

COPY

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *R. v. M.D.T.*,
2003 BCSC 2072

Date: 20031204
Docket: 22135
Registry: Vancouver

Regina

v.

M.D.T.

Ban on Publication 517(1) CCC; Ban on Disclosure 486(3) CCC
Before: The Honourable Mr. Justice Brooke

Oral Reasons for Sentence

Counsel for the Crown:

K. Ford

Counsel for the Accused:

S. Ross

Place and Date of Hearing:

Vancouver, B.C.
December 4, 2003

Place and Date of Judgment:

Vancouver, B.C.
December 4, 2003

[1] **THE COURT:** M.D.T. has pled guilty to five counts of sexual assault upon which he had been indicted.

[2] The offence of sexual assault carries a maximum term of imprisonment of ten years. The Crown submits that, having regard to the circumstances of the offences and of the offender and the sentences imposed in similar cases, a global sentence of five to seven years should be imposed. Counsel for the offender submits that, on those same circumstances and on the cases he cites in support, an appropriate sentence is no more than three years, and indeed a sentence of two years less a day would not be wrong. Having regard to time in custody, almost 13 months, he says that is within the range where a conditional sentence must be considered, where the offender would serve his sentence in the community.

[3] The offender is 38 years old and he has been in custody since November 13, 2002. He was raised in Quebec, where as a child he was the victim of some physical and perhaps sexual abuse himself. He began using drugs at a young age and was a user of marihuana, LSD, cocaine and heroin by the age of 16. Other than during a period in federal custody, he has been unable to remain substance-free.

[4] While M.D.T. admits to a criminal record dating back to 1984, it contains no offences relevant to the charges upon which he has pled guilty and no record is alleged after 1996.

[5] The circumstances of the offences are that between March and October of 2001 M.D.T. committed sexual assaults on five young women, who were between the ages of 13 and 15 at the time the offences were committed. In each case the

young woman was of First Nations origin, and not living in the kind of secure and structured environment that might reasonably be expected for a young person of that age. To refer to them as young women is probably to impute a maturity and judgment that they had not yet achieved at the time the offences were committed.

[6] In most cases, these young persons were introduced to the offender by a slightly older woman, who was then known to the offender. In each case the young person or persons resorted to the offender's home, where alcohol and drugs could readily be obtained and easily consumed to the point of oblivion. It was then that M.D.T. removed articles of clothing from these young women, fondled their breasts and genitalia, sometimes committed cunnilingus, and recorded these indignities with a video camera. The videotapes were delivered to the police by an anonymous source and the police embarked upon a lengthy and careful investigation, which ultimately led to these charges.

[7] All of the young persons were shown to be unconscious during the filming of these activities, and of course it is the absence of consent or volition that forms the criminal offence of sexual assault to which M.D.T. has pled guilty. I am advised that each of these young persons was shocked and humiliated when it was made known, during the course of the investigation, that they had been filmed while they were unconscious. While there is no evidence the video was widely distributed, or for that matter distributed at all, at least one person was aware of its existence, and that of course was the person who delivered the videotapes to the police.

[8] In less enlightened times, the principles of sentencing that might have been expressed in a case such as this is that emblazoned upon the central pedestal of the criminal courts in London at the Old Bailey, where these words appear: "Defend the children of the poor and punish the wrongdoer." While denunciation and deterrence remain principles of sentence, others must be taken into account as well.

[9] I turn to the principles and the purposes of sentence as they are set out in s. 718 of the *Criminal Code*. The fundamental purpose of sentencing is to contribute, along with crime-prevention initiatives, 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 reparations for harm done to victims or to the community;
and
- (f) to promote a sense of responsibility in offenders, and
acknowledgement of the harm done to victims and to the community.

[10] Section 718.1 sets out this fundamental principle: A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

[11] Other sentencing principles which are important are set out in s. 718.2(a), which says a court that imposes a sentence shall take into consideration the following principles:

- (a) a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender...

[12] The Crown points to these aggravating circumstances:

1. The disparity between the age of the offender and the victims, the offender being 37 at the times of the offence, the victims between 13 and 15;
2. The position of trust, or something like trust, occupied by the offender, who was introduced as the uncle of the young woman who introduced the victims here to the offender;
3. The fact that a video was made and that it was made when the victims were unconscious;
4. The repetition over a period, with multiple vulnerable young persons as victims, and in addition the provision of alcohol and drugs, or at least the making available a venue for the excessive consumption of alcohol and drugs.

[13] While I am not satisfied it can be said the offender occupied a position of trust, I do find that the age disparity, the provision of alcohol and drugs, or the venue for their consumption, and the video recording of these young persons in positions of which they would be ashamed, are aggravating factors. In each case the offender took advantage of the most vulnerable and readily abused members of our society, persons who were in need of his protection, not his abuse.

[14] Counsel for M.D.T. points out these mitigating factors:

1. That a guilty plea was entered to these five counts, after the preliminary 11 of the 18 original counts were dismissed;
2. That there was no vaginal or anal penetration;
3. That there was no violence displayed, and of some importance the fact that the offences stopped about 12 months before the arrest of the offender.

[15] While I find that these are mitigating factors, they do not overcome the aggravating factors.

[16] The most significant sentencing principles I find in this case are those of denunciation and deterrence, both of the offender and of others.

[17] I have considered the authorities referred to by counsel. While helpful in defining the range of sentence, all are distinguishable on the particular facts of this case.

[18] I have considered the report of Dr. de la Torre, whose opinion is that the offender is not a pedophile and that he suffers from a disorder that he describes as an adjustment disorder that is amenable to treatment.

[19] Before I pass sentence on you, M.D.T., you wish to address me? Please stand.

[THE ACCUSED ADDRESSES THE COURT]

[20] THE COURT: Thank you. I find -- please remain standing, M.D.T.

[21] I find that a global sentence is fit and proper in these circumstances. In respect of each count in the Indictment, I sentence you to a term of imprisonment of three-and-a-half years, each sentence to be served concurrently.

[22] You have been in custody for 13 months and I am satisfied that appropriate credit for that is 26 months. Despite counsel's submissions to the contrary, I see no special circumstance to increase the usual multiplier of two to one.

[23] The effective sentence being less than two years, I have considered as I must a conditional sentence and I reject that. It does not give sufficient expression to the principles of denunciation and deterrence which I consider to be paramount in this case.

[24] In addition, sir, there will be an order pursuant to s. 487.051 of the *Criminal Code* authorizing the taking of samples of bodily substances for the purpose of DNA analysis.

[25] Finally, there will be a continuation of the publication ban in respect of the name or names of any of the complainants, or any person under the age of 18, pursuant to s. 486.(1) and (2) of the *Criminal Code*.

[26] Is there anything else?

[27] MR. ROSS: Yes. I wonder if Your Lordship just might clarify something. You indicated a three-and-a-half-year sentence?

[28] THE COURT: A three-and-a-half-year sentence.

[29] MR. ROSS: From that you are subtracting 26 --

[30] THE COURT: Subtracting 26 months. So it is a net sentence of 14 months; that is correct.

[31] MR. ROSS: Yes. I wasn't clear on that.

[32] THE COURT: All right.

[33] MR. ROSS: I appreciate that.

[34] THE COURT: All right. Thank you. Ms. Ford?

[35] MS. FORD: I don't know if Your Lordship wants to impose probation to follow that or if the record is going to reflect a 14-month sentence with 26 months' time served or -- but if it is going to be under two years a probation order might be of some assistance.

[DISCUSSION RE PROBATION ORDER]

[36] THE COURT: In addition, there will be an order for 18 months' probation, an order that you keep the peace and be of good behaviour, report to a probation officer as soon as practicable after your release --

[37] MS. FORD: If I may suggest, My Lord, that it be within 72 hours of your release?

[38] THE COURT: -- within 72 hours after your release; that you have no contact with the following: J.R., R.R., C.B., G.Y., T.A., L.A., --

[39] MS. FORD: B.A.

[40] THE COURT: -- B.A., R.B. --

[41] MS. FORD: R.C.

[42] THE COURT: R.C., M. --

[43] MS. FORD: M.G.

[44] THE COURT: M.G. and --

[45] MS. FORD: P.I.

[46] THE COURT: P.I., as well as --

[47] MS. FORD: And M.P.

[48] THE COURT: And M.P., all right.

[49] MS. FORD: And then the four other complainants.

[50] THE COURT: And the complainants named in the Indictment.

[51] There will be an order that you enter into such counselling programs as may be directed by your probation officer, including but not limited to substance abuse counselling, and there will be an order that you are not to possess or own videotaping equipment, cellphones and video equipment generally.

[52] MS. FORD: It was web or cellphone camera equipment.

[53] THE COURT: Web or cellphone?

[54] MS. FORD: Camera equipment.

[55] THE COURT: Cellphone camera equipment?

[56] MS. FORD: Yes.

[57] MR. ROSS: Yes. I understand that M.D.T. could have a cellphone, just not one that has the camera.

[58] MS. FORD: That's correct.

[59] THE COURT: That does not have the video capability?

[60] MR. ROSS: Right.

[61] MS. FORD: Yes.

[62] THE COURT: All right. So that that is clear, a cellphone is permitted without any video capability or capacity.

[63] MR. ROSS: Right.

[64] THE COURT: Do you understand all of those things, M.D.T.?

[65] THE ACCUSED: Yes, I understand.

[66] THE COURT: I am satisfied, sir, that substance abuse played a major role in the behaviour that brings you before the Court and has resulted in the custody in which you have been held and which you will be held for some time to come. It is most important that you face these issues and address them; that you avoid those substances that you cannot control.

[67] I am satisfied that there has been no history of sexual abuse or of the sexual abuse of young persons, with the exception of the matter upon which you are now convicted. You must be very sure that nothing like this ever happens again. The effect of your behaviour has added one more element of hardship, pain and distress to young persons who would already feel justified in thinking they have been abandoned by society.

[68] Thank you, sir. I wish you well.

[69] MR. ROSS: I wonder if I can just ask one more thing. I wonder if Your Lordship might make a recommendation that M.D.T. be classified to the Ford Mountain Correctional Centre, which is the sexual abuse program?

[70] THE COURT: All right. And in which one is that?

[71] MR. ROSS: Ford Mountain Correctional Centre.

[72] THE COURT: Ford Mountain?

[73] MR. ROSS: It's referred to in --

[74] THE COURT: Ms. Ford?

[75] MS. FORD: I think that is appropriate, My Lord.

[76] THE COURT: All right. A recommendation will be included to the Corrections Service that during the assessment process or as a result of the assessment process you be assigned to the Ford Mountain --

[77] MR. ROSS: Correctional Centre.

[78] THE COURT: -- Correctional Centre. Thank you.

[79] MS. FORD: My Lord, I'm -- Crown is -- there is a couple of housekeeping matters. Madam Clerk has asked about firearms. I don't believe s. 109 or 110 are involved in this.

[80] THE COURT: No.

[81] MS. FORD: Crown is prepared to agree to waive the victim fine surcharge --

[82] THE COURT: Thank you.

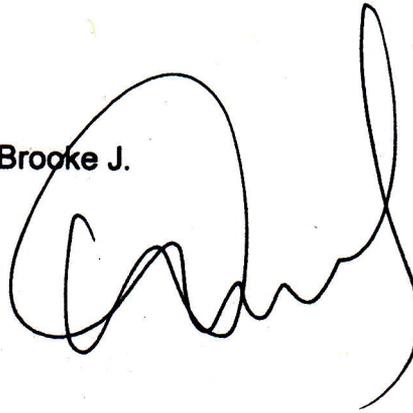
[83] MS. FORD: -- in these circumstances.

[84] THE COURT: All right. Finally, I am much indebted to the able submissions and assistance of counsel.

[85] MS. FORD: I direct a stay of proceedings on the two outstanding counts, and you've got the two --

[86] THE COURT: Thank you.

Brooke J.

A handwritten signature in black ink, appearing to be 'Brooke J.', written in a cursive style. The signature is positioned to the right of the printed name 'Brooke J.'.