

Citation: *R. v. Keats*, 2019 YKTC 12

Date: 20190208
Docket: 17-00732A
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before Her Honour Judge Ruddy

REGINA

v.

ROGER KEATS

Publication of information that could identify the complainant or a witness is prohibited pursuant to section 486.4 of the *Criminal Code*.

Appearances:

Kevin W. MacGillivray
Malcolm E.J. Campbell

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCE

[1] RUDDY J. (Oral): Roger Keats is before me for sentencing in relation to an offence of sexual interference, contrary to s. 151 of the *Criminal Code*, to which he has entered a plea of guilty.

[2] The facts were read in and accepted by me in December of 2018. For the purposes of this decision, the facts will not be restated. They have already been accepted and I have considered them as part of all of this decision.

[3] What I do think is important is that Mr. Keats met the complainant (F.V.) and her family through the church, which led to the development of a relationship with a fair

degree of trust between the family and Mr. Keats. Sadly, we have a circumstance here in which that trust was abused, resulting in at least three occasions of inappropriate touching.

[4] The issue for me today, though, is the determination of the appropriate disposition. There are a couple of things that I wanted to explain that make this a little bit different from what you might see in a normal sentencing where the Crown would take one position as to an appropriate sentence, defence counsel would take another, and it would be up to the judge to determine the appropriate sentence, based on all of those arguments.

[5] We have a slightly different circumstance today. You might have heard the lawyers refer to a "joint submission". That means they have — for any number of reasons, some of which I might know, many of which I will not — had discussions about all of the circumstances that should be considered and reached an agreement to stand before me and say together that they think this is the appropriate disposition by putting forward a joint submission.

[6] The law says that for a joint submission my role is not to determine whether or not the joint submission is the sentence that I would otherwise have imposed in a regular sentencing hearing. The test for me with a joint submission is whether or not what is being proposed falls so far outside the range of appropriate sentences for these kinds of offences that I would find that to impose the joint submission would bring the administration of justice into disrepute. So, the role for me is just a little bit different. I am assessing the appropriateness of the joint submission, as opposed to deciding what

I think the right sentence should be, though I do consider a lot of the same factors in deciding the appropriateness of the joint submission that is being proposed, such as the circumstances of the offender, in this case, Mr. Keats. That is part of the reason why we have heard so much about him today.

[7] The information I have heard indicates to me that Mr. Keats is now 28 years of age; that he has a good employment history; has no prior criminal record; and that he appears to have a great deal of community and family support. He has entered a guilty plea. That is an indication, in law, of some degree of remorse, although it was a guilty plea at the date of trial as opposed to earlier on. A guilty plea is something that is considered a mitigating factor for us because it means that the complainant and/or other members of the family do not have to testify. I am also aware that Mr. Keats has been compliant with the conditions that have been placed on him, which is a positive sign as well.

[8] There is some suggestion of possible developmental delays which may help us understand why Mr. Keats has done what he has done. Unfortunately, this is not a case in which I have any actual assessments before me that might help me understand what motivated his behaviour or the potential risk of reoffending. I am mindful of the fact that there are certainly others that support him that do not have concerns about risk to their children. In my view, this is a little bit different than having a professional assessment that enquires into some of these issues and gives perhaps a more helpful assessment of what the risk factors might be. However, there is certainly enough here to suggest to me that there is value in exploring what may be going on inside Mr. Keats' brain, in

terms of monitoring and managing his behaviour, and, more importantly, ensuring that no one else is victimized. This, really, is the primary goal, in my view.

[9] I am also very mindful of the impact the offence that is before me today has had on the complainant and her family. I do want to thank all of you for taking the time to not just prepare your victim impact statements but to read them, which I know is not easy. That is something that is offered to victims but, sadly, far too infrequently do we actually see them. I do want to extend my appreciation to all of you for taking the time to put on paper what the impact of this has been for you.

[10] In terms of impact, it is clear to me that the offence resulted because of the connection made through the church. The fact that Mr. Keats clearly has familial connections within that church has led to, from what I have read, a sense of isolation for the complainant's family. I think there was a sense of betrayal at the breach of trust which has led to a difficulty in trusting others and building new relationships, a sense of being uncomfortable in the community, and a sense of feeling somehow that they, as a family, are being blamed for what happened — which I would say very clearly should never ever happen.

[11] For the parents, I think there were some feelings perhaps of anger and guilt and helplessness, in the sense of whether or not they felt they had fully protected the complainant.

[12] We have a little sister who is struggling to understand what has happened. She knows her world is different now. I do not think she really understands why and that is leading her to feel a sense of fear.

[13] We have the complainant, for whom the impact was pretty profound, leading to some self-harm and suicidal thoughts.

[14] The impact of the offence and all of its ripple effects, I would say, cannot be overstated in terms of how it has impacted on all of the family.

[15] I have considered all of the factors that I am required to consider, including, but not limited to:

- the circumstances of the offence, the circumstances of Mr. Keats, the impact of the offence on the complainant and her family;
- principles like denunciation and deterrence and rehabilitation;
- the aggravating factors, like the complainant's young age, the breach of trust, the impact on the complainant; and
- the mitigating factors, like the guilty plea, the fact that there are supports, and that Mr. Keats has taken some positive steps in trying to reach out to get some counselling.

[16] When I consider all of these factors, the conclusion I reach is that I cannot say that the joint submission that is before me would be one that would bring the administration of justice into disrepute. It is one that would appear, on the face of all of the circumstances, to be appropriate. As such, I am going to adopt the joint submission.

[17] Mr. Keats, a sentence of 90 days in jail will be imposed.

[18] In the circumstances, particularly your employment, I am going to allow you to serve that intermittently. Employment tends to be a protective factor for people who get into trouble. The more stable their circumstances tend to be, the less likely they are to

get into trouble. This is one of the reasons we allow people to serve sentences intermittently so that they can maintain employment. There is, in my view, some value in doing that.

[19] Mr. Keats, you are sentenced to a term of imprisonment of 90 days to be served intermittently as follows.

[20] You are to attend at the Whitehorse Correctional Centre, 25 College Drive, Whitehorse, Yukon, on Saturday, the 9th day of February 2019 at 7 p.m., for release on Tuesday, the 12th of February 2019 at 6 a.m. You are to attend thereafter on Saturdays at 7 p.m. for release on Tuesdays at 6 a.m. until the sentence is served in full.

[21] Given that the intermittent sentence will take some time to complete, my intention would be to marry the conditions on the intermittent probation order with the conditions that will be on the probation order to follow. My concern is we had not spoken about counselling on the intermittent probation order, but I think if Mr. Keats can get started on some of those things right away there will be value in that, so I am going to put more conditions on the intermittent probation order than were suggested, unless there is an objection to that.

[DISCUSSIONS]

[22] The terms and conditions are going to be in relation, firstly, to the intermittent sentence, 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 F.V., M.V., R.V., and P.V.;
5. Do not attend at any known place of residence, employment or education of F.V., M.V., R.V., and P.V.;
6. Report to your Probation Officer within four (4) working days, and thereafter, when and in the manner directed by your Probation Officer;
7. Reside as approved by your Probation Officer and not change that residence without the prior written permission of your Probation Officer;
8. 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, for the following issues:

psychological issues, and

any other issues identified by 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;

[23] Please relay to the Probation Office that I do think there is value in considering the possibility of arranging for a neuropsychological assessment, as suggested by M.F., because it certainly might provide some insight that would allow for the appropriate management of risk in the future.

[24] In addition, on the intermittent sentence probation order, will be the standard term that you are:

9. Not to consume alcohol during the 24-hour period immediately preceding the time that you are to report to Whitehorse Correctional Centre.

[25] The 90-day intermittent sentence will be followed by a probation order of 12 months. All of the terms and conditions of that probation order will be exactly the same as on the intermittent sentence probation order with the exception of the abstain condition, which is something we put on those people who are serving intermittent sentences to ensure that they are not attending at the facility under the influence. There is nothing before me that suggests these actual offences related to alcohol in a way that would warrant an abstain condition on the probation order.

[26] Other than that condition, all of the conditions of the 12-month probation order to follow will be the same as the intermittent sentence probation order, including the no contacts and the not attend conditions in relation to the family.

[27] I am also imposing an order, Mr. Keats, that you provide such samples of your blood as are necessary for DNA testing and banking. The police will be taking a sample of your blood. That sample goes into the National DNA Data Bank.

[28] In addition, you will be required to comply with the provisions of the *Sex Offender Information Registration Act* for a period of 10 years, which includes things like making sure the authorities know where you are living and what you are doing.

RUDDY T.C.J.