

Citation: *R. v. Ladue*, 2003 YKTC 100

Date: 20031203
Docket: T.C. 02-00420A
Registry: Whitehorse
Heard: Ross River

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Judge Faulkner

Regina

v.

Frank Ralph Ladue

Publication of information that could disclose the identity of the complainant or witness has been prohibited by court order pursuant to section 486(3) of the *Criminal Code*.

Publication of evidence taken or information given a show cause hearing has been prohibited by court order pursuant to section 517(1) of the *Criminal Code*.

Appearances:
Kevin Drolet
Gordon Coffin

Counsel for Crown
Counsel for Defence

REASONS FOR SENTENCING

[1] FAULKNER T.C.J. (Oral): Frank Ralph Ladue was convicted after trial on a charge of breaking and entering a dwelling house and committing therein the indictable offence of sexual assault.

[2] Today there are two issues before the court. The first issue is the imposition

of a fit sentence for the charge of which Mr. Ladue was convicted. The second is the matter of an application by the Crown pursuant to s. 753.1 of the *Criminal Code*, to have Mr. Ladue designated as a long-term offender.

[3] The defence, in fact, conceded that the case had been made out to designate Mr. Ladue as long-term offender. Mr. Ladue's long criminal history makes it clear that such a finding is fully warranted.

[4] The circumstances of the present offence are that in the early morning hours the offender entered a dwelling house in Ross River without permission of the occupants. It appears there had been considerable alcohol and drugs consumed by some of the occupants and, in particular, the 22-year-old victim of the offence, who was in a comatose condition, lying in the living room. She awoke to find the offender touching her breasts over her clothing and then the skin of her abdomen as he attempted to unbutton her pants. The victim was, although by this time awake, unable to move or resist. Fortunately, there were other residents in the house who had been awakened by what was going on. The offender was interrupted and made an escape from the residence.

[5] Those circumstances, troubling as they are, are made more troubling by Mr. Ladue's past criminal history. He has some 40 prior offences, six of them of for violence, but there are a number of prior offences that are particularly in point of the present circumstances. The first of those occurred in 1987 and is similar to the present case. Mr. Ladue entered a woman's bedroom following a party where she was sleeping or comatose. Mr. Ladue had a complete act of sexual intercourse with the victim.

[6] Another offence occurred in 1997, although the accused was not convicted of the offence until two years later. Again, the female victim had passed out at a friend's residence following the overconsumption of alcohol. She awoke to find that the bottom half of her clothing had been removed and that the offender was having intercourse with her. The victim struggled with Mr. Ladue and he eventually ran out of the house but not until he ejaculated.

[7] There was another incident which did not involve a conviction for sexual assault but is, nevertheless, eerily similar to these other matters. That incident occurred in 1998 when the offender entered the residence of a woman who was sleeping and placed a sleeping bag over her head and shoulders. The offender was interrupted by the woman's daughter and he fled the residence.

[8] Mr. Ladue has spent considerable periods of time in custody over the years. During those periods of time and, in particular, with the last penitentiary sentence, he did undergo sexual offender treatment and, of course, was assessed by psychologists and psychiatrists within the Correctional Services staff. It was noted on his discharge from the last sentence that, despite treatment, he continued to exhibit sexually deviant behaviour, including fantasies of offences of the kind that I have just been discussing.

[9] In addition to that, following the Crown's application for the long-term offender designation, there was a court-ordered psychiatric assessment of Mr. Ladue. That assessment, which was completed by Dr. Friend, resulted in Dr. Friend returning the opinion that Mr. Ladue was a person who was to be considered as persistently dangerous to others. Mr. Ladue had shown himself incapable of refraining from the use of alcohol and was unable to control his sexual impulses. The diagnosis, in fact,

was that the accused was a sexual sadist and suffering from anti-social personality disorder. Dr. Friend's prognosis for the future was guarded, to say the least.

[10] There is, nevertheless, some prospect that Mr. Ladue can be eventually managed in the community with appropriate controls. The reasons for so thinking are that in the past Mr. Ladue has had a period of sobriety of several years and appeared not to have difficulties during that time. As well, Mr. Ladue was compliant while he was in the community subject to controls after his release from the penitentiary on the last occasion.

[11] Unfortunately, as soon as the parole ended, Mr. Ladue reverted to old behaviours and old associates and that led ultimately to the commission of the predicate offence.

[12] Mr. Ladue is a man who has had a most unfortunate past, which is indicated in the pre-sentence report and elaborated on further in the offender's letter which Mr. Coffin read to the court. That past, I think, goes some considerable distance towards explaining Mr. Ladue's criminal history.

[13] It is unfortunate that things have come to this pass, because it appears that Mr. Ladue has some good qualities. He has some degree of accomplishment as an artist and there are indications that, in spite of everything that has happened, he still has some community support.

[14] Given that it is conceded that a long-term offender designation should be made, the issues, therefore, are what an appropriate length of sentence should be for the predicate offence, and the length of the long-term offender order.

[15] With respect to the sentence for the offence of breaking and entering and committing sexual assault, it goes without saying that the offence is a serious one and that circumstances of sexual assault of this type are all too prevalent in this jurisdiction. As already indicated, this type of offence, perpetrated on defenseless victims, is something that Mr. Ladue is no stranger to since he has a serious prior record of virtually identical offences.

[16] Some of the cases that I was referred to, particularly by Mr. Coffin, were cases of sexual assault and, indeed, sexual assault of unconscious victims. In this case, there is the additional factor, of course, that Mr. Ladue has a predilection for breaking into dwelling houses for the purpose of committing that type of offence so that the hazard that he poses is all the more palpable. It is further obvious that, given the type of offence that he wants to commit, he well knows and intends to break into houses that are occupied by people.

[17] As has been lately pointed out by the Supreme Court of Canada in *R. v. Johnson* (2000), 158 C.C.C. (3d) 155 (B.C.C.A.), all of the sentencing principles apply both with respect to the length of sentence for the predicate offence and with respect to the long-term or dangerous offender aspect of the proceedings. But having said that, I think that it will be at once obvious that the primary focus of sentencing in this case must be upon the protection of the public. I see really no alternative in this case to a lengthy period of incarceration.

[18] With respect to the mitigating factors that may be present, I think Mr. Drolet put it fairly aptly when he said that about the best that could be said is that there was an absence of aggravation, in the sense that Mr. Ladue did not succeed in completing an act of sexual intercourse with his victim, nor did he offer to her

violence beyond that which was necessarily inherent in the commission of the offence itself.

[19] Taking the circumstances of the offence into account, taking into account Mr. Ladue's overall record, but particularly taking into account the serial nature of Mr. Ladue's sexual offending, I am satisfied that a sentence in the range of five or six years would be fully warranted.

[20] Mr. Ladue is, of course, entitled to credit for the time he has spent in custody, which is now approaching 14 months. Accordingly, Mr. Ladue, with respect to the offence of breaking and entering and committing sexual assault, you are sentenced to a period of imprisonment in a penitentiary of three years.

[21] With respect to the length of sentence, I should also add that the evidence before the court was that Mr. Ladue will need to undergo an extensive array of treatment and that, inevitably, a sentence approaching the length of the one that I have imposed would be necessary in order for Mr. Ladue to complete the necessary course of treatment.

[22] Mr. Ladue is also designated as a long-term offender. The terms of the order that he will be subject to following his release are not set by the court; they will be set by the Corrections personnel, but it is obvious that they should include terms similar, if not identical, to those terms set out in the pre-sentence report.

[23] With respect to the length of the long-term offender designation, it seems to me significant that there have been a number of identical offences. It seems to me significant that Mr. Ladue has already undergone treatment to no apparent effect to

date. It seems to me particularly significant that Mr. Ladue got into trouble so soon after his last period of community supervision ended. Accordingly, I am satisfied that the seven-year period of supervision contended for by the Crown is appropriate and I impose that order.

[24] Mr. Ladue is also prohibited from having in his possession any firearm, ammunition, or explosives substance for a period of ten years following his release from imprisonment.

[25] Mr. Ladue is further directed to provide samples of bodily substances for the purposes of DNA analysis and banking.

[26] In the circumstances, the victim fine surcharge is waived.

FAULKNER T.C.J.