

*Lander v. HMTQ*, 2002 NWTSC 37

Date: 20020502  
Docket: S-1-CR2001000107

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

KAREN LANDER

Appellant

- and -

HER MAJESTY THE QUEEN

Respondent

---

Summary conviction appeal from convictions and sentence.

Heard at Yellowknife, NT on March 28, 2002

Reasons filed: May 2, 2002

---

REASONS FOR JUDGMENT OF THE HONOURABLE JUSTICE V.A.  
SCHULER

The Appellant represented herself and was present by Video Conference  
Counsel for the Respondent: Caroline Carrasco

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

KAREN LANDER

Appellant

- and -

HER MAJESTY THE QUEEN

Respondent

REASONS FOR JUDGMENT

[1] After a trial that took place at the same time as the trial which led to the appeal in CR 2001000096, the Appellant was convicted on charges of sexual assault, unlawful confinement and entering a dwelling house with intent to commit an indictable offence. She was sentenced to 15 months in jail for the sexual assault, 12 months concurrent for the unlawful confinement and 6 months concurrent for the entering a dwelling house. She was also sentenced to 12 months consecutive for assault causing bodily harm, the matter dealt with in CR 2001000096. The latter sentence was not appealed. The total sentence imposed was therefore 27 months' imprisonment.

[2] The Notice of Appeal, which appears to have been drafted by the Appellant herself, makes reference to an appeal from sentence, although some of the relief sought would be available only on an appeal from conviction. At the appeal hearing, the Appellant clarified that she intended to appeal from conviction only on the sexual assault and enter a dwelling house charges and from sentence on all the charges. She represented herself on this appeal, but Mr. Brydon, who was authorized by Legal Aid to represent her only on the assault causing bodily harm conviction appeal, assisted both the Appellant and the Court by making some additional submissions.

[3] As to the conviction appeal, the Appellant alleged that her trial counsel was incompetent and that she did not receive effective representation. Specifically, she referred to an out of court conversation overheard by a defence witness in which someone suggested to the complainant that she should get her story straight. She also referred to motives that the complainant might have for lying. She said that these issues were raised with her trial counsel but he did not pursue them.

[4] For the same reasons I set out in the appeal in CR 2001000096, this ground of appeal fails. It was not raised at all in the Notice of Appeal and the necessary notice to trial counsel and affidavit material were not filed.

[5] The issue at trial was credibility. Only the complainant and the Appellant were present when the incident giving rise to the charges took place. The complainant's version of events was that the Appellant had followed her home from a bar where they had both been drinking and had entered her apartment uninvited. The complainant attempted to leave the apartment but the Appellant blocked the door and then grabbed her hair and kicked her and acted in a threatening manner. The complainant eventually went into a bedroom, where she was followed by the Appellant, who told her to undress. The complainant complied out of fear and the Appellant laid on top of her and touched her all over, including between her legs. The complainant eventually convinced her to stop and left the apartment.

[6] The Appellant's testimony, while providing a different version, contained some important admissions. On her evidence, she and the complainant went together to the complainant's apartment and engaged in some consensual sexual contact. The complainant then decided to leave, which caused the Appellant to become angry. The Appellant stood in front of the door and hit the complainant a couple of times in the face with a closed fist. They both then got undressed. The Appellant admitted that she could not tell whether the complainant wanted to have sex or not and that the complainant was not responding when the Appellant was touching her.

[7] The trial judge instructed himself about the application of reasonable doubt to credibility as set out in *R. v. W. (D.)*, [1991] 1 S.C.R. 742. He rejected the evidence of the Appellant and did not rely on the admissions she had made. He accepted the complainant's evidence. There is no basis upon which I can find that his assessment of credibility was unreasonable. The appeal against conviction is therefore dismissed.

[8] As to the sentences imposed, the trial judge had before him a comprehensive pre-sentence report, which, as he noted, describes a "terrible dysfunctional life" with serious

problems of drug and alcohol abuse. He also considered the Appellant's criminal record, which includes two previous convictions for assault, the most recent of which was for assault causing bodily harm for which she received 10 months in jail in 1999. That incident also involved a bite.

[9] The Appellant argued that the sentencing judge failed to take into account the one month she spent on remand between conviction and sentence. Although that factor was not specifically mentioned in his reasons for sentence, I am not going to assume that the sentencing judge disregarded it. Whether he gave the Appellant any more credit for it than simply the one month was in his discretion and even if he gave it no weight at all, in my view that does not make the resulting sentence unfit in this case.

[10] The sentencing judge was also aware that the Appellant was pregnant at the time of sentencing. She has since given birth and the baby has serious medical problems. In light of her past history, there is reason to doubt that she would be permitted to keep the custody of the child. Although one has to have some sympathy in these circumstances, there is no basis upon which the situation with her child can affect the Appellant's sentence. Her wish to see the child is something that must be left to the correctional and social services authorities.

[11] The Crown proceeded on all of the charges by way of summary conviction. Despite that, they were serious and violent offences. The sentencing judge was obviously concerned about what the two separate incidents had in common: that the Appellant reacted with violence when her sexual advances were rejected. The submission was made that the homosexual nature of the sexual conduct caused the judge to sentence the Appellant more harshly than he would otherwise. I find nothing in his reasons or the sentences imposed to support that suggestion.

[12] Considering all the circumstances and the principles of sentencing, including the need to protect the community from violent behaviour, and considering also the deference that must be given to the decision of a sentencing judge, I find that the sentences imposed are not unfit when looked at in totality. The sentencing judge noted the need for the Appellant to address her serious drug and alcohol problems. The pre-sentence report indicates that although the Appellant has, to her credit, made efforts in the past to address her problems, those efforts have not been successful. It may be that in the structured environment of a federal institution the problems can be more effectively addressed.

[13] For the above reasons, the appeals from conviction and sentence are dismissed.

V.A. Schuler  
J.S.C.

Dated at Yellowknife, NT, this  
2nd day of May 2002

The Appellant represented herself  
Counsel for the Respondent: Caroline Carrasco

S-1-CR-2001000107

---

IN THE SUPREME COURT OF THE  
NORTHWEST TERRITORIES

---

BETWEEN:

KAREN LANDER

Appellant

- and -

HER MAJESTY THE QUEEN

Respondent

---

REASONS FOR JUDGMENT OF  
THE HONOURABLE JUSTICE V.A. SCHULER

---