

Citation: *R. v. Dick*, 2016 YKTC 25

Date: 20160309
Docket: 14-00746
Registry: Whitehorse
Heard: Ross River

IN THE TERRITORIAL COURT OF YUKON
Before His Honour Judge Chisholm

REGINA

v.

DENNIS IVAN DICK

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:
Joanna Phillips
Malcolm E.J. Campbell

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCE

[1] CHISHOLM J. (Oral): This is the sentencing of Dennis Dick for an offence of sexual assault on M.T. contrary to s. 271 of the *Criminal Code*.

[2] Mr. Dick was found guilty after trial. He committed the assault in December of 2013, in Ross River. The victim of this offence is a young person, who was 13 years of age at the time of the sexual assault. She was at Mr. Dick's home visiting his daughter. Mr. Dick pulled her into the bathroom, pulled down her pants and underwear, and placed one hand over her mouth. He used his other hand to put one of her hands on

his penis. He placed his penis on her buttocks, close to her vagina. The victim struggled free of his hold and left the bathroom and the home.

[3] Mr. Dick is 56 years of age and a father of three young children. He has been in a common-law relationship with the mother of these children since 2008. He lives in Faro, Yukon Territory. He is a member of the Ross River Dena Council. He has a grade eight education.

[4] Mr. Dick attended a residential school in Lower Post, British Columbia, a community a few hours drive from his home community of Ross River. Although he is somewhat reticent about his residential school experience, I am told that this experience was unpleasant. He was a victim of violence and indicates he became angry and rebellious as a result.

[5] He was first convicted of a criminal offence at the age of 16 and thereafter, he amassed a significant and serious criminal record. This record includes convictions for assaultive behaviour, including a sexual offence committed against a young person. He was convicted and sentenced for this offence in 1987, although Mr. Dick advises through counsel that he was much younger — a teenager, in fact — when he committed the offence. There is no file documentation available to shed further light on this matter.

[6] His last violent offence, an aggravated assault, led to a conviction and a prison term in 2007. Since 2008, he has not been convicted of further criminal offences. The gap in his record coincides with his common-law relationship.

[7] I am advised that Mr. Dick has a limited employment history.

[8] Mr. Dick drank alcohol quite heavily as a youth and young adult. He took a treatment program while in custody in 1984 and has been sober since.

[9] The victim of this sexual assault provided a Victim Impact Statement. She indicates that as a result of this attack, she increased her consumption of alcohol. She is also fearful of talking to men as a result of this incident. She has had suicidal thoughts and has committed some self-harm. As might be expected, she has been negatively affected by the criminal actions of Mr. Dick.

[10] The aggravating factors are:

- The victim was visiting Mr. Dick's daughter at his home after school when this attack occurred. This is a place and a time when she should have been safe from any such danger;
- As indicated, she was 13 years of age, which is a statutorily aggravating factor pursuant to the *Criminal Code*;
- Mr. Dick has a prior criminal record.

[11] On the other hand, it is important to be mindful of Mr. Dick's time in residential school and the negative impacts that this experience had on him. I take into account the *Gladue* information that has been presented to me.

[12] The Crown is seeking a penitentiary term of 30 months, based on Mr. Dick's serious criminal history and the circumstances of this offence. The Crown has provided me with a number of cases, including *R. v. White*, 2008 YKSC 34; *R. v. Rosenthal*, 2015 YKCA 1; and *R. v. S.(G.W.)*, 2004 YKTC 5, in particular.

[13] The defence suggests that a much lesser period of incarceration is appropriate, one of 16 to 18 months. The defence points to the gap in Mr. Dick's criminal history, his

residential school experience, and the positive relationship in which he finds himself with his common-law spouse and children.

[14] I have considered the principles of sentencing in coming to this decision. The principles of denunciation and deterrence are of primary importance when dealing with a case of this type that involves the abuse of children. The rehabilitation of Mr. Dick is secondary in nature. The prevalence of this type of violent offence in the Yukon is disconcerting. Statistical information filed with the Court in this matter reveals a high frequency of sexual assaults in this jurisdiction. The nature of this sexual assault is very serious. The attack only ended when the victim was able to break free from Mr. Dick and escape.

[15] Sentencing is an individualized process. I am to determine and impose a fit sentence considering the circumstances of this offence and this offender. Having done so, I conclude that the appropriate sentence should be a lengthy term of imprisonment. Mr. Dick is sentenced to a period of incarceration of two years less a day.

[16] The term of imprisonment will be followed by a two-year probation order. The terms of the probation order will be:

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 of any change of employment or occupation;

4. Have no contact directly or indirectly or communication in any way with M.T.;
5. Do not attend at any known place of residence, employment or education of M.T.;
6. Report to the Probation Officer immediately upon release from custody and thereafter, when and in the manner directed by the Probation Officer;
7. Reside as approved by the Probation Officer and not change that residence without the prior written permission of the Probation Officer;
8. Attend and actively participate in all assessment and counselling programs as directed by the Probation Officer, and complete them to the satisfaction of the Probation Officer, for the following issues: anger management, psychological issues, sexual assault offending, any other issues identified by the Probation Officer, and provide consents to release the information to the Probation Officer regarding participation in any program directed by the Probation Officer pursuant to this condition.

[17] The following ancillary orders are made:

1. A 10-year firearms prohibition pursuant to s. 109 of the *Criminal Code*;
2. Pursuant to s. 487.051 of the *Criminal Code*, Mr. Dick will provide samples of his bodily substances for the purposes of DNA analysis and recording;
3. Mr. Dick will also comply with the *Sex Offender Information Registration Act* for a period of 20 years pursuant to s. 490.013(3) of the *Criminal Code*.

[18] Finally, the victim surcharge of \$200 is payable forthwith.

CHISHOLM T.C.J.