SUPREME COURT OF YUKON

Citation: *R.* v. *Roberts*, 2013 YKSC 75 Date: 20130709
Docket: S.C. No. 11-01508
Registry: Whitehorse

BETWEEN:

HER MAJESTY THE QUEEN

AND:

PAUL ARTHUR ROBERTS

Before: Mr. Justice G.C. Hawco

Appearances:
Ludovic Gouaillier Counsel for the Crown
John Gustafson Counsel for the Defence

REASONS FOR SENTENCING
DELIVERED FROM THE BENCH

[1] HAWCO J. (Oral): Mr. Roberts has been convicted by a jury of sexual assault upon S.G., a young girl of under the age of 16 years at the time; touching her for sexual purpose and of inviting her to sexually touch him. Mr. Roberts has a criminal record including a number of assaults and a sexual assault in 2005.

[2] Mr. Roberts was in a position of trust with S.G.; she was the daughter of his common-law wife. Ms. G. left her daughter in Mr. Robert's care on a number of occasions. The Victim Impact Statements which were read to this Court disclose some of the damage inflicted upon S. and upon her mother and grandmother.

[3] Sexual assault often scars a woman; it always scars a young girl, particularly when it happens by a person in a position of trust. I do not think that any man could properly feel or appreciate the violence a woman must feel and even greatfully more when the victim is a young girl.

[4] Mr. Roberts is an Aboriginal person and a First Nations person. Unfortunately he has suffered what so many of our First Nations people have suffered. He was abandoned by his parents at a very young age. He, himself, was physically and sexually abused as a child. He may have suffered from Foetal Alcohol Syndrome. Mr. Roberts grew up in an unstable environment. He himself abused alcohol and drugs.

[5] The Supreme Court of Canada, in *R*. v. Gladue, [1999] 1 S.C.R. 688, has reminded trial court judges of our duties under s. 718(e) to consider all available sanctions other than imprisonment particularly with respect to Aboriginal offenders. In *R*. v. *Ipeelee*, 2012 SCC 13, it has very strongly reminded us to inquire into the causes of the particular offender's problem and to endeavour to remedy it, to the extent that a remedy is possible to the sentencing process. I refer, in particular, to para. 58 in *Ipeelee*, *supra*.

[6] Justice Clackson of the Alberta Court upon its bench in the decision referred to as *R*. v. *Gouda,* 2013 ABQB 121, referred to the *Ipeelee*, *supra,* decision and the importance of obtaining a *Gladue* Report and the importance of considering the background factors which have played a part into a particular offender coming within our jurisdiction.

[7] Justice Watt of the Ontario Court of Appeal, in *R*. v. *Pelletier*, [2012] 295 OAC 200, stated even in situations where Aboriginal offenders are involved:

> [143]… The more violent and serious an offender's crime, the more likely that the terms of imprisonment for Aboriginals and non-Aboriginals will be close to each other, …

What we must do is to be aware of the background of the individual, to be aware of the systemic or background factors which have come to into consideration here.

[8] We have the benefit of a thorough Pre-Sentence Report in this particular case. We have a *Gladue* Report that Mr. Stevens prepared in this particular case. In the *Ipeelee*, *supra*, decision, to which I have already referred, at para. 73 the Supreme Court said this:

> First, systemic and background factors may bear on the culpability of the offender, to the extent that they shed light on his or her level of moral blameworthiness. This is perhaps more evident in *Wells* where Iacobucci J. described these circumstances as "the unique systemic or background factors <u>that are mitigating in nature</u> in that they may have played a part in the aboriginal offender's conduct" (*Wells,* at para. 38 (emphasis added)). Canadian criminal law is based on the premise that criminal liability only follows from voluntary conduct. Many Aboriginal offenders find themselves in situations of social and economic deprivation with a lack of opportunities and limited options for positive development. While this rarely -- if ever -- attains a level where one could properly say that their actions were not *voluntary* and therefore not deserving of criminal sanction, the reality is that their constrained circumstances may diminish their moral culpability… (emphasis already added).

[9] In these types of cases where there has been sexual assault on a woman or a young woman the range in this jurisdiction appears to be from three to eight years. Again, it is much the same as in the courts in Alberta.

[10] I have taken into consideration the principals set forth in s. 718 of our *Criminal Code* as well as ss. 718.1 and 718.2. I have considered the courts both in Alberta and

British Columbia and in this jurisdiction, maintaining that the courts that sentencing judge must take into consideration as a primary factor; deterrence and denunciation of this type of conduct. I have taken into account the materials provided to me in the submissions of counsel. Having taken all of this into account and referring to the principal to which I have already referred, I sentence you, Mr. Roberts, to a period of three and a half years imprisonment for the offence committed against your step-daughter. This would be reduced by four months pre-trial custody that results in a sentence of 38 months imprisonment.

[11] The conditions in the Pre-Sentence Report set forth on pages 16 and 17 of that report are all incorporated into the two year probation period which follows. There will be, in addition, a DNA order, there will be registration under the Sexual Offender's Registration Act, and there will be a minimum requirement of 10 years firearms prohibition. Gentlemen, is there anything further?

[12] MR. GOUAILLIER: There is a mandatory order that Mr. Roberts comply with the Sexual Offender Registry for a period of 20 years, [indiscernible].

[13] THE COURT: For a period of 20 years; I thought I had covered that, but yes. Is there anything further?

[14] MR. GUSTAFSON: In light of the incarceration I ask the Court to waive the Victim Fine Surcharge.

[15] THE COURT: Yes, that is waived. Thank you.

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HAWCO J.