

Citation: *R. v. Stewart*, 2007 YKTC 65

Date: 20070831
Docket: T.C. 06-10073
Registry: Watson Lake

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Chief Judge Faulkner

REGINA

v.

GEORGE PAUL STEWART

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:
Kevin Komosky
Lynn MacDiarmid

Counsel for Crown
Counsel for Defence

REASONS FOR SENTENCING

[1] FAULKNER C.J.T.C. (Oral): George Paul Stewart has entered a plea of guilty to a charge of sexual assault .

[2] On November 9, 2006, a 16-year-old girl was at the offender's residence. She was grossly intoxicated. At one point she telephoned her friend to come over and get her. When the friend arrived, Mr. Stewart answered the door and told the friend that the girl was not there. Sometime later, a further investigation was made and the girl was discovered in Mr. Stewart's residence. She was laying on a bed virtually comatose and naked from the waist down. Mr. Stewart had his hand on her thigh.

[3] Mr. Stewart has a horrendous criminal record. Of particular note in these circumstances is a prior conviction for sexual assault in 1996, to which Mr. Stewart received five years imprisonment.

[4] With respect to the present offence, although Mr. Stewart entered a guilty plea, he maintained to the probation officer that the girl had been consenting to the sexual activity. This position, in my view, is simply absurd, given the comatose state of the victim.

[5] The court must also have regard to the prevalence of this type of offence in this jurisdiction. Regrettably, this sort of conduct, taking advantage of women who become incapacitated, is all too common, as a survey of the Yukon cases in point will quickly reveal.

[6] In *R. v. G.C.S.*, [1998] Y.J. No. 77, the Yukon Territorial Court of Appeal has established a range of one to two years for sexual assaults committed in circumstances similar to these. In comparing this case to others to which I was referred, several factors can be noted. First, as Ms. MacDiarmid submits, in this case, there was not a completed act of sexual intercourse. Two, as I already indicated, Mr. Stewart has a serious record, and, in comparing it to the other cases, it can be seen that it is much more serious than that of most of the offenders in the comparator cases. Thirdly, while not in a position of trust at law, Mr. Stewart, nevertheless, had some responsibility for a 16-year-old girl who was a guest in his home and had been rendered senseless by the consumption of alcohol.

[7] The first of these three factors might suggest a sentence toward the lower end of the range. The second and third factors would suggest a sentence at or near the top of that range. In the result, in my view, a sentence of 18 months to two years would be appropriate.

[8] There are, however, two additional factors to be accounted for. The first of these is that Mr. Stewart has served over two-and-a-half months in pre-trial custody. Secondly, even after he was released from imprisonment in late January, he has been residing at the ARC, subject to a very restrictive recognizance. He has apparently done well while at the ARC and has no breaches of his recognizance, and has reportedly abstained from the consumption of alcohol, the significance of this being that alcohol has been a prime factor in virtually all of Mr. Stewart's offences.

[9] Allowing full credit for these factors relating to his pre-trial custody and restrictive release conditions, I impose a sentence of imprisonment of 14 months. Following Mr. Stewart's release from imprisonment, he will be subject to a probation order for a further period of one year. I will return to the conditions of that order. Mr. Stewart will also comply with the provisions of the *Sexual Offenders Registry Act* for a period of 20 years. The surcharge is waived.

[10] The terms of the probation order will be that he shall:

1. Keep the peace and be of good behaviour and;
2. Appear before the court when required to do so by the court.

3. You will notify the probation officer, in advance, of any change of name or address, promptly notify him of any change of occupation or employment, and;
4. You will report to a probation officer within two working days after the order comes into force, and thereafter when and in the manner directed by the probation officer.
5. You will abstain from the possession and consumption of alcohol or controlled drugs or substances, except in accordance with a prescription given to you by a qualified medical practitioner.
6. You will not attend at any place where alcohol is sold, except a restaurant which might be incidentally licensed for the sale of alcohol with meals.
7. You will take such alcohol or drug assessment counselling programming as directed by the probation officer, and take such assessment counselling/programming as directed by your probation officer, including, but not limited to, sex offender treatment.
8. You will have no contact, directly or indirectly, or communicate in any way with T.C., and you will not knowingly be in the direct company of intoxicated female persons.

[11] I have been asked to consider the possibility of Mr. Stewart serving his sentence conditionally in the community. Notwithstanding that Mr. Stewart has done well at the ARC over the past months, in my view, public safety could not be assured, having regard to the long, serious and violent record of this offender. Moreover, given the

nature of the offence, its prevalence in the jurisdiction, and the need to denounce and deter such conduct, I find that a conditional sentence in these circumstances would not be in accordance with the purpose and principles of sentencing as they are enumerated in the *Criminal Code*.

FAULKNER C.J.T.C.