**In the Court of Appeal for the Northwest Territories**

**Citation: R v Sassie, 2015 NWTCA 7**

**Date:** 2015 10 27

**Docket:** A1-AP-2012-000002

**Registry:** Yellowknife

**Between:**

**Her Majesty the Queen**

Respondent

- and –

**Dennis Sassie**

Appellant

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**The Court:**

**The Honourable Mr. Justice Peter Costigan**

**The Honourable Mr. Justice Peter Martin**

**The Honourable Mr. Justice Jack Watson**

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**Memorandum of Judgment**

Appeal from the Conviction by

The Honourable Mr. Justice D. M. Cooper

Dated the 4th day of November, 2009

Filed the 9th day of November, 2009

(2009 NWTSC 69; S-1-CR-2009-000010)

Appeal from the Sentence by

The Honourable Madam Justice V.A. Schuler

Dated the 21st day of March, 2012

(2012 NWTSC 27, Docket: S-1-CR-2009-000010)

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**Memorandum of Judgment**

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**I. Introduction**

1. The appellant was convicted of sexual assault, designated a dangerous offender and given an indeterminate sentence. He appeals both the conviction and the sentence.

**II. The Conviction Appeal**

1. The complainant was a 64 year old woman who had babysat the appellant and known him for many years. The complainant testified that she was alone in her home at night when she responded to a noise outside and opened her door to a man who she did not recognize at that time. The complainant had poor eyesight, was not wearing her glasses and had difficulty hearing.
2. The home was dimly lit by two small fixtures in the bathroom and a television set. The complainant and the man went into the living room where they sat a few feet apart. The complainant then recognized the appellant. She started a conversation with him based on that recognition and their familiarity. The appellant grabbed the complainant several times before pushing her into the bedroom and having non-consensual sex with her.
3. The appellant did not testify at the trial.
4. The trial judge noted an inconsistency and some confusion in the complainant’s statement to the police and her trial testimony. Nonetheless he found her to be a truthful and credible witness. He found the complainant had known the appellant all his life, would know what he looked like, would know the sound of his voice and was close enough to identify him despite the lightning conditions. He found the contradictions in the complainant’s evidence were minor and inconsequential. In the result, he was satisfied beyond a reasonable doubt that the appellant had sexually assaulted the complainant.
5. The appellant says the trial judge erred in law by failing to properly apply the doctrine of reasonable doubt and by misapprehending the identification evidence. In essence, the thrust of this ground is one of unreasonable verdict. Is this a verdict that a properly instructed judge could reasonably have rendered?: *R v Yebes*, [1987] 2 SCR 168, 43 DLR (4th) 424; *R v Biniaris*, 2000 SCC 15 at para 36, [2000] 1 SCR 381, *R v RP*, 2012 SCC 22 at para 9, [2012] 1 SCR 746. The function of this Court is not to retry the case but to assess the evidence adduced before the trial judge to determine whether the conclusion is unreasonable or cannot be supported by the evidence: *R v Saddleback*, 2013 ABCA 250 at para 13, 556 AR 17 citing *R v Keshane* (1992), 11 BCAC 86 at para 15, [1992] BCJ No 450.
6. The appellant argues there were gaps in the evidence which were not considered by the trial judge such as the lack of forensic evidence, lack of evidence from the appellant’s son, absence of descriptive evidence and lack of evidence of special features. The appellant says the trial judge failed to explain why these gaps did not give rise to a reasonable doubt. He also asserts that the trial judge misapprehended the complainant’s evidence that she did not recognize the man when he first entered her home and substituted his own reasoning as to how the complainant could identify the appellant despite her problems with eyesight and hearing.
7. Although eye-witness evidence is often subject to frailties, there is less reason for concern where the witness and the perpetrator are well known to each other. Here, there was uncontradicted evidence of a long standing relationship between the complainant and the appellant upon which the trial judge could reasonably rely in concluding that the complainant recognized the appellant as her assailant. In this case, the lack of corroborative evidence need not give rise to a reasonable doubt as to the assailant’s identity. Read as a whole, the trial judge’s reasons demonstrate that he did not misapply the doctrine of reasonable doubt.
8. Nor did the trial judge misapprehend the identification evidence. He considered the facts that the complainant did not recognize the appellant at first; that the room was dimly lit and that the complaint had poor eyesight. Nonetheless, he accepted the complainant’s identification evidence and gave cogent reasons to support that finding. The verdict is not unreasonable. It is one that a properly instructed trier of fact, acting judicially, could reasonably render.
9. The conviction appeal is dismissed.

**III. The Sentence Appeal**

1. The appellant next argues that the dangerous offender designation and indeterminate sentence are not fit. This appeal, narrowly framed, is aimed at the trial judge’s acceptance of certain aspects of the expert evidence led by the Crown. No expert evidence was led by the appellant.
2. The appellant is an aboriginal person who has a lengthy criminal record which includes three sexual assaults, two assaults causing bodily harm, one assault with a weapon, and four assaults *simpliciter*. His release on parole was suspended 5 times. He has no youth record but has committed an offence nearly every year that he was out of jail since becoming an adult. The appellant suffers from polysubstance dependence. While incarcerated, the appellant received treatment programs which were largely ineffective.
3. The dangerous offender assessment was conducted by two psychiatrists with the assistance of a psychologist. The psychiatrists opined that the appellant has a preference for coercive sexual interaction with females. In their view, a coercive sexual preference increases the risk for future violent sexual behaviour.
4. The psychiatrists were also of the opinion that the appellant has an antisocial personality disorder. One of the criteria for this disorder is conduct disordered behaviour before the age of 15. In cross-examination, one of the psychiatrists conceded that, because many details of the appellant’s early life were missing, there was a weak basis for a finding of early disordered behaviour. The psychiatrist maintained, however, that the diagnosis was still valid based on the appellant’s self-reports of his early years. The psychiatrist also opined that even if the appellant did not have an antisocial personality disorder, he would still be diagnosed with a personality disorder with antisocial features which would not change the psychiatrist’s assessment of risk. There is no effective treatment for antisocial personality disorder.
5. The appellant was administered several tests to measure his risk to re-offend. On the Psychopathy Checklist - Revised, the appellant was given a score of 30. A score of 30 or higher indicates a high risk of future violent offences and a lower probability of behavioural change and treatability. One of the psychiatrists testified that, even without considering the evidence of conduct disordered behaviour before the age of 15, the appellant would score 29.5. On the Sexual Offender Risk Appraisal Guide (SORAG), the appellant was scored in the second highest category for reoffending. On the Static -99-R test and the Ontario Domestic Assault Risk Assessment (ODARA), the appellant’s score placed him in the highest risk category.
6. The psychiatrists were cross-examined on the validity of the assessment tools for aboriginal people. Both testified that, while the PCL-R had not been so validated, the Static -99-R test had been validated in the aboriginal population. In any event, considering the appellant’s history of violent offences, the psychiatrists were of the opinion that it would be difficult to view the appellant as other than a high risk to re-offend. The psychiatrists concluded that the appellant was a high risk to re-offend in a violent and sexual manner in both the short and the long term.
7. The psychiatrists concluded that the prognosis for treatment was not good. Although medication to reduce the sex drive was a possible option, there was no evidence that the medication would be safe for the appellant and it was doubtful that the appellant would voluntarily pursue this option.
8. The sentencing judge’s reasons contain a thorough and careful review of the evidence and the law: 2012 NWTSC 27. She concluded that the predicate offence formed part of a pattern of sexual offences against vulnerable females. She accepted the psychiatrists’ diagnoses and their risk assessments. She accepted their explanation that disregarding the appellant’s early behaviour would not affect the risk assessment. She found that the criteria under both ss 753(1)(a)(i) and 753(1)(b) of the *Criminal Code* were met and there was no reasonable expectation that anything less than an indeterminate sentence would adequately protect the public from the risk posed by the appellant.
9. The appellant says the expert evidence was based, in part, on judgment calls which were prejudicial to the appellant. He cites, as an example, the psychiatrist’s opinion that conduct disordered behaviour was likely present even though there was an absence of evidence of the appellant’s early behaviour. He asserts that this conclusion was based on speculation. He says the trial judge delegated to the experts the determination of the issues arising under s 753(1).
10. The experts addressed and explained the significance of the absence of evidence of the appellant’s early behaviour. In essence, they testified that it made little difference to their overall diagnosis and their assessment of risk. The trial judge was entitled to accept the expert’s uncontradicted evidence and to base her findings on that evidence.
11. The appellant asserts that the diagnostic tests were not validated for the aboriginal population. This assertion was also addressed in the psychiatrists’ evidence. One of the tests has been validated for the aboriginal population and it produced a risk assessment similar to the other tests. Moreover, the psychiatrists’ risk assessment was buttressed by the appellant’s offence history. The trial judge did not err in accepting this evidence.
12. Reasonableness is the appropriate standard of review for a dangerous offender designation. While a more robust appellate review is required than that which applies to sentencing generally, deference to the findings of the sentencing judge remains warranted: *R v Severight*,2014 ABCA 25 at para 24, 566 AR 344 citing *R v Warawa*, 2011 ABCA 294 at para 20, 519 AR 140. The uncontradicted expert evidence amply supports the sentencing judge’s conclusions that the appellant is a dangerous offender and there is no reasonable expectation that anything less than an indeterminate sentence would adequately protect the public from the risk posed by the appellant.
13. The sentence appeal is dismissed.

Appeal heard on October 20, 2015

Memorandum filed at Yellowknife, NWT

this 27 day of October, 2015

Costigan J.A.

Martin J.A.

Watson J.A.

**Appearances:**

Susanne Boucher

 for the Respondent

Thomas H. Boyd

 for the Appellant

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| BETWEEN:HER MAJESTY THE QUEENRespondent-and-DENNIS SASSIEAppellant |
| MEMORANDUM OF JUDGMENT  |