*R V Clillie*, 2020 NWTSC 8 **S-1-CR-2019-000022**

**IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES**

**IN THE MATTER OF:**

**HER MAJESTY THE QUEEN**

**-v-**

**JUSTIN GERALD CLILLIE**

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**Transcript of the Reasons for Sentence delivered by the Honourable Justice S.H. Smallwood, sitting in Yellowknife, in the Northwest Territories, on the 7th day of February, 2020**

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**APPEARANCES:**

**D. Praught: Counsel for the Crown**

**J. Bran: Counsel for the Defence**

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**Charge(s) under s. 266, 271 and 139(2) of the *Criminal Code***

**There is a ban on the publication, broadcast or transmission of any information that could identify**

**the complainant pursuant to s. 486.4 of the Criminal Code.**

**I N D E X**

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THE COURT: So Justice Gerald Clillie was convicted of three counts: assault, sexual assault and attempt to obstruct justice in relation to events which occurred in August, September and October 2018, involving the victim who was his then girlfriend.

 Mr. Clillie had a trial by a judge and jury. His trial proceeded the week of November 25, 2019, in Hay River. At the outset of the trial he pled guilty to the assault and the attempt to obstruct justice charges. The trial on the sexual assault charge proceeded, and the jury returned a verdict of guilty on the charge of sexual assault. It is now my task to sentence Mr. Clillie for these offences.

 In a decision dated January 17, 2020, I decided the facts of the offences and -- so I do not intend to review all of the evidence again. Briefly, the facts of the assault were that Justin Clillie found the victim in a bedroom of a residence on August 6, 2018, in Fort Providence. He had been looking for her. He was angry and assaulted her. He shoved, kicked and hit her over a period of approximately 20 minutes while they walked from that residence to Henry Minoza’s residence in Fort Providence. As a result of this assault, the victim suffered bruising and swelling to her face and body.

 When they got back to the residence, the Minoza residence, they went into a bedroom before Justin Clillie suggested that they go shower. In the bathroom Justin Clillie forcibly removed the victim’s shirt and pants. She resisted him at first but then gave up and removed her own underwear. She got in the shower, and Justin Clillie got in behind her. He bent her over and had sexual intercourse with her from behind without her consent. While in the shower he also slapped the victim twice.

 This was interrupted by the arrival of the police who had been called by a witness to the assault and were able to locate the residence that they were staying at. They arrived at the residence, entered the bathroom and arrested Mr. Clillie.

 Mr. Clillie was in custody at the North Slave Correctional Centre following his arrest. He called the victim from there several times despite there being an order that he not have contact with her. Seven of those calls were entered into evidence, all made on September 9, 2018. In those calls Justin Clillie repeatedly asked the victim to drop the charges or to lie and say nothing happened.

 The Crown is seeking a global sentence of six years’ imprisonment with five years being imposed for the sexual assault, one year concurrent for the assault and one year consecutive for the attempt to obstruct justice. The defence is seeking a sentence, a global sentence of 36 to 42 months’ imprisonment with 30 to 36 months being imposed for the sexual assault, six months concurrent for the assault and six months consecutive for the attempt to obstruct justice.

 The victim did not complete a victim impact statement; however, from her testimony at the trial and the recorded calls which were entered into evidence, it was apparent that these events had a significant impact on her. She was upset by them; she was angry. She referred in her testimony to asking him why he would handle her like that and why he would humiliate her. I am not surprised that these events would have an impact on the victim both physical and psychological.

 Justin Clillie has a criminal record with 37 convictions on it, dating from 2001 to 2018. His criminal record is significant, and there are a number of convictions which raise concerns. There are 18 offences against the administration of justice and 10 convictions for offences of violence.

 The offences against the administration of justice consist of convictions like failing to comply with an undertaking, failing to comply with a probation order, driving while disqualified, failing to attend court and failing to appear.

 Justin Clillie was also convicted of an assault in 2001, uttering threats in 2004, assault in 2005, two counts of assault and uttering threats later in 2005, assault in 2008, sexual assault in 2009, sexual assault in 2013 and assault in 2016. Two of the assaults in 2008 and 2016 occurred in a domestic context.

 So today Mr. Clillie is being sentenced for his sixth assault and his third sexual assault.

 A pre-sentence report was prepared and provides some background on Mr. Clillie, and I have also heard from counsel as well about his background and the *Gladue* factors that are present in his life.

 An issue arose with respect to the pre-sentence report and how it addressed Mr. Clillie’s time on remand. The pre-sentence report referred to 40-plus incidents of violence, harassment, bullying, muscling threats and other disruptive behaviour towards staff and inmates by Mr. Clillie. The defence took issue with this, and the Crown made inquiries and contacted the author of the report. The author confirmed that Mr. Clillie had not always been responsible for what occurred -- is I guess what the message was at the end.

 It is of concern that allegations of seriously disruptive behaviour were made in a Pre-Sentence Report which cast Mr. Clillie in a very negative light and then when inquiries were made, the Court is told essentially, never mind. The Court relies on these reports to accurately convey information about the accused, and it is very, very concerning when it turns out that a report is or may be inaccurate.

 Turning now to Mr. Clillie’s circumstances, he is an Indigenous man who grew up in Wrigley, was raised by his grandparents and later his mother. Both of Mr. Clillie’s parents attended residential school, and his mother had problems with alcohol. Mr. Clillie also experienced violence at home. Mr. Clillie was placed in the foster care system and suffered sexual abuse while there. He has limited education but has also been employed off and on and has been able to secure employment when needed.

 Counsel, sorry, I am going to take a few minutes. My throat is very sore.

THE CLERK: All rise. Court is adjourned briefly.

**(PROCEEDINGS ADJOURNED AT 10:12 AM)**

**(PROCEEDINGS RECONVENED AT 10:17 AM)**

THE CLERK: Order. All rise. Court is now reconvened. Please be seated.

THE COURT: All right. I am sorry, counsel, Mr. Clillie. My throat has been very scratchy the last couple of days. I think I am coming down with a cold. All right.

 So I think I left off where -- discussing where Mr. Clillie was placed in the foster care system and suffered sexual abuse while there. He has had limited education but has been employed off and on and has been able to secure employment when needed.

 Mr. Clillie has a daughter as well who he has referred to in his remarks today. The Pre-Sentence Report refers to Mr. Clillie to being sentenced to a term of custody for assaulting his daughter which resulted in her being placed in foster care. This assault is not reflected on his criminal record, but I thought of this when I read the sentencing transcript from 2016 where it turns out I sentenced Mr. Clillie for another assault. And I just want to read some of what I said then, which is equally applicable now. I was referring to Mr. Clillie having been a victim of violence himself and I stated:

The idea that people who have been victimized often turn to abuse themselves is not a new one. This Court often sees people who have been subjected to physical and/or sexual abuse as children and when they are adults become abusers.

The impact that violence has on children is significant; whether they were subjected to violence or witness it on their own, it can have a lasting impact. They may not only grow up to abuse others, but it may make them more prone to being victims. So, Mr. Clillie, you may want to think about the impact that seeing or witnessing violence might have on your daughter when you think about whether you need to continue with your counselling and to address your problems because with your history, it is clear that you do have problems that you need to address and if you do not, then you will continue to come back before the courts in the future, and I am sure you would be rather raising your daughter than spending more time in jail.

I think those sentiments are equally applicable today and, Mr. Clillie, I am profoundly disappointed to be having to sentence you again. You are running out of chances, and your daughter is growing up. And I sincerely hope, as you said, that this is the last time you are before the courts.

 The fundamental principle of sentencing is that a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender. There are a number of sentencing principles to consider: deterrence, denunciation, rehabilitation amongst others.

 Denunciation and deterrence are always significant sentencing principles to consider in offences of sexual assault, assault, particularly domestic assaults, and for the offence of the attempt to obstruct justice.

 Rehabilitation must also be considered. There still is hope for Mr. Clillie. If his mother can quit drinking and stay sober for 17 months, then so can Mr. Clillie, and I have heard that he has been sober for significant periods in the past.

 Looking to the aggravating and mitigating factors, in mitigation Mr. Clillie has entered guilty pleas to the assault and the attempt to obstruct justice. The guilty pleas were not early guilty pleas, as they were entered at trial and the case for each offence was very strong. The assault was witnessed by a person walking down the street who contacted the police, and the attempt to obstruct justice consisted of phone calls which were recorded by the corrections facility.

 The Pre-Sentence Report raises some concerns that Mr. Clillie has attempted to minimize his conduct, particularly with respect to the attempt to obstruct justice charge. However, the guilty pleas are an acknowledgement of responsibility and are deserving of credit.

 Mr. Clillie does not take responsibility for the sexual assault and maintains his innocence. Defence counsel explained that he respects the trial process and the verdict of the jury and the job that they had to do but maintains his view. That is his choice. It is not aggravating that he does so; it means that he does not receive the mitigating effect that would come from an acknowledgement of his guilt or an expression of remorse.

 It is statutorily aggravating that the assault and sexual assault occurred in a domestic relationship. Violence within a domestic relationship is considered a breach of trust. Within a domestic relationship the partners should be able to trust and rely upon each other and not be subjected to violence. That relationship is now over because of Mr. Clillie’s actions.

 Mr. Clillie’s criminal record and his history of violence, domestic violence and sexual assault are also aggravating. Looking to the circumstances of the offences, the attempt to obstruct justice is serious. Mr. Clillie called the victim multiple times in one day and repeatedly asked her to drop the charges, to lie and say nothing happened. While the accused did not threaten violence against the victim in order to secure her cooperation, his actions were persistent and pernicious. The attempt to interfere with witnesses in a criminal proceeding, whether it is by an accused person or another person, in an attempt to evade justice is an action that goes to the very heart of the criminal justice system.

 If actions like this are allowed to occur and not dealt with severely, then the public’s faith in the administration of justice will be irretrievably broken, and the justice system itself will have failed victims and society in general. Justice must be done and must be seen to be done.

 The assault and sexual assault offences are intertwined, occurring close in time. The assault was vicious and prolonged, involving Mr. Clillie hitting, shoving and kicking the victim repeatedly for approximately 20 minutes and then later slapping her twice in the shower. She was left with bruises on her face and body and a lump on her head.

 The sexual assault occurred shortly after the assault and involved the accused bending the victim over and having forced sexual intercourse with her in the shower for a few minutes. The accused admitted he was angry and jealous when he assaulted the victim. His actions show that he wanted to punish and humiliate the victim, to force his will on her and ignore her wishes.

 Instead of inquiring with her about why she was at the residence, he flew into a rage and began assaulting her, and his actions towards the victim for the next 20 to 30 minutes reflect that same anger, jealousy and dominance without regard for the victim.

 Mr. Clillie has been in custody since August 6, 2018, which is 551 days, which equates to 18 months of remand credit. At one and a half days’ credit for every day spent in remand, that equates to 27 months’ credit which will be deducted from Mr. Clillie’s sentence.

 Turning first to the ancillary orders which the Crown is seeking, I have not heard defence take any issue with any of the orders. First a DNA is mandatory, so there will be an order to obtain Mr. Clillie’s DNA. As well there will be a SOIRA order, and it will be for life. And there will be a section 109 firearm prohibition order for life.

 I have taken into account the circumstances of the offences, Mr. Clillie’s personal circumstances, his guilty pleas and the applicable sentencing principles in attempting to craft a suitable sentence. I have also considered totality and restraint. Please stand, Mr. Clillie.

 For the assault I sentence you to 15 months imprisonment to be served concurrently with the sexual assault. For the sexual assault I sentence you to four years’ imprisonment. For the attempt to obstruct justice I sentence you to a period of imprisonment of 18 months to be served consecutively. You will receive remand credit of 27 months, leaving a sentence of 39 months left to serve, so three years and three months. You may have a seat.

 **CERTIFICATE OF TRANSCRIPT**

Neesons, the undersigned, hereby certify that the foregoing pages are a complete and accurate transcript of the proceedings transcribed from the audio recording to the best of our skill and ability. Judicial amendments have been applied to this transcript.

Dated at the City of Toronto, in the Province of Ontario, this 18th day of March, 2020.



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Kim Neeson

Principal