

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

-v-

EDWIN FLOYD DOUGLAS GORDON

Transcript of the Reasons for Judgment delivered by the Honourable Justice S.H. Smallwood, sitting in Yellowknife, in the Northwest Territories, on the 18th day of January, 2021.

APPEARANCES:

A. Lewis: Counsel for the Crown
K. Oja: Counsel for the Defence

(Via teleconference)

Charge under s. 271 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*.

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RULINGS, REASONS

Reasons for sentence

1

1 JANUARY 18, 2021

2 THE COURT: So on the date scheduled for his trial,
3 Edwin Floyd Douglas Gordon pled guilty to a sexual
4 assault, and now after some delay it is my task to
5 sentence him for that offence.

6 The facts that Mr. Gordon has pled guilty to are
7 that in August 2018, Mr. Gordon was at the home of the
8 complainant in Aklavik. The victim, who was 17 years
9 old, was asleep in her bedroom on the second floor.
10 Mr. Gordon was drinking with Philip Elanik at the
11 residence.

12 At around 3:00 a.m., Mr. Gordon went to the
13 second floor to use the washroom. After Mr. Gordon
14 left the washroom, he entered the victim's bedroom
15 where she was asleep. In the bedroom, Mr. Gordon
16 began licking the victim's vagina while she was asleep.
17 Philip Elanik became suspicious when he heard Mr.
18 Gordon finish in the bathroom and he did not come
19 downstairs as expected. He went upstairs, entered the
20 victim's bedroom, and saw Mr. Gordon with his head
21 between the victim's legs, licking her vagina.

22 Mr. Elanik turned the light on in the bedroom
23 and Mr. Gordon stopped and got up. Mr. Elanik
24 physically removed Mr. Gordon from the residence.
25 Mr. Gordon punched Mr. Elanik in the face during this
26 process.

27 The position of the parties: The Crown is

1 seeking a sentence of 18 months' imprisonment
2 followed by two years of probation. The defence is
3 seeking a sentence of 12 months of imprisonment
4 followed by two to three years probation.

5 Victim Impact Statement: The victim completed
6 a Victim Impact Statement. A portion of the Victim
7 Impact Statement refers to a Facebook post made by
8 the victim. Not all of what is contained in that post is
9 appropriate for a Victim Impact Statement for this
10 offender and this offence. It refers to another offence
11 as well.

12 I have considered that portion of the Victim
13 Impact Statement in the context of how this offence has
14 impacted on the victim. Like many victims of sexual
15 assault, this offence has not surprisingly had a
16 profound effect on the victim. It has led to her dropping
17 out of school, feeling ashamed, embarrassed, guilty
18 and depressed.

19 When she has seen Mr. Gordon in the
20 community, she has felt fear, ashamed, guilt, numb,
21 shaky, hurt and afraid that it will happen again. The
22 offence has led her to distance herself from others
23 including family and friends. Mr. Gordon's actions have
24 had a permanent effect on the victim.

25 At the same time, she seems determined to
26 overcome what has happened to her. I hope that she
27 is able to and that this sentencing process being

1 completed today will help in this process and allow her
2 to move to the next phase of overcoming what has
3 been done to her. Nothing can take away what has
4 happened to the victim and no sentence can change
5 that, but I hope that after today she can take the
6 necessary steps for her healing and not focus on what
7 is happening in court in this case.

8 Presentence Report: I have the benefit of a
9 Presentence Report which was prepared for this
10 sentencing. It was completed in June 2020, so several
11 months have passed since the preparation of the
12 report. There has been some delay since Mr. Gordon
13 entered his guilty plea to this offence. Part of that is
14 due to the ongoing COVID pandemic and the delays
15 which have resulted in that, but we have now reached
16 the sentencing date.

17 The Presentence Report details Mr. Gordon's
18 childhood and his upbringing. He was raised by his
19 parents in a home with other siblings. Mr. Gordon
20 described his childhood as abusive and traumatic,
21 although other members of the family did not witness
22 this or relate the same experiences.

23 There was domestic violence that occurred in
24 the home but apparently not witnessed by Mr. Gordon.
25 Despite this, Mr. Gordon felt loved and accepted by his
26 parents and had a close relationship with them. Mr.
27 Gordon's father recently passed away, which has been

1 a significant source of grief for him. Mr. Gordon's father
2 attended residential school and also abused alcohol for
3 many years before quitting several years ago.

4 As for Mr. Gordon, he began consuming alcohol
5 at age 13, and by 15 or 16 was getting blackout drunk
6 every weekend. His alcohol abuse escalated to the
7 point that he was consuming alcohol on a daily basis.
8 He has also used cocaine and marijuana.

9 Mr. Gordon has abstained from alcohol since
10 November 2019. He met his wife in 2018 and they
11 moved in together in September 2019 and married in
12 January 2020. His wife has been very supportive of
13 him and has been instrumental in helping Mr. Gordon
14 stop drinking. Their relationship is healthy and
15 supportive.

16 Mr. Gordon now attends church and Bible study
17 groups and he is engaged in counselling. Mr. Gordon
18 has now been sober for 14 months, he attends A.A., he
19 has continued with his counselling and he and his wife
20 now have a new child.

21 His counsellor provided a letter outlining Mr.
22 Gordon's counselling. His counsellor is optimistic that if
23 Mr. Gordon remains clean and sober and continues
24 with his counselling that he will not reoffend. A number
25 of other letters were filed from his wife, his son, his
26 pastor and other members of the community. They
27 were all supportive and they attest to how well Mr.

1 Gordon has done in making positive changes to his life
2 and they also attest to his value as a member of the
3 community and how supportive he has been.

4 I also believe that if Mr. Gordon is able to remain
5 sober and if he continues with his counselling that he
6 will not be before this court or another court again, that
7 he will not reoffend. This will require more hard work
8 on Mr. Gordon's behalf to continue with maintaining
9 sobriety and counselling. It is a choice that you make
10 every single day, and some days that choice will be
11 harder than others, but I think that with the support of
12 your wife and your family that you can contribute to
13 making those good choices and continue to make
14 those good choices.

15 *Gladue* factors: In sentencing Mr. Gordon, I am
16 required to take into account the circumstances of an
17 Aboriginal offender, including systemic and background
18 factors that have impacted the lives of Aboriginal
19 people and the specific factors that have affected Mr.
20 Gordon and may have contributed to his criminal
21 offending. I have taken judicial notice of the systemic
22 factors impacting Aboriginal people in the Northwest
23 Territories, as well as the specific things in Mr.
24 Gordon's life that I have heard and read about.

25 There are things that have occurred in Mr.
26 Gordon's life that have contributed to his being before
27 the courts today. His abuse of alcohol and drugs stems

1 from those issues and his abuse of alcohol is a
2 significant contributing factor to why he is here today.
3 But it is to his credit that he has begun to address those
4 issues and has maintained sobriety for over a year now
5 and has taken steps as well to help others.

6 Sentencing principles: There are many
7 purposes to sentencing; to denounce unlawful conduct,
8 to deter the offender and other persons from
9 committing offences, to separate offenders from society
10 where necessary, to assist in rehabilitating offenders, to
11 provide reparations for harm done to victims or to the
12 community, and to promote a sense of responsibility in
13 offenders and an acknowledgment of the harm done to
14 victims and to the community.

15 Sentencing is an individualized process, taking
16 into account the circumstances of the offence and the
17 offender. For each offence, there are sentencing
18 principles which must be considered and some are
19 considered paramount. The sentencing principles that
20 are paramount in offences of sexual assault in cases
21 involving the sexual assault of a person under the age
22 of 18, in cases involving a sexual assault on a sleeping
23 or unconscious victim, are deterrence and
24 denunciation.

25 Denunciation means expressing society's
26 disapproval of the conduct engaged in by the offender.
27 When denunciation is paramount, it means that

1 society's denunciation of that conduct must be made
2 clear. Deterrence means deterring the offender
3 specifically or others generally from engaging in this
4 type of conduct in the future.

5 In this jurisdiction, sexual assaults occur far too
6 frequently, and sadly, what occurred in this case is not
7 uncommon. Many young women in the Northwest
8 Territories have been sexually abused in places where
9 they should feel safe and in situations where they are
10 vulnerable to sexual abuse. Through no fault of their
11 own, they are victimized, often by men who are under
12 the influence of alcohol.

13 The courts in this jurisdiction over the years
14 have repeatedly emphasized deterrence and
15 denunciation in sentencing for these offences. While
16 Mr. Gordon has engaged in significant efforts at
17 rehabilitation and specific deterrence so long as he
18 abstains from alcohol is not a concern, general
19 deterrence and denunciation are still paramount
20 sentencing considerations.

21 The importance of those sentencing principles
22 cannot be forgotten in an individual case. It is also
23 statutorily required that denunciation and deterrence be
24 given primary consideration in cases where the victim is
25 vulnerable because of personal circumstances,
26 including because they are Aboriginal and female. That
27 provision is applicable here.

1 Counsel agree that this was a major sexual
2 assault as contemplated in *R. v. Arcand* and that
3 engages a starting point sentence of three years. The
4 starting point is not a maximum sentence or a minimum
5 sentence, but a sentence which is adjusted to take into
6 account the personal circumstances of the offender, the
7 circumstances of the offence and the aggravating and
8 mitigating factors. Those are all considered and then a
9 final sentence is arrived at.

10 The sentencing range for sexual assault
11 offences is very broad. In this case, there is no doubt
12 that this was a significant violation of the victim's sexual
13 integrity.

14 There are a number of aggravating and
15 mitigating factors to consider in this case. It is
16 aggravating in this case that the victim was 17 and was
17 asleep in her own bedroom when the sexual assault
18 occurred. She was vulnerable because she was
19 asleep and unable to prevent or stop the sexual assault
20 from occurring. She was at the mercy of Mr. Gordon
21 who was an invited guest into the home.

22 It is statutorily aggravating that the victim of the
23 offence was under the age of 18 and that the offence
24 had a significant impact on the victim. The victim was
25 17 years old and, as I have mentioned, her Victim
26 Impact Statement makes clear that this offence has
27 had a significant impact on her.

1 Mr. Gordon has a criminal record with one
2 conviction in 2017 for an assault. It is related because
3 it is an offence of violence, but there are no convictions
4 for sexual offences on Mr. Gordon's record. He
5 received a 60-day conditional sentence for the assault,
6 which suggests to me that it was not a significant
7 assault. So there is a criminal record, but I do not
8 consider it significant.

9 Mr. Gordon entered a guilty plea to this offence.
10 It is a late guilty plea because it occurred at the
11 commencement of his trial. It also appears that the
12 Crown had a strong case. However, it is deserving of
13 credit, as the guilty plea provided certainty of result and
14 saved the victim for having to testify at the trial.

15 It also removes any doubt about what occurred
16 and that Mr. Gordon was the one at fault. As well, Mr.
17 Gordon also waived the preliminary inquiry, so the
18 victim has not had to testify during these proceedings.
19 Sexual assault victims often have to testify in court
20 about very personal details of a sexual assault, which is
21 a traumatic event, and the process itself can be
22 traumatizing. Sparing the victim from having to do this
23 enhances the value of the guilty plea.

24 Mr. Gordon, when he spoke on Friday,
25 apologized to the victim. His remorse for the offence is
26 also referred to in the Presentence Report. I accept
27 that Mr. Gordon is genuinely remorseful for what he did

1 and is committed to his rehabilitation.

2 I have already referred to Mr. Gordon's efforts at
3 rehabilitation and the community support that he has
4 from a number of members of his community. His
5 efforts are to be commended and I hope that he will
6 continue along this path. I also hope that while he is in
7 custody that he can continue to engage with his
8 counsellor and that he will continue to have the support
9 of his family and his community.

10 There is no issue that a jail term must be
11 imposed for this offence. General deterrence and
12 denunciation as the paramount sentencing principles
13 require this. The Crown and defence have each
14 suggested a jail sentence. As well, it is clear that a
15 period of probation following imprisonment would be
16 beneficial to Mr. Gordon's rehabilitation.

17 Starting first with the ancillary orders, the Crown
18 is seeking a DNA order, a SOIRA order and a firearms
19 prohibition order. This offence is a primary designated
20 offence, so there will be a DNA order, collecting Mr.
21 Gordon's DNA for inclusion in the DNA databank. The
22 *Sex Offender Information Registry Act* order is also
23 mandatory and will be for a period of 20 years. The
24 firearms prohibition order pursuant to section 109 of the
25 *Criminal Code* is also mandatory and will be for a
26 period ending ten years after Mr. Gordon's release from
27 imprisonment.

1 Please stand, Mr. Gordon. So taking into
2 account the circumstances of the offence and your
3 personal circumstances, the applicable sentencing
4 principles and factors, I impose a sentence of 14
5 months' imprisonment for the sexual assault. I have
6 not heard any reference to remand time, so there is no
7 pretrial custody to deduct.

8 This will be followed by a period of 30 months of
9 probation. You will be required to follow the statutory
10 conditions and the following conditions. Within three
11 days of your release, you are to report to a probation
12 officer and thereafter you will report as required.

13 You are to take counselling as directed by your
14 probation officer. I hope that when you are released,
15 you are still engaged in counselling so that this will not
16 be a difficult condition for you to follow.

17 You will have no contact with the victim. It
18 appears from the Victim Impact Statement that the
19 victim is still quite angry with you, so you can
20 understand that she likely does not want contact with
21 you. Some day, you may be able to apologize to her in
22 person, but that will have to wait until she is prepared to
23 speak to you.

24 You are also not to attend the residence or place
25 of employment or school of the victim. If you find
26 yourself in a place where the victim is, then you are
27 required to leave immediately. So if you go to visit

1 someone's house or if you go to the store and she is
2 there, then you have to leave. You can go back later
3 when she is gone.

4 You are also going to have to abstain from the
5 consumption of alcohol and non-prescription drugs. I
6 sometimes hesitate to make orders of this nature
7 because when someone has an alcohol problem, this
8 type of condition can set them up for failure, but you
9 have been sober for 14 months now, and I think that is
10 a very good start, and I think that this is a condition that
11 you can follow and I think it will be helpful for your
12 rehabilitation. You may have a seat.

13 I am also going to have endorsed on the
14 Warrant of Committal that there will be a judicial
15 recommendation to the correctional authorities that they
16 give strong consideration to permitting Raymond
17 Pidzamecky to continue counselling with Mr. Gordon
18 while he is incarcerated. Mr. Gordon, I can only make
19 the recommendation. I cannot force the correctional
20 authorities to allow this, but I hope that in making the
21 recommendation that they will give this
22 recommendation the consideration that I have
23 requested and that they will allow this to occur so that
24 you can continue with the same counsellor as you have
25 been.

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(PROCEEDINGS CONCLUDED)

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 21st day of July, 2021.



Kim Neeson
Principal