

Citation: *R. v. Gallan*, 2010 YKTC 3

Date: 20091218  
Docket: 04-00528E  
09-00367  
09-01509  
Registry: Whitehorse

**IN THE TERRITORIAL COURT OF YUKON**

Before: His Honour Judge Cozens

REGINA

v.

CHRISTIAN JAMES GALLAN

**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:  
John Phelps  
Nils Clarke

Counsel for the Crown  
Counsel for the defence

**REASONS FOR SENTENCING**

[1] COZENS T.C.J. (Oral): Christian Gallan has entered a guilty plea to a charge under s. 271 of the *Criminal Code*. The Crown has accepted the guilty plea to this offence rather than s. 272(c) that he was originally charged with. There are several other offences which Crown is going to speak to at the conclusion of this disposition.

[2] An agreed statement of facts was filed as an exhibit in the sentencing hearing and I do not propose to repeat the facts in detail. In brief, in circumstances which Mr. Gallan's counsel indicated he was not in a position to refute, he was 31 (sic) years of age at the time this occurred in August 4, 2009. He was drinking with the complainant,

D.C., who is 15 years of age and some others. Both were highly intoxicated and Mr. Gallan pinned D.C. underneath him on the ground. She was resistant. He applied pressure to her neck causing significant bruising, and a blow to her face that caused significant swelling and bruising to her eye, and told her to "Shut up." D.C.'s pants were down; her top was on. This was in a semi-public area in that it was a spot where people would go by. The sexual assault did not continue past this point and Mr. Gallan ran from the scene.

[3] There is a joint submission for 21 months before me. Mr. Gallan has a criminal record with one offence which, in particular, I consider to be related, and that was an assault causing bodily harm in 2005 that took place in a domestic context, I understand, for which Mr. Gallan received one year in jail. There are a number of other process and property related offences, primarily, on his record, that goes back to 1994.

[4] He has been in custody since shortly after this offence and has, as both counsel agree, a credit of six months that can be applied to the 21 month sentence that has been jointly submitted. As counsel have pointed out, in the circumstances, this is an early guilty plea, in a case in which the prosecution would not have been the easiest, not to say that it would have been unduly difficult, but certainly there are issues surrounding this case that have been pointed out.

[5] Mr. Gallan has a somewhat limited education and a history of substance abuse and homelessness issues. As I understand from the submissions, there have been no issues related to his conduct in the four months that he has been in custody.

[6] The sentence I will impose is the 21 months custody, which will be broken down as a 15 month sentence in addition to six months credit for time served. So there will be a further 15 months. There will be a period of probation to follow.

[7] The period of probation will be two years. The terms will be:

1. To keep the peace and be of good behaviour;
2. Appear before the Court when required to do so by the Court;
3. Notify the Court or Probation Officer in advance of any change of name or address; and promptly notify the Court or Probation Officer of any change of employment or occupation;
5. Report to a Probation Officer within two working days of your release from custody, and thereafter when and in the manner directed by the Probation Officer;
6. Reside as approved by your Probation Officer and not change that residence without the prior written permission of your Probation Officer;
7. Abstain absolutely from the possession or consumption of alcohol and controlled drugs or substances, except in accordance with a prescription given to you by a qualified medical practitioner;
8. Take such alcohol and drug assessment, counselling or programming as directed by your Probation Officer;
9. Take such psychological assessment, counselling or programming as directed by your Probation Officer;
10. Take such other assessment, counselling and programming as directed by your Probation Officer, including if directed, Sex Offender Treatment

Programming;

11. Have no contact, directly or indirectly, or communication in any way with D.C.

[8] There will be a s. 109 firearms prohibition in effect for a period of ten years, prohibiting Mr. Gallan from having in his possession any prohibited firearm, restricted firearm, prohibited weapon, prohibited device and prohibited ammunition.

[9] There will be the s. 487 DNA order, as this is a primary designated offence, and there will be an order under s. 490.012 for the *SOIRA* order, and this will be for a period of twenty years.

[10] There will also be an order under s.743.21 prohibiting contact with D.C. while Mr. Gallan is in custody at Whitehorse Correctional Centre.

[11] Are there any terms of the probation order that counsel feel need to be addressed or terms I did not mention? I did not put a not attend on; I was not certain whether that was something the Crown was seeking.

[12] MR. PHELPS: No, Your Honour.

[13] THE COURT: As Mr. Clarke pointed out, Mr. Gallan, in the event that you are doing well once you are released and while you are on probation, this order can come back for review. We can make any changes to it, we can shorten the order. I hope you take advantage of this opportunity to kind of steer your life in a direction that will be more productive for you in the future. I have no information to indicate that you cannot do that. So I hope that you are able to.

[14] The remaining charges?

[15] MR. PHELPS: I would suggest that with respect to the Indictment, I'll simply withdraw the Indictment, and with the remaining outstanding matters, I'll direct a stay of proceedings.

[16] THE COURT: The victim fine surcharge will be waived. So the file will note that the Supreme Court Indictment is to be withdrawn and the remaining charges are stayed. Anything further from counsel?

[17] MR. CLARKE: Nothing further, Your Honour.

[18] MR. PHELPS: No, Your Honour.

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COZENS T.C.J.