. There was a gap in his record between 2002 and 2009, after which there is a mischief charge and some fails to comply with orders and charges that flow from that.

[6] He is a member of the Vuntut Gwitchin First Nation. Both parents attended residential school. He was very heavily involved in drugs. He has some ongoing alcohol issues. That said, he has been able to work with the First Nation until he was brought into custody here. He has the ability to do that. He has entered a guilty plea in this case as well.

[7] The sentence will be 14 months with credit for seven months custody, leaving a remanet of seven months.

[8] There is agreement on probation being attached to this. There is some disagreement on the length of the order. Crown is suggesting 18 months with different terms on each half; defence is suggesting 12 months total. It is going to be a 15-month probation order. The terms of the order for the first nine months are going to be -- well, for the entirety of the order the statutory terms will apply, which are that you:

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

3. Remain within the Yukon Territory unless you obtain written permission from your Probation Officer or the Court;
4. Report to a Probation Officer immediately upon your release from custody, and thereafter when and in the manner directed by the Probation Officer;
5. Reside as approved by your Probation Officer, and not change that residence without the prior written permission of your Probation Officer;
6. Attend for assessment counselling and programming as directed by your Probation Officer;
7. Have no contact or communication, directly or indirectly, with R.S., and you are not to attend within 50 metres of any known residence of R.S.;

[9] Now, the no-contacts are for the entirety of the order. The reporting clause, the reside clause, and assessment counselling and programming clauses are only for the first nine months of the order. Again, for the first nine months of the order:

8. You are to provide your Probation Officer with consents to release information with regard to your participation in any programming or counselling you have been directed to do pursuant to this Probation Order.

That is, again, only for the first nine months. The only terms on the last six months are the statutory terms and the no contact and not attend terms.

[10] There is a mandatory DNA order; there is a mandatory s. 109 firearms order; there is also the SOIRA order under s. 490.012, and according to 490.013 this is a 20-year order as the Crown has proceeded by indictment in this case. I am going to waive the victim fine surcharges.

[11] Remaining counts?

[SUBMISSIONS RE SECTION 145 CHARGE]

[12] THE COURT: The 145 charge will be 30 days time served. The probation will only attach to the s. 271 charge. And the remaining counts?

[13] MS. PHILLIPS: Stay of proceedings.

[14] MS. LAND-MURPHY: Sorry, the firearms was 10 years?

[15] THE COURT: It is a 10-year firearm order, yes.

[16] MS. PHILLIPS: Did Your Honour include the report to -- under the SOIRA order and probation order?

[17] THE COURT: I did not. Thank you. No, I did not move that over to the other terms. For the first nine months of the order there will be a term that you are required to report as directed by your SOIRA order.

COZENS C.J.T.C.