

Citation: *R. v. Kodwat*, 2013 YKTC 38

Date: 20130111
Docket: 11-00564
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Judge Lilles

REGINA

v.

JACKIE KODWAT

Publication of information that could disclose the identity of the complainant has been prohibited by court order pursuant to section 468.4 of the *Criminal Code*.

Appearances:
Joanna Phillips
Malcolm Campbell

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCING

[1] LILLES T.C.J. (Oral): This is the matter of Jackie Kodwat. He has pled guilty to an offence dated November 12, 2011, namely: that he did commit a sexual assault on Ms. S., contrary to section 271 of the *Criminal Code*.

[2] Has there been a non-publication order made in this with respect to identifying the complainant?

[3] MS. PHILLIPS: I believe there was.

[4] THE CLERK: I don't actually see one, but [indiscernible - overlapping speakers] --

[5] THE COURT: Well, just to be on the safe side, I will make that order now with respect to the complainant, Ms. S.

[6] Mr. Kodwat is a 42 year-old-man of Aboriginal ancestry. Counsel have filed an Agreed Statement of Facts because of the seriousness of the charge and the length of the sentence. I am going to take the time to read that Agreed Statement of Facts into the record.

1. On or about 11 November, 2012, [Ms. S.], age 16, attended a residence in the Kwanlin Dun Village with some of her friends.
2. There were a number of people present in the residence and several of those, including the complainant, Ms. S., were consuming alcohol.
3. Mr. Kodwat was present at the residence. Mr. Kodwat and Ms. S. had a number of interactions throughout the evening.
4. The complainant and her friends remained in the residence until the early morning hours of 12 November, 2011.
5. At some point during the evening, some of the complainant's friends went to the downstairs of the house where they passed out.
6. The complainant went downstairs to wake up her friends, but then she passed out as well.
7. At approximately 3:00 o'clock in the morning, the complainant woke up without her pants or underpants on.
8. Mr. Kodwat was sitting on top of her. She thought that he might have had his clothes on.
9. The complainant does not recall having sex with Mr. Kodwat, but she was sore around her vaginal area when she woke up.
10. Upon waking up, she got off the bed and went upstairs to find her friends.
11. The complainant could not find her pants or underpants, but Mr. Kodwat gave her an extra pair from the residence.
12. The complainant left the residence with one of her friends and reported the incident immediately to her mother, and to the police.
13. The complainant identified Mr. Kodwat from a photo lineup.
14. Mr. Kodwat was arrested on 12 November, 2011, and has remained in custody since that date, a period of fourteen months.

[7] Mr. Kodwat has a lengthy criminal record. Counsel discussed the contents of that record earlier and pointed out that there were two prior sexual assaults dating back to 1989 when Mr. Kodwat was a youth; however, with respect to the second one, he was convicted as an adult. The record includes convictions which suggest that Mr. Kodwat has, from time to time, had alcohol and drug issues. Of greater concern to me is that there are several assault convictions on the record, and in my view, those are aggravating factors with respect to the charge before the Court. There have also been a number of failure to comply with court order offences, which suggests that a community disposition would be inappropriate in these circumstances.

[8] Counsel have made a joint recommendation of 36 months custody less time served. In my view, that sentence falls within the acceptable range. Mr. Kodwat has been in custody for 14 months and counsel are in agreement that he should receive credit for 21 months. As a result, there will be a balance of 15 months to serve. The sentence, therefore, will be a sentence of 15 months custody, and it will show credit for 14 months served at 1.5 credit, for a total of 21 months credit.

[9] We did not speak specifically about a Probation Order, and I am not inclined to make one.

[10] MS. PHILLIPS: All I'd want is a no contact.

[11] THE COURT: That is a free-standing, no contact order?

[12] MS. PHILLIPS: Yes.

[13] MR. CAMPBELL: The parties are unknown to each other, so there is no

issue with that.

[14] THE COURT: Okay. There will be a free-standing order that Mr. Kodwat have no contact, directly or indirectly, with Ms. S. There is an application for a DNA sample to be provided. That order will go as requested. There will also be a firearms order prohibiting Mr. Kodwat from having in his possession any firearm, cross-bow, prohibited weapon, restricted device, ammunition, prohibited ammunition, and explosive substance for a period of ten years, as set out in the *Criminal Code*. There will also be a Sex Offender Registry Order. Does that need to be expanded?

[15] MS. PHILLIPS: No. It's a lifetime [indiscernible], because it's --

[16] THE COURT: That is a lifetime.

[17] MS. PHILLIPS: Yeah.

[DISCUSSION ABOUT AUTHORIZATION OF THE SEX OFFENDER ORDER]

[18] THE COURT: The Victim Fine Surcharge will be waived.

LILLES T.C.J.