

CANADA / JUDGMENT

R. v. T.E.C.

2025 BCSC 1200

COURT

Supreme Court of British Columbia

DECIDED

11 February 2025

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2025 BCSC 1200 R. v. T.E.C.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. T.E.C.,

2025 BCSC 1200

Date: 20250211

Docket: X083753

Registry: New Westminster

Rex

v.

T.E.C.

Restriction on publication: Pursuant to ss. 486.4(1) and 539(1) of the C.C.C.

Before: The Honourable Mr. Justice Blok

Oral Reasons for Sentence

Counsel for the Crown:

V. Yip

A. Lee

Counsel for the Accused:

B. Movassaghi

Place and Dates of Hearing:

New Westminster, B.C.

February 7 and 11, 2025

Place and Date of Judgment:

New Westminster, B.C.

February 11, 2025

- [1] THE COURT: On August 1, 2024, T.E.C. was convicted of the following offences: (1) sexual assault with choking, suffocating or strangling; (2) sexual assault causing bodily harm; and (3) assault by choking, suffocating or strangling. He is now before the Court for sentencing. The reasons for conviction may be found at 2024 BCSC 2255.
- [2] Crown and defence are in agreement on the length of sentence, as well as a three-year probationary term, but disagree as to whether an order should be made pursuant to the Sex Offender Information Registration Act, S.C. 2004, c 10 [SOIRA].
- [3] Crown and defence also agree that Count 3 should be conditionally stayed pursuant to the Kienapple principle (R. v. Kienapple, [1975] 1 S.C.R. 729) which prohibits multiple convictions for the same delict. I agree, and so Count 3 shall be conditionally stayed.

I. Circumstances of the Offences

- [4] These offences arise from an event that occurred on August 4, 2021. The complainant, who I will describe as J.R., was about 20 years old at that time (she is now 23) and T.E.C. was 39. Although it appears from the evidence that T.E.C. and J.R. were not in a relationship as such, they did get together for occasional sexual activity. Their sexual activity was of the type sometimes described as "rough sex", and as part of that activity they had agreed on a tapping signal to convey that T.E.C. should ease up or stop the activity. J.R. could also simply say "stop".
- [5] On the occasion in question, their sexual activity proceeded with T.E.C. using substantial physical aggression from the outset, striking J.R. in the face with considerable force. J.R. described it as smashing her face with the palm of his hand. It was too rough for her from the very start and she told him to stop after the second blow, and said "stop" several more times as the blows continued. He then proceeded to choke her, again using excessive force to the point she could not breathe and felt she was about to pass out. She used the tapping signal to no avail and then hit his hands and arms in an effort to get him to stop. She said she was in "complete survival mode" in trying to get him to stop. He eventually stopped.

- [6] In my reasons for conviction I rejected T.E.C.'s evidence, found it did not raise a reasonable doubt, and accepted J.R.'s evidence that she revoked her consent to the sexual activity when excessive force was used. I also found the complainant had communicated her revocation of consent using the accepted and agreed signal, as well as by other means, and that T.E.C. had continued with the sexual activity despite that communicated revocation.

II. Victim Impact

- [7] J.R. suffered physical injuries as a result of the incident; specifically, bruises on her face, broken blood vessels in her left eye, various other bruises to her arms and body, and concussive-like symptoms. The latter symptoms included dizziness, vertigo and light sensitivity. These symptoms lasted one or two weeks.
- [8] J.R. provided a victim impact statement. She described the heavy toll that this incident has had on her, both mentally and emotionally. She has constantly replayed the matter in her mind and struggled with feelings of fear, shame and helplessness. The emotional strain was debilitating and the stress made her unable to focus on even the simplest tasks.
- [9] T.E.C. was known to persons at her place of employment, and J.R. endured "judgments and harassment" from some co-workers when she attempted to return to work. The alienation was such that she felt she had no choice but to quit her job. The resulting financial strain added further to the stresses she endured.
- [10] Emotionally, she continues to suffer. The incident has affected her ability to connect with or trust others, and it has impacted her current relationships and made her fearful about building meaningful ones in the future. The trial process was an additional stress, as it heightened her anxiety and made it difficult to find closure.

III. Circumstances of the Offender

- [11] Information concerning T.E.C. was provided by way of both a pre-sentence report (PSR), which was filed November 27, 2024, and a psychological assessment report dated January 8, 2025.
- [12] There was a notable divergence between the information conveyed to the PSR author and the information both conveyed to the psychologist and gleaned by the psychologist from other records. Given my view of this matter, it is not necessary to resolve or reconcile these various differences.
- [13] T.E.C. is currently 42 years old. His upbringing appears unremarkable, at least from one telling of that background, but as reported by the PSR author, T.E.C. dropped out of school in Grade 11 and started with hard drugs at age 18, which is when his adult criminal record begins. His criminal record has three identifiable periods of criminal activity: (1) 2001 to 2002, where he had convictions for uttering threats; theft (two convictions) and possessing break-in instruments; (2) 2006 to 2008, where he had two theft convictions; and (3) 2010 to

2013, where he had nine convictions for assault, one conviction for assault with a weapon, and one conviction for uttering threats. There are also three breach offences in his earlier record. His longest sentence was one that was equivalent to 12.5 months in jail before factoring in time served. He has also had a six-month conditional sentence order.

- [14] Of particular concern is the fact that the numerous assaults in the 2010 to 2013 time period of T.E.C.'s criminal record involved assaults on different domestic or romantic partners.
- [15] T.E.C. was involved in a serious motor vehicle accident in 2010 and is said to have suffered numerous injuries including a traumatic brain injury. He has not been employed since that time and is currently on disability. That accident caused him to spiral into more intense drug use and addiction, though it is apparent he had substantial issues with drug use prior to that given other information indicating that he had one month stints in rehab in each of 2005, 2007 and 2009. While he claimed to the PSR author to have been abstinent from drugs for the last nine months, he told the psychologist that he had consumed cocaine in December 2024.
- [16] A psychological report was ordered because T.E.C. testified that the traumatic brain injury he suffered in the 2010 accident has caused memory problems and his cognitive ability and understanding have slowed down.
- [17] The psychologist found T.E.C. to be "quite evasive" in his examination and noted that the information T.E.C. provided was inconsistent. For example, the psychologist noted reports from 2015 indicating that he had been expelled from a number of schools and dropped out in Grade 9, but that he had later obtained his high school equivalency as well as a trade certification. This information was not reported by the PSR author. Other aspects of the information provided by the PSR author did not coincide with that same type of information provided by the psychologist.
- [18] In terms of the potential effects of the 2010 accident on his criminal offending, the psychologist noted there were violent offences in T.E.C.'s record that predate the accident. The psychologist also noted post-2010 correctional records describing T.E.C. as being "extremely manipulative".
- [19] The psychologist administered a number of tests and said "effort was not an issue", such that the results appeared to be an accurate reflection of T.E.C.'s abilities. The psychologist did not see any long-term memory issues, although he said T.E.C. seemed to have trouble "sequencing life events". The psychologist said there was no indication from any of the tests of an enduring decline or gross impairment in cognitive functioning. He also saw no injury-related impact that would increase or decrease the risk of offending. The psychologist concluded:

Specifically, there is no indication that the head injury of 2010 had any enduring impact on impulse control, social judgment, decision-making or aggression. There has been no change in behaviour related to the behaviours noted from what was documented prior to the injury with behaviour documented since the injury. This lack of change in behaviour is probably the best indicator and it is supported by the test results. The behaviour of concern (reoffending) appears to be related to a personality disorder with traits that have been developing since adolescence.

IV. The Positions of Crown and Defence

[20] Crown and defence agree that a fit sentence here is a jail sentence of two years less a day plus three years probation. They differ only on the SOIRA order.

A. Crown Submissions

- [21] The Crown cited *R. v. Parranto*, 2021 SCC 46, at paras. 9-12, 30-44, for the proposition that proportionality is the organizing principle in sentencing, and cited *R. Maslehati*, 2024 BCCA 207, at paras. 11-13, 58, 64-74 and 135, for several sentencing principles specific to adult sexual assault cases.
- [22] Drawing from the list of factors set out in *Maslehati* at para. 74 that may assist in assessing the gravity of the offence, the Crown submits this case involved highly invasive and demeaning conduct, prolonged duration, additional physical violence and physical injury, and persistence in the face of communicated non-consent.
- [23] Citing *Maslehati* at para. 135 where the Court of Appeal discussed moral blameworthiness, the Crown submits that while the offences appear to have taken place "in the moment", T.E.C.'s persistence in perpetrating the offences despite the complainant's objections still puts his moral blameworthiness in the moderate to high range, though not actually at the high end.
- [24] In terms of aggravating factors, the Crown says a significant effect on the victim, which is a factor specifically set out in the Criminal Code at s. 718.2(a)(iii.1), is applicable here. The Crown also says T.E.C.'s prior, though dated, criminal record for intimate partner violence is also aggravating.
- [25] As for mitigating circumstances, the Crown said some of T.E.C.'s personal circumstances might be seen as mitigating in nature, in particular the somewhat dated nature of his criminal record and the indications of the prospects for rehabilitation.
- [26] The Crown cited the following cases as supporting the proposed length of sentence: *R. v. Hart*, 2023 BCSC 933; *R. v. B.-Q.*, 2023 BCSC 671; and *R. v. Titian*, 2024 BCSC 2355. The Crown also cited *R. v. Anthony-Cook*, 2016 SCC 43, for the law relating to joint submissions.

- [27] The Crown said it recognizes the proposed sentence is at the lowest end of the range but noted that the proposed jail sentence in combination with three years probation will keep T.E.C. under supervision for a five-year period.
- [28] The Crown notes that a 20-year order under SOIRA is presumptive, that is, the burden is on the offender to demonstrate on a balance of probabilities that the order should not be made. Crown noted in particular the following factors: the nature of the offences involving as they did choking and bodily harm; the ages of the persons involved, approximately 20 and 39 at the time; the nature of their relationship, being for casual sexual encounters; and lastly, T.E.C.'s record of past violence against women while in domestic relationships, although Crown did recognize that those offences were dated.
- [29] The Crown also responded to the defence case submitted, that is, *R. v. M.K.M.*, 2024 BCSC 575, where the court exempted the offender from SOIRA registration, but the Crown argued here that there were distinguishing facts in that case, including the youthfulness of the offender, no criminal record, and a specific finding by the court in that case that the offender had a low risk to reoffend. Here, the Crown says, there is no such evidence or finding.

B. Defence Submissions

- [30] The defence noted that this is a joint position on sentence. Counsel noted that while this is not a joint submission in the Anthony-Cook sense, nonetheless it is a position that ought to carry weight with the Court.
- [31] Defence counsel said that the low end of the range is appropriate here, arguing that this is not a typical invasive sex assault because the mutual plan here was to have a sexual encounter.
- [32] As to the Crown's position on the SOIRA order, defence counsel said there is no connection here between making the order and assisting police. Counsel argues that this is a one-off event, there is no prior history of sexual offences, and T.E.C. has maintained an offence-free record for the last three-and-a-half years.
- [33] Counsel argues that there is an indication that T.E.C. has insight into his other reasons or problems with offending because the PSR author says, at page five, "[T.E.C.] advised that he has not used any illegal substances in approximately nine months and appears to have recognized the negative impact his addiction has had on his life".

V. Analysis

- [34] I will begin by saying that I am content to accept the joint position on sentence. While this is not a joint submission in the Anthony-Cook sense, I agree that, while not having the same kind of weight attributed to joint submissions, some deference or weight is appropriately accorded to joint positions on sentence, and I take that into account here.

- [35] While all sexual assaults are serious, within that group of serious offences some distinctions may be drawn, as per the factors set out in Maslehati, at paras. 73 and 74.
- [36] I agree with some of the factors submitted by the Crown as tending to show the offences were more serious within the general category of sexual assaults, those being the additional physical violence and physical injury and the persistence in the face of communicated non-consent.
- [37] I agree, as well, with the Crown's argument or referencing as additional factors the significant impact on the victim, and although the criminal conviction history of T.E.C. is somewhat dated, his history of violence against domestic partners is also a factor to be taken into account in this case.
- [38] In terms of the defence argument, I agree that this is not a situation of lack of consent to sexual intercourse from the outset but one of revocation of consent, but nonetheless it is still a serious offence as reflected in the joint positions of counsel. It is, however, different from those cases where there is no consent from the outset in the specific circumstances of this case.
- [39] As for the SOIRA order, I conclude there ought to be a SOIRA order in this case. Here, there is no positive finding of low risk to reoffend as there was in M.K.M.
- [40] I am also concerned about some of the comments in the psychologist's report regarding manipulative behaviour and of course the very recent illicit drug use, particularly given that substance abuse seems to have been the root cause of some of T.E.C.'s earlier offending.
- [41] I accept that there has been no other sexual offending. The prior domestic assaults had no sexual component. However, given the nature of the current offences, one cannot really say that the earlier offences of violence against women have no part to play in this analysis.
- [42] As a result, I conclude that T.E.C. has not discharged his burden of showing that he comes within either of the exceptions set out in s. 490.012(3).
- [43] And now to the sentencing itself.

VI. Sentence

- [44] T.E.C., if could you please stand.
- [45] T.E.C. for the offences for which you have been convicted, Counts 1 and 2, because Count 3 has now been conditionally stayed, I sentence you to a period of incarceration of two years less a day followed by a 36-month probation order.
- [46] You may now be seated.
- [47] I am going to proceed what are so-called ancillary orders relating to sentencing, and I will pronounce the conditions of probation momentarily.

- [48] Pursuant to s. 743.21 of the Criminal Code, there will be an order prohibiting you, T.E.C., from contacting -- and now I have to say the complainant's name, [J.R.], and I do remind everyone there is publication ban in place -- during the custodial period of your sentence.
- [49] There will also be a DNA order pursuant to s. 487.051(1) as this is a primary designated offence.
- [50] There will be a mandatory firearms and weapons prohibition pursuant to s. 109 of the Criminal Code, for life.
- [51] And there will be an order pursuant to s. 490.012 requiring you, T.E.C., to comply with the Sex Offender Information Registration Act for a term of 20 years. The duration is pursuant to s. 490.013(2)(b).
- [52] In view of T.E.C.'s personal situation and what I understand of his financial situation, I waive the victim fine surcharge.
- [53] Now to the probation conditions. T.E.C., I am going to read these to you, and there are quite a few of them. So I would be grateful if you could just pay attention because I am going to ask you at the end if you understand them, all right?
- [54] So it is a 36-month term. The conditions are:
1. You must keep the peace and be of good behaviour;
 2. You must appear before the court when required to do so by the court;
 3. You must notify the court or the probation officer in advance of any change of name or address, and promptly notify the court or the officer of any change of employment or occupation;
 4. You must have no contact or communication, directly or indirectly, with [J.R.];
 5. You must not go to or be within 100 metres of any place where [J.R.] lives, works, attends school, worships or happen to be. If you see her, you must leave her presence immediately without any words or gestures;
 6. You must report in person to a probation officer at 103-80A Sixth Street, New Westminster, phone number 604-660-8834, within two business days after your release from custody, unless you have obtained before your release from custody written permission from the probation officer to report elsewhere or within a different timeframe. After that, you must report as directed by your officer;
 7. When first reporting to your probation officer, you must provide them with the address where you live and your phone number. You must not change your address or phone number without notifying your probation officer in writing at least three days in advance of any change;

8. You must attend, participate in and complete any intake, assessment, counselling, or education program as directed by your probation officer. This may include, but is not limited to, counselling or programming for violence prevention, alcohol or drug addiction, mental health or sexual offence prevention;
 9. Having consented in court, and that is something that we will have to remember to do. Having consented in court, you must sign any document that is necessary for your probation officer, counsellors or treatment providers to check your attendance and completion or any intake, assessment, counselling or treatment program. I think that should be "for" any intake, assessment, counselling or treatment program. Would I be right?
- [55] CNSL V. YIP: Yes, Justice. That should be --
- [56] THE COURT: Yes, there was an "f" there.
- [57] CNSL V. YIP: Yes.
- [58] THE COURT: For any intake, assessment, counselling or treatment program.
10. Having consented in court, if asked by your probation officer you must provide proof of your attendance and completion of any assessment, counselling or treatment program;
 11. You must not possess or consume any controlled substances as defined in the Controlled Drugs and Substances Act, S.C. 1996, c. 19, except with a medical prescription;
 12. Your reporting ends when you have satisfied your probation officer that you have completed all your counselling and treatment, or that it is not required and your officer has told you that you are no longer required to report; and
 13. You must not possess, directly or indirectly, any weapon as defined by the Criminal Code, including: (a) firearms and ammunition; (b) crossbows, prohibited or restricted weapons or devices or explosive substances; (c) anything used, designed to be used, or intended for use in causing death or injury to any person, or to threaten or intimidate any person; (d) any imitation of all of the above, including any compressed air guns and or BB/pellet guns; or (e) any related authorizations, licenses and registration certificates and you must not apply for any of these.
- [59] And that concludes the probation orders.
- [60] Do you understand those, T.E.C.?
- [61] THE ACCUSED: Just the one, about the alcohol, is it to consume alcohol.
- [62] THE COURT: We took that out.
- [63] THE ACCUSED: Okay. So just --
- [64] THE COURT: Okay.

- [65] THE ACCUSED: I can't possess narcotics?
- [66] THE COURT: Anything under the Controlled Drugs and Substances Act, and so that would include anything captured. So that is both illicit drugs and --
- [67] THE ACCUSED: Marihuana?
- [68] THE COURT: -- well, I have not gotten into the question of marihuana. I am not going to go into the defining, it is just under the CDSA --
- [69] THE ACCUSED: I'm just asking because I use it for my --
- [70] THE COURT: Mr. Movassaghi will give you some excellent legal advice on that, I am sure.
- [71] CNSL B. MOVASSAGHI: Yes, I cannot recall the last time Crown charged anyone for breaching for possessing marihuana.
- [72] THE COURT: Yes.
- [73] CNSL B. MOVASSAGHI: I will speak with T.E.C.
- [74] THE COURT: In any event, the condition is as I have said it. But, Mr. Movassaghi, one of those conditions is based on a consent given in court for the probation officer to check on the progress of treatment, and is that consent given?
- [75] CNSL B. MOVASSAGHI: Yes, thank you.
- [76] THE COURT: All right. As I have previously said, there is a conditional stay of proceedings on Count 3.
- [77] Have I -- are there any matters that arise, Ms. Yip?
- [78] CNSL V. YIP: No, not from the Crown, Your --
- [79] THE COURT: Mr. Movassaghi?
- [80] CNSL B. MOVASSAGHI: The SOIRA, was it for 20 years, My Lord?
- [81] THE COURT: It was.
- [82] CNSL B. MOVASSAGHI: Okay, thank you.
- [83] THE COURT: All right. That concludes these proceedings. Thank you very much.

"Blok J."

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