
CANADA / JUDGMENT

HMTQ v. Morgan

2003 BCSC 1766

COURT

Supreme Court of British Columbia

DECIDED

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HMTQ v. Morgan

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IN THE SUPREME COURT OF BRITISH COLUMBIA

Oral Reasons for Sentence

The Honourable Mr. Justice Preston

November 12, 2003

(BAN ON DISCLOSURE - s. 486(3)CCC)

her majesty the queen

AGAINST

armechi dante morgan

Counsel for the Crown:

D. Ballyk

Counsel for the Defence:

R. Roy

- [1] THE COURT: On February 14th, 2003, the accused was found guilty by a jury of one count of sexual assault of a 16-year-old complainant on February 2nd, 2002, in Surrey, British Columbia.
- [2] The complainant was in the accused's residence in the course of visiting her boyfriend. Late in the evening, her boyfriend informed her that he had to return home. The buses were no longer operating, and there was no practical alternative but for her to remain overnight at the accused's residence. There was another couple and their two children in the residence, a basement apartment, and the complainant agreed to stay until the next morning when her boyfriend was going to return.
- [3] The complainant testified that the accused threatened her and forced her to perform an act of fellatio and submit to sexual intercourse. In my charge to the jury, I summarized her evidence as follows:

She said that after Mr. Morgan threatened her, she concluded that she had no choice but to submit to sexual intercourse. She said that she asked him to use a condom and that he did. She testified that he told her about him being a member of a gang and asked her to become a member of the gang. When she said that she did not want to, he became agitated and told her she should suck his dick to calm him down. He put his hand at the back of her neck and forced her mouth into contact with his penis. She said she was crying. She testified that he offered her a choice of 96 blows to the chest or having sex with him, or die, or whatever. She said that he pushed his fist against her chest and that it hurt. She said, "I was begging. I said, 'No.'" She said he then went into the kitchen and rummaged in a drawer, then turned and held his hand behind his back. She testified she thought he had a knife. She said that she said, "Please, no, I don't want to. I'm only 16. I want to go to sleep. I'm tired."

- [4] The accused testified that the reason for the complainant's visit to his apartment was for the purpose of having sexual intercourse with him. The complainant and the accused had not met before her arrival at the apartment. They had talked briefly on the telephone. The accused said that all of the sexual activity that the complainant described took place, but that it was consensual.
- [5] The nature of the trial was such that the jury had before them two diametrically opposed versions of the central events between the complainant and the accused. They chose to believe the complainant and concluded that the accused's evidence did not raise a reasonable doubt as to his guilt.
- [6] The accused is 31 years of age. He was born in Arkansas. He spent some years in Texas and returned to Arkansas, from whence he came to Canada a few years ago to pursue a career as a rap musician.

- [7] He has two related previous convictions. On September 3rd, 2002, he entered a plea of guilty to a charge of uttering threats to cause death or bodily harm to a young woman. He was sentenced to the three weeks that he had already served awaiting disposition and given a suspended sentence with conditions limiting his contact with the complainant. On March 25th, 2003, he pleaded guilty to one count of sexual assault. This sexual assault arose out of the fondling and massaging of a young girl's breasts and buttocks in the course of a purported interview for employment as a dancer in a music video. He was sentenced to the three months that he had already served in custody. Both of these offences post-dated this offence. The convictions on the guilty pleas took place in the interim between the date of this offence and the date of the trial of this offence.
- [8] In *R. v. Sandercock*(1985), 22 C.C.C. (3d) 79, a 1985 decision of the Alberta Court of Appeal, the court allowed a Crown appeal from a three-year sentence and imposed a sentence of four and one-half years for an offence that the court described as follows:

Sandercock was driving his vehicle in a residential area in Calgary. The victim, who was 16, was walking towards her home at 11:15 p.m. He told her that he was lost and asked for directions. After a friendly chat, they went their separate ways. A few moments later, he again approached her and asked her to park his car. She agreed to do this, and got behind the wheel. He then forced her to go to a secluded spot and submit to an act of sexual intercourse. Notwithstanding her protests that she was too young, he told her, "It's going to be all right. I just want to make out." She cried more than she struggled. He then told her that he loved her and dropped her off near her home without further incident. He had been drinking.

The accused was 26 years of age with a good work record. However, he had an alcohol problem and a criminal record for minor offences. At the time of the offence, he was on mandatory supervision for an earlier sexual assault. He pled guilty to the offence of sexual assault under consideration by the Court of Appeal.

- [9] In *R. v. Zimmerman*, [1998] B.C.J. No. 1968, a 1998 decision of this court, Mr. Justice Romilly sentenced a 32-year-old accused to three years imprisonment for the sexual assault of "a very naïve and unsophisticated mother of a young child who fell into bad company." He described the circumstances of the offence as follows:

At approximately 1:30 to 2:00 a.m. on the 20th of August, 1995, the accused attended the complainant's home. She invited him in and he asked her if he could go to his car for some beer. She had no objection to this, so he went to his car to retrieve a six-pack of beer. The complainant shared in the consumption of this beer and smoked some marihuana with the accused after the beer was finished. While in a drunken state, the accused started playing with the complainant's hair and started to fondle her breast and vagina. The accused continued with this behaviour, although he was told to stop by the complainant. While holding the complainant down on the floor, he undid his pants and told her to suck his dick, pushed his penis into her mouth on several occasions and told her to suck it. The accused bit the complainant on her breast, pried her legs apart, and had sexual intercourse with her against her will.

The accused before Mr. Justice Romilly had no related criminal record.

[10] In R. v. Kerr (1992), 13 B.C.A.C. 165, a May 13th, 1992 decision of the British Columbia Court of Appeal, the court upheld a five-year sentence of imprisonment for sexual assault and a one-year concurrent sentence for unlawful confinement in the circumstances of a violent sexual assault. The accused was 31 years of age at the time of the offences. He had no related criminal record, although he did have a significant criminal record for unrelated offences. In upholding the sentences, Mr. Justice Wood commented:

In my view, the trial judge considered the circumstances of the offence and the particular circumstances of the offender and came to the conclusion that the sentences which he imposed were fit and proper in the circumstances of this case. I am not persuaded that the trial judge erred or that the sentences imposed in this case are unfit. The sentence of five years imprisonment for the sexual assault conviction is, I think, a sentence at the high end of the range for someone who has no record of prior similar convictions, but it is nonetheless a sentence which, in the circumstances, appears to me to be justified on the basis of the facts of this case.

[11] Mr. Morgan has served nine and three-quarter months awaiting trial on this charge. The circumstances of this sexual assault are extremely serious. Mr. Morgan forced sexual intercourse and fellatio on an unwilling 16 year old girl. He threatened her and terrorized her for a prolonged period. He has been convicted and sentenced for two related offences, one of them a sexual assault.

[12] Mr. Morgan is subject to a deportation order. The significance of the deportation order is that it removes any ability that I might otherwise have to impose a prolonged period of probation. To do so in the face of a deportation order would be pointless.

[13] The sexual assault has had a profound effect on the complainant. It is not surprising that it has.

[14] In all of the circumstances, I am satisfied that a sentence of five years imprisonment is an appropriate sentence. Because Mr. Morgan has been incarcerated for nine and three-quarter months on this charge, that period of incarceration should be reduced by 19 and one-half months.

[15] Mr. Morgan, would you stand, please? Mr. Morgan, I sentence you to imprisonment for 40 months and 15 days.

[16] THE DEFENDANT: What's that?

[17] THE COURT: 40 months and 15 days. Three years, four months and 15 days.

[18] In addition, there will be an order authorizing the taking from you, for the purpose of a forensic DNA analysis, any number of samples of one or more bodily substances that is reasonably required for the purpose of forensic analysis by means of the investigative procedures described in subsection 487.06(1).

[19] You are prohibited from possessing any firearm other than a prohibited firearm or restricted firearm, and any crossbow, restricted weapon, ammunition and explosive substance from today's date for ten years after your release from imprisonment on this offence, and you are prohibited from possessing any prohibited firearm, restricted firearm, prohibited weapon, prohibited device and prohibited ammunition for life.

(EXCERPT CONCLUDED)

"B.M. Preston, J."

The Honourable Mr. Justice B.M. Preston

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