In the Court of Appeal of Alberta

Citation: R. v. Hudon, 1996 ABCA 331

Date: 19961030
Docket: 16662
Registry: Calgary

Between:

Her Majesty the Queen

Respondent

- and -

Nicole Ann Hudon

Appellant

The Court:

The Honourable Madam Justice Picard
The Honourable Mr. Justice Gallant
The Honourable Madam Justice Rawlins

Memorandum of Judgment

COUNSEL:

G. Tomljanovic, for the Respondent

Elliot O. Baker, for the Appellant

MEMORANDUM OF JUDGMENT

THE COURT:

[1] This case raises the issue of the appropriate sentence for a person who complains to the police about a serious sexual assault and later, before charges are laid, admits she was lying.

FACTS:

[2] The appellant, 18 years of age, complained to the police that three men had, together, sexually assaulted her. She gave a very detailed account involving allegations of violence and perversity. The response was predictable. The police commenced a massive

investigation, interviewing a number of individuals, including families and spouses of the men. They even arranged for a snowblower to clear an area where evidence was expected to be found. The appellant was examined in hospital. The men were interrogated and one was arrested. One man took a polygraph test. All retained counsel. Before charges were laid, and only after being re-interviewed by the police, the appellant admitted she had lied. The appellant received a sentence of 15 months concurrent on each of three counts of public mischief for causing a police officer to enter on an investigation by making a false statement, s. 140(1)(a) *Criminal Code.*

[3] The judge found that the appellant's actions caused stress and mental suffering to the men and their families as well as a negative effect on their reputations in the small city in which they all live.

[4] There was a pre-sentence report which said that the appellant needed counselling but would not accept that she did. While the pre-sentence report stated that the appellant's concern was centred upon herself and her child rather than the victim's she had falsely accused, her lawyer stated that she expressed remorse to him and that she told him she had expressed remorse to the person preparing the pre-sentence report.

[5] The appellant argues that the trial judge placed too much emphasis on deterrence and too little on the mitigating factors.

[6] It is true that the sentencing judge did not articulate the mitigating factors in his judgment. We will review them, as put forward by the appellant, in assessing whether the sentence was unreasonable or unfit. There was a guilty plea, the appellant is a young person, a responsible single parent and has emotional and personal problems from a difficult childhood. As to the aggravating factors, the trial judge said, after hearing the submissions of counsel referred to above, that there was no remorse. He also identified the appellant's refusal to acknowledge her need for counselling. Clearly, he was most concerned about specific and general deterrence.

[7] In order to assist the court in assessing the scope to be given to deterrence, counsel sought similar cases but advised that they had not been able to find any. Three cases from this Court are of some assistance. In *R. v. Lukasik* (1982), 22 Alta. L.R. (2d) 222, the appellant was sentenced to nine months for public mischief and perjury. She alleged an attempted rape and maintained her false story through the Preliminary. The short reported decision describes the circumstances as "most unusual" and "extenuating" apparently identifying a mitigating feature in the case but giving no details. In *R. v. Rees* (1993), 145 A.R. 64, a sentence of 12 months was given to a man convicted of failing to

stop at the scene of an accident and of public mischief. He had left the scene of an accident and then taken steps to cover up his role in it including making a false report that his car was stolen. In *R. v. Gill* (1994), 162 A.R. 163, as part of a 30 month sentence for extortion and fraud, a concurrent sentence of six months for public mischief was affirmed. The appellant had planned to stage an accident and make an insurance claim. It is clear from all three cases that deterrence was paramount.

[8] Reviewing the fitness of the sentence on the basis of the mitigating and aggravating factors, it is clear that the consequences to the victims, the men against whom the false allegations were made, were profound. These victims and their families suffered a great deal of stress, emotional suffering and financial loss. The damage to good name and reputation that comes from such allegations and investigations is impossible to totally reverse. On a community level, there was the unnecessary deployment and use of scarce resources: the police and the health care system. Furthermore, the actions of the appellant may potentially have a chilling effect on a system which has so recently come to act expeditiously on complaints of sexual assault.

[9] The important consideration of deterrence must be balanced with that of the possibility of rehabilitation. In this case the appellant continues to deny that she has a need for counselling, a need recognized by professionals as well as her family and friends. An important step in rehabilitation is the acknowledgement of remorse. We consider the presentence report which said that the appellant was focused on herself rather than the victims to be the most objective measure of the appellant's position. At this time, the prospects for rehabilitation are not great. General and specific deterrence are dominant in this case.

[10] Upon reviewing the factors as suggested by the Supreme Court of Canada decisions in *R. v. Shropshire* and *R. v. M.* (C.A.), we find that the sentence of 15 months was not demonstrably unfit.

[11] The appeal is dismissed.

JUDGMENT DATED at CALGARY, Alberta,
this 30th day of October A.D. 1996