

Citation: *R. v. Buyck*, 2016 YKTC 71

Date: 20160205
Docket: 13-00373
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before His Honour Judge Chisholm

REGINA

v.

ROY KENNETH BUYCK

Appearances:
Jennifer Grandy
Roy Buyck
J. Robert Dick

Counsel for the Crown
Appearing on his own behalf
Appearing as *Amicus Curiae*

REASONS FOR SENTENCE

[1] Chisholm J. (Oral): Roy Kenneth Buyck has pleaded guilty to the offence of sexual assault. The guilty plea was entered on June 5, 2014, with respect to this offence which occurred on August 16, 2013, in Whitehorse. The sentencing of this matter was delayed for a significant period of time.

[2] The initial delay was to allow Mr. Buyck time to organize his support network, to enable the production of a pre-sentence report, a *Gladue* report, and a neuropsychological assessment, as well as a risk/needs assessment. Mr. Buyck subsequently discharged his lawyer.

[3] After retaining another counsel, an application to withdraw the guilty plea was ultimately abandoned. He confirmed, through this counsel, his plea of guilt. He sought and was granted further adjournments. Again, he began to waver with respect to his plea of guilt and dismissed his second counsel.

[4] He subsequently made an application to withdraw the guilty plea, however that application was unsuccessful.

[5] The facts of this incident are that Mr. Buyck sexually assaulted the victim in a hotel room in Whitehorse. The victim was intoxicated and was sleeping at the time of the assault. The sexual assault consisted of digital penetration. The victim reported experiencing soreness in her vaginal area as a result of the assault. Mr. Buyck's DNA was located on her clothing. His DNA also matched DNA taken from a vaginal swab of the victim.

[6] The Crown seeks a period of custody of 22 months, plus a period of probation. Mr. Buyck argues that a significantly lower period of custody would be appropriate, plus a period of probation.

[7] Mr. Buyck is 57 years of age. He is a member of the Na-Cho Nyak Dun First Nation.

[8] I have the benefit of comprehensive reports, including pre-sentence reports, a *Gladue* report, and a neuropsychological assessment. It is clear from those reports that Mr. Buyck had an unenviable and difficult upbringing.

[9] For example, he was sent to a detention centre hundreds of kilometres away from his home village and spent a number of years at that facility for what have been described as relatively minor offences. He reports having been sexually abused at that location.

[10] As a result of his upbringing, he developed a distrust for authority figures and, over the years, he has developed a serious criminal record, including offences of violence. I do note that the offence for which he is being sentenced today is his first for a sexual assault-type offence.

[11] Mr. Buyck has a sporadic work history, but he appears to be a good and dependable worker during the times that he is working.

[12] He has suffered from alcohol dependency and abuse. That being said, he has had extended periods of sobriety, which correspond to significant gaps in his criminal history.

[13] It is clear that he has made efforts at times to deal with his issues through various forms of programming.

[14] In summary, there are significant *Gladue* factors in this matter. I also note that Mr. Buyck does have some support in his home community.

[15] The mitigating factors here include his plea of guilt. As indicated, it has taken some time to get to this sentencing hearing due to Mr. Buyck's actions.

[16] On the other hand, in terms of aggravating factors, this is a serious and invasive sexual assault. Mr. Buyck knew the victim well and she, in fact, was staying in a hotel room with him, expecting a ride back to her home community the following day. In this sense, in my view, there was a breach of trust.

[17] I have considered the case law in the area of sexual assault offences, including the decisions in *R. v. Rosenthal*, 2015 YKCA 1; *R. v. M.T.L.*, 2015 YKSC 9; and *R. v. White*, 2008 YKSC 34, which are all decisions from this jurisdiction. The case law reveals a range of sentence of between 12 and 30 months for offences of this nature.

[18] In terms of the principles of sentencing that are applicable here, denunciation and deterrence are of importance. The Yukon sees many offences of this nature and they are far too prevalent. At the same time, and as the Crown has fairly pointed out, based on the circumstances of Mr. Buyck, rehabilitation is also of significance in this matter. I have taken that into consideration, as well as the likelihood of psychological harm to the victim of this offence.

[19] Having balanced the sentencing principles, the circumstances of the offence, and the circumstances of Mr. Buyck, I find that an appropriate sentence is a period of 18 months' imprisonment, to be followed by a one-year probation order.

[20] The terms of the probation order are, Mr. Buyck, 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 your Probation Officer in advance of any change of name or address, and promptly of any change of employment or occupation;
4. Have no contact directly or indirectly or communication in any way with J.H.;
5. Not attend at her place of residence, employment, or education;
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 as directed by your Probation Officer and not change that residence without the prior written permission of your Probation Officer;
8. Not possess or consume alcohol and/or controlled drugs or substances 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 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.

[21] There are also mandatory ancillary orders that I impose.

[22] You will provide samples of your bodily substances for DNA analysis and recording.

[23] Based on your criminal record, where a previous firearms prohibition of 10 years was given in 2009, the firearms prohibition which I impose now must be for life, pursuant to s. 109 of the *Criminal Code*. Section 113 of the *Criminal Code* allows for application to a competent authority for a lifting of the order for sustenance or employment.

[24] You will be required to comply with the provisions of the *Sex Offender Information Registration Act* for a period of 20 years.

[25] As the Crown proceeded by way of indictment in this matter, the victim surcharge is \$200 and is payable forthwith.

CHISHOLM T.C.J.