In the Court of Appeal for the Northwest Territories

Citation: *R.* v. *Doll*, 2014 NWTCA 03

Date: 2014 11 20
Docket: A1AP2014-000001
Registry: Yellowknife

Between:

Her Majesty the Queen

Respondent

- and -

Russell Dean George Doll

Appellant

The Court:

The Honourable Mr. Justice Jean Côté
The Honourable Mr. Justice Neil Sharkey
The Honourable Mr. Justice Thomas W. Wakeling

Memorandum of Judgment
Delivered from the Bench

Appeal from the Conviction and Sentence by
The Honourable Madam Justice K. Shaner
Convicted the 13th day of November, 2013
Sentenced on the 13th day of December, 2013
(Docket: S1CR2012-000097)

Memorandum of Judgment
Delivered from the Bench

Wakeling J.A. (for the Court):

[1] The sentencing judge sentenced Russell Dean George Doll to four years' imprisonment less twenty-nine days for time spent in pre-sentence custody after convicting him of a contravention of s. 151 of the *Criminal Code*.[1] This provision makes it an offence for a person to touch any part of the body of another person under sixteen years of age for a sexual purpose.

[2] Mr. Doll appeals this sentence.

[3] In 2005 Mr. Doll touched the victim's vagina on two separate occasions and the victim on one other occasion for a sexual purpose. She was five or six years old at the time. The offences occurred while the appellant was babysitting the victim. Mr. Doll was a friend of the victim's father.

[4] We are satisfied that a four-year prison sentence is outside the range of just sanctions for this offence. The nature of the touching and its limited duration, and all other relevant circumstances, lead to the conclusion that the range of just sanctions includes a prison term between one and 3.25 years. This offence falls within the first quartile of sexual interference offences, measuring the gravity of the offence and other relevant factors.[2]

[5] The determination that the sentence under appeal is well above the high point of the range leads to the conclusion that the sentence is not fit and is not a just sanction. This conclusion requires us to determine a fit sentence and a just sanction.

[6] Taking into account the fundamental purpose of sentencing recorded in s. 718, the fundamental principle of sentencing stipulated in s. 718.1 – proportionality – and the other principles of sentencing set out in s. 718.2, we vary the sentence imposed by the sentencing judge to this extent: we substitute a sentence of two years' imprisonment with credit for twenty-nine days served in pre-sentence custody at a rate of 1.5 to 1 for the sentence of four years' imprisonment.[3] This is roughly the midpoint of a sentence for an offence that is properly classified as a first

[1] R.S.C. 1985, c. C-46.

[2] The range for a first quartile offence is one to 3.25 years' imprisonment; a second quartile offence is 3.25 to 5.5 years' imprisonment; a third quartile offence is 5.5 to 7.75 years' imprisonment; and a fourth quartile offence is 7.75 to ten years' imprisonment.

[3] This means that Mr. Doll's period of incarceration is the difference between two years and twenty-nine days multiplied by 1.5 (2 years – (29 x 1.5) = X).

quartile sexual interference offence. Mr. Doll will also be subject to probation for a three-year period following his prison term consisting of the following components:

1. He must abide by standard statutory conditions respecting reporting;
2. He must report to a probation officer within thirty days of release from incarceration;
3. He must reside at a residence to be approved by his probation officer;
4. He must actively seek and maintain employment;
5. He must report to his probation officer on the first Friday of every month regarding his efforts to seek and maintain employment.

[7] While the nature of the contact between the appellant and the victim was not as egregious as the conduct which would warrant placing this offence in a quartile reserved for more egregious or grave offences, the fact that Mr. Doll voluntarily agreed to care for the victim and the harm Mr. Doll caused the victim emphasizes the need for a significant period of incarceration.[4]

[8] The appeal is allowed. Pursuant to s. 687(1)(a) of the *Criminal Code*, we vary the sentence under appeal in the manner set out above.

Appeal heard on October 22, 2014

Memorandum filed at Yellowknife, N.W.T.
this 20th day of November, 2014

Wakeling J.A.

[4] We are satisfied the trial judge took into account the appropriate *Gladue* factors. Our decision reflects them.

* The footnotes were not part of the judgment delivered from the bench.

Appearances:

K. Lakusta
for the Respondent

C.B. Davison
for the Appellant

A-1-AP-2014000001

IN THE COURT OF APPEAL FOR THE NORTHWEST TERRITORIES

BETWEEN:

HER MAJESTY THE QUEEN

-and-

RUSSELL DEAN GEORGE DOLL

MEMORANDUM OF JUDGMENT
