

Citation: *R. v. Tisiga*, 2011 YKTC 34

Date: 20110603
Docket: 10-00062
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Chief Judge Cozens

REGINA

v.

SHANE CONRAD TISIGA

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

Appearances:
Terri Nguyen
Gordon Coffin

Appearing for the Crown
Appearing for the Defence

REASONS FOR SENTENCING

COZENS C.J.T.C (Oral): Shane Tisiga has entered a guilty plea for an offence under s. 271 of the *Criminal Code*. Crown has elected to proceed summarily in the matter. While the guilty plea is not the earliest, it came still at a time for which considerable credit should be given.

[1] The facts are that on April 25, 2010, at a party in Carmacks, Yukon Territory, there was a lot of alcohol being consumed by various of the parties there, including Mr. Tisiga. The complainant passed out in a bed. Mr. Tisiga was in another location.

When the complainant awoke, Mr. Tisiga was in her bedroom wanting to have sex. She said no to him, but he held her down, and, in the course of a brief struggle, had sexual intercourse with her, and then left.

[2] There is no victim impact statement, is there? I am just checking.

[3] THE CLERK: No, Your Honour.

[4] THE COURT: No. There is a joint submission before me for a sentence of 18 months to be served conditionally in the community, followed by a period of probation of 18 months.

[5] Mr. Tisiga's criminal record has entries in 2007 for -- well, frankly, he has an entry in 2007 for which he was discharged, it appears, those entries, and entries in 2010 for which he was discharged.

[6] MS. NGUYEN: Yes, sir, those would be relevant in that these offences would have occurred in the last month prior to that discharge. So in my submission, they're still relevant on sentencing and whether or not Your Honour believes a conditional sort of sentence in the community would work, but the Crown is not making any application with respect to that discharge.

[7] THE COURT: No, given that his record with respect to those prior convictions will be expunged in the sense that those discharges will have, in the absence of any revocation taking place in the last, which is not going to occur, end up resulting in him not having criminal conviction entries for those. So this will be the only criminal entry on his record --

[8] MS. NGUYEN: Yes, it will.

[9] THE COURT: -- from this point in time forward. Mr. Tisiga has been the subject of a pre-sentence report that also had the benefit of a Community Wellness Court summary and a wellness plan that had occurred with respect to Mr. Tisiga's involvement in the Community Wellness Court in 2009.

[10] Very briefly, Mr. Tisiga is a First Nations individual who has a high school level education, plus he is currently in the third year of an apprenticeship as a plumber. He has a very positive work history. He does not appear to have any issues related to any cognitive deficits. His biggest issue is his struggle with an alcohol problem that began as a teenager and continues. Although his alcohol problem has been something that he has been able to maintain long periods of sobriety with, it is something that he sometimes does not deal with properly, and that has resulted in him being before the Court today.

[11] He ranks as a medium risk to reoffend. The factors that were noted as increasing his risk were his friends, his alcohol abuse, relationship issues, and lack of appropriate leisure and recreational activities. In the pre-sentence report, Mr. Tisiga has indicated, and this is supported, that he leads a somewhat pro-social life. He recognizes the risks of associating with individuals that elevate his risk factors, and recognizes that he has an alcohol problem, but still needs to work towards resolving it. He is considered a sound candidate for a community disposition. He has been under release terms for a year, and there have been no concerns with his ability to comply with those conditions. He has supportive letters from his employers.

[12] This is a serious offence and the sentence proposed by counsel is in the form of a joint submission. While not at the high end of the range, it takes into account the aggravating factors inherent in the offence, and the circumstances and the mitigating factors, and falls within the range of sentence available for such an offence in the Yukon Territory.

[13] Joint submissions are given careful consideration by the Court, and in particular, when dealing with experienced counsel, the Court appreciates and understands that a lot of factors go into a joint submission, and I find this one to be appropriate.

[14] The sentence that will be imposed is that of 18 months to be served conditionally in the community. I am satisfied that this complies with the requirements of s. 742.1 of the *Criminal Code*, and the principles of sentencing. This is to be followed by 18 months of probation:

1. You are to keep the peace and be of good behaviour;
2. You are to appear before the Court when required to do so by the Court; report to a Supervisor immediately, and thereafter, when required by the Supervisor and in a manner directed by the Supervisor;
3. You are to remain within the Yukon Territory unless you have written permission from your Supervisor or the Court;
4. You are to notify the Supervisor or the Court in advance of change of name or address, and promptly notify the Court or the Supervisor of any change of employment or occupation;

5. You are to reside as approved by your Supervisor and not change that residence without the prior written permission of your Supervisor;
6. At all times you are to remain within your place of residence, except for the purposes of work and travel to and from employment, and except with the prior written permission of your Supervisor. You must present yourself at the door or answer the telephone during reasonable hours to ensure you are complying with this condition. Failure to do so will be a presumptive breach of this condition;
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;
8. You are to not attend any bar, tavern, off-sales, or other commercial premises whose primary purpose is the sale of alcohol;
9. You are to take such assessment, counselling, and programming as directed by your Supervisor;
10. You are to have no contact directly or indirectly or communication in any way with G.S.;
11. You are not to attend at or on the premises of G.S.;
12. You are provide your Supervisor with consents to release information with regard to your participation in any programming or counselling that you have been directed to do pursuant to this conditional sentence order.

Those are all the terms that were sought, if I am correct?

[15] MS. NGUYEN: Yes.

[16] THE COURT: With respect to the probation order of 18 months, the terms will be the same:

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 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 the completion of your conditional sentence;
5. Reside as approved by your Probation Officer, and not change that residence without the prior written permission of your Probation Officer;
6. 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;
7. Not attend any bar, tavern, off-sales, or other commercial premises whose primary purpose is the sale of alcohol;
8. Take such assessment, counselling or programming as directed by your Probation Officer;
9. You are to have no contact directly or indirectly or communication in any way with G.S., except with the prior written permission of your Probation Officer in consultation with Victim Services;
10. You are not to attend at or on the premises on the residence of G.S., except with the prior written permission of your Probation Officer in

consultation with Victim Services;

If I did not say premise or residence on the conditional sentence order, I meant to state .

11. You are to provide your Probation Officer with consents to release information with regard to your participation in any programming or counselling that you have been directed to do pursuant to this probation order.

[17] Those are all the terms, I believe, that were sought on the probation order?

[18] MS. NGUYEN: Yes, sir.

[19] THE COURT: There will be an order. It is a primary designated offence, that you provide a sample of your DNA. There will be, also, the *SOIRA* order under s. 490.012, and that order shall be for a period of ten years. There will not be a discretionary firearms prohibition. I do not believe that was sought.

[20] MS. NGUYEN: No, and the Crown's not seeking one.

[21] THE COURT: There will be a \$50 fine surcharge. How much time to pay that?

[22] MR. COFFIN: That can be paid forthwith.

[23] THE COURT: Forthwith.

[24] One thing I omitted to do, which I should have done before, was ask your client whether he wished to say anything. Given that it is a joint submission, it is still important that he be given the opportunity to speak if he wishes to say anything.

[25] MR. COFFIN: No, I don't believe so, sir.

[26] THE COURT: That is fine. With respect to the probation order, certainly, depending on how things have gone during the course of the conditional sentence and during the probation, this order can be altered, changed, or shortened. I have every reason to believe, based on the information that I have, that you can do well on the conditional sentence order. I accept the fact that you are remorseful for what took place, and that you wish to make the kind of changes in your life that will keep you out of situations that could bring you before the Court again.

[27] Remaining counts?

[28] MS. NGUYEN: Withdrawn.

[29] THE COURT: They are withdrawn.

COZENS C.J.T.C.