

R v Dick, 2018 NWTSC 15

S-1-CR2017000040

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- vs. -

GARRETT DICK

Transcript of the Reasons for Sentence by The Honourable
Justice S. H. Smallwood, at Yellowknife in the Northwest
Territories, on February 9th A.D., 2018.

APPEARANCES:

Mr. T. Johnson: Counsel for the Crown

Mr. T. Bock: Counsel for the Accused

Charge under s. 271 Criminal Code

No information shall be published in any document or
broadcast or transmitted in any way which could identify
the victim or a witness in these proceedings pursuant to
s. 486.4 of the Criminal Code of Canada

Official Court Reporters

1 THE COURT: Garrett Dick has pleaded
2 guilty to one count of sexual assault. The
3 charge arises from an incident which occurred
4 on November 16th, 2013 in Inuvik. Mr. Dick
5 entered his guilty plea on December 4th, 2017,
6 and the matter was adjourned to February 6th,
7 2018 for sentencing and a pre-sentence report
8 was ordered. It is now my responsibility to
9 sentence Mr. Dick for this offence.

10 The facts of the offence are as outlined
11 in the Agreed Statement of Facts and, briefly,
12 they are:

13 On November 16th, 2013, Garrett Dick and
14 the victim were at a party at a home in
15 Inuvik, Northwest Territories. The two did
16 not know each other prior to this.

17 After drinking alcohol, the complainant
18 went to sleep on a mattress in the home. She
19 was alone on the mattress and fully clothed
20 when she went to sleep.

21 Mr. Dick pulled down the complainant's
22 pants and underwear while she was asleep and
23 had sexual intercourse with her. When she
24 awoke the next day, the victim's pants were
25 down around her ankles and she had "a funny
26 feeling" in her vagina that made her believe
27 that her vagina had been penetrated. She got

1 up out of bed, pulled up her clothes and left
2 the house. She went home and a shower.

3 The next day on November 18th, the victim
4 went to the hospital in Inuvik and reported
5 the sexual assault. The RCMP were notified
6 and a sexual assault examination was
7 performed. Samples obtained during the sexual
8 assault examination, as well as the clothing
9 that had been worn the night by the victim,
10 were sent for forensic testing by the RCMP.
11 DNA analysis determined that the underwear
12 that the victim was wearing had human semen on
13 them which matched the DNA of Mr. Dick.

14 Mr. Dick had vaginal sexual intercourse
15 with the victim while she was asleep and
16 unable to consent.

17 The Crown is seeking a sentence of two
18 years and five months incarceration followed
19 by two years probation. Mr. Dick has been in
20 custody for 105 days, which amounts to 157 and
21 a half days of credit at the rate of one and a
22 half days for every day spent in pre-sentence
23 custody. The defence is seeking a sentence of
24 two years less a day after credit for remand
25 credit time and to be followed by two years
26 probation.

27 Mr. Dick has a criminal record. He has 17

1 convictions starting in 2000 and continuing up
2 until this year. There are three property
3 offences, three offences of violence, and 11
4 offences against the administration of justice
5 on his record. He has a conviction for
6 assault in 2008, another in 2009, and a third
7 in 2011. He has received sentences for those
8 offences, ranging from a fine and probation to
9 40 days in custody. His last conviction was
10 entered in January of this year for failing to
11 comply with conditions of his recognizance.

12 Mr. Dick is of Inuvialuit descent and this
13 requires me to consider section 718.2(e) of
14 the Criminal Code which states that all
15 available sanctions, other than imprisonment,
16 that are reasonable in the circumstances
17 should be considered for all offenders, paying
18 particular attention to the circumstances of
19 Aboriginal offenders.

20 I have considered the principles set out
21 by the Supreme Court of Canada in Gladue and
22 Ipeelee and the requirement to consider the
23 unique systemic or background factors which
24 may have played a part in bringing an
25 Aboriginal offender before the courts and the
26 types of sentencing procedures and sanctions
27 which may be appropriate in the circumstances

1 because of the Aboriginal background.

2 In this case I have the benefit of a
3 pre-sentence report and I have heard from
4 defence counsel about Mr. Dick's background
5 and circumstances.

6 Mr. Dick is 39 years old and has lived in
7 Inuvik for most of his life. He reportedly
8 had a good childhood that he viewed as mostly
9 positive. His parents did drink and he noted
10 that there was a lot of drinking that he
11 observed. They drank until he was seven and
12 then quit and so they have been sober for some
13 31 years. Mr. Dick recalled seeing a lot of
14 drinking when he was a child.

15 He did not attend residential school but
16 both of his parents did. Both parents were
17 subjected to various forms of abuse at
18 residential school.

19 While he was a child, he did traditional
20 activities, going to whaling camp and bush
21 camp, learning how to hunt and clean game. He
22 has not carried on with those activities as an
23 adult for the most part.

24 Mr. Dick was in a common-law relationship
25 for a number of years and has four children.
26 This relationship that he was in recently
27 ended and was not described as a positive one.

1 It involved substance abuse by both parties
2 and violence by both parties. Mr. Dick also
3 had to deal with the loss of his daughter in a
4 house fire several years ago which has been
5 very difficult for him to deal with and has
6 resulted in a significant amount of guilt.

7 In the pre-sentence report, Mr. Dick
8 acknowledged that he has a substance abuse
9 problem. He began drinking alcohol when he
10 was 16. He smoked marijuana when he was 14
11 and he began using crack cocaine in 2002 and
12 over the years it has since become his drug of
13 choice. His substance abuse has become a
14 significant problem and he now realizes that
15 he needs to deal with it.

16 A fundamental principle of sentencing is
17 that the sentence must be proportionate to the
18 gravity of the offence and the degree of
19 responsibility of the offender. The courts
20 have consistently said that in cases of sexual
21 assault, and "major sexual assaults" as
22 defined in Arcand, 2010 ABCA 363, that
23 deterrence and denunciation are to be given
24 considerable weight in sentencing.

25 The principle of denunciation involves
26 denouncing unlawful conduct, sending the
27 message that the sexual abuse of sleeping or

1 unconscious women will not be tolerated by the
2 people of Inuvik or the Northwest Territories.
3 Deterrence involves deterring the offender and
4 other persons from contemplating committing
5 this type of offence, imposing a sentence that
6 will make Mr. Dick and others think twice
7 about committing this type of offence.

8 Sexual assault is an offence that occurs
9 far too often in the Northwest Territories.
10 There are far too many incidents and many that
11 involve the abuse of someone who is sleeping
12 or passed out. In this case, the victim was
13 sleeping and unable to defend herself from the
14 offender. A woman should be able to expect to
15 go to sleep alone, fully clothed, and wake up
16 in that same state untouched.

17 Looking at the factors that are applicable
18 in this case, there are mitigating factors and
19 aggravating factors.

20 Mr. Dick has entered a guilty plea. It is
21 not a guilty plea at the earliest opportunity
22 but Mr. Dick did waive the preliminary inquiry
23 in this matter and entered a guilty plea to
24 this offence. It spared the victim from
25 having to testify and provided the certainty
26 of a conviction so the guilty plea is
27 deserving of credit. Mr. Dick, as well, in

1 the pre-sentence report indicated that he
2 accepted responsibility for what he had done
3 and expressed his remorse in the report and
4 through his counsel.

5 In speaking to the Court on Tuesday, he
6 apologized to the victim. The comments of the
7 offender in the pre-sentence report
8 demonstrate that he is sorry for what he did
9 and has gained some insight into what occurred
10 and the underlying causes with respect to his
11 behaviour as well as the impact that this
12 offence had on the victim.

13 There are also aggravating factors.

14 Mr. Dick has a prior criminal record so
15 this is not his first offence. He has a
16 number of convictions, including convictions
17 for offences of violence, albeit none as
18 serious as this offence.

19 It is aggravating that this sexual assault
20 was committed on a sleeping victim. As noted
21 in Arcand, a sexual assault on a person who is
22 asleep or passed out elevates an offender's
23 degree of responsibility. The victim is
24 vulnerable sleeping or unconscious and is not
25 able to consent, to defend themselves, or to
26 call for help.

27 This offence happened in November of 2013

1 and the victim has been waiting since then for
2 resolution this matter. She reported this
3 offence promptly and submitted to a sexual
4 assault examination and then had to wait years
5 for the police to charge Mr. Dick. The delay
6 was not because of the actions of the victim
7 or of the offender.

8 The offender was a suspect initially and
9 the sexual assault examination kit was sent
10 for analysis. However, a DNA report was
11 misinterpreted by a police officer and it was
12 felt that there was not sufficient evidence to
13 proceed with charges. A later review by a
14 supervisor discovered the mistake and charges
15 were laid.

16 That there has been significant delay in
17 this matter is unfortunate. To the victim I
18 say I am sorry that you have had to wait so
19 long to see a charge laid and a conviction in
20 this matter. No victim should have had to
21 wait this long.

22 The victim completed a Victim Impact
23 Statement in which she described the effects
24 that this offence has had on her. Not
25 surprisingly she has been upset and anxious.
26 Shortly after the offence, she left Inuvik and
27 moved elsewhere and she attempted to carry on

1 with her life. When the charge was eventually
2 laid against Mr. Dick, she had to deal with
3 the stress of this again - the stress, the
4 anxiety, and the depression that has resulted
5 and has had a significant affect on her work
6 and her home life.

7 Looking now at the ancillary orders that
8 the Crown has requested, I will deal with
9 those first.

10 This is a primary designated offence so
11 there will be a DNA order pursuant to section
12 487.051 of the Criminal Code.

13 It is mandatory, pursuant to section
14 490.012 of the Criminal Code, that the
15 offender comply with the Sex Offender
16 Information Registration Act. That order will
17 be in place for 20 years.

18 There is a mandatory firearms prohibition
19 order pursuant to section 109 of the Criminal
20 Code. It will be in place for ten years
21 following Mr. Dick's release from
22 imprisonment.

23 There will also be the victim of crime
24 surcharge of \$200 payable in accordance with
25 the regulation.

26 Mr. Dick has been in custody for 105 days
27 which amounts to 157 and a half days credit at

1 the rate of one and a half days credit for
2 every day spent in pre-sentence custody. That
3 equates to just over five months of remand
4 credit which will be deducted from the
5 sentence that I am about to impose.

6 Please stand, Mr. Dick.

7 Taking into account the circumstances and
8 the applicable sentencing principles, I am
9 satisfied that an appropriate sentence is one
10 of two years and five months imprisonment.
11 Five months will be deducted from that
12 sentence for your remand time, leaving two
13 years left to be served.

14 I have given some consideration as to
15 whether you should be put on probation because
16 you do not have a good history of following
17 court orders. But I have decided to follow
18 counsel's recommendation and impose probation
19 because I believe that attending counselling
20 will be an important part of your
21 rehabilitation. If you do not address your
22 substance abuse issues, I expect that you will
23 simply end up before the courts again.

24 There will be a probation order for two
25 years which will commence when you are
26 released from imprisonment, and it will
27 include the statutory conditions and some

1 additional conditions.

2 The conditions are that you keep the peace
3 and be of good behavior. You are not to
4 communicate directly or indirectly with the
5 victim. You are not to attend at the victim's
6 home or place of work. You are to appear when
7 required to do so by the Court. You are to
8 notify the Court or the probation officer in
9 advance of any change of name or address and
10 promptly notify the Court or the probation
11 officer of any change in employment or
12 occupation. You are to report to the
13 probation officer within two days of your
14 release from jail and after that as directed.
15 You are to take any counselling that has been
16 directed by the probation officer.

17 Do you understand those conditions?

18 THE ACCUSED: Yeah.

19 THE COURT: You may have a seat.

20 Is there anything else, counsel?

21 MR. JOHNSON: Not from the Crown, Your
22 Honour.

23 MR. BOCK: No, Your Honour, thank you.

24 THE COURT: All right, thank you, and we
25 will adjourn Court.

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to Rules 723 and 724 of the
Supreme Court Rules,

Lois Hewitt,
Court Reporter

