

Citation: *R. v. Blackjack*, 2008 YKTC 66

Date: 20080905
Docket: 07-00347
07-00347A
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before: His Honour Judge Faulkner

REGINA

v.

STEWART CLYDE BLACKJACK

Publication of evidence that could disclose the identity of the complainant, witness or justice system participant has been prohibited by court order pursuant to s. 486(2)(a) of the *Criminal Code*.

Appearances:
Eric Marcoux
Keith Parkkari

Counsel for Crown
Counsel for Defence

REASONS FOR SENTENCING

[1] FAULKNER T.C.J. (Oral): Stewart Clyde Blackjack was convicted after trial on a charge of sexual assault. The trial was held in Carmacks on June 19 of 2008. The matter of sentence was adjourned for the preparation of a pre-sentence report. Today, Mr. Blackjack has entered a guilty plea to an additional charge, being a charge of breach of recognizance.

[2] The sexual assault occurred after the offender, who was then 41 years of age, supplied alcohol over a number of hours to a 14-year-old girl, who eventually became

quite intoxicated. Mr. Blackjack then pushed the girl to the ground and forcibly had sexual intercourse with her. She was eventually able to make good her escape.

[3] The position of Mr. Blackjack at trial was that he was actually the victim in the matter, having been seduced by the girl. This contention was rejected by the Court.

[4] The breach charge arose owing to Mr. Blackjack's consumption of alcohol in breach of a condition in his recognizance that forbade him to possess or consume alcohol.

[5] The circumstances of the sexual assault are extremely serious. The victim of the offence was only 14 years of age. Mr. Blackjack plied her with drink over a considerable period of time, and that, of course, led to her becoming somewhat incapacitated and much more vulnerable to attack. In addition to that, Mr. Blackjack used considerable violence in the assault on his victim, which led to a completed act of intercourse. Understandably, there has been a significant impact on the young victim and her family.

[6] Given the nature of the offence, denunciation and deterrence must be the primary focus of sentence. For many years the decision of the Yukon Court of Appeal in *R. v. G.C.S.*, [1998] Y.J. No. 77, has provided guidance to the trial courts. That case seemed to fix a range of one to two years for sexual assaults against comatose victims. More recently, Mr. Justice Gower in *R. v. White*, [2008] YKSC 34, suggested that for various reasons, *G.C.S.*, *supra*, may no longer be considered the touchstone which it was previously thought to be. He held that a somewhat higher range of up to 30 months actually applied to such circumstances.

[7] The difference between *G.C.S.* and *White* may lie partly in Mr. Justice Gower's review of the relevant case law, but may also lie partly in the fact that in *White*, the victim awoke during the course of the assault, which actually continued violently for some 10 minutes thereafter. Thus it had elements which perhaps went beyond the usual sort of cases contemplated in *G.C.S.*

[8] The difficulty for Mr. Blackjack is that the facts of this case actually surpass those even of *White*, since the assault, while no doubt assisted by the girl's incapacitation by alcohol, actually involved the violent rape of a conscious and resisting victim; thus the range of an appropriate sentence, in my view, extends even beyond that suggested by Mr. Justice Gower in *White*.

[9] I should pause parenthetically to say that earlier on I had referred to this as being a "completed act of sexual intercourse." I meant that in the sense that I find that there had been penetration, but not in the sense that there was proof of ejaculation.

[10] There are some mitigating factors in the case. Mr. Blackjack has not had an easy life. His upbringing is perhaps all too typical of many people in the North and he now suffers from alcoholism and diabetes. Despite this, he does have a reasonable work record. In addition, it must be noted that although he does have a prior criminal record, it is both dated and entirely unrelated to the present circumstances.

[11] I should also note that it was suggested in argument that the Court should perhaps take cognizance of the claimed fact, I do not recall exactly how Mr. Parkkari put it, but something along the lines of the victim not being sweet, little, or innocent. In my

view, this argument is so utterly devoid of merit that I will refrain from any further comment on it.

[12] I will, however, note that Mr. Blackjack, far from expressing remorse, reasserted to the probation officer during the preparation of the pre-sentence report his preposterous claim that he was attacked by the victim, and made the further assertion that the police had twisted the evidence and changed statements in order to make him look guilty.

[13] So at the end of the day, we have a very serious set of circumstances, and not a great deal that can be said to mitigate the severity of those circumstances. In my view, a substantial penitentiary sentence is called for. In the result, I impose a sentence of three years imprisonment to be served in a penitentiary.

[14] There is, however, the matter of the time that Mr. Blackjack has spent in pre-trial custody. This amounts to some 80 days, being the time between the trial in June and today. This period ended up being much longer than what would normally have been required for the preparation of a pre-sentence report. The time became longer for various reasons, which I will not go into in any detail other than to say that none of them were in any way attributable to Mr. Blackjack. All of the delays appear to have been institutional including, perhaps most notably, a crash of the probation officer's computer. In the circumstances, I am going to allow much more than the usual one and a half times credit. I allow six months credit for the time already served, leaving a remanet of thirty months. On the breach of recognizance charge, 30 days concurrent.

[15] Additionally, I hereby order that Mr. Blackjack comply with the provisions of the *Sex Offender Information Registration Act* for a period of 20 years.

[16] Additionally, pursuant to the provisions of the *Code*, Mr. Blackjack is prohibited from possessing any firearm, crossbow, restricted weapon, ammunition or explosive substance for a period ending 10 years after his release from imprisonment, and he is prohibited from possessing any prohibited firearm, restricted firearm, prohibited weapon, prohibited device or prohibited ammunition for the remainder of his life.

[17] Additionally, pursuant to the provisions of the *Code*, I hereby order that the offender provide samples of bodily substances for the purpose of forensic DNA analysis and banking.

[18] The surcharges are waived.

FAULKNER T.C.J.