

Citation: *R. v. Kraeleman*, 2010 YKTC 100

Date: 20100909
Docket: 09-00584
09-00584A
09-00728
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Judge Cozens

REGINA

v.

LEAH GAYLE KRAELEMAN

Appearances:
David McWhinnie
Robert Dick

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCING

[1] COZENS T.C.J. (Oral): Leah Kraeleman has entered guilty pleas to three offences. The first is an offence under s. 139, the second, an offence under s. 145(5), and the third, an offence under s. 95(1)(a). Crown has proceeded summarily on the s. 145 but by indictment on the s. 139 and the s. 95(1)(a). There is a statutory minimum of three years attached to the s. 95(1)(a), and there is a joint submission before me with respect to disposition.

[2] Briefly, the facts are, firstly, with respect to the s. 139(2) offence, which was originally charged as a s. 140 offence and to which a plea to the s. 139(2) was proffered

and accepted in its place, that on September 28, 2009, the RCMP received a complaint from Ms. Kraeleman that her partner at the time, Mr. MacDonald, had assaulted her several times, sexually assaulted her and unlawfully confined her. As a result, the RCMP arrested Mr. MacDonald and he spent some time in custody.

[3] The investigation continued. On September 30th, Ms. Kraeleman appeared at the RCMP detachment and recanted what she has said earlier. In the end, subsequently, Ms. Kraeleman again went to the RCMP and attempted to recant her recantation, and while the facts that were put before me indicated that not everything she originally advised the RCMP was true, she maintained some of it was. But in the end, it is clear that there was an obstruction of justice.

[4] She failed to appear in court on December 16, 2009 as she was required to do by the promise to appear. Finally, on December 26, 2009, the RCMP conducted a high risk takedown of an individual in relation to his having shot at least one individual with a nine-millimetre handgun. While it is uncertain what Ms. Kraeleman may have known prior to December 26, 2009, it is clear that on that day she was aware of the existence of this nine-millimeter handgun, and, in fact, during the takedown, had possession of it and concealed it under her seat. She admitted in the statement to the RCMP the next day that she had done so. This nine-millimeter firearm was loaded.

[5] The circumstances of Ms. Kraeleman are set out in a pre-sentence report and in a psychological risk report. I do not propose in the circumstances to go through this in any detail. It is clear that Ms. Kraeleman has struggled with some difficulties in relation to addictions in the past. She is noted to be, pursuant to assessments, at a high risk

range to reoffend under the LS/CMI. However, there are certainly factors that would reduce that risk. She is noted to also have a severe level of problems related to alcohol abuse. She has maintained sobriety for the eight months she has been in pre-trial custody and at the one year mark of maintaining sobriety, according to the procedures used, this risk would substantially decrease, I would expect.

[6] She has the support of her parents. Her father is present in court today. I believe both her parents were present the last time. She has three young children. She has taken advantage, while in custody, of a number of opportunities that are available to her to change her lifestyle. The psychological and risk report certainly identifies that she struggles with some depression and, it appears, some post-traumatic stress disorder. There are certainly indications that she would benefit from access to therapy, substance abuse programs and any further assistance that psychiatric, psychological or medical interventions may provide her.

[7] These offences are serious offences. Ms. Kraeleman has no prior criminal history. The submission put before me is that there be a further 25 months custody in addition to the one year credit that she would receive for the pre-trial custody at one and one half to one, which is what the regime in the Yukon was prior to the amendments in February 2010, and these offences arose before that date. Therefore, she is entitled to the standard credit of one point five to one.

[8] Crown recognizes the principle of totality in the circumstances and while it would normally be the case that the s. 139 offence and the s. 95 offence would result in consecutive sentences, Crown quite fairly points out that the crushing effect of this

would be contrary to the principles of sentencing, and I certainly concur. Crown and defence both have recognized that what would work best in the circumstances, and be within the range, is a disposition that would have Ms. Kraeleman serve her sentence outside of the Yukon. This, I would expect, is in large part due to her ability to access further counselling and perhaps treatment in a different institution.

[9] The sentence will be as follows: There will be the minimum sentence of three years on the s. 95(1)(a) offence. There will be one year credit for the time spent in custody, leaving an additional two years to be served on that.

[10] The range of sentence proposed for the s. 139 offence goes from several months, to the period of one year sought by the Crown. I will impose a sentence of nine months. That sentence will be concurrent, and for ease of simplicity to arrive at the joint submission, what I will do is impose a sentence on the s. 145(5) offence of 30 days consecutive to these dispositions, therefore, a further 25 months. There will be no probation.

[11] There will be the mandatory s. 109 firearms prohibition, prohibiting you for a period of ten years from possessing any firearm, crossbow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition and explosive substance. I expect the Crown was not seeking more than the 10 years in this case.

[12] MR. MCWHINNIE: No, Your Honour.

[13] THE COURT: Am I correct that this does not fall under s. 487.04?

[14] MR. MCWHINNIE: That does appear to be the case.

[15] THE COURT: As such, there will be no order requiring you to provide a sample of DNA.

[16] The victim fine surcharges will be waived. The remaining counts?

[17] MR. MCWHINNIE: Should be stayed, Your Honour.

[18] THE COURT: Anything further from counsel?

[19] MR. DICK: No, Your Worship.

[20] MR. MCWHINNIE: Not at this time.

[21] THE COURT: Again, Ms. Kraeleman, I wish you the best.

COZENS T.C.J.