

Citation: *R. v. Dickson*, 2011 YKTC 72

Date: 20111108

Docket: 11-10019

11-10019A

11-10019B

11-10019C

11-10019D

11-10019E

Registry: Watson Lake

Heard: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Judge Faulkner

REGINA

v.

TONY LEE DICKSON

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

Appearances:

Terry Nguyen

Gordon Coffin

Counsel for the Crown

Counsel for the Defence

REASONS FOR SENTENCING

[1] FAULKNER T.C.J. (Oral): Tony Lee Dickson is before the Court to be sentenced with respect to four offences. There is a charge of a sexual assault, a charge of failing to appear, a charge of failing to comply with an undertaking, and, finally, a charge of breach of recognizance.

[2] It may be convenient to deal with the process offences first. The failing to appear was, in fact, a failing to appear for the trial on the sexual assault, for which the

complainant and others had been subpoenaed and were in attendance. It was a serious failure; it was not a perfunctory appearance.

[3] The failing to comply involved the consumption of alcohol by Mr. Dickson, which, as becomes apparent in reading the Pre-Sentence Report, hearing the circumstances of all of these offences and looking at Mr. Dickson's track record, is a common problem for the offender.

[4] The final charge, the breach of recognizance, involved Mr. Dickson not complying with a curfew, and that occurred more than once.

[5] With respect to those charges, I think the most salient factor to be considered here is that Mr. Dickson has 81 days of pre-trial custody and he is entitled to credit for that. In my view, that period of custody is roughly equivalent to the sentences he would have received in any event. With respect to the charges of failing to appear, failing to comply with an undertaking, breach of recognizance, on each of those charges he is sentenced to a period of imprisonment of one day, in addition to time served of 81 days. The surcharges will be waived.

[6] That leaves for consideration the principal offence, which is the charge of sexual assault. The circumstances, very briefly, involved Mr. Dickson, who is age 20, and C.S., after both had consumed considerable alcohol. They ended up on a bed. There was some consensual kissing and so on that went on, but Mr. Dickson decided to proceed further despite C.S.'s protests. He pulled down his pants and attempted to pull hers down. He tried to force oral sex on the girl, and also touched her breast. Her screams and protests drew the attention of the girl's father, who intervened and dragged Mr. Dickson out of the room and out of the house.

[7] Mr. Dickson has now entered a plea of guilty to that offence but, as already indicated, it was set for trial at least once, so it certainly is not an early guilty plea, but he is entitled to some credit for it nonetheless. Also of note is the fact that the Crown proceeded by way of summary conviction. Finally, of particular importance herein is the prior criminal record of the accused. It involves some related entries in the sense that there are entries for violence. There are no prior sexual offences. In addition to the entries for violence, which are assault and resisting arrest, there is a conviction for theft under and several process offences, as well as an uttering threats charge, I believe.

[8] The Crown seeks a six month sentence. That length of sentence is not particularly disputed by Mr. Dickson. The only issue, really, before me is the issue of whether or not the sentence, whether it is six months or perhaps longer, can be served conditionally in the community. On the plus side, of course, Mr. Dickson is a young man and there is a relatively favourable Pre-Sentence Report, at least in terms of the Probation Officer's recommendations in terms of there being a community-based sentence.

[9] However, I think this is one of those situations where, given Mr. Dickson's alcohol problems, given his prior track record of breaches, given his track record since being charged with this offence, and given the apparently somewhat unstable living situation that he has, the chances of him successfully completing a conditional sentence are very poor, to say the least. There is almost no chance that he will be able to comply, given particularly how he has conducted himself since he got charged with the sexual assault back in May.

[10] In the result, with respect to the charge of sexual assault, Mr. Dickson, you are

sentenced to a period of imprisonment of six months. Following your release from imprisonment, you will be subject to a probation order, the terms of which will be that:

1. You will report to the Court as and when required;
2. You will report within two working days after the order comes into force to the Adult Probation Officer, thereafter as, when and in the manner directed;
3. You will notify the Probation Officer in advance of any change of name or address and promptly notify him of any change of occupation or employment;
4. You will reside where the Probation Officer will approve and not change your residence without prior written permission;
5. You will take such alcohol assessment, treatment, and counselling as directed by your Probation Officer including, if directed, attendance at residential treatment;
6. You will take such other assessment, counselling, and programming as directed by your Probation Officer;
7. You will have no contact, directly or indirectly, or communicate in any way whatsoever with C.S.;
8. You will make all reasonable efforts to advance your education or to find and maintain suitable employment, and you will provide your Probation Officer with all necessary details concerning your efforts in those regards;
9. You will provide your Probation Officer with a consent for release of information in regard to your participation in any programming, counselling

or other activities you have been directed to engage in pursuant to the probation order.

[11] Again, I will waive the surcharge. With respect to other ancillary orders, do counsel have any submissions on whether or not I should impose those?

[12] MR. COFFIN: I think my friend is seeking them. My only comment about the sex offender registry order is, given the assessment by Mr. Dempsey and the low risk, that this may be a situation where the imposition is a greater interference than is warranted in the circumstances. I make no comment about the DNA order.

[13] MS. NGUYEN: Sir, although he may be at fairly low risk to reoffend, some of the factors of his offending have to do with his alcohol abuse, which is not under control at this point. Although my friend describes this offence as low end, this is a situation where he tried to force fellatio on a family member, and a *SOIRA* order at this point is appropriate.

[14] THE COURT: In my view, it is appropriate that the offender comply with the provisions of the *Sex Offender Information Registration Act* for a period of ten years, and further that he provide samples of bodily substances for the purpose of DNA analysis and banking.

[15] THE CLERK: Your Honour, the length of the probation order is how long?

[16] THE COURT: Twelve months.

- [17] THE CLERK: Thank you.
- [18] MS. NGUYEN: And the victim surcharge for that will be waived as well?
- [19] THE COURT: Was waived, yes.
- [20] MS. NGUYEN: Thank you.
- [21] THE CLERK: Your Honour, there is also Count 1 on the E Information.
- [22] MS. NGUYEN: Withdrawn.
- [23] THE CLERK: Thank you.
- [24] THE COURT: Any objection?
- [25] MR. COFFIN: No.
- [26] THE COURT: Withdrawn at the request of the Crown.

FAULKNER T.C.J.