

Citation: *R. v. Johnson*, 2014 YKTC 46

Date: 20140910
Docket: 13-00014
14-00038
Registry: Whitehorse
Heard: Burwash Landing

IN THE TERRITORIAL COURT OF YUKON
Before His Honour Judge Cozens

REGINA

v.

SAMUEL JARRED JOHNSON

Publication of information that could disclose the identity of the complainant or witness has been prohibited by court order pursuant to sections 486.4 and 486.5 of the *Criminal Code*.

Appearances:

Keith D. Parkkari

Malcolm E.J. Campbell

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCING

[1] COZENS T.C.J. (Oral): Samuel Johnson has entered guilty pleas to having committed two offences contrary to s. 271(1) of the *Criminal Code*. The Crown has proceeded indictably on both offences.

[2] The circumstances are that on March 15, 2013, in Haines Junction, K.B. had been drinking, Mr. Johnson had been drinking, and others were drinking at a residence. K.B. passed out on a couch. She awoke to Mr. Johnson behind her. Her hands were being held over her head and he was having sexual intercourse with her. She said, "No". He did not listen. He turned her over and continued to have sexual intercourse, again with her resisting. She ultimately stopped resisting and passed out. K.B. was unaware as to whether he was or was not wearing a condom or how the sexual assault ended. She had no pants on when she woke up, which is contrary to her normal manner of sleeping, and she ended up going back to sleep.

[3] Again, this was clearly not consensual sex. K.B. had some bruising on her wrists and there was bruising noted on her arms and legs, as well as a hickey above her right breast. The DNA result had indicated that there was a high probability it was Mr. Johnson. He entered a guilty plea to this offence.

[4] Subsequently, on April 21, 2014, again in Haines Junction, a number of individuals were drinking, including Mr. Johnson and S.J., as well her boyfriend. Around 7 a.m., S.J. went to sleep. She thought her boyfriend was on the bed beside her. Some others were sleeping on the floor. She felt a hand go down the side of her underwear and she thought it was her boyfriend. She said, "No."

[5] A little later, while she was still sleeping, there was hand and finger down her underwear. The finger was inside her vagina. Again, she thought it was her boyfriend. She thought it was unusual. This continued for quite a while until she finally got up to go to the bathroom and noticed that her boyfriend was, in fact, sleeping on the floor and

it was Mr. Johnson that was in the bed beside her and whom had been having the sexual contact with her without her consent -- in fact, contrary to it. Mr. Johnson apologized. He was quite intoxicated at the time.

[6] Mr. Johnson is a 24-year-old member of the Kluane First Nation. He has no prior criminal history.

[7] There are a number of letters that have been provided to the Court. Ms. Alice Johnson spoke to the Court. Without getting into these letters specifically, they portray Mr. Johnson as being an individual who is known to be a gentle, kind, reliable, trustworthy, helpful, hard-working, intelligent, productive member of the community. He has been involved in sports. He has been involved in sustenance hunting for the community. He has a number of life skills. He was raised with traditional values and knowledge. He was raised to respect others, to respect his family, and that appears to be, for the most part, what he has done in his life. And when people speak to these incidents as being out of character, I have no difficulty seeing why they would say that.

[8] The major concern, as I expressed, is that while this happened once while Mr. Johnson was under the influence of alcohol and he had been charged, essentially there was a subsequent sexual assault under similar circumstances. There is clearly some work to be done with respect to Mr. Johnson's problems when he consumes alcohol.

[9] There is a joint submission before me. The joint submission is for a sentence of two years to be followed by three years of probation. He has nine days of pre-trial custody. I am not to take that into account, just be aware of it, in sentencing him to the

two years and the three years of probation. This is a sentence that will remove Mr. Johnson from the community. He will go to a federal institution outside of the Yukon.

[10] Many members of his family and community who have filed letters point to their perspective that jail is something that, for this young man, is not likely to be the best thing and a jail out of the territory is not a jail that he should go to if, in fact, he is sentenced to jail. There has, however, been consideration by counsel into the sentence that they have put forward as a joint submission. I take that into account. So while I understand the positions of Mr. Johnson's friends, family, co-workers, and supporters, I also respect the fact that experienced counsel have made the submission fully aware of all the options and this is a sentence that best reflects what counsel believes should happen in the circumstances.

[11] I concur with counsel. These are serious sexual assaults. The impacts on K.B., from the victim impact statement, were significant and continue to be significant not only physically with respect to the impacts of the stress, but psychologically and emotionally. She continues to struggle with and deal with what happened, and that is understandable and that is to be expected when an assault of this nature takes place.

[12] There is no victim impact statement from S.J. but I do not need one to understand and appreciate that the consequences on her could well be significant.

[13] This is an offence of violence and violence against the integrity of these two women, and that needs to be stressed. In offences like this, denunciation and deterrence are paramount. This is a case that falls within the range of sentence for

such offences as set out in *R. v. White*, 2008 YKSC 34, and, in my opinion, fully reflects all the aggravating and mitigating factors.

[14] There are a number of mitigating factors: a guilty plea, the lack of any criminal history, and all the positives that Mr. Johnson brings as a person. I appreciate he is dealing with great stress through deaths that have taken place in his family and I can appreciate that this has been an extremely difficult time for him. But the reality is, he simply needs to accept responsibility for what he has done, which he has done by his guilty plea, and then move forward and contribute back to his community.

[15] As I stated, the aggravating factors, being that we are dealing with two instances -- and one after already being charged with the first -- that, I believe, is also properly reflected in the submission that is before me.

[16] Therefore, with respect to the sexual assault against K.B., the sentence will be 16 months' custody; and with respect to the sexual assault against S.J., it will be eight months' consecutive.

[17] Just so members of the public and community that are here know, this is not because one offence is considered to be twice as bad as the other; it is simply that this reflects a global sentence that is appropriate in the circumstances.

[18] There will be a period of probation to follow of three years. The terms of the probation order are:

1. You will be required to keep the peace and be of good behaviour;

2. You are to appear before the Court when required to do so by the Court;
3. You are to notify your Probation Officer in advance of any change of name or address, and promptly notify your Probation Officer of any change in employment or occupation;
4. You are to report to your Probation Officer immediately upon your release from custody and thereafter when and in the manner directed by your Probation Officer;
5. You are to reside as approved by your Probation Officer and not change that residence without the prior written permission of your Probation Officer;
6. You are to abstain absolutely from the possession or consumption of alcohol;
7. You are not to attend any premises whose primary purpose is the sale of alcohol, including any liquor store, off-sales, bar, pub, tavern, lounge, or nightclub;
8. You are to attend and actively participate in all assessments and counselling programs as directed by your Probation Officer and complete them to the satisfaction of your Probation Officer for the issues of alcohol abuse and for sex offender programming;

9. You are to provide consents to release information to your Probation Officer regarding your participation in any program that you have been directed to do pursuant to this order;
10. You are to have no contact directly or indirectly or communication in any way with K.B. and S.J.;
11. You are to remain 50 metres away from any known place of residence, employment, or education of K.B. and S.J., except with the prior written permission of your Probation Officer in consultation with Victim Services;
12. You are to participate in such educational or life-skills programming as directed by your Probation Officer;
13. You are to provide your Probation Officer with consents to release information in relation to your participation in any programs that you have been directed to do pursuant to this probation order;
14. You are to make reasonable efforts to find and maintain suitable employment and provide your Probation Officer with all necessary details concerning your efforts.

[19] I note that this standard form does not include attendance at residential treatment or counselling. Counsel is satisfied that programming for alcohol abuse or sex offender treatment would allow for the direction for him to attend at a residential treatment centre?

[20] MR. PARKKARI: Yes, that's my understanding.

[21] THE COURT: Okay.

[22] I believe those were all the terms that were sought in the probation order; correct?

[23] MR. PARKKARI: Yes.

[24] THE COURT: There will be the mandatory firearms order under s. 109 with respect to both offences. That will be for 10 years. I will, however, make an order under s. 113 that provides for you to make application to the competent authority to possess a firearm or restricted weapon to hunt or trap in order to sustain yourself or your family, and also for the purposes of employment. That is an application you can make later.

[25] There will be an order under SOIRA, s. 490.012. The SOIRA order will be for the period of 20 years.

[26] There will not be a s. 161 order.

[DISCUSSION WITH COUNSEL]

[27] There is a publication ban in place under s. 486.4 that would prohibit the publication of any information that would identify the complainants in this case.

[28] Victim Fine Surcharge. I am going to impose a \$100 on the original and a \$200 on the second, but payable forthwith. I believe we only need to deal with count 2 on that one Information.

[29] Stay of proceedings in count 2.

[DISCUSSION WITH COUNSEL]

[30] THE COURT: As this is a primary designated offence, there will be an order that you provide a sample of your DNA. The order applies to both offences.

COZENS T.C.J.