Citation: *R.* v. *R.J.D.*, 2012 YKTC 78

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Registry: Watson Lake
Heard: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before: His Honour Judge Faulkner

REGINA

v.

R.J.D.

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

Appearances:
Terri Nguyen — Counsel for the Crown
Bibhas Vaze — Counsel for the defence

REASONS FOR SENTENCING

[1] FAULKNER T.C.J. (Oral): R.D. (herein referred to as "R." and "R.D.") and L., who was at all material times his wife, have three daughters, A.D., now 19, K.D., now 17, and L.D., now 13. In early 2007 R. moved his wife and three children from Whitehorse to a remote site on the Nahanni Range Road approximately 150 kilometres from Watson Lake, Yukon, ostensibly because other people were a corrupting influence. The site was quite remote and there were no neighbours. Initially, the family lived in a wall tent while R. constructed a more permanent house.

[2] R. closely controlled his wife and daughters. The children were home schooled following a limited curriculum approved by R. Ties to family were severed. R. had long-standing fundamentalist Christian beliefs and he obviously spent much time and effort inculcating his family members in his own unique religious views. He had his wife and children write in journals regularly regarding what R. had taught them regarding religion and faith. R. would then review the journals and provide written comments and corrections. In this way, R. was able to exercise a remarkable degree of control over his wife and children.

[3] R. also instituted a rather Draconian system of discipline and punishment. Discipline included corporal punishment as well as other more inventive means. Once the permanent house was habitable, both his wife L. and the three children would be disciplined by being banished to the wall tent on reduced rations until they "learned their lesson". This could take days or weeks. The wall tent had no amenities other than a wood stove which could become unusable in winter due to ice blocking the chimney.

[4] Some of the most severe discipline was visited on the eldest daughter A. On one occasion, R. struck A. on the wrist with a board. Afterwards, the wrist was so painful that they thought it was broken. Fortunately, the wrist healed; there was no break and no permanent damage. On another occasion R. ordered A. to walk from the family acreage to Watson Lake. She complied and began walking. Eventually, she was picked up by a passing motorist and given a ride to Watson Lake. By then she had walked an estimated 60 kilometres. This punishment was astonishing not only in the bare terms of the sentence, walk 150 kilometres, but also demonstrated an unfathomable disregard for the danger his daughter might be exposed to as an

unaccompanied young girl on a lonely highway. But it gets worse. On yet another occasion R. punished A. for “lustful thoughts” by handcuffing her to a tree on the family’s acreage. She was dressed only in shorts and a T-shirt. It was summer and the mosquitoes were thick. Over an hour passed before R. released her. At other times A. was punished for alleged lustful or lesbian thoughts by being made to walk naked around a spot near the house.

[5] Punishments were also imposed on all for being prideful or for taking on responsibilities without first asking for R.’s permission. These responsibilities included such mundane household tasks as unloading groceries or filling a water jug, tasks that, in a normal home (that is, one not presided over by a tyrant) would have been expected and encouraged.

[6] During the years that the family lived on the wilderness acreage R. had no employment or other source of income. For significant periods of time R.’s wife, L., was away in Watson Lake working at a hotel. R. often also sent the two younger daughters to stay with L. in Watson Lake where they also sometimes worked at the hotel. This arrangement provided R. with an income stream and, as we shall see, easier means of access to the eldest daughter, A.

[7] By October of 2010 the marriage between R. and L. had become strained. R. ordered L. to leave the family home. He barred her from returning and made it clear he would not tolerate any attempts by L. to gain custody or access to the children. From then until December of 2010 when he was arrested, R. lived alone with the children at the acreage. R. told his children that his wife, L., was rebellious and sinful and that God

wanted him to take a new wife to replace the sinful, prideful one. As it turns out, that is more or less precisely what he had done.

[8] From the time his daughter A. was four years old R. had been commenting to his wife and to A. herself about A.'s supposed lustful and lesbian thoughts. As the girl grew older, R. also discussed with his wife his attraction to A. and her alleged attraction to him. By 2007 when A. was 15 years old, R. announced to his family that God had approved R. taking A. as his new wife and having a sexual relationship with her. Thereafter he had sexual intercourse with his daughter on a regular basis. A. described the sexual contact as occurring "as often as necessary", until his arrest in December of 2010. In the spring of 2009 R. took A. on a trip to Stewart, B.C., which he described as their honeymoon. He told his actual wife, L. that, while on the trip two angels had delivered a message from God telling him that taking A. as his wife was right.

[9] While other family members never actually witnessed the incest, R. was remarkably open about what he was doing. He actually had extensive conversations with the two younger daughters about the fact that he was having a sexual relationship with their sister. R. repeatedly told them that God wanted him to take A. as his new wife. R. told his children that God spoke to him through the Bible and made references to passages about God having made dirty meat clean so that the Hebrews could eat the previously unclean meat. L.D. and K.D., in particular, the two younger girls, came to accept the bizarre situation as normal and in accordance with God's wishes.

[10] R.'s wife L. was also fully aware of the incest and complicit in having L.D. and K.D. accept the relationship. I conclude that the years of R.'s tyranny, psychological

abuse and religious rubbish had left her unable to act. It was only some months after being banished by R. that L. finally went to Child Welfare officials and disclosed what had been going on for years. It should be noted that, when R. first disclosed the incest to L., she became upset and attempted to walk away. R. grabbed her, threw her to the ground and grabbed her by the neck. She did not fight back and the assault ended. She was not injured.

[11] In addition to having a multi-year incestuous relationship with his daughter, A., R. took over 900 sexually explicit photographs of A. and of A. and himself. Some were of A. alone. Others depict R. and his daughter performing oral sex on each other. Over half show R. having sexual intercourse with his daughter. R. also made a video of R. and his daughter having sex. The videos were stored on R.'s camera, iPhone and laptop computer.

[12] Following his arrest in December of 2010, R. was detained in custody, but was made subject to a s. 515(12) order forbidding contact with his wife and children. Nonetheless, in January of 2011 R. contacted L. and asked her to retrieve the laptop and camera on which the child pornography was stored. He also asked L. to pass on a message to his children that he missed them. In March of 2011, staff at the Whitehorse Correctional Centre intercepted a letter intended to have been mailed to a social worker involved in the case asking her to pass on messages to the children that he missed them and they should continue to write in their journals. There was a second letter addressed to L.'s parents requesting them to pass on to L. a message asking L. not to file for divorce and to forgive him.

[13] At about the same time as the letters, R. also contacted the RCMP and subsequently provided a statement. In the statement R. confirmed much of what L. and the children had already told the police. However, he also disclosed the existence of the child pornography on the computer. This was not known at the time by the authorities. R. expressed some remorse, but minimized his behaviour as much as possible. In particular, he described A. as a full, consenting partner in the relationship and justified the pornographic images as pictures taken between husband and wife.

[14] Although R. indicated fairly early on that he did not intend to contest the charges, guilty pleas to the substantive charges were not entered until September of 2011. Thereafter, matters proceeded at a glacial pace as R. changed lawyers and dithered over what facts he was prepared to admit. It was not until June 25, 2012 that the sentencing hearing finally proceeded. Ultimately, guilty pleas were entered and accepted to the counts charging incest with A., the unlawful confinement of A., the assault on A. where she was struck on the wrist, the assault on L., corrupting the morals of the daughter K.D., corrupting the morals of the daughter L.D., the making of child pornography, and the breach of the court order forbidding contact with L. and the children.

[15] Although virtually all of the delay to that date lay at the feet of the offender, the matter had to be further adjourned through no fault of his as a previously ordered psychological assessment had not been completed. The report was eventually prepared by another psychologist and was provided to the Court and counsel in mid-August.

[16] It goes without saying that the primary focus of sentencing in a case such as this must be deterrence and denunciation. It is difficult to conceive of, or imagine a more egregious breach of trust. Children are entitled to expect protection, care and guidance from their parents. Unfortunately, they are extremely vulnerable when parents have other ideas, particularly when those ideas include using their children to satisfy their own sexual desires. Parents should be their children's beacon of safety. When those children, instead, receive abuse or are forced to bear witness to abuse on siblings, the effect on their lives is devastating.

[17] The victim impact statements in this case are a sad testament to the results. They reveal a maelstrom of depression, hurt, confusion and conflicting emotions which the victims may struggle with for the rest of their lives. One of the disturbing aspects of a disturbing case is the offender's continuing assertions that A. was a consenting and equal participant in the incest. This nonsense is repeated as recently as in the psychological report filed scant weeks ago. To describe A.D. as consenting is simply perverse. It totally ignores the fact that R. was her father. It totally ignores the difference in ages. It totally ignores the fact that the only apparent alternative to compliance involved a perilous 150 kilometre hike to Watson Lake. It totally ignores the entire scheme of control, dominance, coercion, pseudo-religion and downright abuse orchestrated by the offender on this defenceless girl and the rest of the family.

[18] The passage as quoted by Meredith J. in *R.* v. *M.S.*, [1994] BCJ No. 1028, remains entirely on point:

> In relation to the feasibility of "consensual" intercourse between a parent and a child at any age, I believe that there

> are factors which make it unrealistic to speak of true consent. My primary reasons for saying this relate to the fact that the balance of power between a parent and child is unequal, and because the relationship between a father and daughter does not begin at the age of majority but the dynamics begin earlier in childhood.
>
> There are frequently characteristics both in the parent, child and situation which detracts from the reality of consent. Many studies which have examined by adolescent girl victim have found that the incestuous father tends to be domineering, authoritarian, moralistic and demanding of obedience.

[19] The offender comes before the Court with but one prior and entirely unrelated entry on his criminal record. It must also be noted, and he must be given credit for the fact that he entered a guilty plea and spared A. and the others the ordeal of testifying. However, it long appeared that they might nevertheless be required to appear in court at a hearing to settle the contested facts.

[20] There were two Pre-Sentence Reports prepared. Neither was of any particular assistance to R. In the first PSR, he blamed his daughter for his crimes; in the second, he shifted the blame to his wife, L. Throughout, he was still describing the incest as a "mutual loving relationship" that both desired.

[21] The psychological assessment is much more recent, having been filed August 16, 2012. But, as noted, R. still describes his relationship with his daughter as consensual and based on mutual sexual attraction. On the other hand, Mr. Dempsey did offer the opinion that R.'s risk of reoffending is low, noting that incest offenders had the lowest rates of recidivism of those who perpetrate sexual offences. A cynic might say that this is mostly because they no longer have daughters available to them.

[22] While Mr. Vaze treated the Dempsey report as if it were gospel, it should be noted that the report does not stand alone. The PSRs and R.'s attitude toward his offences, including his comments in the Dempsey report itself, in my view, paint a less hopeful picture of R.'s prospects for rehabilitation. Regardless, R.'s risk of recidivism, while certainly a relevant consideration in sentencing, cannot be determinative of the sentence to be imposed in this case since general deterrence and denunciation are the primary concerns.

[23] There is also the issue that, and it cannot be forgotten, R. has breached his no contact order more than once and that until recently, at least, has continued to express the desire to renew contact with his family. In my view, they are entitled to whatever protection the courts can offer to ensure that this does not happen.

[24] The psychological assessment does confirm that R. does not suffer from any mental illness or deficit that would diminish his degree of culpability.

[25] The maximum sentence for incest is 14 years. The Crown seeks a sentence of 12 years. However, the cases in which sentences of this magnitude have been imposed have been beyond the scope of even R.'s abhorrent deeds. For example, in *R.* v. *R.J.G.,* 2007 BCCA 631, a sentence of 12 years was imposed but in that case there were four victims, including three daughters. The abuse began when the youngest was but ten and carried on for a full decade.

[26] In *R.* v. *A.D.W.,* (1997), 149 Nfld. & P.E.I.R. 351 (Nfld. C.A.), the 12-year sentence was in response to incest that began when the daughter was four or five and continued until she was nine or ten. The incestuous attacks were accompanied by

physical assaults and threats. There were also sexual assaults on a second daughter beginning when the girl was four and physical assaults on a son. There was also a not guilty plea.

[27] In *R.* v. *H.S.L.*, 2000 NBCA 54, a sentence of 14 years was imposed. *H.S.L.* had abused his two daughters over two decades with violent and sadistic sexual assaults.

[28] R.'s counsel, Mr. Vaze, thus has some basis to submit that what the Crown seeks is outside the usual range of sentence for incest. An extensive review of the cases suggests that the range is something on the order of four or five years to eight or nine years for father/daughter incest. Mr. Vaze suggests a sentence of three or four years and argued that, with his extensive time already served, R. could be considered for a sentence of two years less a day which would allow the Court to impose a probation order. However, in my view, Mr. Vaze's submissions as to length of sentence fail on two vital points. First, R.'s incestuous relationship with A. was sufficiently serious and sufficiently protracted that a sentence at or below the bottom of the range usually imposed would simply not be fit. Second, the defence submission totally ignores the fact that R.'s offending went well beyond "mere" incest and included unlawful confinement, assaults, the making of child pornography and corrupting the morals of his other two daughters. All of these misdeeds require a response from the Court. Either these offences warrant substantial additional time in custody or, if they are considered part and parcel of the incest, are so aggravating that they warrant a sentence orders of magnitude beyond that contended for by the defence. They simply cannot be ignored.

[29] In that regard, I am very much inclined to the view that the other offences, the unlawful confinement, the child pornography and the assault on A. being the most obvious examples, are really part and parcel of the offender's scheme to maintain control over A. and the rest of the family, thus ensuring the compliance of the former and the acquiescence of the latter as he shamelessly used his daughter to satisfy his own sexual and emotional needs. This scheme of isolation and control takes this case out of the ordinary, if incest can ever be so described. As the Crown noted, incest is usually a dirty secret, even within the family. Here, the offender had so brainwashed his wife and daughters that he could go about his sordid business openly for the better part of three years.

[30] I thank counsel for the extensive case law, memorandums of argument and other materials they provided. I have reviewed it all and considered it carefully. In a perfect world I would refer to it more extensively in my reasons, but attempting to do so would only necessitate a further adjournment. This would not be in the interests of anyone, given the already protracted length of these proceedings. They must come to an end at some point so that there can be closure for the victims and the beginning of reformation for the accused.

[31] On the charge of incest, I sentence Mr. R.D. to a period of imprisonment of eight years. I consider this a global sentence. I have already indicated that the other offences were closely associated with and greatly aggravated my view of the seriousness of the incest. Moreover, I also keep in mind that it would not be proper to impose a number of consecutive sentences that are, in total, excessive. Therefore, the following sentences will be served concurrently. For the offence of unlawful

confinement, two years; for making child pornography, two years; for corrupting the morals of K.D. and L.D., one year on each count; for the assault on A., three months; for the assault on L., two months; for breaching the no contact order, three months.

[32] The offender should receive credit for the over 20 months he has spent in pre-sentence custody. Mr. Vaze submitted that he should receive 1.5 to 1 credit based on his institutional record and the principles enunciated in the decision of *R.* v. *Vittrekwa,* 2011 YKTC 64. At the June hearing, the Crown took no position on the submission, but, by the time of filing its supplementary written submissions yesterday, had changed its tune and now argues that he should receive something less. While I appreciate that this changed position may, in part, be based on recently filed reports, in my view, these reports do not reveal any material change in circumstances sufficient to warrant allowing the Crown to resile from its earlier position. I allow the offender 30 months credit for the time already spent in custody, leaving a remanet of five years and six months yet to be served.

[33] The surcharges are waived.

[34] In view of the conviction for the offence of unlawful confinement, the provisions of s. 109 apply, and there will be an order pursuant to that section prohibiting the offender from possessing any firearms, ammunitions or other items enumerated in s. 109(2)(a) for a period of ten years following his release from imprisonment, and from possessing or acquiring any of the items specified in s. 109(2)(b) for life.

[35] There will also be an order whereby the offender will furnish samples of bodily substances for the purpose of DNA analysis and banking.

[36] There will be an order requiring the offender to comply with the provisions of the *Sex Offender Information Registration Act* for a period of 20 years.

[37] Finally, the Warrant of Committal should be endorsed with my recommendation that the offender be prohibited from contacting his daughters or L. or her parents while in custody or on parole.

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FAULKNER T.C.J.