

Citation: *R. v. Gilmore*, 2015 YKTC 49

Date: 20151210
Docket: 15-10018
Registry: Watson Lake

IN THE TERRITORIAL COURT OF YUKON
Before His Honour Judge Chisholm

REGINA

v.

LYLE WAYNE GILMORE

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

Appearances:
Eric Marcoux
Gordon R. Coffin

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCE

[1] CHISHOLM T.C.J. (Oral): Lyle Wayne Gilmore is being sentenced for having committed sexual offences against a number of children in or near Watson Lake. He has pleaded guilty to three offences, namely: touching for a sexual purpose, M.M., a person under the age of 16 years; touching for a sexual purpose, A.M., a person under the age of 16 years; and touching for a sexual purpose, J.L. and A.D., persons under the age of 16 years. These offences occurred between the beginning of January 2013 and the end of December 2014. The Crown proceeded by way of indictment.

[2] The Crown and the defence have submitted an Agreed Statement of Facts. In summary, one of the victims wrote a note to her mother about the abuse she and some of her friends were suffering at the hands of Mr. Gilmore. She left this note - which was, in fact, a cry for help - in her room, where her mother discovered it.

[3] M.M. is 11 years old. Mr. Gilmore abused M.M. when she was nine years old. He was a family friend. M.M. and her two siblings were staying with Mr. Gilmore in his recreational vehicle. They were watching television together. Mr. Gilmore covered M.M. with a blanket and lay beside her. He put his hand inside her pyjamas and underwear, and digitally penetrated her vagina. She got up and moved to another bed to be with her siblings.

[4] Later that year, Mr. Gilmore took M.M. and her younger sister to a local motel. M.M. woke up to Mr. Gilmore putting his hand underneath her clothing and digitally penetrating her vagina. She said she had to go to the washroom, after which she lay beside her sister on another bed.

[5] A.M. is eight years of age and the younger sister of M.M. Mr. Gilmore abused her when she was seven years of age. He did so for the first time at a local motel. He touched her body with his hands, including her breasts and private parts. She had been sleeping on the same bed as Mr. Gilmore when awakened by this assault. He touched her both inside and outside of her pyjama bottoms. He was lying behind her and she could feel his penis touching her buttocks over her pyjamas. She pretended to be asleep.

[6] Mr. Gilmore also touched her private areas at times when she sat on his lap in his vehicle. On other occasions, he touched her breasts and private area. At a local motel, Mr. Gilmore at one point positioned himself so that his private area touched her private area; both he and A.M. were dressed. He has kissed her on the mouth on occasion. Mr. Gilmore would come to her house to pick up A.M., her brother, and her sister, M.M. He would buy them toys, candy, and clothing, while also giving them money.

[7] J.L. is 10 years old. She has known Mr. Gilmore for seven years, as he used to visit her grandmother. Mr. Gilmore abused J.L. when she was 10 years of age. She and her friends, including M.M. and A.M., stayed with him at a local motel. Very early in the morning one day, he touched J.L.'s crotch, or private area, over her clothes while she was on a bed.

[8] On another occasion, he touched her crotch area over her clothing while she played in her grandmother's house with a friend. It is she who wrote a note for her mother explaining what Mr. Gilmore had done.

[9] A.D. is 11 years old. Mr. Gilmore abused her when she was nine years of age. This occurred at J.L.'s grandmother's house while she and J.L. watched television. He was tickling both girls when he moved his hand up A.D.'s leg and touched her in the thigh area. She was wearing shorts. She became scared and moved her legs underneath her in order that he could not repeat this.

[10] The Crown seeks a global sentence of four to five years imprisonment, comprised of consecutive sentences for each of these three counts. The Crown has

referred to a number of cases, including *R. v. Rosenthal*, 2015 YKCA 1; *R. v. R.T.A.*, 2015 YKTC 24; and *R. v. E.M.Q.*, 2015 BCSC 201. These three sentencings involve matters which occurred subsequent to the change in legislation which increased the mandatory minimum sentence for sexual interference from 45 days imprisonment to one year imprisonment, when prosecuted by indictment.

[11] The defence submits that a proper sentence, taking into account the principle of totality, is one of 30 months. Defence refers to *R. v. R.T.A.*, a decision where Cozens J. imposed a 12-month term of imprisonment on an offender who had abused his five-year-old daughter on more than one occasion. The abuse included touching and licking her vaginal area. The defence also referred to *R. v. P.D.W.*, 2015 BCSC 660; *R. v. Hillyer*, 2012 YKSC 34; and *R. v. G.J.W.*, 2012 YKTC 54. These latter cases pre-date the increased mandatory minimum sentence for sexual interference.

[12] Eight Victim Impact Statements have been received by the Court. As would be expected, the crimes Mr. Gilmore has committed have negatively impacted the victims and their respective families. The families feel betrayed by, and angry at, their former friend. The negative consequences for the victims range from feelings of guilt to fear to nightmares. Mr. Gilmore's actions have scarred these children. He has taken away their innocence.

[13] Mr. Gilmore is 56 years of age. He has a significant criminal history, although he has never been convicted of an offence of a sexual nature. He has a good work history and has worked productively, when not in trouble with the law, since a young age. He has lived a good part of his life in the Yukon. He has not only pleaded guilty to these

offences, thus saving the victims from having to testify, but he has also expressed, through counsel, his remorse for his crimes.

[14] I do not have the benefit of a pre-sentence report, nor do I have the benefit of any psychological or risk assessments. Having pointed this out, Mr. Gilmore is not to be treated more severely in their absence. They, nonetheless, may have been of assistance in understanding more about him, how he came to commit these offences, and what his prospects are in terms of likelihood to reoffend.

[15] I have considered the principles of sentencing which are, for the most part, codified now in the *Criminal Code*. When dealing with the abuse of children, the objectives of denunciation and deterrence are of primary importance.

[16] I have taken into account the aggravating and mitigating factors. As mentioned, Mr. Gilmore's pleas of guilt are a significant mitigating factor. Not only has he taken responsibility, but he is remorseful.

[17] He also argues that the circumstances of these offences are mitigated in that he did not threaten the children and the offences did not involve any further violence to the inherent violence of these types of offences. In considering this argument, it must be remembered that the victims are quite young and vulnerable. In the circumstances, one would not expect much, if any, need for threats to facilitate the commission of these crimes. A similar observation could be made with respect to the likelihood of resistance from children of this age and the need for an offender to use further violence to accomplish his crimes. As such, I do not see much in the way of mitigation in this regard.

[18] The aggravating factors include his prior criminal history. It is also of significance that Mr. Gilmore was serving a lengthy conditional sentence when he committed some of these offences. Indeed, he received permission from his conditional sentence supervisor to come to Watson Lake and stay at the local motel where he committed some of these offences. In September 2014, he was granted permission to stay at the motel with children he had described to his supervisor as his grandchildren. Included in the names he provided were three of the four victims. In my view, this type of behaviour reveals premeditation on his part.

[19] Mr. Gilmore could be considered to be in a position of trust with respect to these children. He used his friendship with the families to gain access to the children. He was well known to the children and he abused this position. These were not crimes committed on the spur of the moment. The crimes were repetitive in nature. In all of the circumstances, I find that his moral culpability is high.

[20] Considering the young age of the victims and the nature of the contact, the offences to which he has pleaded guilty are very serious. His conduct must be denounced to deter him and others who are like-minded. The rehabilitation of Mr. Gilmore, although important, is not the primary consideration in this sentencing.

[21] Sentencing is an individualized process. It is a balancing process within the range of sentence for the given offence, based on the circumstances of the offences and the offender. The sentencing range is wide. In cases of this nature, it may range from a low of 12 months to a high of five years.

[22] In coming to this range, in addition to the case law submitted by counsel, I take into account *R. v. Wills*, 2015 CanLII 73433 (ONCJ), a decision from the Ontario Court of Justice. The offender was found guilty by the Court of abusing two very young children. He was a daycare owner and committed sexual offences somewhat similar to the offences committed by Mr. Gilmore. The abuse of his position of trust was high. The offences were repetitive in nature. He abused one of the victims by placing her hand on his penis, and by placing his penis in her mouth. This occurred on numerous occasions. She was three years of age. The offender had no criminal record and was at low risk to reoffend sexually. He was sentenced globally to a sentence of five years' imprisonment. As indicated, in that case, the offender had not pleaded guilty and thus did not receive the benefit of a lesser sentence.

[23] Considering the above and considering the totality principle, I find that the appropriate sentences for Mr. Gilmore are as follows.

[24] For the charge of sexual interference with respect to M.M.; 24 months imprisonment, to be reduced by 10.5 months for his pre-trial custody.

[25] For the charge of sexual interference with respect to A.M.; 20 months imprisonment, to be served consecutively.

[26] For the charge of sexual interference with respect to J.L. and A.D.; 12 months imprisonment, to be served concurrently.

[27] The overall result is a global sentence of 44 months, minus the 10.5 months of pre-trial custody.

[28] I also make the following ancillary orders.

[29] A 10-year firearms prohibition, pursuant to s. 109 of the *Criminal Code*.

[30] An order under s. 487.051 of the *Criminal Code* for the provision of samples of DNA for analysis and reporting. As the three offences to which he has pleaded guilty are primary designated offences, pursuant to s. 487.04, the order is mandatory.

[31] Mr. Gilmore shall comply with the *Sex Offender Information Registration Act*. The offence of sexual interference is a designated offence under s. 490.011(1) of the *Criminal Code*, and I therefore make the order under s. 490.013(3). Since Mr. Gilmore has been convicted of multiple offences, the order is for life.

[32] I have considered the Crown and defence arguments with respect to s. 161 of the *Criminal Code*. I order that for a period of 10 years, Mr. Gilmore be prohibited from attending a public park or public swimming area where persons under the age of 16 years are present or can reasonably be expected to be present, or a daycare centre, school ground, playground, or community centre.

[33] He is also prohibited for that period of time from seeking, obtaining, or continuing any employment whether or not the employment is remunerated or being a volunteer in a capacity that involves being in a position of trust or authority towards persons under the age of 16 years.

[34] Finally, he is prohibited for the same period of time from having any contact - including communication by any means - with a person who is under the age of

16 years, unless he does so under the supervision of a person whom the Court considers appropriate.

[35] The victim surcharge for each count is \$200, for a total of \$600. I order that payable forthwith.

[36] Mr. Marcoux, in terms of the other charges?

[37] MR. MARCOUX: Stay of proceedings.

[38] THE COURT: Stay of proceedings.

CHISHOLM T.C.J.