

IN THE TERRITORIAL COURT OF YUKON
Before His Honour Judge Chisholm

REGINA

v.

MARVIN DOUGLAS CLEAVE

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

Appearances:

Keith D. Parkkari

Malcolm E.J. Campbell

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCE

[1] CHISHOLM J. (Oral): Mr. Marvin Douglas Cleave has pleaded guilty to the offence of sexual assault. This offence was committed against G.S. on November 4, 2014, in the Village of Pelly Crossing, Yukon. At the time of the offence, Mr. Cleave was 71 years of age and the victim was 37. They had had a previous relationship, but at the time of the sexual assault they were no longer in that relationship.

[2] The victim attended Mr. Cleave's home on the night that this incident occurred. They were drinking alcohol together and watching television. At some point in time,

Mr. Cleave became upset with the malfunctioning of the television and he began shouting and swearing. G.S. indicated that she was uncomfortable with his behaviour and indicated she was going to leave the premises.

[3] Mr. Cleave grabbed her by the hair and dragged her into the bedroom, smashing her head against the walls. He punched and kicked her. He removed her outerwear that she had put on to return home. She resisted. He threatened her, and indicated that he would slice her up with a knife. G.S. was fearful of this threat, as she believed that he had a knife, or knives, in his bedroom. Mr. Cleave ultimately removed G.S.' clothing and forced vaginal intercourse upon her. This continued for a period of 5 to 10 minutes. It appears he was angry throughout, and after the sexual assault, he continued beating her. Initially, he refused to allow her to go to the washroom but ultimately relented. She used this opportunity to escape from his residence and went to a neighbour's residence for assistance.

[4] G.S. subsequently attended at the nursing station, where a sex assault kit was performed. The results of the testing at the nursing station, when compared to bodily samples of Mr. Cleave, confirmed that his DNA was both in her vaginal area and on her panties. G.S. suffered some physical injuries, including scratch marks on her neck, sore ribs, and some bruising in that area. It was also noted by the investigators that clumps of her hair were on the floor in Mr. Cleave's residence.

[5] The Crown has filed an application pursuant to s. 753(1)(a)(i) and (ii), and s. 753(4) of the *Criminal Code*, seeking to have Mr. Cleave designated as a dangerous offender. The Crown has perfected its application by filing a consent of the Attorney

General of Canada. The consent is with respect to the application in question and was filed on February 8, 2016, along with the notice of motion to which I have referred.

[6] There are a number of factors to consider with respect to an application of this type, but I should say at the outset that Crown and defence counsel have put before me a joint submission which would see Mr. Cleave designated as a dangerous offender. In addition to the sentence of four years for the predicate offence, the joint submission also would see Mr. Cleave subject to long-term supervision for a period of 10 years.

[7] I have reviewed the comprehensive report filed by Dr. Lohrasbe on August 2, 2015. It is clear from his report - subsequent to his interview with Mr. Cleave and his review of various documentation, including Mr. Cleave's criminal record and reports to the Court, in the form of both Pre-Sentence Reports and Bail Assessment Reports - that Mr. Cleave is at a high risk for spousal violence. He is also at a high risk for future sexual violence.

[8] Dr. Lohrasbe indicates in his report that Mr. Cleave was cooperative, in terms of the interview that Dr. Lohrasbe conducted with him. It is clear that Mr. Cleave has very little recollection of many of the offences for which he has been convicted. In Dr. Lohrasbe's opinion that is not unusual, considering the fact that some offences date back to the 1970's and, more importantly, because it appears in each and every situation where Mr. Cleave committed a criminal offence and ultimately was convicted, he was under the influence of alcohol.

[9] Dr. Lohrasbe does say, based on all the work that he had done, including the interview with Mr. Cleave, that Mr. Cleave has little insight into his issues. Mr. Cleave

does not feel that he has an alcohol problem. As I understand it, Mr. Cleave holds this opinion because he does not drink alcohol on a daily basis, and yet at the same point in time, as I have just indicated, all of his criminal convictions involve the use of alcohol prior to the offence being committed.

[10] So based on the facts of this case, the report of Dr. Lohrasbe, and on the submissions of counsel this morning:

- I am content, firstly, that this clearly is a serious personal injury offence, as defined in s. 752(a) of the *Criminal Code*.
- I am satisfied that Mr. Cleave constitutes a threat to the life, safety, or physical or mental well-being of other individuals, on the basis of evidence establishing: a pattern of repetitive behaviour by the offender, of which the offence for which he has been convicted forms a part, showing a failure to restrain his behaviour and a likelihood of causing death or injury to other persons, or inflicting severe psychological damage on other persons, through failure in the future to restrain his behaviour.
- I am also satisfied that an appropriate penalty for the predicate offence is one greater than two years; and
- I am satisfied from a review of his criminal record that he has been previously convicted of primary designated offences on more than two occasions, where at least two years of imprisonment was imposed for those convictions.

[11] As a result, I deem Mr. Cleave to be a dangerous offender. I am cognizant of his serious criminal record and the previous offences of this nature that he has committed, as well as numerous offences of assault and uttering threats, showing his propensity for violence. I take that factor into consideration in terms of an appropriate sentence for the predicate offence.

[12] I am in agreement with counsel that the four-year jail sentence that has been proposed is an appropriate one. Mr. Cleave will be sentenced to four years incarceration for the offence of sexual assault. He will receive credit for 23 months of pre-trial custody; therefore, the remaining term of imprisonment is one of 25 months.

[13] Subsequent to this term of imprisonment, a long period of monitoring and supervision is imperative. Pursuant to s. 753(4)(b), I order that Mr. Cleave be subject to a long-term supervision for a period of 10 years.

[14] There are, as well, ancillary orders to be made in this case. Pursuant to s. 109 of the *Criminal Code*, Mr. Cleave will be prohibited from possessing any firearms, ammunition, or explosive substances. That prohibition will be -- in the circumstances, you indicated for life?

[15] MR. PARKKARI: I believe so, given his priors.

[16] THE COURT: Yes, it will be for life.

[17] There will also be, pursuant to s. 487 of the *Criminal Code*, an order that Mr. Cleave provide a sample of his DNA to authorities for the purpose of DNA analysis and recording.

[18] Pursuant to s. 490.013 of the *Code*, Mr. Cleave shall comply with the *Sex Offender Information Registration Act*, and that will be for life.

[19] The offence attracts a victim surcharge of \$200.

[20] MR. CAMPBELL: Forthwith.

[21] THE COURT: That will be payable forthwith.

(DISCUSSION)

[22] MR. PARKKARI: The last -- the remaining three counts, a stay of proceedings.

[23] THE COURT: Stay of proceedings.

CHISHOLM T.C.J.