

Citation: *R. v. Johnston*, 2010 YKTC 16

Date: 20100204
Docket: 08-00408
08-00408A
Registry: Whitehorse
Heard: Teslin

IN THE TERRITORIAL COURT OF YUKON

Before: Her Honour Chief Judge Ruddy

REGINA

v.

RAYMOND PATRICK JOHNSTON

Appearances:
Ludovic Gouaillier
Malcolm Campbell

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCING

[1] RUDDY C.J.T.C. (Oral): Raymond Johnston is before me, having entered a plea of guilty to a single count of sexual assault.

[2] The offence arose on the 12th day of August 2008. At that time it appears that the complainant, Ms. D., returned to her home after an evening out drinking with friends. She went home, she went to bed, and is fairly certain that she locked her doors. Unfortunately, she was awoken only to find Mr. Johnston in her home, in her bed, and in fact with his hand on her vagina. She yelled at him. He left the residence, at which point she phoned the RCMP. He then returned to the residence and made a comment to her along the lines of her having wanted it, and then left again.

[3] He comes before the Court with a prior criminal record. There are no sexual offences on that record, but there are offences for failing to comply with court orders, and there are three offences of violence, all in 2005.

[4] I have before me a very thorough pre-sentence report setting out Mr. Johnston's background and current circumstances. There is a lot of information in there. Unlike a lot of people that we see, Mr. Johnston seems to have had a fairly positive childhood. He lived within a family where traditional First Nation values were prevalent within the home and he appears to have enjoyed a certain degree of stability there, although there also appears to have been a significant amount of alcohol usage in the home.

[5] The problems for Mr. Johnston appear to have really started when he left Teslin and went to Whitehorse for his high school education. At that time he got heavily involved in using and, I think it is fair to say, abusing alcohol. I understand most of his record is connected to his abuse of alcohol. The offence before me today is certainly connected. He was under the influence and it is my understanding from the pre-sentence report that he has no recollection of what occurred as a result of his level of intoxication.

[6] I do want to state, I do not have any specific victim impact statement before me, but I have no difficulty taking judicial notice of the fact that this offence, in these circumstances, would have been extremely disturbing for the victim. It would have been for anyone. We are entitled to feel safe in our own homes, and to be woken in this manner must have been terrifying. I have a great deal of concern that there is going to

be ongoing difficulties for the victim as a result of your behaviour, Mr. Johnston, and that is something I need to take into account.

[7] On the other hand, I also have a fair amount of information with respect to your post-offence conduct, which is positive in nature. In particular, I am mindful of the fact that you have taken some significant steps, particularly since June of this year, to address the alcohol issue which has brought you into conflict with the law on more than one occasion. It is clear from the information I have before me that it is a serious and significant problem for you but that you have nonetheless been able to maintain sobriety since June 7th of this year. I am also mindful of the fact that you have attended and successfully completed an in-patient treatment program, the Anchorage program, in Edmonton, Alberta, which appears to be a particularly lengthy program, from June 9, 2009 to November 6, 2009. I have taken into account as well the fact that there is a very positive report from that treatment program, outlining your participation and your progress. I have also taken into account the comments made by Mr. McIsaac, who is formerly a counsellor here in Teslin and who worked with you, Mr. Johnston, and who did indicate that he saw consistent changes in your behaviour and he saw a real commitment to addressing your alcohol issues.

[8] I am also very mindful of the comments made by Mr. King in his preparation of the report, that if we were talking about your situation a few months before, he would have recommended against me even considering a conditional sentence on the circumstances before me, because you do not have the best history of compliance as a result of your consumption of alcohol. But he has noticed that you appear to have a sincere commitment to addressing alcohol and the role that it plays in your life.

[9] I am also mindful of the fact that I have before me a joint submission from counsel, and for me to deviate from what is being suggested I need to be able to articulate a reason why the sentence as suggested does not fall within the range for this particular type of offence. I am of the view that what is being suggested is within the range. For that reason I am prepared to accede to the joint submission that this matter be resolved by way of an 18-month sentence, but that Mr. Johnston be entitled to serve that sentence conditionally within the community.

[10] Mr. Johnston, I want you to understand that a conditional sentence is a jail sentence. When you are on probation, the Probation Officer has a bit of leeway. They can give you warnings and they can decide whether or not they want to lay charges. With a conditional sentence, they do not want that choice. You breach, you are back in jail, and you run the risk of serving the rest of the sentence behind bars. You have to follow each and every condition exactly as it is set out or you are going to end up in jail. Do you understand that?

[11] THE ACCUSED: Yes, I do.

[12] THE COURT: Okay. One of the biggest components of this is going to be staying sober. You cannot be anywhere near alcohol.

[13] The sentence on the offence that is before me is going to be 18 months served conditionally within the community on the following terms and conditions. I am following those primarily set out in the report by Mr. King. They are:

1. That you keep the peace and be of good behaviour and appear before the Court when required to do so by the Court;

2. That you remain within the Yukon Territory unless you have written permission from your Supervisor;
3. That you notify your Supervisor in advance of any change of name or address and promptly notify the Supervisor of any change of employment or occupation;
4. That you report to a Supervisor immediately and thereafter when required by the Supervisor and in the manner directed by the Supervisor;
5. You are to reside as approved by your Supervisor and not change your residence without the prior permission of your Supervisor;
6. For the first six months of your sentence, you are to remain within your place of residence at all times except for the purposes of employment, including travel to and from employment, or for attending courses at the College, including travel directly to and from the College, or as otherwise approved in advance, in writing, by your Conditional Sentence Supervisor. For the remaining 12 months you are to abide by a curfew by remaining within your place of residence between the hours of 9:00 p.m. and 6:00 a.m. except with the prior written permission of your Conditional Sentence Supervisor. You are required to present yourself at the door or answer the telephone during reasonable hours for curfew checks. Failure to do so will be a presumptive breach of this condition.

And they will be checking.

7. You are to abstain absolutely from the possession or consumption of alcohol and controlled drugs or substances except in accordance with a prescription given to you by a qualified medical practitioner.

Mr. Campbell, what is his position on providing a sample?

[14] MR. CAMPBELL: There is no issue with that.

[15] THE COURT: Then:

- You will also be required to provide a sample of your breath or urine for the purposes of analysis upon demand by a peace officer who has reason to believe that you may have failed to comply with this condition;
8. You are not to attend any bar, tavern, off-sales or other commercial premises whose primary purpose is the sale of alcohol;
 9. You are to take such alcohol and/or drug and/or sex offender assessment counselling or programming as directed by your Supervisor, and you are to attend and complete a residential treatment program as directed by your Supervisor;
 10. You are to take such other assessment, counselling and programming as directed by your Supervisor;
 11. You are to have no contact, directly or indirectly, or communication in any way with M.D. except with the prior written permission of your Supervisor in consultation with Victim Services;

That will be something she gets to decide, but you are to not have contact with her in any way, shape or form unless that is something that you have permission for, and it is going to be something that she initiates.

12. You are to perform 120 hours of community work service as directed by your Supervisor or such other person as your Supervisor may designate. The community work service is to be completed within 12 months of today's date;
13. You are to make reasonable efforts to find and maintain suitable employment or attend for education, and you are to provide your Supervisor with all necessary details concerning your efforts;
14. You are to provide your Supervisor with consents to release information with regard to your participation in any programming, counselling, employment or educational activities that you have been directed to do pursuant to this conditional sentence order.

[16] The victim fine surcharge?

[17] MR. GOUAILLIER: It's \$50.

[18] MR. CAMPBELL: Fifty dollars, two months time to pay?

[19] THE COURT: Fifty dollars, two months time to pay. The remaining count?

[20] MR. GOUAILLIER: There will be a stay of proceedings, Your Honour, but I'm sorry, in relation to the sentencing, I forgot to mention this is a primary designated

offence for the purpose of the DNA provisions of the *Code*. And also, the Crown is seeking SOIRA, the sex offender registry.

[21] THE COURT: Any submissions?

[22] MR. CAMPBELL: No.

[23] THE COURT: They are both more than appropriate, in my view. I will make the order then, as I am required to do by law, Mr. Johnston, that you provide such samples of your blood as are necessary for DNA testing and banking. I am also going to require that you comply with the provisions of the *Sex Offender Information Registration Act* for a period of, I believe, of ten years for a first, is that correct?

[24] MR. GOUAILLIER: Yes.

[25] THE COURT: For a period of ten years.

RUDDY C.J.T.C.