

Citation: *R. v. Josie*, 2015 YKTC 27

Date: 20150609
Docket: 14-00597
14-00521
14-06666
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before His Honour Judge Cozens

REGINA

v.

ALVIE STEPHEN JOSIE

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

Appearances:
John W. Phelps
Lauren Whyte

Counsel for the Crown and Agent for the Territorial Crown
Counsel for the Defence

REASONS FOR SENTENCING

[1] COZENS J. (Oral): Alvie Josie has entered guilty pleas to having committed offences under ss. 266 and 271 of the *Criminal Code*.

[2] There is a joint submission before me that I find to be entirely appropriate in the circumstances, and as such, I am not going to review the circumstances of Mr. Josie or the case law that was filed in any detail as I would have had to had the parties been before me advocating for different positions. I expect that, given the materials that are before me, I would have taken some time to consider the matter and provide a decision

that dealt with the issues that are raised. But given how counsel have worked together to achieve what I consider to be a fair resolution, that is not necessary in this case.

[3] The circumstances of these offences are set out in an Agreed Statement of Facts. Briefly stated, with respect to the s. 266 charge on September 5, 2014, in Old Crow, Mr. Josie, while intoxicated, was in a dispute with his common-law spouse, Yvonne Andre. While Ms. Andre was calling the RCMP, Mr. Josie left the house. Mr. Josie then returned and Ms. Andre called the police again. Ms. Andre left the house and the RCMP found her at the school. When Mr. Josie had returned to the house, he began yelling and swearing at Ms. Andre, and then he pushed her .

[4] With respect to the s. 271 offence, on December 20, 2014, Mr. Josie entered into the residence of M.K. in Old Crow. She was sleeping on her couch. He came through the unlocked door, pushed her to the ground, penetrated her vaginally, attempted to penetrate her anally, and then again penetrated her vaginally until the point of ejaculation.

[5] Mr. Josie, when arrested by the RCMP that evening, after being taken into custody under the *Mental Health Act* and transported to the nursing station, ended up providing a statement to the RCMP in which he confessed to the sexual assault.

[6] The joint submission before me is, that after giving Mr. Josie six months' credit for the time he spent in custody since December 20th, he should be sentenced to a period of two years less one day, with probation to follow for two years.

[7] Mr. Josie has a criminal history that includes two prior convictions for sexual assault: one in 1990, for which he received one year; and one in 1994, for which he received a seven-month custodial disposition. He received two-year probation periods on each. He has prior convictions for assault going back to 1984 and as recent as 2002, which was a spousal assault, as well as a number of process and property offences, and an impaired driving offence. There are gaps in his criminal history. There is a gap in his record from 1996 to 2002 and then from 2002 until today's date.

[8] A *Gladue* report was filed that I found very helpful and that, no doubt, Crown and defence found helpful in coming to the resolution and submission they placed before me today. This sets out the circumstances of the community of Old Crow and Mr. Josie within the community of Old Crow. He is currently 52 years of age. He never knew his biological father. He was raised primarily by his mother. He also had a stepfather, who died in the early 1980s. He lost his mother in tragic circumstances in 2000 when she was ice fishing and went through the ice. The loss of his mother had a significant impact on Mr. Josie's life.

[9] Suffice to say that the introduction of alcohol into the community of Old Crow had a devastating impact on an otherwise functional community that lives very close to the land. Violence became rampant within the community -- substance abuse, sexual violence -- and this is the life environment that Mr. Josie was raised in.

[10] Mr. Josie was subjected to sexual abuse, not only in the community of Old Crow but when he went to Yukon Hall in Whitehorse at the age of 16. He experienced, or

witnessed, physical abuse, community violence, violence in the home, and violence by his brothers against his mother.

[11] This report makes it clear to me that his Aboriginal heritage is very much linked to much of the trauma that he has suffered as a child, and that has contributed to some of the substance abuse issues he has today and some of the offences that are in his past, as well as the current offences before the Court.

[12] He has four children that he has shared responsibility with along with his common-law spouse, Ms. Andre. Whether they are able to continue in a relationship is something that, while it appears unlikely now, cannot be ruled out, at least insofar as they are working together to raise their children.

[13] Mr. Josie is clearly remorseful for his actions.

[14] I concur with the submission of Crown counsel as to the aggravating features of this offence. The s. 271 offence was a sexual assault upon the victim, a vulnerable First Nations female in the community of Old Crow, in her own home. It was a prolonged sexual assault. She has been significantly affected by this. She did not wish to provide a Victim Impact Statement, but she is afraid, and understandably so, when this happened to her in her own home by a member of her community.

[15] I also agree with what Crown counsel says, and was apparent to me from the *Gladue* report, that while accepting that he has an alcohol problem and having taken steps to deal with it, there is still a lot of work to do with respect to Mr. Josie understanding what contributes to his consumption of alcohol.

[16] I also accept that he has not yet fully come to terms with his need to deal with the issues related to his deviant sexual conduct, as illustrated by the three sexual assaults that he has now been convicted of.

[17] This said, I note from the *Gladue* report that Mr. Josie has done extremely well in custody, that he has taken as many courses as are available to him, and that he is prepared to participate in courses coming forward with respect to sexual offending. While his past efforts have not been everything they could be, I accept that going forward he acknowledges that he has to deal with underlying issues in relation to his sexual offending, as well as grief issues and substance abuse issues. I am satisfied that he is entirely motivated to take the steps that he needs to take to try to address and deal with these issues so that he does not come before this Court again, having been accused or found guilty of having committed criminal offences.

[18] There is no question that his guilty plea in these circumstances, as early as it came, certainly minimized the impact on the victim from what it would have been, had he taken this to trial. This would have been a difficult case, Crown concedes, notwithstanding the confession, due to the intoxication of both parties, the lack of witnesses, and other concerns. With respect to the early guilty plea, which eliminated the need for DNA testing, there is a monetary factor. The guilty plea certainly does allow for the RCMP to use their resources in a manner that will benefit other cases as these resources otherwise would have been used in Mr. Josie's case.

[19] The circumstances as set out in the *Gladue* report are very clear with respect to the history of Mr. Josie, his offending and what he is doing to deal with it. This report provided the foundation for the resolution that has been reached.

[20] Mr. Josie, you will be sentenced, taking into account six months' credit for remand, a sentence of two years less one day in custody for the s. 271 offence. You will be sentenced to 90 days to be served concurrently with respect to the s. 266 offence. You will, with respect to both offences, be placed on probation for a period of two years.

[21] The terms of your probation order are:

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 in employment or occupation.
4. Have no contact directly or indirectly or communication in any way with M.K. except with the prior written permission of your Probation Officer and with the consent of M.K.
5. Remain twenty (20) metres away from any known place of residence, employment, or education of M.K. except with the prior written permission of your Probation Officer and with the consent of M.K.

Noting the submission of the Crown with respect to Ms. Andre -- that she wishes to have contact with Mr. Josie, as they have children together, and as I can understand from the facts and what I have read in the *Gladue* report, she is not afraid of him -- I will simply say that you are to:

6. Have no contact directly or communication in any way with Yvonne Andre if you are under the influence of alcohol.
7. Not attend any known place of residence, employment, or education of Yvonne Andre if you are under the influence of alcohol.
8. Remain within the Yukon unless you obtain written permission from your Probation Officer or the Court.
9. Report to a Probation Officer immediately upon your release from custody and thereafter, when and in the manner directed by the Probation Officer.
10. Reside as approved by your Probation Officer and not change that residence without the prior written permission of your Probation Officer.
11. Not possess or consume alcohol. Provide a sample of your breath for the purpose of analysis upon demand by a peace officer who has reason to believe that you may have failed to comply with this condition.
12. Not attend any premises whose primary purpose is the sale of alcohol, including any liquor store, off-sales, bar, pub, tavern, lounge, or nightclub.

13. Attend and actively participate in all assessment and counselling programs as directed by your Probation Officer and complete them to the satisfaction of your Probation Officer for the following issues:
 - alcohol abuse
 - spousal violence
 - anger management
 - psychological issues
 - any other issues identified by your Probation Officer specific to sexual offenders,and provide consents to release information to your Probation Officer regarding your participation in any program you have been directed to do pursuant to this condition.
14. Participate in such educational or life skills programming as directed by your Probation Officer and provide your Probation Officer with consents to release information in relation to your participation in any programs that you were directed to do pursuant to this condition.
15. Make reasonable efforts to find and maintain suitable employment and provide your Probation Officer with all necessary details concerning your efforts.

[22] There will be a SOIRA order under s. 490.012. This will be for life, as you have prior convictions for s. 271 offences.

[23] There will be a s. 109 firearms prohibition. This also is for life due to the previous s. 271 convictions. You can, of course, bring forward a s. 113 application in the future if the need arises.

[24] You will provide a sample of your DNA, as this is a primary designated offence.

[25] Victim surcharges amount to \$300: \$100 on the s. 266 offence; and \$200 on the s. 271 offence. I will impose that and it's payable forthwith.

COZENS J.