

Citation: *R. v. Porter*, 2007 YKTC 37

Date: 20070504
Docket: T.C. 06-10010
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: Her Honour Judge Ruddy

REGINA

v.

STANLEY LEE PORTER

Appearances:
Ludovic Gouaillier
Jennie Cunningham

Counsel for Crown
Counsel for Defence

REASONS FOR SENTENCING

[1] RUDDY T.C.J. (Oral): Mr. Porter comes before me having been found guilty following trial on a sexual assault. Factually, the offence involved his having intercourse with an elderly complainant who was, at the time, incapacitated by alcohol.

[2] Mr. Porter is 36 years of age. He is a First Nations man from the Watson Lake area. He comes from a fairly troubled background which involved exposure to abuse and his having developed a long standing problem with alcohol. He comes before the Court with a prior criminal record, which includes four related offences, at least two of which are fairly similar factually to the offence that is before me.

[3] He has spent time in and out of custody in relation to these types of offences. He has been given the opportunity to seek treatment in the past as well. Unfortunately, it has not been successful to date. Accordingly, I have before me a joint submission from counsel, which recognizes the history that he has, and the struggles that he has in terms of managing his behaviours, both in terms of his consumption of alcohol and his sexual offending behaviour.

[4] That joint submission is for a sentence of four years less the time that he has spent in remand, to be followed by 10 years supervision as a long-term offender. I have before me a thorough pre-sentence report setting out Mr. Porter's background as well a psychological assessment conducted by Randall Kropp, which refers to Mr. Porter's circumstances and his prognosis as it relates to treatment and supervision. Counsel agree that the pre-conditions with respect to the long-term offender designation are met. I agree that there is plenty of material before me, including his criminal record, the pre-sentence report and the psychological assessment, to meet the required pre-conditions in s. 753.1.

[5] I must say the only concern that I did have in reading Dr. Kropp's report was whether or not a long-term offender designation was the appropriate designation in this particular case given that his report appears to suggest that there is little to no likelihood of success through supervision and monitoring in Mr. Porter's case. Fortunately, Mr. Gouaillier anticipated those concerns and has spoken with Dr. Kropp further on that and I am advised, by way of an email, that his concerns as they relate to Mr. Porter's risk being managed within the community related primarily to the size of the community

from which he hails, that being Watson Lake, and the relative lack of resources available.

[6] He, however, does feel that there remains some hope that his risk can be managed in a somewhat larger community, such as Whitehorse, where appropriate resources are available to address his needs. So for those reasons I must say that I am satisfied, at least with respect to the long-term offender designation, that it is appropriate in all of the circumstances.

[7] With respect to the time frame that has been put before me in terms of a jail sentence, my initial reaction is that it is low, but I cannot say that it is outside of the range in a way that I would reject the joint submission. I fully appreciate the comments of both counsel and, in particular, the Crown, that part of that reduction in sentence relates to Mr. Porter's willingness to consent to the long-term offender finding, as well as his willingness to proceed to a sentencing and to pursue treatment options within the federal system as well as here. Given that I cannot say that it is outside of the range, I am prepared to adopt the joint submission in all of the circumstances.

[8] Accordingly, Mr. Porter, there will be a sentence as follows: The sentence itself will read as a sentence of two years. I ask that the record reflect that you are being given credit for two years in remand. So your record will read as if it is a global four year sentence, but you will only be doing an additional two years from now, having already done essentially the first two.

[9] I am also prepared to make the finding, based on the information before me, that you are a long-term offender and I would order that you be supervised within the

community, as per the long term offender provisions, for a period of 10 years. I am also going to order that you provide such samples of your blood as are necessary for the purposes of DNA testing and banking, pursuant to those provisions. I am also going to order that you comply with the registration requirements of the *Sex Offender Information Registration Act* for a period of 20 years.

[10] In all of the circumstances I am going to decline to address the firearms issue, whether or not it is mandatory or discretionary. I am content that is going to be addressed by Corrections and whatever supervision terms they place him on under the long-term offender designation.

[11] In the circumstances I am going to waive the victim fine surcharge.

[12] Is there anything further that we need to cover today?

[13] MR. GOUAILLIER: I do not believe so.

[14] THE COURT: Then just before we leave, I want to thank Mr. Hyde for his helpful report, as well as Dr. Kropp for his. In particular, I want to thank both counsel for taking the time to work through this. I think it is an appropriate resolution of this matter and I appreciate your hard work in pulling it together; it makes my job much easier. Mr. Porter, good luck to you. I hope that you find the help that you need, both within the federal system and with the assistance of the good people at probation up here as well once you return. So good luck. Thank you all.

RUDDY T.C.J.