

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

RUSSELL DOLL

Transcript of the Reasons for Sentence delivered by The Honourable Justice V. A. Schuler, sitting in Yellowknife, in the Northwest Territories, on the 19th day of December, 2014.

APPEARANCES:

Mr. M. Lecorre: Counsel for the Crown

Mr. N. Homberg: Counsel for the Accused

(Charge under s. 151 of the Criminal Code of Canada)

1 THE COURT: All right. Well, I will give
2 my decision now and, in the decision, I am going
3 to refer to the victim of the offence as "the
4 victim", and the reason I do that is simply
5 because if the reasons are put on the court
6 website or otherwise published then she is not
7 identified by name.

8 So Russell Doll is before the Court today
9 having pled guilty to a charge of sexual
10 interference. He admits that during the summer
11 of 2003, when he was 43 years old, he sexually
12 touched the nine-year-old daughter of the family
13 at whose home he was living at the time.

14 On the evening in question, the victim was
15 on the couch and Mr. Doll, who was intoxicated at
16 the time, sat down beside her and pulled down her
17 pajama bottoms and underwear, grabbed her
18 buttocks and ran his finger up and down the crack
19 in her buttocks several times and also with his
20 finger, circled her anus. This lasted
21 approximately ten minutes before Mr. Doll pulled
22 up her underwear and pajama bottoms and left the
23 room.

24 Mr. Doll also admits that he was a friend of
25 the victim's family and that while he was living
26 with them, the victim called him uncle.

27 Crown counsel characterizes this as a breach

1 of trust situation whereas defence counsel
2 disagrees with that. He says Mr. Doll was not
3 baby-sitting, nor related to the victim. He
4 relies on the case of R. v. G.L., 2011 NWTSC 36,
5 a decision of Justice Vertes in which there is an
6 analysis of breach of trust when it comes to
7 children, and I have heard now that Crown counsel
8 also refers to certain things that were said in
9 that case.

10 In that case, Justice Vertes pointed out, as
11 has been emphasized in other cases, that children
12 are particularly vulnerable to oppression and
13 abuse by adults simply because of the physical
14 power adults have and can use to control them.
15 But when the child has a relationship with the
16 adult whereby the child places trust in the
17 adult, the harm caused by a betrayal of that
18 relationship is compounded.

19 I will quote from page 9 of the copy of the
20 decision in the form that it was submitted to me,
21 where Justice Vertes said:

22 For there to be a position of
23 trust, there must be some ongoing
24 relationship, some status, between
25 the offender and the child that is
26 more than merely occasional or
27 transitory.

28 So, in this case, the evidence is Mr. Doll
29 lived in the victim's home during the summer of

1 2003 (although no specific time period or length
2 of time is in evidence), that he was a friend of
3 the family, and that she called him "uncle" while
4 he was living at the home.

5 In my view, what differentiates this case
6 from the G.L. case is that the victim called
7 Mr. Doll "uncle", which does suggest that she
8 perceived him as family, which might not be the
9 case if, for example, she has simply used his
10 first name. So, in my view, there is certainly
11 an element of breach of trust in this case.
12 Mr. Doll was living in the home, she is a child
13 in the home, someone to whom she refers as
14 "uncle". Obviously a closer relationship than
15 simply a boarder, for example, in the home. So
16 while it may not be a classic breach of trust
17 situation, there is certainly an element of
18 breach of trust.

19 A Victim Impact Statement has been filed and
20 in it the victim describes the long-lasting,
21 negative, emotional impact Mr. Doll's actions
22 have had on her and particularly on her sense of
23 trust, which I think is the impact most
24 frequently described by victims of sexual
25 offences based on the many Victim Impact
26 Statements that I have read as a judge. The
27 emotional and psychological impact of this type

1 of offence (in other words, the harm that it is
2 likely to cause) is why deterrence is such an
3 important factor in sentencing for this type of
4 offence.

5 As to Mr. Doll's circumstances, he is now in
6 his early 50s, he has a Grade 10 education, and
7 has worked at various jobs, sometimes in the oil
8 fields and also as a plasterer and labourer. He
9 has three adult sons to whom, I am told, he has
10 provided some financial assistance and whom he
11 sees from time to time. He had a difficult
12 childhood in which he witnessed violence and
13 alcohol abuse, and he began experimenting with
14 alcohol and drugs at the age of 11. He is of
15 Metis heritage and is originally from Alberta.
16 In 2003 when this offence happened, he was living
17 in Yellowknife and was self-employed as a carver.
18 He was abusing alcohol at the time.

19 As to mitigating factors, the guilty plea is
20 the most significant one. It indicates that
21 Mr. Doll is taking responsibility for the
22 offence, which in itself indicates remorse, as
23 does his apology to the victim relayed through
24 his counsel this morning. The guilty plea also
25 means that the victim does not have to testify at
26 a trial, and the plea has come early enough that
27 there was not a trial date looming, which in

1 itself would likely have been a source of stress
2 and anxiety for the victim.

3 I also take into account that Mr. Doll is
4 Metis and that the factors referred to in the
5 Gladue decision must be considered.

6 The sad and difficult home life that
7 Mr. Doll experienced, his abuse of alcohol, are
8 all factors that no doubt contributed to the life
9 he has led and the poor choices he has made, but
10 as he has done today by his guilty plea, he has
11 to take responsibility for those choices. Sexual
12 abuse of women and children is such a huge
13 problem with such devastating consequences in
14 this jurisdiction and in many, if not all,
15 jurisdictions in Canada that Mr. Doll's
16 aboriginal status cannot be a significant factor
17 in the sentence he receives for this offence.

18 I must also consider Mr. Doll's criminal
19 record, which is extensive. He has been before
20 the courts in Alberta, the Yukon, and the
21 Northwest Territories regularly since 1978. He
22 has been convicted of a variety of offences,
23 which, not surprisingly, reflect some of the
24 issues he experienced as a child; that is,
25 drinking and driving offences and narcotics
26 offences. He also has a record of violent
27 offences. I count six assaults and one uttering

1 threats since 1993. I do note that for many of
2 the offences he was fined or received short jail
3 sentences, likely indicating that they were not
4 the most serious examples of the offence.

5 However, the sheer number of offences on his
6 record indicates to me that Mr. Doll has
7 difficulty complying with the law.

8 I must also refer to Mr. Doll's previous
9 conviction for sexual interference. That
10 conviction was in 2013 for an offence that
11 occurred in 2005. Mr. Doll appealed the
12 four-year sentence he received in that case and
13 it was reduced by the Northwest Territories Court
14 of Appeal to two years in jail followed by three
15 years' probation. So that offence was committed
16 after the offence I am now sentencing Mr. Doll
17 for, although he was convicted of it before the
18 conviction for this offence.

19 Although Mr. Doll should be considered a
20 first-time sexual offender as far as the offence
21 before me goes, the fact that two years later he
22 committed a similar offence is relevant because
23 it goes to the issue of rehabilitation and
24 whether the Court can feel confident that
25 Mr. Doll is not likely to commit further
26 offences, and in combination with the fact that
27 Mr. Doll was convicted of other offences after

1 2003, in particular two assaults, unfortunately
2 the Court can have little confidence that
3 Mr. Doll will abide by the law in the future.

4 I do take into account that the sexual
5 interference that was committed in 2005 has both
6 similarities to and differences from the offence
7 I am dealing with today. Again, the victim was a
8 young child. In that case, a child of five or
9 six years old whom Mr. Doll was baby-sitting at
10 the time. The 2005 offence involved three
11 separate incidents of touching, in two of which
12 Mr. Doll touched the victim's vagina. There was
13 no guilty plea to the 2005 offence. The 2005
14 offence can be characterized as more serious
15 because it was repeated; however, the main and
16 most significant factor, in my view, was that
17 both the offence before the Court today and the
18 earlier one involved sexual interference with a
19 child and, for that reason, both must be
20 considered serious offences.

21 Crown counsel seeks a sentence of two years'
22 imprisonment consecutive to the sentence that
23 Mr. Doll is currently serving, that being the
24 two-year sentence on the other sexual
25 interference charge. Defence counsel seeks a
26 sentence of 16 months' imprisonment, which he
27 submits would reflect significant credit for the

1 guilty plea.

2 Crown counsel referred to the analysis in
3 the previous Doll case. That involves where a
4 sentence lies in the four quartiles of sexual
5 offences, and with the utmost respect, I have to
6 say that that analysis, at least as far as I am
7 aware, is a novel sentencing approach and I do
8 not see any need to comment on it, and since I
9 have not had adequate time today to consider that
10 approach, I do not want this decision to be
11 understood as adopting it. I also believe, if my
12 recollection serves me, that there have been
13 different views expressed in the jurisprudence
14 from the Northwest Territories Court of Appeal
15 and the Alberta Court of Appeal on whether a
16 Memorandum of Judgment on sentencing from a panel
17 of the Court has binding authority, and this
18 issue of course is really simply of interest to
19 counsel, but I just want to make it clear that I
20 find that I need not delve into or decide those
21 matters because of the positions that have been
22 taken by counsel and because of my view of what
23 is an appropriate sentence, in any event, in this
24 case.

25 So the Crown also seeks a number of
26 ancillary orders which I am going to deal with
27 first. Since this is a primary designated

1 offence, there will be a DNA order in the usual
2 terms. There will also be a Section 109 firearms
3 and other weapons prohibition order which will
4 commence today and expire ten years from
5 Mr. Doll's release from imprisonment on this
6 sentence. There will also be an order that
7 Mr. Doll register and report pursuant to the Sex
8 Offender Information Registration Act for a
9 period of 20 years.

10 Finally, the Crown seeks an order under
11 Section 161(1)(b) of the Criminal Code for a
12 period of somewhere between ten years and life.
13 Such an order must be considered when sentencing
14 for an offence under Section 151 of the Criminal
15 Code when the victim is under the age of 16, but
16 it is discretionary. In other words, the Court
17 does not have to make the order. It is clear
18 that such an order, if made, is considered part
19 of the sentence (in other words, the punishment)
20 because Section 161(1) says it may be made "in
21 addition to any other punishment that may be
22 imposed" for the offence. The order, if made,
23 would prohibit Mr. Doll from seeking, obtaining,
24 or continuing any employment, whether or not the
25 employment is remunerated, or becoming or being a
26 volunteer in a capacity that involves being in a
27 position of trust or authority towards persons

1 under the age of 16 years of age. However, the
2 Court can also make the order subject to
3 conditions or exemptions.

4 Counsel did not refer to any cases that
5 dealt with Section 161, however, I have had the
6 opportunity to review the decision of the Alberta
7 Court of Appeal in R. v. R.K.A., 2006 ABCA 82,
8 which is very helpful and discusses some of the
9 cases that have dealt with that section. The
10 R.K.A. case says the purpose of the order is to
11 protect children. So to make the order, the
12 Court has to be of the view that there is a
13 serious risk to the safety of the child or
14 children under the age of 16. There are no other
15 prerequisites, however, the circumstances of the
16 offence, the presence of a related record, and
17 the various factors that are considered on
18 sentencing may also be considered in determining
19 whether to make the order.

20 In this case, I take into account that
21 Mr. Doll has now been convicted twice of sexual
22 interference with children. In both cases, the
23 children were quite young (aged nine in one case
24 and five or six in the other). The 2005 offence
25 where he was baby-sitting the child was a breach
26 of trust. The 2003 offence has an element of
27 breach of trust.

1 There is no evidence before me as to whether
2 Mr. Doll has sought professional help for his
3 behaviour, which is behaviour that I do not
4 accept can simply be explained by his use of
5 alcohol, nor can it be characterized as impulsive
6 since there are two offences two years apart and
7 the second of which involves touching more than
8 once, and by "second", I mean the second in time.

9 Mr. Doll has expressed remorse in relation
10 to the matter dealt with today and I do take that
11 into account. I also take into account that the
12 offences are from 2003 and 2005, therefore,
13 approximately eight to ten years ago. There is
14 no evidence of any similar behaviour since then,
15 but I do not think that should be determinative
16 because, as we see with both of his convictions,
17 sexual offences against children are often not
18 disclosed for many years.

19 I also consider on the issue whether a
20 Section 161 order should be made, Mr. Doll's
21 criminal record in general which indicates a
22 long-standing inability to comply with the law.

23 I consider that not being able to work with
24 or volunteer with children is unlikely to cause
25 any hardship or prejudice to Mr. Doll given that
26 other than baby-sitting on the occasion when the
27 2005 incident occurred, there is no indication

1 that he has worked or volunteered in situations
2 that would put him in contact with children.

3 So in considering all of this, I am
4 satisfied in all the circumstances that Mr. Doll
5 does pose a serious risk to children and,
6 accordingly, I will make the order under Section
7 161. It will prohibit Mr. Doll from seeking or
8 obtaining any employment, whether or not the
9 employment is remunerated, or becoming or being a
10 volunteer in a capacity that involves being in a
11 position of trust or authority towards persons
12 under the age of 16 years. The order will be for
13 a period of 20 years, and I have decided on that
14 because of a lack of other circumstances that
15 would warrant a lengthier order such as evidence
16 of attempts to obtain employment that would bring
17 him into contact with children, which was one of
18 the circumstances in the R.K.A. case. I do note
19 that under Section 161(3), the Court can vary the
20 order if circumstances warrant it and that that
21 application can be made by the prosecutor or the
22 accused.

23 As I have indicated, the order is part of
24 the punishment, so I have considered it also in
25 relation to the sentence to be imposed today --
26 or the rest of the sentence to be imposed today.

27 Stand please, Mr. Doll. As to the sentence

1 itself, having considered all the circumstances,
2 and I am giving you substantial credit for the
3 guilty plea, I impose a sentence of 18 months'
4 imprisonment consecutive to the sentence that you
5 are currently serving, and the victim surcharge
6 will be waived. You may sit down.

7 Mr. Doll, I just want to say that although
8 your record is a lengthy one, as I have already
9 said, in looking at some of the fines and the
10 short jail sentences you have received, the
11 actual offences, I think I can conclude, may not
12 have been very serious. However, with the
13 offence that you have now been convicted of today
14 and the one you are currently serving the
15 two-year sentence on, you are now moving into
16 territory where you can expect much different,
17 more severe sentences. So how much of the rest
18 of your life, because you are no longer a young
19 man, how much of the rest of your life you are
20 going to spend in jail is really up to you, and I
21 think you should think about that very carefully.

22 Is there anything else, counsel, that I need
23 to deal with?

24 MR. LECORRE: Not from the Crown, Your
25 Honour.

26 MR. HOMBERG: No, Your Honour.

27 THE COURT: Thank you very much for

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resolving this case and we will close court then.

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Certified Pursuant to Rule 723
of the Rules of Court

Jane Romanowich, CSR(A)
Court Reporter