Citation: *R.* v. *Tronson*, 2009 YKTC 88

Date: 20090720
Docket: 08-00630
08-00630A
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before: Her Honour Chief Judge Ruddy

REGINA

v.

BRENT THOMAS TRONSON

Appearances:
Eric Marcoux — Counsel for Crown
Edward Horembala, Q.C. — Counsel for Defence

REASONS FOR SENTENCING

[1] RUDDY C.J.T.C. (Oral): Brent Tronson is before me in relation to a single count of aggravated sexual assault to which he has entered a plea of guilty.

[2] The offence arises on the 17th day of December 2008, and took place within a spousal context. At the time of the particular offence, Mr. Tronson and his then spouse, Ms. B., were separated but discussing reconciliation. There were some issues which appear to have arisen within the seven-year relationship around this period of time. On this particular date, Ms. B. was awoken at 10:30 in the morning to find Mr. Tronson standing over her. He asked her a number of questions in relation to a hickey on her neck. He then proceeded to kick her several times, punch her in the body area and slap

her in the face. He made comments to her, at least one comment of a sexual nature. He then gave her a hickey himself, while choking her. He then jabbed his fingers in her vaginal area, resulting in bleeding. It is my understanding, from an injury perspective, there were three tears and swelling in the vaginal area which did require some medical intervention, although quite fortunately did not result, I understand, in any long-term issues.

[3] Mr. Tronson then proceeded to the fridge, where he grabbed a bottle of Smirnoff Ice and proceeded to open and dump that on Ms. B. He then grabbed her by the hair, threw her against the wall and continued to beat her. He asked her on numerous occasions the name of her boyfriend, and he is described by her as having been in a jealous rage, stating several times that he loved her and also that he was going to kill himself. He ultimately left, crying, and told her to call the police as he had hurt her. Friends arrived as he was leaving and Ms. B. did call the police.

[4] It is also important to note that the couple share an almost three-year-old, child. It is my understanding that the child was present in the room at the very beginning of the assault, though quite fortunately not for the worst of it, but was present in the home for all of what occurred.

[5] I am also advised that there was a previous altercation on November 1, 2008, as well, which involved Mr. Tronson pushing Ms. B. out of the home in her pyjamas.

[6] He was arrested following the report to the police, and he made numerous comments at that time to the officer indicating that he was so mad he had lost control, that he deserves what he is going to get, that he was remorseful that the son had seen

part of what had happened and that he was hopeful that Ms. B. would someday forgive him for his behaviour.

[7] He comes before the Court with a limited and wholly unrelated criminal record which includes an 0.08 offence in 2006 and a drive while disqualified in 2007. There is nothing before me to suggest that there is a prior history of violence outside of the two incidents that are described before me today, which appeared to have occurred within the relationship.

[8] I have a great deal of information before me in the form of a pre-sentence report, as well as an assessment from psychologist Randall Kropp, and a number of letters of support which have been filed on behalf of Mr. Tronson.

[9] The circumstances of the offence before me can only be described as disturbing, in relation to the facts that I normally see in the context of domestic disputes. This definitely falls on the higher end and is extremely egregious behaviour. There is absolutely nothing that Ms. B. could have done that would have justified what was done to her.

[10] On the other hand, I have before me a young man with a largely positive pre-sentence report. He is still a young man, only 29 years of age. He is a member of the Westbank First Nation and appears to have split his upbringing between his two parents in Whitehorse and Kelowna, with his mother residing in Whitehorse and his father residing in Kelowna. It is my understanding that his father has a mill in Kelowna and Mr. Tronson works for him and continues to divide his time between the two communities, with his immediate family residing here in Whitehorse. He considers Whitehorse to be

his home and Kelowna to be his place of employment.

[11] He has a grade nine education, and it is apparent to me in the report that schooling was something of a struggle for him. He does, however, have what could be described as an extremely strong work ethic. He has worked since his mid-teens and by all accounts, in all of the support letters and the pre-sentence report, he is universally described as a good and dedicated worker.

[12] He has two children, a ten-year-old son for whom he has always been financially responsible and for whom he has shared child care responsibilities with the child's maternal grandparents, as there appears to be issues with the mother of that child in terms of her ability to care for the child. It is my understanding that for the two years preceding Mr. Tronson's incarceration he had primary care of this son. He also shares a three-year-old child with Ms. B., and again it is evident to me from the information provided that he has been a significant factor in the financial support of that child, but also otherwise in the raising of both of his sons.

[13] I have also had information before me which relates to the question of remorse, which I think bears addressing at this point in time. The Crown has raised concerns about the degree to which Mr. Tronson is genuinely remorseful for his behaviour, noting that he refers in the pre-sentence report on a number of occasions to this having been a big mistake, and Crown has some question about the degree to which he appreciates the seriousness of his behaviour.

[14] In assessing the information before me, I conclude that Mr. Tronson is genuinely remorseful. He has entered an early guilty plea. It is clear, from his very brief

statements to me and the fact that he was clearly emotional when he made them, that he is extremely sorry for what happened. I also note that he made comments immediately to the police upon arrest, which suggested that he was very remorseful. There may well be issues that Mr. Tronson and some of his supports have in terms of appreciating the seriousness of the offence in the way that they describe it. There may be some concerns in that area, but I am satisfied that that is the type of thing that may be more indicative of perhaps a lack of insight into his behaviour as opposed to his being unremorseful for what happened. I am satisfied that he is, indeed, genuinely remorseful.

[15] There is also an additional complicating factor in this particular case, which I think, based on the comments particularly of Mr. Tronson's mother and in some of the letters , I see at play. We are dealing with an aggravated sexual assault here. Sexual assault, as an offence, has an extremely broad range of behaviour, which includes any interference with someone's sexual integrity, as has happened in this particular case. But I get the sense that people are having difficulty distinguishing the name of the offence from the behaviour. There is a tendency, I believe, for the public to think of sexual assaults as being full intercourse, rape-type offences, when in fact it is a much broader offence than what people genuinely believe it to be, and I get the sense that has caused some confusion for people in how they characterize the seriousness of the offence. For me, it is a question of the facts as opposed to the name of the offence, but I am satisfied that there is some confusion for others which has led them to refer to the offence in a way that may suggest that they are not taking the behaviour as seriously as it ought to be. But again I am satisfied that, in fact, Mr. Tronson recognizes the

seriousness of his behaviour and is remorseful for it.

[16] I also note his recognition that he is in need of help. This is the type of behaviour that is not normal and that requires some serious therapeutic intervention to ensure that there is no repetition.

[17] I also have before me a victim impact statement from Ms. B. She has taken the time to be present in court here as well. It is a very supportive victim impact statement, and it is clear to me that she sees Mr. Tronson as a significant financial support for her and it has been a struggle for her not to have him present and able to financially provide for her and her child. It is also clear to me from her victim impact statement that the behaviour that is described, while very, very serious and disturbing, is behaviour that she would not consider normal for Mr. Tronson in the seven years that they have been together.

[18] The one concern that I have, with respect to the victim impact statement, is Ms. B.'s comment that she feels in part responsible for the violent outburst. I appreciate that this arose in the context of a spousal relationship, that there are dynamics to every relationship that create stressors within those relationships, and it is clear that these two were having a difficult time at this point in time, but as I said earlier, and I hope, Ms. B., that you remember this, there is absolutely nothing you could have done that would justify what was done to you, and I think Mr. Tronson recognizes that. The stressors may well have come from the relationship and the problems that you were having, but he chooses how he responds to that, and here he did not respond even remotely appropriately. So if you take anything from this, I want you to walk away from this

recognizing that you are not responsible for his behaviour in this instance.

[19] With respect to the appropriate disposition, in light of all of the information before me, I am required to consider both the circumstances of the offence, which are, as I said, extremely aggravated, hence the serious offence to which he has entered a plea of guilty, and I am also required to consider the circumstances of the offender, which are, by and large, very positive. He is a young man with a great deal of support. He has had a number of family members who have attended in court today, including his father, who has travelled from Kelowna to be here to support him. It is within that context of largely positive personal circumstances and a largely aggravating offence situation that I am required to determine what the appropriate disposition is.

[20] The Crown takes the position that the behaviour before me would warrant a sentence in the range of, effectively, 43 months to 49 months. Mr. Tronson has spent a number of months in custody and counsel are jointly agreed that the normal credit of one and a half to one would be appropriate, which would give him credit of seven months, and Crown is suggesting that a sentence in the range of 36 to 42 months would be appropriate.

[21] Defence, on the other hand, is suggesting that I consider a sentence in the high territorial range plus probation, to allow, firstly, for Mr. Tronson to remain within the territory, close to his primary supports, and to allow him to pursue programming that is readily available here in the territory, such that there is a rehabilitative focus to the disposition as well. There is no doubt in my mind that a lengthy custodial term is warranted by the facts of this particular case. The question is, where do I fall between

those positions provided to me by counsel?

[22] Crown has filed three cases in support of their position. Factually, the only one which is close is the first case, that being the case of *R.* v. *D.C.*, 2005 YKSC 30, a decision of Mr. Justice Gower out of the Supreme Court of Yukon. It has very similar facts and it arose within a spousal context as well. There are some differences, which I will speak to shortly, in terms of the offender's circumstances, but factually it is fairly similar and it resulted in, effectively, a 36-month sentence which was reduced by 12 months credit at two to one for time spent in remand. Crown has sought a sentence in excess of that given in the *D.C.* case, and has filed two additional cases, *R.* v. *White*, 2008 YKSC 34, and *R.* v. *Blackjack*, 2008 YKTC 66, in support of an argument that there ought to be a general increase in ranges for sexual offences across the board.

[23] The *White* decision was again a decision of Mr. Justice Gower out of the Yukon Supreme Court. It is a lengthy decision which does an exhaustive review of case law in sexual offences, primarily with respect to sexual offences involving full intercourse or attempted intercourse with respect to a victim who is incapacitated as a result of alcohol. There was a case here that is referred to in the *White* decision, that being *R.* v. *G.C.S.*, [1998] Y.J. No. 77, out of, I believe, it went to the Court of Appeal in the Yukon, which spoke at length about the range for the offences of this particular nature, which are, as Mr. Horembala pointed out, unfortunately, all too common here in the Yukon. The Crown also filed the *Blackjack* decision, a decision of this court from my brother Judge Faulkner, which applies the *White* decision, with respect, again, to a full intercourse sexual assault. Both of those resulted in significant sentences.

[24] Crown argues that the reasoning in *White*, which postdates the *D.C.* decision of Mr. Justice Gower, supports a conclusion that the sentence in this case ought to be more than what was received in the *D.C.* case. I have some difficulty with the reasoning. Firstly, I would note that factually *White* deals with very different circumstances than did the *D.C.* decision. I would also note that the *D.C.* decision is 2005. It is only three years prior to the *White* decision, which is 2008. *White* was primarily concerned with a longstanding range as it related to full intercourse offences with an incapacitated victim, which dates back, if I recall correctly, into the mid-'90s, and it speaks to the fact that there was a need to revisit the sentencing range that has been so entrenched in the jurisprudence here in the Yukon since that date. We are dealing with a much different offence here.

[25] I take, however, from all of the cases before me, that the sentence clearly must address denunciation and deterrence as primary factors and that it must be lengthy, given the nature of the offence and the facts in this particular case. I do believe that *White* is instructive as it relates to the importance of there being significant responses to sexual offences of all kinds, including the facts of the offence before me. However, that being said, I am satisfied that the case which is the closest in circumstances to the case before me is the *D.C.* decision, which, as I indicated, was effectively a 36-month sentence.

[26] In considering the application of that case to the case at bar, defence has pointed out that there are some differences, some significant differences, which perhaps suggest that Mr. Tronson would fall somewhat lower than the sentence in the *D.C.* case. Firstly, and of importance to me, is the fact that there was little to no remorse in the *D.C.*

case. There are some differences in risk assessments. Mr. Tronson is at moderate risk to reoffend, while the accused in the *D.C.* case was moderate to high. However, what is of more significance to me is that the sentencing in *D.C.* followed a committal for trial after a preliminary hearing, which would have necessitated the complainant in that particular case to have testified. I do take it as a significant mitigating factor that Mr. Tronson has not put Ms. B. through the necessity of having to testify about the nature of the circumstances which she suffered as a result of this particular offence. That was not the case in the *D.C.* decision. I also note that *D.C.* had a lengthier criminal record, which included a couple of related offences, while not sexual in nature, were violent in nature, that being an assault and an uttering. That is not the case before me, as well.

[27] The other thing I think is significant in determining the appropriate disposition here is the fact that Mr. Tronson has clearly recognized his need for counselling and programming. In fact, I am advised by his counsel that he had, in fact, contacted Many Rivers around the time that the relationship was developing problems and the couple were on a waitlist with respect to programming. So it is clear to me that at the time he recognized that he had some issues that were developing. It is just unfortunate and saddening for all concerned that they were not able to access counselling or programming before this offence occurred, but he had clearly demonstrated a recognition that he had some issues to address. Since the offence he has, while in custody, taken and completed the Gathering Power program with Phil Gatensby on two occasions - not just one but on two - and the reports I have received from Mr. Gatensby, in the form of two letters, are both quite positive in nature. Mr. Tronson has also made a number of comments confirming his recognition that he is in need of programming as

it relates to his ability to manage his anger and his emotions.

[28] In terms of determining the appropriate programming, Crown has suggested, in support of their position, that I consider a federal penitentiary term, and has filed, as Exhibit 2, an outline of some of the programming that is available in the federal system and has asked that I consider that information as being supportive of a penitentiary term. Defence has asked that I consider that there are appropriate programs available here in the territory that can be accessed by Mr. Tronson and has also asked that I consider the value of a probationary term in this particular matter, which would allow for ongoing supervision as Mr. Tronson accesses treatment supports.

[29] On balance, I am satisfied that in this particular case it is appropriate that there be a sentence in the territorial range for a number of reasons. Firstly, it would allow Mr. Tronson to remain in the territory close to his supports. Secondly, it would allow him to access the programming which is here. I believe Mr. Horembala is quite right; if there is a federal penitentiary term, I have no guarantees that Mr. Tronson will access or be able to access the programming in that system. That best that I can do is make a recommendation that he be admitted into certain programs within the federal system, but that is not binding in any way and, indeed, I am not in a position to order him to take programming if he is in the federal system. I am satisfied, based on what I have heard, that he would, because he has clearly indicated a need for treatment, but I do not have any guarantees that the treatment is going to be accessed.

[30] Thirdly, while I am of the view that denunciation and deterrence are the predominant sentencing principles to apply in this case, given that Mr. Tronson is still a

young man, I am equally satisfied that there needs to be a rehabilitative component as well, and I conclude that my ability, in a sentence, to assure that there is programming is, quite frankly, better done through a probation order, which I could not attach to a penitentiary term in any event.

[31] I also note, considering the *D.C.* decision, that with the seven months of remand credit, I am of the view that a sentence at the high end of the territorial range, and I would say the highest end of the territorial range, is still within the range of appropriate sentences for this particular offence.

[32] In the result, there is going to be a sentence of two years less a day, which will keep you, Mr. Tronson, in the territory, will allow you to access the programming that is here in the territory, and we do have relevant and effective programming, which is something else that I have considered, both in the area of sexual offending behaviour, but also, more importantly, in the area of spousal violence. Dr. Kropp in his report, while noting that there may be some value to sexual offending programming, really stressed that the behaviour in this particular case falls, to some extent, more within the range of domestic violence behaviour as opposed to sexually predatory behaviour. I fully accept, and I know this was a concern for Ms. B. and for Mr. Tronson's family, that there is no suggestion before me on the facts of this case that Mr. Tronson is a sexual predator and that is not a concern to me on these circumstances.

[33] So there will be a sentence of two years less a day, and that sentence will be followed by the maximum probationary term of three years. In terms of conditions, bear with me for a minute, there are some suggested conditions. The conditions will be as

follows. There will be the statutory terms, Mr. Tronson. Those are terms I am required to include in each and every probation order. They are that you:

1. Keep the peace and be of good behaviour;
2. Appear before the Court when required to do so by the Court;
3. Notify the Probation Officer in advance of any change of name or address, and promptly notify the Probation Officer of any change of employment or occupation;

[34] In addition to those, I am going to add the following conditions, that you:

4. Remain within the Yukon Territory unless you obtain written permission from your Probation Officer or the Court.

That does not mean that you cannot work in B.C., it simply means that you need to get permission to go back and forth, and that is because they need to arrange for courtesy supervision in B.C. if you are going to be moving back and forth, so I want to make sure that you do not leave without the probation officer knowing what you are doing.

[35] You are to:

5. Report to a Probation Officer immediately upon your release from custody, and thereafter when and in the manner directed by the Probation Officer;
6. Reside as approved by your Probation Officer and not change your residence without the prior written permission of your Probation Officer.

[36] A curfew is suggested. I am not going to include one because I believe this probation order is intended to be more rehabilitative in nature and he will be doing a

considerable period of time in custody.

[37] You are, however, required to:

7. 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;
8. Not attend any bar, tavern, off-sales or other commercial premises whose primary purpose is the sale of alcohol;
9. Take such alcohol and/or drug assessment, counselling or programming as directed by your Probation Officer;
10. Report to the Family Violence Prevention Unit to be assessed, and attend and complete the Spousal Abuse Program as directed by your Probation Officer;
11. Take such other assessment, counselling and programming as directed by your Probation Officer, including, but not limited to, the Sex Offender Treatment Program if so directed;
12. Provide your Probation Officer with consents to release information with regard to your participation in any programming or counselling that you have been directed to do pursuant to this order;

[38] I have a question about the no-contact. Does counsel have any submissions on that?

[39] MR. HOREMBALA: That term was removed some time ago.

[40] THE COURT: There has been ongoing contact while he was out?

[41] MR. MARCOUX: If I may?

[42] THE COURT: It is a recommendation in the pre-sentence report, but I am --

[43] MR. MARCOUX: May I?

[44] THE COURT: Yes.

[45] MR. MARCOUX: Thank you. Yes, Your Honour, I believe now they are having contact through the written permission of the Bail Supervisor, and they would like to have that condition still there to monitor future contacts.

[46] THE COURT: Okay. Any issue, Mr. Horembala? Okay. So there will be a condition that you:

> 13. Have no contact, directly or indirectly, or communication in any way with Ms. B. except with the prior written permission of your probation officer in consultation with Victim Services and the …

[47] VICTIM SERVICES: Your Honour, may I just clarify? I just wanted to suggest that that's more of a precautionary measure. My client would want contact, and I would support that contact happening. It would be more if there was ever --

[48] THE COURT: If a problem arises, okay. So the intention, as I understand it, and for the record, is not that there would not be contact but simply that there is a mechanism to terminate contact if a problem arises. Okay, fair enough. I am going to include consultation with both Victim Services and the:

13. … Spousal Abuse Program;

As I expect that he will be in programming with them, and I believe the counsellor should have some input into that issue as well, if problems arise.

[49] I am going to add a condition which is not suggested, but a condition that he:

14. Take such psychological assessment, counselling and programming as directed by the Probation Officer;

I think there may be some value in as suggested by Dr. Kropp as well, a more extensive psychological assessment, to get a better sense of what underlying issues there might be, as it is clear to me that there are not any obvious mental illnesses or psychoses that would explain the behaviour and it is somewhat contrary to all of the other descriptions of Mr. Tronson and his history that I have before me.

[50] Any concerns as it relates to those conditions?

[51] MR. HOREMBALA: Concerned a little bit, Your Honour, about alcohol was not a factor here. There is an indication in the pre-sentence report that there may be not a total acknowledgement of an alcohol problem he's had in the past, but I have concerns that he be restricted from the use of alcohol and, quite frankly, being allowed to go into established premises. I'm not sure that, with due respect, that that's warranted in this case, those conditions.

[52] THE COURT: Okay. Any submissions?

[53] MR. MARCOUX: I understand, first of all, that there was no condition

not to attend any bars; did I miss that or? I thought it was just purely --

[54] THE COURT: I did say that.

[55] MR. MARCOUX: Oh, you did?

[56] THE COURT: Yes.

[57] MR. MARCOUX: Well, I would emphasize more the abstain condition. The evidence is a bit conflicting. The father of Mr. Tronson says there's an issue there.

[58] THE COURT: And there is some -- okay, there is something worth exploring. Here is what I am prepared to do.

[59] MR. MARCOUX: Okay.

[60] THE COURT: I am going to include it for the first six months, and that gives some time where he can get actively engaged in programming, where he is not near it. They can do some assessments and see whether or not there are some issues that he needs to explore. But I will not include for the full three years. So that condition will be for the first six months he will abstain absolutely. I will remove the not attend clause. I take your point. That does not need to be there. But I would like you to have some stability where you are not using anything at the beginning so that you can get actively engaged and make some progress in the treatment.

[61] I will waive the victim fine surcharges, given his custodial status. But that leaves us with the mandatory orders that arise as a result of the nature of this offence. The first of those is the DNA order. It is a primary designated offence, so I will make the

order that Mr. Tronson provide such samples of his blood as are necessary for DNA testing and banking. There is also a mandatory firearms prohibition, because of the nature of the charge. So there will be an order that you are prohibited from having in your possession any firearms, ammunitions or explosive substances for a period of ten years. Does he have any firearms in his possession that would need to be surrendered?

[62] MR. HOREMBALA: Not that I am aware of.

[63] THE COURT: No? Okay. The offence also makes you subject to the *Sex Offender Information Registration Act*, and you indicated that was, given the nature of the offence, was it life?

[64] MR. MARCOUX: That's correct. That's according to - I have the section number here - 490.013(2)(c), because this is an aggravated sex assault, with life imprisonment as a maximum.

[65] THE COURT: Okay. Then there will be an order that you are required to comply with the provisions of the *Sex Offender Information Registration Act* for life.

[66] Have I left anything outstanding?

[67] UNIDENTIFIED SPEAKER: What does it mean, though?

[68] THE COURT: Sorry?

[69] UNIDENTIFIED SPEAKER: I don't know what that means, what he's giving

them.

[70] THE COURT: Mr. Horembala will give you an explanation once we are done. It primarily relates to him advising of his address and where he is and those types of things. Anything that we have overlooked?

[71] MR. MARCOUX: Just for clarification, if I may, Your Honour. So the sentence from today is two years less a day?

[72] THE COURT: Yes.

[73] MR. MARCOUX: So that is an effective sentence of 31 months.

[74] THE COURT: Of 31 months.

[75] MR. MARCOUX: Thank you.

[76] THE COURT: Yes.

[77] MR. MARCOUX: I could direct the clerk to stay the remaining charges before the Court.

[78] THE COURT: Okay, thank you.

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RUDDY C.J.T.C.