

# SUPREME COURT OF YUKON

Citation: *R. v. Hillyer*, 2012 YKSC 34

Date: 20120402  
Docket S.C. No.: 11-01501  
Registry: Whitehorse

BETWEEN:

**HER MAJESTY THE QUEEN**

AND:

**PAUL BRIAN HILLYER**

Before: Madam Justice M. Maisonville

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

Appearances:  
Terri Nguyen  
André Roothman

Counsel for the Crown  
Counsel for the Defence

## **REASONS FOR SENTENCING DELIVERED FROM THE BENCH**

[1] MAISONVILLE J. (Oral): On November 30, 2011, Paul Hillyer entered guilty pleas to Counts 1 and 3 of the Indictment before the Court as follows: Count 1, and it was amended to read as follows:

On or between the 1st day of February, 2007 and the 31st day of January, 2008, at or near Watson Lake, Yukon Territory, did unlawfully commit an offence in that: he did for a sexual purpose touch [...], a person under the age of sixteen years directly with a part of his body, to wit: his penis, contrary to section 151 of the Criminal Code.

Count 3:

On or between the 1st day of October, 2006 and the 31st day of March, 2007, at or near Watson Lake, Yukon Territory, did unlawfully commit an

offence in that: he did for a sexual purpose touch [...], a person under the age of sixteen years directly with a part of his body, to wit: his penis, contrary to section 151 of the Criminal Code.

[2] Trial of this matter had commenced on November 28, 2011. Two days of evidence were called, including the victims that were just referred to in the counts. The complainants are sisters. At the time of the offences, they were six and nine years old respectively. The background to this matter is that at the time of the offences the accused, the mother of the complainants, and the complainants lived in Watson Lake, Yukon. The mother of the complainants had met the accused in or about May of 2001 at a bar in Watson Lake and they had commenced a relationship. They lived common-law for approximately six years. She brought in the two girls into the relationship and, in time, a third child was born, a half-brother to the two complainants. The relationship between the parties, however, deteriorated. Ultimately, he left the premises and then he left the Watson Lake area entirely and moved to the lower mainland of British Columbia area.

**The circumstances of the offence:**

[3] After the family, being the complainants' mother and her two daughters and son, commenced living in Marsh Lake, on one fateful day the mother sat with her children down on a couch. [...] started to cry and her mother took her to a room where she explained what had happened back at the home at Watson Lake.

[4] One event, which was believed to have occurred on March 3, 2007, was when the complainants' mother had gone to Whitehorse to pick up certain medicines for her mother. At that time, [...] was nine years of age. She went into Paul's bedroom, her

mother's room as she called it here in the trial. There was a DVD player, but there was not children's movies in that player, and instead what she described as "naked adults," being evident that it was a pornographic movie. The accused asked her to come and sleep. He tried to undress her but he could not get her shorts off. He grabbed her hand and put it on his penis. She kept trying to pull her hand away. It was then that they heard her mother return from the vehicle. It was at that time that the accused told her never to tell anybody what had happened.

[5] The second incident relates to [...], who was six years of age at the time. The children have a habit of sleeping together all in one bed because they enjoy each other's company. The accused came into bed where she was sleeping with her sister. He grabbed [...]'s hand, put her hand under the blanket and unzipped his pants and made her hold his penis up and down. She thinks it was for about a short period of time but she forgot the rest. These were very difficult circumstances for the complainants; that is to putting it at its most bare facts. This has destroyed their trust in adults.

**The position of the parties:**

[6] The Crown is seeking a sentence of incarceration of six months and terms of probation. The jail term of six months, I take the Crown's position to be run concurrently on both counts.

[7] MS. NGUYEN: Yes.

[8] THE COURT: But, as Crown counsel submitted, it is important here not to lose sight of rehabilitation. In that vein, the Crown sought the longest period of probation possible, that of three years, in which there could be treatment obtained for

Mr. Hillyer, which took into account the chances for him to rehabilitate himself and to take any necessary courses for alcohol counselling, as well as sexual offender treatment. The Crown's submission was that this takes into account the aggravating factors that these offences were committed against what were, in effect, his children. It is understood and agreed that he stood in the place of a father figure to these two young girls. He denied their protection and instead abused them.

[9] Defence counsel's position was as follows: seeking the minimum jail incarceration possible on this offence. Turning to the provisions of s. 151 for a moment, it is of note that it states as follows:

SEXUAL INTERFERENCE.

151. Every person who, for a sexual purpose, touches, directly or indirectly, with a part of the body or with an object, any part of the body of a person under the age of 16 ...

- (a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years and to a minimum punishment of imprisonment for a term of forty-five days; ...

Consequently, this is an offence for which Parliament has sought to set out a minimum term, and it is of note that the maximum term is ten years.

[10] Defence counsel noted that the Pre-Sentence Report referred to at length to Mr. Hillyer's troubled background. Suffice it to say that many of the incidents that occurred to Mr. Hillyer, that are noted in the Pre-Sentence Report, occurred to him as a child, but they do form part of his history. It is clear that there are issues that have to be resolved respecting Mr. Hillyer's dealing with sexual situations, particularly as he had divulged an incident of sexual abuse against himself as a young child. But, as well, he became

sexually initiated at a very young age and had difficulty attaching and forming adult relationships with others than his female partners.

[11] A very sad time in Mr. Hillyer's life was that he had a significant relationship with a woman to whom he married. She was regrettably killed in a motor vehicle accident. It was after that time that his use of alcohol and drugs became out of control. It was a few years following that motor vehicle accident that he met the complainants' mother and then started on a family relationship. His mother had described to the Probation Officer the role that he had played as a father to these children. The difficulty is that, as he himself acknowledges, that those two acts that he committed have negated all six years of acting as a father to those children, and it is something that they will have to deal with for the rest of their lives, including the difficulty that they found in not being able to say anything about it and that it took some time before this became evident to their mother as to what had happened before she was able to deal with the pain and turmoil of both the children and herself and what she saw as letting this happen.

[12] With respect to Mr. Hillyer's criminal background, I have been provided with a copy of his criminal record. They are unrelated offences: in 1987, possession of property obtained by crime for which he received a fine of \$500; in 1990, a theft under for which he received a fine of \$50; and 2005, in Whitehorse, failing to provide a sample and an \$800 fine. There is absolutely no record of behaviour of this sort or of behaviour of violence, and that is noted and I have defence counsel's submission on that.

[13] With respect, however, to the aggravating circumstances, those are as set out and they are acknowledged by defence counsel that they are that this man, Mr. Hillyer,

the accused, stood in as a father figure to these two girls. I do not find it to be a mitigating factor that the offence charged is that of sexual interference. It is a separate offence from sexual assault and the fact that that has occurred is not the offence for which I am considering. This is not an included offence to sexual assault. I am separately sentencing on the basis of the offence as charged and as pled guilty to by Mr. Hillyer.

[14] It has not been suggested to the Court that Mr. Hillyer has any First Nations background and, accordingly, the principles of *Gladue*, [1999] S.C.J. No. 19, do not apply here. But the important principles of sentencing that apply are those of s. 718 of the *Criminal Code*, which states as follows:

The fundamental purpose of sentencing is to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:

- (a) to denounce unlawful conduct;
- (b) to deter the offender and other persons from committing offences;
- (c) to separate offenders from society, where necessary;
- (d) to assist in rehabilitating offenders;
- (e) to provide reparations for harm done to victims or to the community; and
- (f) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims and to the community.

[15] A sentence must be proportionate to the gravity of the offence and the degree of the responsibility of the offender.

[16] Also important are the personal circumstances of Mr. Hillyer. As noted, he has suffered from a difficult childhood. He is at present 43 years of age and works as a

heavy duty mechanic. Three letters from his employer were put in evidence, and those being from where he works at present, for the Seymour-Capilano Twin Tunnels Completion Project. He is clearly a model employee upon whom they depend, although they recognize that it may be that he will be incarcerated and that he will lose his job. This is something that defence counsel stressed to the Court as one of the extra consequences that are going to ensue to Mr. Hillyer as a consequence of his change of plea to guilty. I note those and note that he is a model employee, and following any incarceration imposed by this Court it is hoped that he will be able to retain a job in that field again. Additionally, there are issues of past drug and alcohol abuse.

[17] There was additionally the question of whether there was insight by Mr. Hillyer into the offences here. He did acknowledge that this is the worst thing that he could do to the victims and he has today expressed to the Court that he wished to apologize to the family and the victims. He wishes to get counselling, and that he has no difficulty with any of the conditions that were suggested by the Crown respecting the terms of probation. He found it difficult to express to the Court how badly he feels and that he hurt the children.

[18] What the Court, though, must acknowledge is, as well, the Victim Impact Statement of the complainants' mother. It is difficult to put into words the destruction that the offence has had on the two girls and their mother. In summary, it has destroyed their trust in adults and the girls have now had to carry on differently than they did in the past. They are trying to avoid the house where the offence took place and it is difficult for the family to pick up and move on. The girls do not want to discuss the matter and it

is hoped that they obtain any counselling that they will need to carry on in this event. The Court takes into account the Victim Impact Statement of [...].

[19] However, in addition to this shattered family, there is the difficulty of addressing any rehabilitation for Mr. Hillyer.

[20] The Court considers it to be an aggravating circumstance that he stood as a father figure to these children. Aggravating as well is that the victims of the crime were children. The Court must denounce unlawful behaviour, isolate dangerous individuals from society, but it is equally important to consider the aspects of rehabilitation. The key factors here are that of denunciation and deterrence, not just generally but with respect to Mr. Hillyer specifically.

[21] Mr. Hillyer, please stand. For reasons of specific and general deterrence, the circumstances of the offence and the seriousness of the offence, I sentence you to six months incarceration, to be followed by three years probation on the following terms:

1. To report within 48 hours of your release to a Probation Officer, and thereafter as and when directed by your Probation Officer;
2. To reside at a residence approved of by your Probation Officer and not to change that residence without prior written approval by your Probation Officer;
3. You are to participate in any psychological or psychiatric assessment as directed by your Probation Officer;
4. You are to have no contact directly or indirectly with [...], [...], [...], and [...], or any member of their family;



5. You are not to attend at any public park, swimming area, daycare centre, school ground or playground where persons under the age of 16 years of age are present or can reasonably be expected to be present;
6. You are not to have contact directly or indirectly with any persons under the age of 16;
7. You are to attend such counselling as directed by and to the satisfaction of the Probation Officer, but not limited to the Sexual Offender Treatment Program and the Sexual Offender Maintenance Program.

[22] I appreciate defence counsel's position that you may wish to someday re-embark on a relationship with your son. I would like to see your treatment well underway before that happens and this will enable that to occur.

[23] As well, pursuant to the provisions of s. 487.051 of the *Criminal Code*, I order that in accordance there be taken samples of your bodily substances for the purposes of forensic DNA analysis. Pursuant to the provisions of s. 490.012, there will be an order to comply with the *Sexual Offender Information Registration Act*, S.C. 2004, c. 10. Additionally, pursuant to s. 109 of the *Criminal Code*, you are prohibited from possessing any firearm, cross-bow, prohibited weapon, prohibited device, ammunition, prohibited ammunition and explosive substances for a period of ten years, in accordance with s. 109 of the *Criminal Code*.

[24] Mr. Hillyer, I hope that you get the rehabilitation and counselling that you deserve in order to move on, and that you recognize what you can do, too, so that something like this never occurs again.

[25] MS. NGUYEN: Your Honour, Counts 2 and 4 on the Indictment are withdrawn. And the matter of the victim fine surcharge, given that there'll be some custody and the financial circumstances as set out in the Pre-Sentence Report, the Crown's content that the victim fine surcharges be waived.

[26] THE COURT: Thank you.

[27] MR. ROOTHMAN: There's just one issue that I want to point out, as far as it concerns the firearm prohibition. My client advised me that he, in fact, does own a firearm. That firearm is currently in a safe --

[28] THE ACCUSED: Yeah.

[29] MR. ROOTHMAN: -- in a safe down in -- at his residence and nobody else can access it. So that firearm will only be -- he will only be able to make arrangements.

[30] MS. NGUYEN: He can't possess --

[31] MR. ROOTHMAN: Yeah.

[32] MS. NGUYEN: -- a firearm, so if he needs to surrender that to somebody who can lawfully possess it or to the RCMP in his area.

[33] MR. ROOTHMAN: Yeah, I'm just pointing out that --

[34] THE COURT: He has it now and he cannot get at it.

[35] MR. ROOTHMAN: He can't get to it now.

[36] THE COURT: Yes, and if arrangements could be made that that could be dealt with, and then it is -- you will be aware if anything arises from his efforts to try to surrender that weapon.

[37] MR. ROTHMAN: Yes. So it may be that only upon his release will he be able, when he goes down, then to arrange for the RCMP or for somebody else to be present to take possession of the firearm.

[38] THE COURT: I leave that for counsel to sort out.

[39] MR. ROTHMAN: Yeah. But I just wanted to put it on the record so that there's --

[40] THE COURT: Yes.

[41] MS. NGUYEN: And I'd also suggest if he has the firearms safe key somewhere other than his person right now, it shouldn't be a problem having that taken care of before he's released.

[42] THE COURT: All right, but I will leave that for counsel to sort out the details. Thank you for that. Is there anything else?

[43] MS. NGUYEN: Nothing.

[44] THE CLERK: I'm sorry; I just need to clarify the length of time for the *SOIRA* order.

[45] THE COURT: Madam Prosecutor, Ms. Nguyen, respecting the *Registration Act*, Madam Registrar has brought to my attention the provisions are for 10,

20 or life.

[46] MS. NGUYEN: Yes, I'd suggest -- this is a first offence and the *SOIRA* order ought to be for ten years.

[47] THE COURT: All right. Mr. Roothman, did you have any --

[48] MR. ROOTHMAN: Nothing in respect.

[49] THE COURT: All right. So that will be for a provision of ten years.

[50] MS. NGUYEN: Thank you.

[51] THE COURT: Thank you.

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MAISONVILLE J.