

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

HER MAJESTY THE QUEEN

- and -

KEEGAN PAYNE

**REASONS FOR SENTENCE
of the
HONOURABLE JUDGE DONOVAN MOLLOY**

Restriction on Publication

This decision is subject to a ban on publication pursuant to s. 486.4 CC with respect to the name of the victim as well as information that may identify this person. Some details may have been edited to ensure that the victim may not be identified.

Heard at: Yellowknife, Northwest Territories

Date of Decision: September 1, 2021

Counsel for the Crown: Nakita McFadden

Counsel for the Accused: Charles Davison

[Section 271 of the *Criminal Code*]
[Sentencing]

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A. INTRODUCTION

[1] On July 23, 2017 a relatively short encounter fundamentally altered the course of two lives. The repercussions of Mr. Payne's ill-conceived attempt to pursue sexual activity with the victim, J.K., scarred her psychologically. Mr. Payne now realizes that lack of resistance cannot equal consent and he is extremely sorry. As a youthful first offender, who entered a guilty plea, Mr. Payne seeks a conditional discharge.

[2] The Crown opposes a conditional discharge, noting that there appear to be no reported decisions from the Northwest Territories where an offender received a conditional discharge for the offence of sexual assault. Mr. Payne acknowledges that the bulk of case law is against him but points to his demonstrable remorse, his antecedents and his future prospects as mitigating in favor of a conditional discharge.

[3] Ultimately I must decide what is a fit sentence based on the circumstances of the offence and Mr. Payne's circumstances. Relevant considerations include:

1. What is the proper place of J.K.'s status as an Indigenous woman and section 718.04 in determining sentence?

2. Should Mr. Payne be granted a conditional discharge considering all of the circumstances?

B. CIRCUMSTANCES OF THE OFFENCES

[4] Sexual assault is an offence that occupies a significant portion of the docket of the Territorial Court. The victims are often Indigenous women. This behaviour must be unequivocally denounced.

[5] Sexual assault can occur in a variety of circumstances and for purposes of sentencing, we differentiate offences in terms of level of seriousness. Factors such as degree of invasiveness, age and other circumstances of victims determine whether a sexual assault is legally assessed as major or minor. To some extent, this legal classification may be regarded as offensive in that there is no such thing as a minor sexual assault.

[6] The facts of the present offence were established by virtue of an Agreed Statement of Facts reproduced below:

1. *On June 30, 2020, J.K. called the Yellowknife RCMP to report a sexual assault that occurred on July 23, 2017.*
2. *On July 28, 2020, Ms. K attended the RCMP detachment and provided an audio and video recorded statement. During the statement she reported the following:*
 - a. *During the early morning hours of July 23, 2017, she and some friends attended a party at Keegen Payne's house on Bromley drive in Yellowknife, NWT. While Ms. K was at Mr. Payne's house he spoke with her a number of times but she was not comfortable speaking with him and they did not engage in much conversation.*
 - b. *At approximately 4:00 AM, Ms. K decided to leave the party and she contacted a friend to come and pick her up. She went and laid on the couch in Mr. Payne's den while waiting for her ride.*
 - c. *Mr. Payne entered the den area and came and sat on the couch next to Ms. K. They spoke again for a few minutes. Mr. Payne then leaned over top of Ms. K and began kissing her on the lips and on her neck. He then lifted up Ms. K's shirt exposing her chest, and began to kiss her on her breasts while holding her right wrist. Mr.*

Payne does not recall touching Ms. K's wrist, but in any event did not do so in an attempt to restrain her.

- d. Ms. K did not consent to any of this contact, but could not stop it because she felt paralyzed and as though she could not stand up for herself. The kissing was brief.*
 - e. Mr. Payne stopped when Ms. K's ride arrived. Ms. K recalls hearing really loud music coming from a car outside. Mr. Payne recalls that Ms. K checked her phone and said her ride was there. She then gathered her belongings and left the residence.*
- 3. Since July 23, 2017 Mr. Payne has attempted to apologize and otherwise make amends to Ms. K when their paths have crossed in various different situations. On October 13, 2018 he sent her the message which is attached to this Statement of Facts, and a few minutes later sent the same message to a mutual acquaintance in the hope that it would be passed on to Ms. K.*
 - 4. On August 9, 2020, Cst. Linnen called Mr. Payne and advised him that he would be charged with sexual assault and asked Mr. Payne to attend the detachment. Mr. Payne turned himself in at the Yellowknife RCMP detachment that same day. He was arrested and was subsequently released on an undertaking.*

C. THE OFFENDER'S CIRCUMSTANCES

[7] Mr. Payne is a 24 year-old male without any criminal record. He is the youngest of three sons born into significantly adverse circumstances. Due to neglect and other concerns he was placed into foster care at 2 years of age and remained in the child welfare system until he became an adult. Fortunately for him one of his grade school teachers decided to foster him and he lived with that teacher, her husband and their biological children from that point onwards. Mr. Payne is part of that family and they are very supportive of him, including in regards to the aftermath of his actions on July 23, 2017.

[8] As a child, Mr. Payne was diagnosed with learning and other disorders that were treated with medication and psychiatric care. Mr. Payne attended the University of British Columbia for 2 years but did not complete his program of study. After leaving University he held a number of different jobs before starting his own local electronic repairs business in 2019. Mr. Payne has a history of volunteerism

and also represented the Northwest Territories as a soccer player at both the Western Games (2011) and the Canada Summer Games (2013).

[9] Mr. Payne continues to experience mental health issues and receives regular mental health care and counselling. Of late part of the focus of his counselling has been on developing healthier relationships and coping with anxiety.

D. PARTIES' POSITIONS

[10] The Crown recommended a 4 month period of imprisonment (to be served in the community as a conditional sentence) followed by a 12 month period of supervised probation and other ancillary orders. The Crown notes that while this sexual assault is at the lower end of the range in terms of its seriousness, it did have a significant impact upon J.K. The Crown specifically referenced J.K.'s status as an Indigenous woman and therefore a vulnerable person as set out in section 718.04 of the *Criminal Code*:

718.04 When a court imposes a sentence for an offence that involved the abuse of a person who is vulnerable because of personal circumstances — including because the person is Aboriginal and female — the court shall give primary consideration to the objectives of denunciation and deterrence of the conduct that forms the basis of the offence.

[11] In terms of Mr. Payne's guilty plea, the Crown's position was that while testifying at a trial is difficult for all victims, in J.K.'s case, testifying *would have been a profoundly traumatic experience for her*.

[12] The Defence, as already noted, asks the Court to grant Mr. Payne a conditional discharge. While it acknowledges that a discharge in respect of a sexual assault conviction is exceptional, the Defence maintains that this case represents an instance where granting a discharge to Mr. Payne would not be contrary to the public interest.

[13] I note that both counsel provided very fulsome and helpful submissions, including a significant number of cases, many of which deal with the appropriateness of conditional discharges in the context of sexual assault convictions.

E. THE PURPOSE, PRINCIPLES AND OBJECTIVES OF SENTENCING

[14] In determining a fit sentence for Mr. Payne I am guided by the:

- Purpose, principles and objectives of sentencing set out in the *Criminal Code*;

- Circumstances of the offences and of Mr. Payne; and,
- Case law.

[15] The fundamental purpose of sentencing is to contribute to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:

- (a) to denounce unlawful conduct;
- (b) to deter the offender and other persons from committing offences;
- (c) to separate offenders from society, where necessary;
- (d) to assist in rehabilitating offenders;
- (e) to provide reparation for harm done to victims or to the community; and
- (f) to promote a sense of responsibility in offenders, and acknowledgement of harm done to victims and to the community.

[16] The principle of proportionality is a fundamental principle of sentencing. It requires that a sentence be proportionate to the gravity of the offence and the degree of responsibility of the offender.

[17] The principle of parity states that a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances.

F. VICTIM IMPACT

[18] J.K. filed a victim impact statement. It speaks to detrimental impacts on her mental health, her self-image, her ability to form new relationships and a profound fear that she would not be believed in regards to being victimized by Mr. Payne. Fortunately, she is finally starting to feel some improvement.

[19] I accept, in his demonstration of remorse generally and as part of his section 726 allocution specifically, that Mr. Payne's guilty plea was in part genuinely motivated by a desire not to impede J.K.'s progress towards regaining her mental well-being.

G. AGGRAVATING AND MITIGATING CIRCUMSTANCES

[20] Mr. Payne has no criminal record, has held gainful employment in the past, has served his community as a volunteer and is currently the proprietor of a small business.

[21] In addition to his guilty plea, he attempted to own his conduct and to apologize to J.K. prior to the matter coming to the attention of the police. One of those efforts, as referenced in the Agreed Statement of Facts, included the following message sent via a friend on October 13, 2018, *Look I know I came on way too strong that night and I've been trying to make amends. I don't expect you to forgive. It's your right to be upset about that but at least know that I am aware of what I did. And i will always regret it.*

[22] In terms of aggravating circumstances, sexual assault is an extremely serious offence. While this sexual assault is at the lower end of the scale in terms of seriousness, the sentence must take into account the removal of clothing and the contact that occurred. J.K. was also a guest in Mr. Payne's home on the evening in question and was waiting for a ride home. Instead of simply seeing that she made it to the automobile safely, Mr. Payne seized on what he saw as a potential opportunity for sexual gratification without first asking J.K. if she wanted to engage in sexual activity with him.

[23] Finally, by way of aggravating circumstances, the Crown stressed that as J.K. is an Indigenous woman, section 718.04 deems her to be a vulnerable person and therefore requires in this case that I give primary consideration to the objectives of denunciation and deterrence.

[24] The Defence however argues that invoking section 718.04 requires something more from the Crown than simply proving that a victim is both female and Indigenous. The Defence says that the Crown must prove some connection between a person's victimization and their status as an Indigenous female. As an example, the Defence posited whether section 718.04 would apply to a hypothetical bank robbery where the bank teller was an Indigenous woman.

[25] In the bank robbery example, while an Indigenous female teller would be a victim of violence, it would perhaps be difficult to argue that she was more vulnerable, because of that status, than any other bank teller of any gender. In cases of sexual and domestic violence however we know from our history and statistics that Indigenous women are more vulnerable to these offences. It is in part for that reason that I conclude that Parliament intended that section 718.04 compel courts to

place denunciation and deterrence at the forefront of any sentence for offences of sexual and domestic violence involving Indigenous women as victims.

[26] J.K., as an Indigenous female was more vulnerable and therefore without the Crown proving anything more, I conclude that the operation of sections 718.04 and 718.201 require emphasis on deterrence and denunciation in sentencing Mr. Payne.

[27] I draw support for that conclusion from the comments of the Quebec Court of Appeal in *R. v. L.P.*, 2020 QCCA 1239:

The protection of vulnerable female Indigenous victims as a sentencing consideration is not a novelty, and was judicially considered prior to the enactment of sections 718.04 and 718.201 of the Criminal Code.

In R v. Whitehead, the Saskatchewan Court of Appeal wrote that it was "vital that the application of s. 718.2(e) not be seen as discounting the lives of or harms done to Aboriginal victims of crime, their families and their communities". In R. v. Williams, the British Columbia Court of Appeal wrote that there was "much to be said for the sentencing judge's concern for the protection of Aboriginal victims [...] and for the role of deterrence in the Aboriginal community".

More specifically concerning the vulnerability of Indigenous women in the domestic context, in R. v. A.D., the Court of Appeal of Alberta wrote that:

The fundamental purpose of sentencing is to protect society (s 718). Unfortunately, there is clear and overwhelming evidence that, when it comes to protecting Aboriginal women from violence and discrimination, more needs to be done. The homicide rate for Aboriginal women is six times that of non-Aboriginal women, and higher than the rate for non-Aboriginal men. Aboriginal women are almost three times more likely to experience violent victimization than non-Aboriginal women. Compared with non-Aboriginal women, Aboriginal women are almost three times more likely to report being the victim of spousal violence and, compared with non-Aboriginal victims of spousal violence, Aboriginal women are more likely to have experienced spousal violence on more than one occasion.

The sad fact is that Aboriginal women are disproportionately affected by domestic violence and violence in general and this reality should inform the sentencing process if there is to be any hope of achieving the fundamental purpose of sentencing and meeting the objectives set out in

section 718 of the Criminal Code, which include denunciation and deterrence. [...]

Taking the circumstances of Aboriginal victims into account in sentencing is consistent with the principles of sentencing, and arguably necessary in order to meaningfully achieve the fundamental purpose of sentencing, namely the protection of the public. The circumstances of both the victim and the offender must be considered as relevant factors and, along with other relevant factors (e.g. aggravating and mitigating), be considered by the sentencing judge to arrive at a fit sentence.

In the parliamentary debates, the Minister of Justice stated that the addition of sections 718.04 and 718.201 to the Criminal Code was intended to address recommendations 5.17 and 5.18 of the final report of the National Inquiry into Missing and Murdered Indigenous Women and Girls, which was issued in 2019, as well as concerns expressed by the Supreme Court in R. v. Barton.

In its final report, the National Inquiry into Missing and Murdered Indigenous Women and Girls noted that the rate of domestic family violence in the Indigenous context was extremely high.

According to the Inquiry, pathways to violence include social and economic marginalization of Indigenous people: "[p]overty, lack of safe housing, food insecurity, and other socio-economic realities are widely understood to compromise the physical, mental, emotional, and spiritual health of Indigenous people, and, in particular, Indigenous women, girls [...]"⁴⁸ Pathways to violence also include the insufficiency of institutional response to all forms of interpersonal violence suffered by Indigenous women and girls, including from law enforcement.

The Inquiry emphasized that Indigenous victims of violence often feel re-victimized by the judicial system and that stereotypes against Indigenous women often justify a lack of action and the adoption of accountability measures for the offenders.

The Inquiry concluded that the "Canadian criminal justice system fails to provide justice for Indigenous people, especially missing and murdered Indigenous women, girls [...]" and to "hold accountable those who commit violence against [them]".

Regarding legislative shortcomings to address violence against Indigenous women, the Inquiry concluded that "the language used in the

[...] Criminal Code and in criminal justice proceedings, minimizes the nature and severity of violent offences and serves to minimize the responsibility of the offender and the impact of the crime".

In this spirit, the Inquiry made recommendations 5.17 and 5.18 as follows:

5.17 We call upon federal, provincial, and territorial governments to thoroughly evaluate the impacts of Gladue principles and section 718.2(e) of the Criminal Code on sentencing equity as it relates to violence against Indigenous women, girls, and 2SLGBTQQIA people.

5.18 We call upon the federal government to consider violence against Indigenous women, girls, and 2SLGBTQQIA people as an aggravating factor at sentencing, and to amend the Criminal Code accordingly, with the passage and enactment of Bill S-215.53

In R. v. Barton, the Supreme Court wrote that: "to better ensure Indigenous women and girls receive the full protection and benefit of the law in sexual assault cases, our criminal justice system should take reasonable steps to address biases, prejudices, and stereotypes against Indigenous women and girls openly, honestly, and without fear".

Therefore, even before the enactment of sections 718.04 and 718.201 of the Criminal Code, the protection of vulnerable Indigenous women who were victims of abuse, whether or not in the domestic context, and the recognition of the suffering endured by these victims, were key considerations in sentencing offenders.

H. PARITY

[28] The principle of parity requires that similar sentences be imposed on similar offenders for offences committed in similar circumstances. As noted above, there do not appear to any reported cases from the Northwest Territories where a conditional discharge was granted in respect of a sexual assault. There are also only a few examples of house arrest being imposed in regards to sexual assaults. This point is canvassed in *R. v. Richardson, 2017 NWTTC 19*:

Counsel for the accused argued that a conditional sentence of imprisonment would be appropriate, in view of the personal circumstances of the accused, including the fact that he is of aboriginal ancestry. Counsel relies, among others, on the decision by a judge of this court in R. v. R. (F.), in which he considered the fact that the accused was

the primary caregiver to his mother who lost her eyesight, and that he was a first-time offender, to justify imposing a conditional sentence.

In the matter of R. v. Tatzia, the Supreme Court of the Northwest Territories said:

This court has consistently stated that for the crime of sexual assault, in all but the most exceptional cases, the principles of sentencing to be primarily considered are deterrence and denunciation.

I have not found exceptional circumstances in Mr. Richardson's situation that would justify departing from this principle, such as those that were found to be present in the case of R. v. R. (F.), noting that this case was decided before R. v. Lepine, in the Northwest Territories. When it comes to sexual violence against women, I find that a sentence of imprisonment in one's home does not adequately reflect the principles of denunciation and deterrence.

I. CONDITIONAL DISCHARGE

[29] Given the prevalence of sexual assault charges in this jurisdiction there is a significant amount of case law. Some of those authorities, including *R. v. Lepine*, 2013 CarswellNWT 21, address whether the offence in question is a ‘major’ sexual assault. I concur with the Crown’s position that the sexual assault here is not in that category.

[30] The Crown tendered *R. v. Crapeau*, 2003 NWTSC 45, *R. v. Chugh*, 2020 ABPC 247 and *R. v. Minoza*, 2013 NWTSC 78. Of these decisions, only *Chugh* extensively addresses the test for a conditional discharge in the context of a sexual assault conviction.

[31] The conviction in *Chugh* was imposed after trial, it was not a major sexual assault and he faced potentially adverse immigration consequences as a result of the conviction. In dismissing the request for a conditional discharge the court reviewed the applicable test at paragraphs 6-15:

A discharge is only available where there is no prescribed minimum and the maximum sentence is not 14 years or life. A finding of guilt under Section 271 is not so restricted. However, the court must be satisfied a discharge is not only in the best interests of the offender but is not contrary to the public interest.

It is almost always in the best interest of the offender to be granted a discharge unless rehabilitation is an overarching necessity. In this case a criminal conviction may have immigration consequences as to whether he and his family can remain in this country as he is an immigrant from India. I find there is no doubt a discharge is in his best interest.

The real issue is whether a discharge would be contrary to the public interest. The Alberta Court of Appeal in R. v. MacFarlane (1976), 3 Alta. L.R. (2d) 341 (Alta. C.A.), set out six factors to consider in discharge applications. It also stated it would be a most exceptional case where a crime involving violence would be dealt with by an order of discharge. Sexual assault is always considered a crime of violence (Arcand). Only four of the factors could be applicable here.

First is the nature of the offence, meaning the seriousness of the offence and the harm such an offence can cause. Unless a sexual assault is trivial or minimal, it is serious and can cause psychological harm.

Second is the prevalence of the offence in the community. Sexual assaults are certainly not uncommon and deterrence and denunciation are important principles of sentencing for sexual assaults.

Third, whether the crime was committed as a matter of impulse or was it calculated. The fact he insisted only the victim conduct the massage and the facial gives the impression of premeditation and calculation as opposed to impulsiveness.

Fourth, should the fact the offender committed the crime be a matter of public record? In this case should other female employees of massage establishments be aware of this fact and should the immigration authorities who are determining if he should be granted permanent residency in Canada be aware of the crime?

Most of the authorities presented where a discharge was considered or granted for sexual offences, the court categorized the facts as trivial or minimal. In R v. Bakhshi, [2019] A.J. No. 921 (Alta. Prov. Ct.), the Offender attempted to hug and kiss the complainant and as she turned away he slapped her rear end. A discharge was not granted. In R. v. Pan, [2012] A.J. No. 878 (Alta. Prov. Ct.), the charge was voyeurism where on impulse he videotaped a sexual encounter for four minutes and then erased it. He apologized and showed deep remorse. A discharge was granted. In R. v. Gilmour, [2005] A.J. No. 555 (Alta. Q.B.) (Gilmour), the

offender's sexual assault took place in a retail store where the victim worked. He pushed his groin into her and placed his arm around her. A discharge was granted.

In R. v. B. (J.L.), [2017] B.C.J. No. 195 (B.C. Prov. Ct.), the Offender sexually assaulted his female employee by touching her on the buttocks and thigh and kissing her. He was granted a discharge. In R. v. P. (C.R.), 2009 ABPC 32 (Alta. Prov. Ct.), the Offender committed a sexual assault by momentarily touching the vaginal area outside the clothing of a friend of his daughter. He was granted a discharge. In R. v. Graham, 2008 ABPC 227 (Alta. Prov. Ct.), the Offender was present at his daughter's party with her girlfriends. He entered the hot tub where the victim was and momentarily placed his hand under her swimsuit, making contact with her vaginal area for two seconds. He was not granted a discharge.

Of the above six precedent cases, four were guilty pleas. The only matter that went to trial and a discharge was granted was Gilmour. I point this out because discharges are generally granted where remorse is shown and the offender accepts responsibility for his actions and understands the harm he has caused the victim and the community.

[32] The Defence tendered *R. v. Shortt*, 2002 NWTSC 47, *R. v. Dyson*, 2016 NWTTC 3, *R. v. Ingrey*, 2003 SKQB 300, *R. v. Gilmour*, 2005 ABQB 354, *R. v. J.W.*, 2010 NSPC 40, *R. v. J.L.B.*, 2017 BCPC 24, *R. v. Rai*, 2018 ONCJ 949 and *R. v. Henry*, 2019 ONSC 4978. Several of those decisions resulted in the granting of conditional discharges in respect of sexual assault convictions.

[33] In *Dyson*, the request for a conditional discharge was denied even though objectively, the sexual assault appears less serious than that committed by Mr. Payne. In deciding that a conditional discharge was not appropriate Gagnon J. weighed the aggravating and mitigating factors:

Clearly, I am not dealing with a major sexual assault. This would also suggest to me that imprisonment may not be necessary or appropriate. However, I must also consider aggravating factors and mitigating factors.

a) Aggravating factors include:

- 1. Ms. R. was a guest at Mr. Dyson's house. There was a breach of trust.*
- 2. The prevalence of sexual assaults in our jurisdiction and the consequences on victims in general*

3. *The impact on the victim: she has suffered emotional and psychological harm and she is still struggling, as one can read from her victim impact statement;*

b) *Mitigating factors include:*

4. *The guilty plea and remorse. The guilty plea is highly mitigating, as it spares the victim from having to testify and be submitted to cross-examination*

5. *Prior good conduct and lack of criminal record - this was described as being out of character*

6. *There was only one incident, brief in duration*

7. *There was no violence other than the act itself*

[34] All of the aggravating circumstances referenced by Gagnon J. are also present in this case. J.K. was a guest in Mr. Payne's home, she was waiting for a ride when Mr. Payne sexually assaulted her in a manner that I conclude is more serious than the offence in *Dyson*. Further, J.K. is an Indigenous woman, a circumstance which case law and the *Criminal Code* recognize as a position of increased vulnerability with respect to offences of violence, sexual and otherwise.

[35] All of the mitigating factors referenced by Gagnon J. are also present in this case. Beyond accepting responsibility after being charged with the crime, Mr. Payne attempted to apologize prior to that development. Missing from his apology is any suggestion of fault on the part of J.K. Mr. Payne's section 726 allocution likewise omitted any suggestion or intimation of fault on the part of J.K. That is of significance as I believe it bolsters the genuineness of Mr. Payne's acceptance of responsibility, his remorse. His history of counselling/therapy and his continuation of therapy throughout this process also demonstrate a commitment to understanding his shortcomings and avoiding potential pitfalls associated with the trauma he experienced as a child.

[36] While he came to the realization too late to spare J.K. the trauma of the violation of her sexual integrity, Mr. Payne is now fully aware and accepts that the commencement of sexual activity must wait until after consent is explicitly and voluntarily provided. Mr. Payne is abjectly remorseful and he is not a person who I believe is at risk of reoffending, sexually or otherwise.

J. SENTENCE

[37] Ultimately, Mr. Payne's sentence must be based upon his circumstances and the circumstances of this offence. Undoubtedly, a conditional discharge would be in Mr. Payne's best interests. That is not the most important consideration here however. Granting Mr. Payne a conditional discharge must also not be contrary to the public interest.

[38] Assessing the public interest requires consideration of the prevalence of sexual assault in the Northwest Territories, and the degree to which Indigenous women are victimized in this jurisdiction.

[39] Considering that J.K. was a guest in Mr. Payne's home, that she is an Indigenous woman, that the sexual assault was a serious violation of her sexual integrity, that J.K. has suffered from and continues to endure psychological harm, I conclude that it would be contrary to the public interest to grant a conditional discharge.

[40] On the other hand, similarly to the *Dyson* decision, where Gagnon J. rejected both the accused's request for a conditional discharge and the prosecution's request for a conditional sentence of imprisonment, I too find that in all of the circumstances, a sentence of imprisonment (real or conditional) is not necessary here. There is little risk of Mr. Payne reoffending and his prospects for rehabilitation are high. He has already pursued some counselling of his own volition and he is abjectly remorseful.

[41] As a consequence, I suspend the passing of sentence on Mr. Payne and place him on probation for a period of 18 months. The conditions of that probation order are as follows:

- (a) Keep the peace and be of good behaviour;
- (b) Appear before the court when required to do so by the court;
- (c) Report to a probation officer within 2 business days and report thereafter as required by the probation officer;
- (d) Notify the court or the probation officer in advance of any change of name or address, and promptly notify the court or the probation officer of any change of employment or occupation;
- (e) Attend any and all counselling, programming or other related activities as directed by the probation officer, including risk reduction programs for sex offenders;

- (f) Refrain from any contact or communication with J.K. and refrain from attending at her place of residence, employment or education; and,
- (g) Perform 180 hours of community service at a rate of not less than 10 hours per month.

[42] In addition to the probation order the Court makes the following orders:

- i. That Mr. Payne provide a sample of a bodily substance pursuant to section 487.051 (a DNA order);
- ii. That Mr. Payne be prohibited from possessing firearms and other items as enumerated in section 110 for a period of 3 years; and,
- iii. An order for a period of 10 years pursuant to section 490.012, requiring Mr. Payne to comply with the *Sex Offender Information Registration Act*.

Donovan Molloy
T.C.J.

Dated at Yellowknife, Northwest
Territories, this 1st day of
September, 2021.

R. v. Payne, 2021 NWTTC 15

Date: September 1, 2021
File: T-1-CR-2020-001709

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