

R. v. Clillie, 2013 NWTSC 21

S-1-CR2012000083

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- vs. -

JUSTIN CLILLIE

Transcript of the Reasons for Sentence by The Honourable
Justice L. A. Charbonneau, at Yellowknife in the Northwest
Territories, on March 27th A.D., 2013.

APPEARANCES:

Ms. J. Bond: Counsel for the Crown

Mr. T. Boyd: Counsel for the Accused

An order has been made banning publication of the
identity of the Complainant/Witness pursuant to Section
486.4 of the Criminal Code of Canada

1 THE COURT: Earlier today Justin Clillie
2 pleaded guilty to a charge of sexual assault
3 and I must now decide what a fit sentence is
4 for that crime. In this case, as with any
5 sentencing, the Court has to take into account
6 the circumstances of the offence that was
7 committed, the circumstances of the offender
8 who committed it, and the principles of
9 sentencing that are set out in the Criminal
10 Code.

11 The circumstances of the offence are
12 outlined in the agreed statement of facts that
13 was filed at the sentencing hearing.

14 The complainant E.H. was at a friend's
15 house in Wrigley on the night in question.
16 People were consuming alcohol in the house and
17 Mr. Clillie joined them. When Mr. Clillie
18 found himself alone in the livingroom with the
19 complainant, he pushed himself on her and
20 tried to kiss her. She told him to leave her
21 alone. Another man who was in the house,
22 Mr. Boniface, who was the boyfriend of E.H.'s
23 friend, came downstairs to check on what was
24 going on. Mr. Clillie told him to go back
25 upstairs. The complainant tried to follow
26 Mr. Boniface but again Mr. Clillie pushed her
27 and this time he tried to kiss her. She got

1 away and went up the stairs. She went to the
2 bedroom where her friend and Mr. Boniface
3 were. She later left to go to the bathroom,
4 which was down the hall. When she came out of
5 the bathroom, Mr. Clillie grabbed her from
6 behind, pulled her into an empty bedroom, put
7 the bed against the door, and then pinned her
8 on the bed. He started grabbing at her breasts
9 and crotch over her clothes. She was trying
10 to get away. He tried to put his hand down
11 her pants but was not successful. She was,
12 during this time, screaming for help.
13 Mr. Boniface came to try to help but he was
14 not able to open the door because the bed was
15 blocking it. He called the police. Two
16 officers responded to the call and they were
17 able to get the door open. When they did so,
18 they found Mr. Clillie holding the complainant
19 onto the bed.

20 Defence counsel had made the submission
21 that I should accept or interpret these facts
22 as being that from Mr. Clillie's distorted
23 point of view that night, the bed was placed
24 against the door to ensure that they could
25 have privacy.

26 I have great difficulty accepting this
27 interpretation of events.

1 The bed had the effect of preventing
2 access to the room where Mr. Clillie had
3 forcibly brought the complainant after twice
4 before that having tried to kiss her against
5 her will. The bed was enough to prevent
6 Mr. Boniface from opening the door and she was
7 screaming on the other side of it. The fact
8 that two police officers were later able to
9 open the door does not change the fact that
10 the bed was blocking the door. On the whole
11 of the circumstances, I find the only
12 reasonable interpretation of the facts is that
13 Mr. Clillie was determined to do what he had
14 set out to do. He knew Mr. Boniface was
15 nearby and he was trying to prevent anyone
16 from getting in to intervene again because he
17 had already been interrupted downstairs in the
18 livingroom one of the times he had tried to
19 kiss the complainant.

20 This case, in my view, is very different
21 in nature from what is sometimes referred to
22 as a "groping" case. This is not an
23 intoxicated person "groping" a clothed woman.
24 This is an intoxicated man determined to force
25 his will on a woman and completely ignore her
26 views of the matter and to use force to
27 confine her and subdue her to his will. I do

1 not think it takes a lot of imagination to
2 figure out what would have happened if there
3 had not been the intervention first from Mr.
4 Boniface, and then from the police.

5 Mr. Clillie showed complete disregard for
6 the complainant and complete contempt for her
7 personal integrity. He ignored her physical
8 resistance to him and her screams for help. In
9 my view, this is a very serious incident.

10 That said, I think the Crown prosecutor is
11 correct in pointing out that Mr. Clillie must
12 be sentenced for what he actually did, not for
13 what could have happened if he had not been
14 stopped. The complainant is lucky obviously
15 that he was stopped. But so is he. If he had
16 not been stopped, and if things had progressed
17 in the direction that they appeared to be
18 heading, he could be looking today at a
19 sentence of several more years in jail and a
20 long long time before he could hope to see his
21 daughter again.

22 The principles of sentencing that I have
23 to apply are set out in the Criminal Code and
24 I am not going to quote them today. But I
25 have reviewed them and I have considered them.

26 The paramount sentencing objectives in
27 this case are deterrence and denunciation.

1 This is because sexual assault is a very
2 prevalent crime in this jurisdiction and the
3 need to reinforce the message that this type
4 of conduct, that shows disregard and contempt
5 for women's personal and sexual integrity, is
6 unacceptable. That need is very much at the
7 forefront of the Court's mind when imposing
8 sentences for crimes of this nature. People
9 have to understand that they have to take 'no'
10 for an answer. It is as simple as that.

11 The fundamental sentencing principle under
12 our law is proportionality. A sentence must
13 be proportionate to the seriousness of the
14 offence and the level of blameworthiness of
15 the offender.

16 Other important sentencing principles in
17 this case are parity and also restraint.
18 Restraint takes on a particular importance
19 when dealing with aboriginal offenders by
20 virtue of Section 718.2(e) of the Criminal
21 Code as interpreted by the Supreme Court of
22 Canada in the cases of R. v. Gladue [1999]
23 1 SCR 688 and R. v. Ipeelee 2012 SCC 13.

24 Just last week, on March 20th, 2013, in my
25 sentencing decision in R. v. Green I reviewed
26 the main features of those two Supreme Court
27 of Canada cases and the responsibilities that

1 they place on a sentencing Judge. For the
2 purpose of this case, I adopt the comments
3 that I made in that case and I have applied
4 the same principles here.

5 I have taken judicial notice of the
6 matters that the Supreme Court of Canada has
7 said sentencing courts must take judicial
8 notice of.

9 I have also taken into consideration the
10 factors specific to Mr. Clillie about his
11 background and upbringing, which are part of
12 the constellation of factors that must be
13 examined in assessing his level of
14 blameworthiness for this crime.

15 And given that here the issue really is
16 whether time served would be a fit sentence,
17 or whether an additional jail term needs to be
18 imposed today, I have specifically turned my
19 mind to the question of which sanctions might
20 be most appropriate to his case given his
21 aboriginal background and some of the
22 struggles that he has faced, and which
23 sanctions are more likely to achieve the
24 objectives of sentencing. More specifically,
25 as I have said, I have reflected about whether
26 a further term of incarceration would be the
27 best way to further the objectives of

1 sentencing, or whether something else would.

2 I have heard about Mr. Clillie's personal
3 circumstances from his counsel and also from
4 him directly when he spoke to the Court
5 earlier today.

6 He is an aboriginal man and grew up mostly
7 in Wrigley. He was raised by his mother as a
8 single parent. Mr. Clillie advised that his
9 mother did go to residential school and that
10 she has and continues to struggle with
11 alcohol. Mr. Clillie says he was sexually
12 abused when he was very young and again as a
13 teenager when he lived in a group home in Fort
14 Simpson. He said he was also physically
15 abused in that home.

16 Mr. Clillie has come to recognize that he
17 should not consume alcohol.

18 I have heard that after he served his last
19 jail term, for a time he was able to maintain
20 employment and a sober lifestyle and that
21 during that period of time he was not involved
22 in a single incident involving the police.
23 That suggests that if Mr. Clillie stays away
24 from alcohol, he does not constitute a threat
25 to public safety. It suggests that he could
26 be productive and turn his life around if he
27 chooses to and if he stays away from alcohol.

1 There is also compelling evidence that when he
2 does consume alcohol, he very much represents
3 a threat to public safety.

4 Mr. Clillie is now 32 years old. He has a
5 long criminal record that starts in 2001 and
6 continues with a steady pattern of convictions
7 until 2009 at which point he received a
8 significant jail term for a sexual assault
9 charge. He received a jail term of 18 months
10 followed by probation but that was after
11 receiving credit for about eight months of
12 pre-trial custody. So, in effect, this means
13 that the sentence that was deemed fit for that
14 offence was well into the penitentiary range.
15 From this I infer that it was a serious sexual
16 assault.

17 As I have already said, I consider that
18 what happened on the date of this incident was
19 a serious assault. Mr. Clillie showed
20 persistence in its commission and he used his
21 own physical strength to overpower his victim.
22 He ignored her words and her actions and
23 proceeded with complete disregard for her as a
24 person.

25 I have heard that Mr. Clillie has a
26 daughter and that he loves her very much and
27 that his focus at this point, and his primary

1 concern, is to be released from prison as soon
2 as possible so that he can try to get her back
3 in his care and look after her. I have no
4 doubt that Mr. Clillie loves his daughter.
5 And I am sure he would not want her to be
6 treated, when she grows up, in the way that he
7 treated the complainant in this case. This is
8 what people have to remember - this
9 complainant, and complainants in all sexual
10 assault cases that come before this Court, and
11 courts in general, are someone's daughter or
12 someone's sister, someone's wife or someone's
13 mother.

14 Apart from the seriousness of the offence
15 itself, the main aggravating factor in this
16 case is the criminal record, especially
17 because it includes several entries for crimes
18 of violence, but more particularly because of
19 the entry from 2009 for the very same offence
20 that brings Mr. Clillie before the Court
21 today.

22 As I said during submissions this morning,
23 a person should not be punished over and over
24 again for the convictions that appear on his
25 or her criminal record but the record does
26 raise concerns from the point of view of
27 specific deterrence and concerns also about

1 the protection of the public.

2 That said, there are mitigating factors as
3 well. Mr. Clillie has pleaded guilty.

4 In assessing the weight to be given to
5 that plea, I have considered that it was not
6 an early guilty plea. There was a preliminary
7 hearing and a date had been set for a jury
8 trial, although the subpoenas had not yet been
9 served or even issued. But the fact is that
10 this case was hanging over the complainant's
11 head for quite some time.

12 I have also considered that Mr. Clillie
13 was virtually caught in the act by the two
14 police officers. There was also an
15 independent witness to at least part of his
16 actions. So this is one of those cases where,
17 it appears, he was inescapably caught. But at
18 the same time, I heard that the complainant's
19 version of events at the preliminary hearing
20 was different than what had been alleged in
21 her statement to the police in some respect,
22 so that could have presented a problem for the
23 Crown at trial.

24 In addition, what the guilty plea has
25 done, quite apart from any challenges the
26 Crown might have had with its case, is that it
27 has spared the complainant from having to come

1 to court to have to testify about this and it
2 has provided her with certainty of outcome.
3 This Court sees complainants testify in these
4 types of cases on a regular basis and knows
5 that it is usually a very difficult and
6 painful experience for them. So sparing
7 someone from that, I have always said, is a
8 very significant thing.

9 In addition, the guilty plea has saved the
10 resources and time required for a trial in a
11 jurisdiction where, more and more, trial time
12 is precious, especially on circuit, given the
13 number of pending cases that we have. So
14 while Mr. Clillie is not entitled to the same
15 mitigating effect for his plea as he might
16 have if he had entered his plea at the very
17 first opportunity, I have concluded that he
18 still deserves considerable credit for it.

19 He is also entitled to credit for the year
20 he spent on remand. In this case, I have
21 discretion to give up to one and half credit
22 for that time but I do not have a lot of
23 information that would justify me doing so. I
24 know that he has had access to certain
25 programs while he was in custody and I have
26 not heard any specific submissions about his
27 case manager, or some other official from the

1 jail, conveying that he would have earned
2 remission had he been a serving prisoner. So
3 I think that the information that I have
4 before me today falls short of what would be
5 required to establish that the circumstances
6 justify enhanced credit for the remand time in
7 his individual case.

8 I have considered the cases that were
9 submitted. As Crown counsel pointed out, no
10 two cases are alike and none of the ones
11 submitted are on all fours with this one. It
12 is true that certain facts in some of those
13 cases, like the removal of the clothing or
14 more intrusive violations of the complainant,
15 make in that respect some of those cases more
16 serious. But here the level of force that was
17 used and Mr. Clillie's persistence in his
18 actions despite the complainant's protests and
19 her attempts to resist are features of his
20 crime that are more serious and are not
21 present in some of these cases referred to.

22 As I noted in my exchange with counsel
23 this morning, at first blush, especially in
24 light of the criminal record and the sentence
25 that was imposed in 2009 for a sexual assault,
26 and some of the aggravating features of this
27 offence, I had concerns about the Crown's

1 position. The additional submissions that
2 were provided to me were helpful in
3 understanding how the Crown came to its
4 position. And now of course I also have the
5 benefit of defence counsel's submissions, as
6 well as information that Mr. Clillie himself
7 has provided, so I have a much fuller picture
8 of the situation than I did when I raised my
9 concern with Crown counsel.

10 I think on the whole the Court would be
11 perfectly justified, on a offence like this
12 one, in imposing a sentence at the high end of
13 the territorial range given the facts and the
14 criminal record. But I have considered
15 carefully the submissions of counsel, what I
16 heard from Mr. Clillie himself, and I have
17 reminded myself that rehabilitation should
18 never be overlooked even when it is not the
19 paramount factor. And I have also, as is my
20 duty, given due consideration to the fact that
21 Mr. Clillie is an aboriginal offender. I have
22 concluded, after giving the matter some
23 thought, that this is a case where it is
24 possible perhaps to approach the sentencing in
25 a manner different than what I might otherwise
26 do, with the view of crafting a sanction that
27 addresses, at least to an extent, some measure

1 of restorative and rehabilitative objectives
2 in the hopes of course that Mr. Clillie will
3 change his ways and will rehabilitate himself.
4 Because ultimately that is the best way to
5 protect the public.

6 Mr. Clillie has said that he thought
7 probation would be helpful for him.

8 At first blush, again his past record
9 might not suggest so, because there are a lot
10 of convictions for breaches on his record.
11 But he said that on his last sentence he found
12 being on probation quite useful. He has also
13 said that he is prepared to abide by a
14 no-drinking condition because he recognizes
15 that this is essential for him to be and
16 remain a productive member of his community.

17 I asked him specifically about this issue
18 of the no-drinking condition because the
19 objective in putting a condition like that in
20 a probation order is not to set him up for a
21 breach and cause him more problems. It is to
22 assist him in his own efforts at maintaining
23 the course he says he wants to be on.

24 So I will make probation part of this
25 sentence, even though someone looking at the
26 criminal record may think that it is not the
27 greatest of ideas. I am going to make

1 probation a part of the sentence as an
2 indication of the Court's hope that it will be
3 helpful and will be used in the way that it
4 can be and assist Mr. Clillie in his
5 rehabilitation.

6 I am going to make it a long probation
7 order with meaningful conditions, and I am
8 going to include a no-drinking condition. It
9 may be a hard condition for Mr. Clillie to
10 comply with. And it is because it will be a
11 burdensome probation order that I feel I can
12 reduce what would have otherwise been the
13 custodial portion of his sentence.

14 Having taken all of this into account, and
15 in all honesty, with some hesitation, but
16 hoping that it is the right decision on this
17 case, I have decided not to impose a further
18 jail term on Mr. Clillie today.

19 I want to make it clear, though, that this
20 decision that I have come to is tied in with
21 the very specific features of this case and
22 the specific circumstances of Mr. Clillie as
23 have been presented to me. This decision
24 should not be considered as a precedent
25 showing the usual range of sentence that would
26 normally be imposed with these kinds of facts
27 and this kind of criminal record. As I have

1 already said, I think it was obvious this
2 morning I certainly do not think that the
3 range that the Crown was seeking here is
4 excessive. If anything, I think it is quite
5 lenient. And the fact that I am about to show
6 even more leniency does not detract from how I
7 view the seriousness of this type of conduct.

8 Stand up please, Mr. Clillie.

9 Mr. Clillie, you have heard what I have
10 said. For the offence that you have
11 committed, I have decided that a fit sentence
12 would be a sentence of one year, which is
13 incredibly lenient given the facts. I will
14 give you a year credit for the time that you
15 spent on remand, one day for each day spent on
16 remand.

17 THE ACCUSED: Yes, ma'am.

18 THE COURT: So that means that there
19 will not be any further jail term today except
20 one day which will be considered served by you
21 having been here today.

22 You may sit down.

23 I am going to place you on probation for
24 three years. It's a long time. You will have
25 the usual conditions, the mandatory conditions
26 that the clerk will explain to you - the main
27 one is to keep the peace and be of good

1 behavior. I am sure that you know what that
2 means - it has been explained to you many
3 times.

4 THE ACCUSED: Yes, ma'am.

5 THE COURT: I will add a condition that
6 you take counselling as directed by your
7 probation officer. That you abstain
8 absolutely from the possession or consumption
9 of alcohol for the full three years. And that
10 you perform 240 hours of community service
11 work during the first 18 months of your
12 probation. I don't know what that will be, it
13 will be for the probation officer to decide.
14 I am sure, whether you are living in Wrigley
15 or elsewhere, that there are a lot of things
16 that can be done by a healthy strong young man
17 such as yourself to assist the community and
18 other members of the community. So I am
19 leaving it very general, 240 hours to be
20 completed within the first year and a half of
21 your probation.

22 THE ACCUSED: Yes, ma'am.

23 THE COURT: The details can be worked
24 out with your probation officer.

25 You must understand that if you reach a
26 point where you do not think you can comply
27 with the no-alcohol condition, it is your

1 responsibility to make a request to this Court
2 to have it changed. I know that surmounting
3 addiction is a difficult thing but because of
4 what you have told me today, I am putting this
5 condition in and it is going to be an offence
6 if you breach this. And with your record,
7 unfortunately, it is almost guaranteed that
8 you would get sent back to jail if you
9 breached this term. So if you reach a point
10 where you do not think that you can continue
11 to follow it, you should apply to the Court
12 and explain the situation and see if the Court
13 will amend it, changing that condition; do you
14 understand?

15 THE ACCUSED: Yes, ma'am.

16 THE COURT: Because as I said, this
17 no-alcohol condition is not designed to cause
18 you more problems, it is the opposite, it is
19 to help you, based on what you have said, to
20 try to stay the course and do what you seem to
21 be able to do for quite some time after you
22 were released last time.

23 I have heard what your lawyer explained,
24 what your focus is, what you want to do with
25 your life, what you want to do with your
26 daughter. And I have already said this, I
27 encourage you to think very much about your

1 daughter, think about how you would like her
2 to be treated by men when she is older and
3 from this day on you treat women the way you
4 would like them to treat your daughter. And
5 that will probably keep you out of this kind
6 of trouble.

7 THE ACCUSED: Yes, ma'am.

8 THE COURT: There will be a firearms
9 prohibition order under Section 109 of the
10 Criminal Code as it is mandatory in a case
11 like this.

12 There will also be a DNA order. It is
13 also mandatory in a case like this.

14 There will be an order that Mr. Clillie
15 comply with the Sex Offender Information
16 Registration Act. The order will be for life
17 for the reasons outlined by counsel. Under
18 the Criminal Code, that is a requirement.

19 I am not going to impose a victim of crime
20 surcharge in this case because Mr. Clillie has
21 been on remand for the last year. I expect
22 that he will need some time to get his life on
23 track again and get employment so I think it
24 would result in hardship if I imposed a victim
25 of crime surcharge.

26 There will be an order for the return of
27 any exhibits seized to their rightful owners,

1 if that's appropriate. Otherwise they can be
2 destroyed but only at the expiration of the
3 appeal period.

4 Is there anything that I have overlooked?

5 MS. BOND: The only other thing, Your
6 Honour, was the issue of the 113 exemption on
7 the firearms order. I am not sure whether you
8 turned your mind to it.

9 THE COURT: Thank you for reminding me.
10 I did. I think that I am going to leave that
11 to Mr. Clillie to apply himself to the
12 competent authority if and when there are
13 specific parameters for him to do so. This
14 means, Mr. Clillie, that even though I have
15 made a firearms prohibition, Mr. Boyd can
16 explain this to you, there is a mechanism
17 where you can ask for that to be lifted for
18 very specific purposes, basically going out on
19 the land hunting and trapping. So it is not
20 that you have the right to have a firearm all
21 the time but you can ask for permission to
22 have one for very specific purposes. But I
23 would rather leave that decision up to the
24 person who would be getting an application
25 from you and details of what it is that you
26 want to do instead of a general thing.

27 THE ACCUSED: Yes, ma'am.

1 THE COURT: Anything further from
2 defence?

3 MR. BOYD: No, thank you, Your Honour.

4 THE COURT: All right.

5 THE CLERK: The firearm prohibition is
6 for ten years?

7 THE COURT: Yes, commencing today
8 because there is no jail term.

9 This has been quite a long day but I want
10 to thank you both for your submissions,
11 counsel. Sentencing is always a difficult
12 task and it is certainly less difficult when
13 the Court has the benefit of thorough
14 submissions so I thank you both.

15 I wish you luck with the next chapter of
16 your life, Mr. Clillie.

17 THE ACCUSED: Thank you, ma'am.

18 THE COURT: And I hope that we won't see
19 you back here ever again.

20 THE ACCUSED: Yes.

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