

CANADA / JUDGMENT

R. v. Titian

2024 BCSC 2355

COURT

Supreme Court of British Columbia

DECIDED

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IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Titian,

2024 BCSC 2355

Date: 20241022

Docket: 42373-2

Registry: Port Alberni

Rex

v.

Michael Anthony Titian

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Before: The Honourable Justice Doyle

Oral Reasons for Sentence

Counsel for the Crown:

C.S. Proteau

Counsel for the Accused:

M. Ritzker

Place and Date of Hearing:

Port Alberni, B.C.

October 22, 2024

Place and Date of Judgment:

Port Alberni, B.C.

October 22, 2024

- [1] THE COURT: Michael Anthony Titian is before me today for sentencing for the sexual assault of X.X. on September 19, 2021, in Port Alberni. This matter was set for trial to commence on April 8, 2024, and on that date, Mr. Titian pled guilty. The matter was adjourned for a pre-sentence report and a Gladue report, among other reasons. Those were completed and filed, and are part of the record in the proceedings today.
- [2] Counsel advised at the outset of the proceedings today, that after further discussions, this would be a joint submission, and further advised that there are no issues with respect to the taking of the guilty plea (that having been done before Justice G.C. Weatherill on April 8, 2024), and that there were no other outstanding matters in issue, such that this matter could proceed today on that basis.
- [3] The Crown and defence presented a joint submission for a sentence of two years in a penitentiary, probation to follow for three years on various conditions, and a number of ancillary orders. I will return to those in due course.
- [4] The offence at issue on the indictment occurred September 19, 2021 and into the early morning of September 20, 2021, at which time X.X. reported that she had been assaulted in her residence by her mother's boyfriend, Mr. Titian. The RCMP ultimately attended, and a statement was taken from X.X. She advised of an incident the prior weekend at a hotel in Nanaimo where she, her mother and Mr. Titian were staying.
- [5] X.X. was 23 at the time of this offence, and Mr. Titian was just shy of 53 years old.
- [6] That weekend prior, all the parties had been drinking together. Mr. Titian tried to kiss X.X. She rebuffed him and went to bed. About a week later, there was the incident which is at issue here and occurred at her residence. Her mother was also there. There was drinking involved. She woke up feeling Mr. Titian's erect penis in her vagina. She was on the couch at that time. Her shorts were off and, having discovered that and rebuffing Mr. Titian, he pulled up his shorts. She did the same. She went to the washroom and found that she was bleeding slightly from her vagina. She messaged a friend of hers and ended up going back to her bed to sleep. There was a further encounter with Mr. Titian attending to her bedroom and trying to touch her, and she told him to "fuck off" and that was the end of the matters between them at that time.

- [7] She told her mother about this incident, who confronted Mr. Titian about it. He attended and asked if she was okay and made an apology of sorts. He then packed up his belongings and left.
- [8] The investigation continued. Various exhibits were seized. Statements were taken from X.X. and her mother. Ultimately, DNA matching Mr. Titian was found from a sample taken from semen in X.X.'s anal region.
- [9] The medical examination revealed redness and abrasions on her vagina. Mr. Titian was questioned by the police but there was no statement forthcoming at that time. The underlying facts and the various points made by the Crown are not contested in any way by Mr. Titian, as set out by his counsel during submissions.
- [10] Mr. Titian lives in Ahousaht, which is about a 45-minute water taxi to Tofino.
- [11] His criminal record was filed as Exhibit 1 on this matter and dates from July 1989 to September 2012. The most notable matter is a November 5, 2007 conviction for exposing himself to a person under the age of 14. His counsel notes that the entirety of his relatively brief record has never resulted in him spending any time in jail.
- [12] A thorough pre-sentence report and Gladue report were ordered and completed. I commend the writers for the details which they set out. Counsel went through portions of them, and they were both filed as exhibits. I do not intend to refer to all excerpts from them, but they do disclose matters that were touched on in the submissions of counsel with respect to the background of Mr. Titian. These include his own history with the residential school system and some of the various struggles that he has clearly had throughout his life as a result of exposure to that system.
- [13] The Crown submits that the various experiences Mr. Titian has had led him to have a "relatively void" knowledge of what is, and is not, consent. That is a matter that may well be looked at by the Correctional Service of Canada, as submitted by Mr. Titian's counsel, with respect to programs available to him in that system.
- [14] With respect to the Gladue report, I will again not cite excerpts. Counsel went through portions of it this morning, and I reviewed it.
- [15] Crown counsel notes, again fairly, that Mr. Titian, as set out at page 8 of the report, presents with a number of Gladue factors. I count 11 of them, which are relevant to consideration of a sentence for him in these proceedings, based on the Criminal Code, R.S.C. 1985, c. C-46 and the law in relation to it. I will not list all of them. They are set out in the report.
- [16] Mr. Ritzker, on behalf of Mr. Titian, notes that same report at page 4, which discusses the fact that, essentially, Mr. Titian grew up fatherless. Part of this page and the next page notes that his mother had also attended residential schools (as did he and his sister), and that in addition to being fatherless, his mother died when he was only 12 years old.

- [17] Mr. Titian has some knowledge of his Indigenous background on his mother's side, but little on his father's side. Again, that may be something that can be inquired into further by Corrections officials during the course of his sentence, including options that may be available regarding where he serves that sentence. I am not making any directions in that regard.
- [18] The Court heard--and perhaps most importantly, Mr. Titian heard--various victim impact statements. I am not going to read through all of them. I appreciate the strength and bravery of those who provided them, including oral statements from X.X. and her mother, with the assistance of her sister. The statement of X.X.'s grandmother was read in.
- [19] I must say that it takes a lot of courage to provide these statements, and particularly to stand before this Court and present them. I thank all of you for doing so. They provide a perspective that simply is not available to me sitting up here, because I do not know any of the people involved. They also provide a perspective not just to this Court, but the public at large and, importantly, to Mr. Titian. These were clear, powerful and brave statements which assisted the matters which this proceeding is meant to address.
- [20] I also very much appreciate the clear, sage thoughts of X.X.'s uncle. Sadly, he had his own history with the residential school process, and the pain and tragedy it brought to his life. He provided his clear and thoughtful perspective on how he and others in the Indigenous community can deal with that legacy. Those included his views, now in his seventies, about how to move forward, having suffered through the pain in the ways he described. He stressed the need for women in the community to be protected.
- [21] X.X.'s grandmother commented about the coming of age ceremony of X.X., attended by Mr. Titian. She too expressed the importance of protecting women in the Indigenous community, and the traditions and cultural beliefs in that regard. I hope these hit home with Mr. Titian, and I hope they continue to do so for the balance of his life.
- [22] I am not going to try and paraphrase what was said by any of you. I could not do it justice if I did. Again thank you for doing so, and thank you for providing cultural perspective to the matter as well.
- [23] Madam Registrar, do you have a copy, or Ms. -- I am sorry, I have lost my train of thought.
- [24] CNSL C. PROTEAU: Proteau, that's okay.
- [25] THE COURT: Ms. Proteau, I have left my copy of the proposed conditions on sentence in my chambers.
- [26] CNSL C. PROTEAU: Yes, I have another.
- [27] THE COURT: Is there another one? I am sorry to trouble you with that.
- [28] CNSL C. PROTEAU: Yes, no, that's fine. I've written on -- just one line on top, otherwise that's fine.

- [29] THE COURT: Thank you.
- [30] CNSL C. PROTEAU: This is a clean -- yes.
- [31] THE COURT: And that handwriting just says two years and three years probation, Mr. Ritzker, so nothing of surprise to you.
- [32] CNSL C. PROTEAU: No.
- [33] THE COURT: I am not going to set out the sections of the Criminal Code in detail. I will note the relevant sections to sentencing generally. Some were referred to by counsel in the submissions, and some were referred to in the cases.
- [34] The principles of sentencing in criminal matters are set out in the Criminal Code, commencing with s. 718, which sets out the fundamental purpose of sentencing. That includes the objectives of denunciation of unlawful conduct and deterrence of others, and those are particularly important in cases involving serious sexual assault.
- [35] This is a serious sexual assault. This is a violation of X.X.'s person. She was a vulnerable person--she was asleep. It is unacceptable, and it is criminal. Society condemns it, and this Court condemns it. The sentence will condemn it as well, to Mr. Titian and any others who think that there might be some excuse for acting in this way. Mr. Titian, you can see the harm it has done to X.X.
- [36] I can hope that X.X. does not suffer more, but sadly hope is all I can offer. Perhaps she, as her uncle describes, wakes up as a survivor of sexual abuse at night in the dark, years later, still experiencing the fear, terror and agony of it. X.X. is clearly still suffering. Perhaps somehow these proceedings can assist her.
- [37] Section 718.02 provides for exactly what I have just said with regard to offences of this nature, namely that denunciation and deterrence are to have primary consideration.
- [38] Section 718.04 discusses, as Crown counsel set out, considerations the court must have when addressing abuse of a person because of their personal circumstances, in particular where the person is Indigenous and female. Again, the primary considerations are denunciation and deterrence.
- [39] Crown counsel also points out--and again Mr. Ritzker has no issue with this--that the principles of s. 718.2(e) require this Court to consider circumstances of sentences for Indigenous offenders, in particular in considering sanctions other than imprisonment. Both counsel agree that a term of imprisonment is required in this case and, in my view, that is appropriate.

- [40] This is a case where the Court is presented with a proposed sentence by way of a joint submission after a guilty plea. Crown counsel referred to the applicable authority in that regard: *R. v. Anthony-Cook*, 2016 SCC 43. It sets out that the court is not bound by a joint submission made by counsel, but must accept it unless, in effect, it would be contrary to the public interest.
- [41] Based on all the factors that I have heard today, including the circumstances of the offence, the mitigating and aggravating factors involved, the victim impact statements, the reports that I have reviewed and/or heard, the record of Mr. Titian, and some of the other matters I will mention below, in my view the joint sentence proposed is an appropriate sentence in the circumstances of this case.
- [42] The mitigating circumstances referred to by counsel are, first, that there appears to have been some sort of an apology the next morning by Mr. Titian, and that does bear some weight. There was a second apology, and I understand that occurred in the courtroom on the day of the guilty plea on April 8, 2024. Although it is for X.X. to decide how she receives that, I will say that is somewhat unusual. It does not happen in every case. In fact, it is more the exception than the rule, and I agree with Crown counsel and Mr. Ritzker that is of some import.
- [43] The Crown also relies upon the fact that Mr. Titian has stopped drinking, and clearly, I expect there will be further steps taken by Corrections officials with respect to addressing those issues so that his sobriety continues.
- [44] The guilty plea was accepted on the day of the trial. There was no preliminary inquiry, which spared testimony. I appreciate Crown counsel's comments with respect to having met with X.X. and her mother early on in this process, and Crown counsel's experienced view about the difficulties that testifying would have caused them had the matter gone forward to trial. Some credit is due for them being spared of that ordeal.
- [45] The positive DNA result--which Mr. Ritzker describes was important to resolving the matter--was, as set out by Crown counsel, not available until October 2023. The Crown also notes that Mr. Titian cooperated with both the pre-sentence report and the Gladue process, and again, that does not always happen.
- [46] Obviously, the circumstances are aggravating. I referred to the consequences, and X.X. and others have set those out in more detail.
- [47] I have considered the cases provided by Crown counsel and agreed upon as relevant by Mr. Ritzker. These relate in some degree to the circumstances of Mr. Titian and his Indigenous status, and also the circumstances here where the victim, X.X., is also Indigenous. They include the methodology in dealing with sentencing pursuant to the Criminal Code as interpreted by legal precedent. Those cases include: *R. v. Wells*, 2000 SCC 10; *R. v. Ladue*, 2011 BCCA 101; *R. v. Ipeelee*, 2012 SCC 13; *R. v. Craig*, 2005 BCCA 484; *R. v. Williams*, 2011 BCCA 194; *R. v. Pouce Coupe*, 2014 BCCA 255 and *R. v. Hurley*, 2024 BCCA 259. I will not cite

further from those cases, but have considered them.

- [48] At the end of the day, both counsel submit that the two-year sentence is at the low end of the range, but that with the maximum probation period and the conditions attached to it, the effect is supervision by either the Correctional Service of Canada or this Court for a period of five years from this date.
- [49] Both counsel submit that this is a fair and fit sentence and, as I indicated earlier, I accept that to be the case.
- [50] Mr. Titian, would you please stand.
- [51] For the offence set out in this Indictment, I sentence you to a period of imprisonment of two years in a penitentiary.
- [52] That two-year penitentiary sentence will be followed by three years of probation on the following terms. These are both statutory and optional terms.
- [53] 5001, Madam Registrar, if it is of assistance. Do you have these, as well?
- [54] THE CLERK: Yes, Justice.
- [55] THE COURT: I have not stolen your only version?
- [56] THE CLERK: No.
- [57] THE COURT: You must keep the peace and be of good behaviour. You must appear before the court when required to do so by the court. 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 probation officer of any change of employment or occupation.
- [58] You must report in person to a probation officer at 3019 4th Avenue, Port Alberni, B.C., 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.
- [59] You must have no contact or communication, directly or indirectly, with X.X. or her mother.
- [60] You must not go to: (1) any place where X.X. or her mother live, work, attend school, worship, or happens to be; (2) if you see them, you must leave their presence immediately without any words or gestures.
- [61] You must not possess or consume alcohol or controlled substances as defined in the Controlled Drugs and Substances Act, S.C. 1996, c. 19 or any other intoxicating substance except with a medical prescription.
- [62] You must attend, participate in, and complete any intake, assessment, counselling, or education program as directed by your probation officer.

- [63] There will be an order pursuant to s. 109(2) of the Criminal Code: You are prohibited from possessing: (a) any firearm other than a prohibited firearm or restricted firearm, and any cross-bow, restricted weapon, firearm part, ammunition, and explosive substance for a period of 10 years from your release; and (b) any prohibited firearm, restricted firearm, prohibited weapon, prohibited device, and prohibited ammunition for life.
- [64] With respect to this offence, it is a primary designated offence pursuant to s. 487.051(1) of the Criminal Code. I make an order in Form 5.03, authorizing the taking of samples of bodily substances from you for the purpose of registration in the DNA National Data Bank.
- [65] Pursuant to s. 490.012 of the Criminal Code, you are required to comply with the Sex Offender Information Registration Act, S.C. 2004, c. 10 for life.
- [66] Finally, the warrant of committal in this matter pursuant to s. 743.21 shall be endorsed that you must have no contact of any kind with X.X. or her mother while you are in custody.
- [67] You understand all those? They will be written out for you. You are nodding, is that a yes? Okay, thank you.
- [68] Counsel, are there any matters I have missed?
- [69] CNSL M. RITZKER: Well, there is a small detail of the victim fine surcharge. I'd ask that you consider, given the incarceratory circumstances, et cetera, and the -- the need to address some, I suppose, other obligations, that this may be excusable, if you could waive it.
- [70] CNSL C. PROTEAU: I think it's typically waived in the circumstances and Crown wouldn't have an issue.
- [71] THE COURT: And just to be clear, it is a victim fine surcharge, I believe it is \$200.
- [72] CNSL C. PROTEAU: Yes.
- [73] THE COURT: And Mr. Titian is going to be spending the next two years in custody.
- [74] CNSL C. PROTEAU: Yes.
- [75] THE COURT: Or on parole, if that occurs. I will waive it in the circumstances.
- [76] CNSL M. RITZKER: Yes, that was what I was trying to say, thank you.
- [77] THE COURT: Yes, thank you.
- [78] CNSL C. PROTEAU: I think that's everything, Justice.
- [79] THE COURT: I think that is everything that I can think of.
- [80] CNSL C. PROTEAU: Nothing else outstanding from my point of view.
- [81] THE COURT: Again, I want to commend counsel for their work on addressing this matter as concisely as they have. Mr. Titian, good luck to you. And to X.X. and her mother, and all the others who attended today, thank you, and we will adjourn.

"Doyle J."

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