

Citation: *R. v. Padden*, 2011 YKTC 51

Date: 20110712
Docket: 06-11063
06-11063A
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before: His Honour Chief Judge Cozens

REGINA

v.

DALE ANDREW PADDEN

Appearances:
Terri Nguyen
Gordon Coffin

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCING

[1] COZENS C.J.T.C. (Oral): Dale Padden has entered guilty pleas to three offences, the most serious of which is a charge under s. 163.1(4.1) of the *Criminal Code* for accessing child pornography.

[2] The circumstances of that offence are that on or about the 29th day of August, 2006, Mr. Padden transmitted images of children that were partially clothed, but in erotic poses, to an individual he was maintaining an online relationship with in British Columbia. These images fell within what would be described as Category 1 or the lowest category of child pornographic material as described in the *R. v. Missions*, 2005 NSCA 82, case.

[3] This individual contacted the RCMP, who then spoke with Mr. Padden, who was cooperative with them, provided them access to his computers and e-mail accounts, and, as I understand it, other images were located, which provided a context for the images that were indicated to me were e-mailed to this other individual. Subsequent to that he was released on a promise to appear for attendance in court on November 2, 2006, and he failed to do so, and in fact was not dealing with this charge until he was arrested and brought into custody on April 21st of this year.

[4] The third offence is an offence under s. 733.1(1) of the *Criminal Code*, because at the time that he accessed and then sent these e-mails on to this other individual, he was on a probation order that required him to keep the peace and be of good behaviour. This was in relation to the only criminal conviction he has, which was a theft over charge. He has no related criminal record.

[5] It is important to point out that we are not dealing with a charge of transmission, which has a more significant range of sentence available to it. We are dealing with a charge of accessing, but it is clear on the facts that he accessed this information, and then to give context to it, he did pass it on to another individual.

[6] The Crown has elected to proceed indictably in this matter. The minimum sentence is 45 days, and the maximum is five years. There is a joint submission before me that asks for a sentence of six months globally to be imposed, to be followed by 18 months of probation. Case law has been provided to me that I have reviewed. Certainly, there are a wide range of sentences available for such a case.

[7] We are dealing with a number of mitigating factors, and I am not going to, in the

circumstances of this case, go point by point through all the considerations that are necessarily dealt with. What we do have here is an individual of 34 at the time of the offences, 39 today, with a very limited criminal record, who has entered a guilty plea and was cooperative with the RCMP. The offence with which he is charged is the lowest category of child pornography that has been set up. This took place over a fairly brief period of time, his involvement, and as I have said, the facts that were put before me, I understand, were in the context of more information, and that is why there is a joint submission before me. So I appreciate that there were other images and other factors that take place here, but, at the end of the day, we are still dealing with the lower end of the threshold of such cases. There is no suggestion that there is any broad dissemination of this material, no suggestion that Mr. Padden has a long history of involvement in such form of illegal activity.

[8] The pre-sentence report that was prepared is not remarkable in any particular way. Mr. Padden is scored as a very low risk to reoffend, in the ten percent category under the LS/CMI. He appears in the report to be remorseful for his behaviour. His version of what took place was fairly similar to the police reports. We do not have an assessment at this point in time, and there is a recommendation that perhaps one should be done to find out the nature and extent of any concerns that might arise, but certainly, Mr. Padden does not come before the Court with any significant indicators that he suffers from any clear sexual deviance that poses a future risk to society, but we also do not have an assessment that clearly says he does not. We do not know. All we know is that we have a 39-year-old who is before the Court for circumstances that took place over a few months in 2006.

[9] He is extremely embarrassed and understandably so. He has currently been in custody for 83 days. The suggestion is that he be credited for those 83 days from the six months that is to be imposed. This is on a one-to-one basis. There is no evidence or submission before me for anything more than that.

[10] The sentence that is going to be imposed is as follows: On the s. 163.1(4.1) offence, the sentence will be five months, less credit for the 83 days in custody. The sentence for the s. 145(5) will be one month consecutive, and for the s. 733.1(1) will be one month concurrent time served -- one month concurrent to the five month sentence. So I will leave it at that.

[11] There will be a victim fine surcharge on the s. 163.1(4.1) that will be \$100. There will be six months time to pay on that. I am going to waive the victim fine surcharges on the other two offences.

[12] There will be a DNA order.

[13] There will be an order for forfeiture of the laptop computer, and any images that are currently in the possession of the RCMP upon expiration of the appeal period.

[14] Is there anything further on that that I have spoken of so far?

[15] There will be an 18 month probation order to follow. The terms of the probation order will be the statutory terms:

1. To keep the peace and be of good behaviour;
2. Appear before the Court when required to do so by the Court;
3. Notify the Court or Probation Officer in advance of any change of name or

- address, and promptly notify the Court or Probation Officer of any change of employment or occupation;
4. Report to a Probation Officer within two working days of your release from custody, and thereafter when and in the manner directed by the Probation Officer;
 5. Reside as approved by the Probation Officer, and not change your residence without the prior written permission of your Probation Officer;
 6. Take such assessment, counselling, and programming as directed by your Probation Officer;
 7. Take such psychological assessment, counselling, and programming as directed by your Probation Officer;
 8. Make reasonable efforts to find and maintain suitable employment, and provide your Probation Officer with all the necessary details concerning your efforts;
 9. Provide your Probation Officer with consents to release information with regard to your participation in any programming, counselling, or employment that you have been directed to do pursuant to this probation order;
 10. You are not to possess any computer, computer software, or computer peripherals such as a cell phone or any other device that has file sharing capability;
 11. You are to provide copies of documentation regarding the issuance of any such device to your Probation Officer upon request by your Probation

Officer.

Those are all of the terms that I propose to put on the probation order.

[16] MS. NGUYEN: All right. They're fine.

[17] THE COURT: Anything further?

[18] MR. COFFIN: No, I don't think so, thank you.

[19] THE COURT: All right.

[20] THE CLERK: What is the probation attached to?

[21] THE COURT: Probation only attaches to the s. 163.1(4.1). For the record, I will make it clear, I considered a SOIRA order, but I am not imposing it.

[22] MS. NGUYEN: Yes, the Crown's not sought.

[23] THE COURT: Right.

COZENS C.J.T.C.