

Citation: *R. v. Gokmen*, 2009 YKTC 74

Date: 20090624
Docket: 08-00773A
08-00777
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Judge Roy

REGINA

v.

ERKAN GOKMEN

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:
Kevin Komosky
Fia Jampolsky

Counsel for Crown
Counsel for Defence

REASONS FOR SENTENCING

[1] ROY T.C.J. (Oral): The accused is 39 years of age and was born and raised in Turkey. He graduated in 1995 in science from the University of Istanbul, went to the United Kingdom, and after that to the United States, where he got married and had a child, who is now six years, and is now divorced. He came to Canada in 2006 with a tourist visa, now expired, and worked in Whitehorse under the name of Michael Vaccher, and intends to be back to Turkey after his sentence.

[2] He was arrested on February 19, 2009, under s. 151, for sexual interference, which states:

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 years

- (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;

But the same section states that this same offence could be pursued and tried on summary conviction, and in this case, the accused will be:

- (b) ...liable to imprisonment for a term not exceeding eighteen months and to a minimum punishment of imprisonment for a term of fourteen days.

But in this case, it has been tried on s. 151(a) as an indictable offence.

[3] He was charged as well, as a second offence contrary to s. 403, to have fraudulently personated Michael Vaccher, with intent to gain advantage for himself.

[4] There was an agreement by parties on the facts. I think it is important to extract from this document certain sections to be in a position to understand correctly what happened, so I am reading from this statement of facts:

1. On February 19, 2009, the police received a call from [a person in Whitehorse] stating that she observed an adult male inside room 101 naked with two or more teenaged females.
2. The females left the apartment and [this same lady] attempted to keep them near the apartment until the police arrived. [This same person] reported that the females identified themselves to her as 18, 19 and 20 years of age.
3. The police attended at 410 Strickland Street, Whitehorse ... and met three young females in the hallway.

4. Two of the females were [C.Y.], 18 years old and [K.O.] twenty years old. [And] The third female was identified as [A.D.] 13 years old.
...
6. The 13 year old appeared to be extremely intoxicated. She was trying to provide a false name to the police and was acting very belligerently. She was ultimately taken to the Whitehorse General Hospital because of her level of intoxication.
...
8. [The accused] was arrested for sexual interference.
9. [Y.] [C.Y.] advised the RCMP that she [and] her sister, [D.] --

The one who was in fact 13 years of age.

-- and her friend [O.] met each other at the Salvation Army. They went to the residence of [the accused] ... where they had a couple of drinks. ...

10. [The accused] was compliant through the investigation and arrest. He provided a statement to the RCMP stating that he met up with [Y.] and [D.] who told him that they were twins and 19 years of age. They went back to [the accused's] apartment and had a few drinks.
11. [The accused] advised that the females left and returned approximately one hour later with the third female.
12. [The accused] advised that [Y.] and [her friend O.] left the living room and went into the bedroom to have sex with each other using a sex toy that [the accused] had given to them.
13. ... While the females were in the bedroom, [the accused] observed [D.] ...

The one being in fact 13 years of age.

... trying to steal a bottle of Bacardi's Rum.

14. When [the accused] tried to stop her from stealing the alcohol, [D.] offered to have sex with him in exchange for the bottle of Rum. [The accused] advised he had intercourse with [D.].
15. The other females came out of the bedroom while they were having sex. The three females left together and the police arrived approximately 10 minutes later.
16. [The accused] concedes that he should have made further inquiries into [D.'s] age.
...
18. Once at the detachment, the RCMP were advised that there was an ongoing identify theft investigation regarding a Michael Vaccher of Prince Rupert
19. Ongoing investigation revealed that the individual in Police custody who had provided the name of Mike Vaccher is [in fact] Erkan Gokmen ... a Turkish national, who is in Canada without status.
20. [The accused] gave a statement to police wherein he advised that he had shared accommodations with the real Mike Vaccher in Prince Rupert in the past. He stated that since the real Vaccher had owed him money he was given Vaccher's SIN Card and birth certificate as collateral. Gokmen then proceeded to use that ... number to obtain employment in the Whitehorse area.

[5] The Crown has stated some mitigating factors, namely the fact that the accused has no criminal record and the fact that the accused has pleaded guilty at the first opportunity, avoiding time and expenses to the Court and avoiding to these three females to have to appear before the Court. There was no violence. He was not in a position of trust. But as an aggravating factor, the Crown mentioned that there was not only touching but complete sexual intercourse. The victim was intoxicated and the accused accepted to give her more alcohol.

[6] There are other mitigating factors, though. It was just one incident; it did not last for days or weeks. He was informed that these two girls were twin sisters, being 18 years of age.

[7] The Crown is suggesting 12 to 14 months, but the Crown is accepting to give a credit for six months for the detention of the accused since the incident on February the 19th, and is suggesting four months for the other count of fraudulently personating Michael Vaccher, to be considered concurrent, and suggesting DNA, suggesting to have the name of the accused on the sex infraction register and suggesting probation according to s. 161 regarding public parks, public sites.

[8] The defence is suggesting seven to nine months and is stating that the cases presented by the Crown would not be pertinent in this case because in these cases there were sometimes previous convictions.

[9] It is useful to mention that there were two decisions rendered by former Chief Judge Heino Lilles in which one of these two cases there was a sentence of six months and, as the accused had already been detained for six months, it was one day sentence, so to speak, because of an important factor, the fact that this accused was suffering from FASD problems.

[10] The defence is in agreement and has mentioned that we should consider 189 days as the detention time. So giving a little more than six months, it would give six months and ten days, so to speak, if we make this calculation. The defence is in agreement with the DNA and with the registration for sex offenders, but not with the

application according to s. 161, and is in agreement with the four months concurrent regarding the second count.

[11] After having heard the parties and taking some time for reserve, the Court states that the accused himself recognizes that he should have made more verification, further inquiries, because there is a need of protection of adolescents. There is a need that adults make sure that the person is not under the age of 16. Children and adolescents need to be protected. That is a message to be sent to society and to adults, that children and adolescents need to be protected. In these circumstances, though, she was 13 years of age but she has presented herself as being a twin with her sister of 18 years of age.

[12] Consequently, the Court concludes there will be a detention of four months, plus DNA, plus registration in the special register, but there will not be application of s. 161. For the second count, it will be four months, just like it has been agreed between the parties, and it will be concurrent with the first sentence. Any questions?

[13] MS. JAMPOLSKY: No, Your Honour.

[14] THE COURT: Thank you very much.

[15] MR. KOMOSKY: Your Honour, actually, I might question the sentence of four months; that would reflect the six months already credited?

[16] THE COURT: Yes, for sure. Four months starting now, okay? Because of this period of pre-detention. Any other question?

[17] MR. KOMOSKY: No, Your Honour.

[18] THE COURT: Okay. Thank you very much.

[19] MR. KOMOSKY: Oh yes, Your Honour, the two remaining charges of --

[20] THE COURT: Oh, yes.

[21] MR. KOMOSKY: -- sexual assault and s. 129, if those could be
withdrawn?

[22] THE COURT: I take note of your intention of withdrawing these two
other charges. Nothing else?

[23] MR. KOMOSKY: No, Your Honour.

[24] THE COURT: Thank you.

ROY T.C.J.