

Citation: *R. v. S.J.E.*, 2007 YKTC 63

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Docket: T.C. 05-00636
05-00636A
05-00636C
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Judge Barnett

REGINA

v.

S.J.E.

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

Appearances:
Noel Sinclair
Gordon Coffin

Counsel for Crown
Counsel for Defence

REASONS FOR SENTENCING

[1] BARNETT T.C.J. (Oral): S.J.E. is 22 years old. He is a First Nations person. His history is very well set out in the two reports prepared by Ms. Rushant, one, a report prepared specifically for today's proceedings, and the other report that was prepared when he was sentenced by JP Cameron back in January of 2004, and it is attached to today's report.

[2] The happenings between January 2004 and April of 2007, are, to say the very least, distressing. Back in January of 2004, Mr. E., I think it is fair to say, was sentenced with compassion. There was a conditional sentence; it did not work very well. It was briefly suspended a couple of times. Then he got on probation, commencing, I believe, on the 30th of June 2004. The order never was particularly successful, but it really began to fall apart early in 2005.

[3] He left the Yukon, did not tell his probation officer, went up to Aklavik in the N.W.T., where he spent a good deal of his younger years. He got into some trouble up there too. He showed up in Whitehorse again in January of 2006. He has some charges now. He got released on an undertaking with a condition that he live here in Whitehorse with his aunt. His aunt is the mother of a girl; she was 12 years old at the time. That girl, of course, is S.E.'s cousin.

[4] Mr. E.'s aunt trusted him to be an appropriate babysitter for her 12-year-old daughter. He had not been there very long when he started making sexual advances to this 12-year-old girl. I could use stronger words, Mr. E., and they would not be wrong. That is describing it charitably. You put your hand down her shirt on one occasion. You were 22 years old, maybe 21 at the time, but you are obviously making a sexual move towards a girl who is only 12. That is just wrong. She did not want it. She made it clear to you. It does need to be said that you did not pursue the matter. She left. You do the same thing again a couple of days later. She leaves again.

[5] You tell the probation officer, you tell me, that your memory of these events is somewhat sketchy. You do not really remember it because you were drinking. That is

excuse making and I do not think it is anything more than that, Mr. E.. That is what you told the Court back in 2004, I think in connection with the car or truck theft matter.

Shortly after these events with that little girl, you got into some sort of an argument with her and you slapped her in the head. That is when the matter came to the attention of the police. Your plea on that Information is to the sexual offence only.

[6] A judge or a JP might well have kept you in custody after that, but you somehow persuaded somebody that it would be safe to release you into the community, provided you live at the YARC centre. Well, you did for a few days, but then you went to Edmonton, which was a pretty clear breach of the order made by a court person. I think it was on the 13th of March 2006 that you went off to Edmonton. It was the 13th of March, I believe, 2007, that they arrested you in Victoria.

[7] What you told Ms. Rushant about that was rather interesting. You were apparently surprised, when you discussed the matter with her, that some government person would not be paying for your transportation back to Vancouver or Victoria since they brought you up here. You told Ms. Rushant that you want to go back to live with your mother, who is now living in Vancouver, and you have told Mr. Coffin that today. Ms. Rushant says that you just do not have any realistic plans, or you did not when you were talking to her.

[8] You know that you are going to do some jail time. Crown counsel is not taking the sternest position that he could fairly take. Mr. Coffin is entirely right to remind me that first, you are a young person still; not in the eyes of the law, you are an adult now, but you are a young adult. You have a First Nations background a lot less troubled than

many. Not an ideal childhood, I understand that, but not everybody in Aklavik drinks, as you have told Ms. Rushant. I say that knowing what I am talking about. I was judging in Aklavik earlier this year. So I have been there; I have some idea about life in that community. Life in that community is -- what is the sign posted up in the community hall about the community motto in Aklavik?

[9] THE ACCUSED: Never say die.

[10] THE COURT: Never say die. So in other words, never give up. Always try and pull yourself out of a bad situation if you possibly can. Is that the community feeling in Aklavik?

[11] THE ACCUSED: Pretty much, yeah.

[12] THE COURT: The government wanted to shut that place down years ago and people said, "We're not giving up. This is our community and we're sticking around. We're going to make a go of it." Is that what they said?

[13] THE ACCUSED: Yeah.

[14] THE COURT: That is what you told Mr. Coffin you were going to do, right?

[15] THE ACCUSED: Yeah.

[16] THE COURT: And you do not want to get two years less a day and no probation. You want less time in jail and you are going to make a probation order work?

[17] THE ACCUSED: Yes.

[18] THE COURT: Ms. Rushant can count on you this time?

[19] THE ACCUSED: Yes.

[20] THE COURT: On the sexual touching charge, the sentence will be 10 months. On the breach of recognizance charge, that is the Information stemming from his having been released on a recognizance on the sexual touching charge, to reside at the YARC centre, staying only a short time and departing, on that matter there will be a sentence of three months consecutive. On the breach of probation charge the sentence will be 45 days concurrent to the breach of recognizance. He has been in custody for some time and should be given credit for six months. So the bottom line is that he will serve another seven months.

[21] There will be a period of probation. Unless counsel have something to say otherwise, I am inclined to believe that if the probation order is to serve any useful purpose, and he tells me it will, that will happen within a one year period, and that a longer order than one year would not accomplish anything more. If counsel have something they want to say about that I will listen, but I am inclined to think one year should be the term of the probation order.

[22] Essentially, I am going to follow Ms. Rushant's suggestions. The order will have in it, of course, the statutory conditions. Ms. Rushant suggests a term that he is to remain within the Yukon Territory unless you obtain written permission from your probation officer or the Court. The condition will be that:

1. You are to remain within the Yukon Territory at all times unless you obtain a variation of this order in court, allowing you to travel or reside outside the Yukon Territory.

[23] Ms. Rushant says that you do not have any sensible plan at the present time. You are going to have some time to think about that. If you come up with a sensible suggestion about going to live in Vancouver, you go and talk to Ms. Rushant about that, or some other probation officer if he or she is supervising you. You make an application in court quite easily and a judge can change the order, but the probation officer cannot just give you permission. Are you clear on that?

[24] THE ACCUSED: Yes.

[25] THE COURT: Condition three is fine. Condition four is fine. Condition five is fine. Condition six is fine. Condition eight is fine. Condition nine is fine. Condition ten is fine, and that is one that I specifically asked you about, Mr. E., and you said you could stay away from schools and playgrounds and those places. Condition 11 is fine. Condition 12 I am going to change just a little. It will read:

12. You are not to attend at or within 50 metres of the residence of V.R.R. or within 50 metres of the Dairy Queen store in Whitehorse. You can walk on the other side of the street, but do not go into the DQ.

[26] Finding work. You can work. You have said that you are going to be able to do that. You will tell your probation officer what efforts you are making to find work.

Condition 14 is also fine.

[27] Mr. E., finally, Mr. Coffin has advised you I am sure, that I must make an order prohibiting you from having any guns and similar things for a 10 year period. I do not have any choice in that. You are not a hunter, from what I understand, are you?

[28] THE ACCUSED: I used to hunt, but I don't hunt anymore.

[29] THE COURT: Do you need a gun for any reason?

[30] THE ACCUSED: No.

[31] THE COURT: If you are ordered not to have guns for a 10 year period, you can live with that?

[32] THE ACCUSED: Yes.

[33] THE COURT: Mr. Coffin, do I need to read out the formal words from the *Criminal Code*, or will it be sufficient that I have informally explained it to him and he will have to sign the order which incorporates what is in the *Code*.

[34] MR. COFFIN: I think the latter will be sufficient, Your Honour.

[35] THE COURT: Crown counsel satisfied with that, Mr. Sinclair?

[36] MR. SINCLAIR: Yes, I think so, thank you.

[37] THE COURT: I make a DNA order because I think that is -- if it is not absolutely mandatory, and it probably is, it is required in any event, so I make that order. I then make also a mandatory 10 year *Sex Offender Registry Act* order.

[38] Mr. E., just in case you are not totally clear on that, Mr. Coffin can explain it to you, but people who get convicted of sex offences these days in this country, there is a registry and your name is going to be in a couple of registries, the DNA data bank and this registry. You really want to do what you told Mr. Coffin you would do, and that is get to work on straightening your life out. You have some abilities. Ms. Rushant has obviously got some good understanding and some compassion for your situation. You do not want to find yourself back before some other judge in some other courtroom or in the Yukon or anywhere else, because you might find it a much harder experience than today.

[39] Any questions?

[40] MR. SINCLAIR: Crown directs a stay of proceedings on the remaining outstanding charges.

[41] THE COURT: Mr. Coffin, thank you.

[42] MR. COFFIN: Thank you.

[43] THE COURT: Mr. Sinclair, thank you.

[44] MR. COFFIN: The surcharge, Your Honour.

[45] THE COURT: That is waived.