

Citation: *R. v. T.D.S.*, 2009 YKTC 110

Date: 20090924

Docket: 07-03597B

07-03597C

08-00673

08-00673A

08-00878

09-00085

Registry: Whitehorse

Heard: Teslin

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Judge Overend

REGINA

v.

T.D.S.

Publication of identifying information is prohibited by s. 110(1) of the *Youth Criminal Justice Act*.

Publication of information that could disclose the identity of the complainant or witness has been prohibited by Court Order pursuant to s. 486.4 of the *Criminal Code*.

Appearances:

Ludovic Gouaillier

Counsel for Crown

Fia Jampolsky

Counsel for Defence

REASONS FOR SENTENCING

[1] OVEREND T.C.J. (Oral): Mr. S., this is your first conviction, and I am speaking now of the serious charges, this is your first conviction as an adult for a crime of sexual assault. However, it is not your first conviction for a sexual assault; it is your third conviction.

[2] Your counsel has said you have the capacity to do well if you choose to do well. So far, you have not chosen to do well. You clearly have the ability to do well. It comes across in the pre-sentence report, in your letter and what your counsel has said, that you are an intelligent young man who can do many things with your life. You have a choice which way you choose to go.

[3] You are a high risk to reoffend based on the tests that were done and are set out in the pre-sentence report. That means that you have to be very especially careful going forward because if you do not avoid the things that get you into trouble, namely alcohol, you are going to be back here again. The risk of you reoffending is there because you abuse alcohol, most importantly. If you continue to abuse alcohol, I guarantee you will be back here. If you are back here, I do not need to tell you what is going to happen, particularly if you are convicted of another similar offence. We will not be talking about time served, or four months, or ten months. We will be talking about a substantial period of custody. Do you understand that?

[4] THE ACCUSED: Yes.

[5] THE COURT: I am not going to go into the history of it. Your counsel and Crown counsel have set it out quite adequately. You are a young man. Rehabilitation is, in my view, the most important thing today. There is no reason why somebody 18 years of age should be facing a lifetime of imprisonment but, again, that is your choice. So I am more concerned with keeping you out of prison than putting you in prison on this occasion.

[6] On Information 09-00085, the charges of forcible entry and committing a sexual

assault, on Count 2, that is the sexual assault, I am sentencing you to a term of imprisonment of one day, giving credit for the fact that you have spent six months in custody awaiting disposition on this matter which, in the Yukon, is given credit of one and a half to one, which is the equivalent of nine months imprisonment.

[7] Now I want to say that I have listened very carefully to what the Crown has had to say and what your counsel has had to say. Because rehabilitation is so important for you and for me, a nine-month sentence would be appropriate in this case but, in my view, is at the lower end of that range given the fact that you have two previous convictions for very similar offences. So keep in mind what I have said here; this is at the lower end. Do not come back here again. Do you understand?

[8] THE ACCUSED: Yes.

[9] THE COURT: On Count 1 I am sentencing you to a term of imprisonment of one month concurrent. On each of the breaches I am sentencing you to a term of one month concurrent. On Information 08-00673, the mischief charge, I am sentencing you to a term of imprisonment of ten days concurrent.

[10] I am going to make a \$400 restitution order. That means that is payable forthwith, but I understand that you cannot do that, you need to get some money. So it is up to you; speak to your Probation Officer to help make arrangements to pay it as quickly as you can so that you do not end up back in court. Do you understand?

[11] THE ACCUSED: Yes.

[12] THE COURT: All right. The responsibility is on you to pay that. I am

not putting a time limit on it but I am just telling you it is payable forthwith.

[13] I am also placing you on probation on the main Information, that is, the sexual assault Information. How much time is left on the youth probation order?

[14] MR. GOUAILLIER: It was imposed on the -- in October --

[15] THE COURT: October last year?

[16] MR. GOUAILLIER: -- in October of last year, and it was a 24-month probation order.

[17] THE COURT: How much?

[18] MR. GOUAILLIER: Twenty-four month.

[19] THE COURT: Twenty-four?

[20] MR. GOUAILLIER: So it's a little more -- there's almost a year, almost a year passed, on the other probation order.

[21] THE COURT: It is about 13 months left; well, almost a year, yes. I am going to place you on probation for a period of 18 months on this adult Information. The terms of the probation are as follows:

1. You are to keep the peace and be of good behaviour.
2. You are to report forthwith to a Probation Officer in Teslin, be under the supervision and direction of the Probation Officer, and report thereafter at the times and in the manner directed by the Probation Officer.

3. You are to notify the Court or the Probation Officer in advance of any change of your name or address and promptly notify the Court or the Probation Officer of any change of employment or occupation.
4. You are to remain within the Yukon Territory unless you obtain written permission from your Probation Officer or the Court to go outside.
5. You are to reside at a residence approved of by your Probation Officer and not change your residence without the prior written permission of your Probation Officer.
6. For the first six months of your probation order, you are to obey a curfew and you are to be in your residence between the hours of 9:00 p.m. and 7:00 a.m., seven days a week, except with the written permission of your Probation Officer. You must present yourself at the door of your residence or answer the telephone during reasonable hours for curfew checks.
7. You are to abstain absolutely from the possession or consumption of alcohol and/or controlled drugs or substances except in accordance with a prescription given to you by a qualified medical practitioner. You are to provide a sample of your breath and urine for the purposes of analysis upon demand by a peace officer who has reason to believe that you may have failed to comply with this condition.
8. You are not to attend any bar, tavern, off-sales or other commercial premises whose primary purpose is the sale of alcohol.
9. You are to take such alcohol or drug assessment, counselling or programming as may be directed of you by your Probation Officer and you

are to complete any program or counselling to the satisfaction of your Probation Officer.

10. You are to take such other assessment, counselling and programming as may be directed of you by your Probation Officer;
11. You are to have no contact, directly or indirectly, or communicate in any way with T.T.
12. You are to make reasonable efforts to find and maintain suitable employment or educational pursuits and provide your Probation Officer with all necessary details concerning your efforts.
13. You are to provide your Probation Officer with consent to release information with respect to your participation in programming, counselling, employment or educational activities that you have been directed to do pursuant to this probation order.

Do you understand all of those terms?

[22] THE ACCUSED: Yes.

[23] THE COURT: All right. Now I want you to tell me, now, what is the most important thing for you from now on?

[24] THE ACCUSED: To obey my conditions.

[25] THE COURT: To obey your conditions. That is for the next 18 months. After that, what is the most important thing for you to do?

[26] THE ACCUSED: I don't know.

[27] THE COURT: You do not know?

[28] THE ACCUSED: Go to school?

[29] THE COURT: Well, go to school is important, that is correct. But before you go to school, you have to get your mind around the idea that alcohol is out of bounds. You are a person who cannot drink alcohol. If you drink alcohol, you will be back here. That is the most important thing to take away from this. You would not be here if it were not for alcohol. Do you understand that?

[30] THE ACCUSED: [No audible response]

[31] THE COURT: All right. There will be a DNA order. Is there not a mandatory prohibition for firearms, as well?

[32] MR. GOUAILLIER: No, it's not mandatory, and under the secondary criteria, under s. 110, it would be if it was an offence of violence. I mean, one can make the argument that there is --

[33] THE COURT: Well, is this not an offence of violence?

[34] MR. GOUAILLIER: Yes, but it is in there on --

[35] THE COURT: But it is still a secondary?

[36] MR. GOUAILLIER: It's still secondary. It's not mandatory.

[37] THE COURT: Well, I am not going to make it, then.

[38] THE CLERK: Is the DNA for primary or secondary, Your Honour?

- [39] MR. GOUAILLIER: It is a primary designated offence.
- [40] THE COURT: It is primary, yes. All right. Is there one other thing?
- [41] MR. GOUAILLIER: Yes, there was an application --
- [42] THE COURT: The registration.
- [43] MR. GOUAILLIER: Yes, registration under the --
- [44] THE COURT: The registration. What do I have to say to get him to
--
- [45] MR. GOUAILLIER: Just direct the offender to comply with the provisions
--
- [46] THE COURT: -- of the *Code* respecting the registration of --
- [47] MR. GOUAILLIER: -- of the *Criminal Code* pertaining to registration with
the Sex Offender Registry.
- [48] THE COURT: -- in the sex offender. All right. You are to comply
with the requirements of s. 490.012 with respect to registration as a sex offender.
- [49] THE CLERK: For how long, Your Honour?
- [50] THE COURT: Is there a time limit on that?
- [51] MR. GOUAILLIER: No, there is just --
- [52] THE COURT: No, there is no time limit.

[53] MR. GOUAILLIER: The only requirement is that the offender be directed to comply. There is a time for the offender to comply that is set out, but it's not necessary to be set out by the Court.

[54] THE COURT: Yes.

[55] MR. GOUAILLIER: And there will be a stay of proceedings on the remaining counts.

[56] THE COURT: All right.

OVEREND, T.C.J.