

Citation: *R. v. Scurvey*, 2024 YKTC 38

Date: 20240923
Docket: 23-00466
23-00574
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before Her Honour Judge Cairns

REX

v.

CALVIN BRENT SCURVEY

Appearances:
Peterson Ndlovu
Jennifer Budgell

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCE

[1] CAIRNS T.C.J. (Oral): This matter has proceeded by way of a guilty plea that Mr. Scurvey entered. The matter was originally set down for trial; however, it was, as I understand it, brought forward for pleas to be entered to two of the charges that Mr. Scurvey was facing.

[2] The first in time is on Information 23-0074, and that is a charge for breaching a condition of his long-term supervision order contrary to s. 753.3(1) of the *Criminal Code*. Essentially, the charge relates to breaching his curfew; however, the breach of the curfew lasted some five months. As he did not return, it is a fairly significant curfew breach.

[3] The other charge that Mr. Scurvey entered a guilty plea on is Information 23-00466 that on August 30, 2023, in Whitehorse, he did commit an assault on Amanda Calbery with a weapon, a piece of wood, contrary to s. 267(a) of the *Criminal Code*.

[4] The facts have been provided by way of an Agreed Statement of Facts, which has been filed with the Court. I will not go into those in detail but, by way of summary, Mr. Scurvey was on a long-term supervision order that he had been placed upon in May 2020. One of the conditions of that long-term supervision order was that he was required to abide by a curfew. On March 31, 2023, he was signed out of the residence (the SHARP-Connective) for a pre-approved weekend pass. Mr. Scurvey was due back on Tuesday after the weekend by his 10:00 p.m. curfew. He failed to return, and he was essentially not arrested again until September 11, 2023. That is the period of time he was away from the residence and not complying with his long-term supervision order.

[5] The assault occurred during the time Mr. Scurvey was away from his residence. Again, that is described in the Agreed Statement of Facts. Briefly, on August 30, 2023, in the early hours, Mr. Scurvey attended at Amanda Calbery's residence. I am advised that Ms. Calbery was his partner at the time. They were in a relationship. She was sleeping. She woke up and found him banging and kicking at the front door demanding to be let in. Mr. Scurvey came around to the back of the house. He broke part of the glass in the window. Ms. Calbery believed he was trying to force his way in. He was intoxicated by drugs and alcohol, and he made some accusations to her about her own drug use. Then there was an assault, where Mr. Scurvey was outside of the house reaching in through the window, standing on a tire with his upper body inside the house.

There was a struggle. Mr. Scurvey grabbed Ms. Calbery's arm and hair and was pulling her. He then picked up a piece of wood that had been lying on the ground and swung the stick toward her. Mr. Scurvey did not strike her. He eventually left the property.

[6] Those are the facts that have been submitted in relation to the assault charge.

[7] As I said, Mr. Scurvey entered pleas to those charges several weeks ago.

[8] As I have noted, I have a concern with the breach of the long-term supervision order, given the lengthy time that Mr. Scurvey was AWOL, by my calculations around five months.

[9] With respect to the assault charge, it is aggravating that the person who was the complainant in the assault was someone he was in an intimate relationship with. I understand that she is an Aboriginal woman, and the *Criminal Code* requires that, in those circumstances, there be primary consideration to denunciation and deterrence of that conduct. There are several sections in the *Criminal Code* that apply to make those factors aggravating: 718.04, 718.2(a)(ii), and 718.201. There are statutory aggravating factors to be considered.

[10] With respect to mitigating factors, the Crown has put forward that Mr. Scurvey entered a plea of guilty, and I agree that that is a mitigating factor. Although it was not the earliest guilty plea, it did mean that the victim of this assault did not have to come forward and testify in court.

[11] Mr. Scurvey has spent a significant period of time in custody, having been arrested on September 11, 2023. I have been given the number of days by counsel that

they are proposing be taken into account, on the basis of a joint submission, for his sentence for these charges. I am told that Mr. Scurvey has spent 379 days in custody, being one year and 13 days, and that is at a 1:1 ratio. However, it is appropriate, in my submission, to grant him credit for one and one-half days, which would round that up to 568½ days, I am told, or 18 months and 20 days.

[12] Ms. Budgell, on behalf of Mr. Scurvey, pointed to the fact that there is no earned remission while in pre-trial custody, that Mr. Scurvey has suffered a number of lockdowns while he was in custody, and, on that basis, it is appropriate to give him the credit of one and one-half to one.

[13] Ms. Budgell, on behalf of Mr. Scurvey, provided extensive information about his background.

[14] Mr. Scurvey is a member of the Kwanlin Dūn First Nation. He is the eldest of four siblings — three sisters, one who has unfortunately passed away. He is almost 47 years old. Both his parents are deceased.

[15] I will not go into detail about all the information that Ms. Budgell provided but, suffice it to say, he had a very difficult upbringing. There was a background of residential school for his parents: his mother being part of the Sixties Scoop and his father going to residential school. There was alcohol and violence in the family home. This led to Mr. Scurvey and his siblings being shuffled around from foster home to foster home, back and forth in different communities, and back and forth to his mother's home. Those experiences, clearly, were difficult and made it very challenging for Mr. Scurvey as a young person growing up. He dropped out of high school in Grade 8, but he has

clearly put his mind to trying to continue his education. He did finish his education later on and has gone on to do some university-level courses.

[16] Ms. Budgell advises that initially, when Mr. Scurvey was put on his long-term supervision order, he did well but after he returned to the Yukon, he essentially fell off the wagon, where he was in his approved residence. Unfortunately, at that approved residence (the SHARP-Connective) drugs were available, and he was exposed to peers that pushed him in a negative direction, leading to his relapse after three years of sobriety. Mr. Survey's sobriety ended in 2023, and he again was in conflict with the law leading to the charges that he has now pled guilty to.

[17] The plan for Mr. Scurvey going forward is that, through his parole officer, he will be relocated to British Columbia and will be placed in one of a number of halfway houses, where he hopes to continue with substance abuse treatment and to continue with his education.

[18] Mr. Scurvey spoke just now expressing his remorse and the significant consequences for him, in terms of the loss of the relationship with his partner, Ms. Calbery, as a result of his actions.

[19] I have received a significant number of letters on behalf of Mr. Scurvey setting out what he has been involved with since he has been in Whitehorse Correctional Centre for his arrest on these charges. I will not go over all of them, but it is clear that Mr. Scurvey has taken just about every opportunity available to him since incarceration to work on himself, to take courses that are available to him, and to fulfill certificates. Those have been provided.

[20] This is good news, Mr. Scurvey. I recognize you had a very difficult childhood and that this will not be the end of your journey but the start of your journey. Clearly, when you are able to put your mind to it, you are able to take advantage of all these opportunities that are available for you. That can be somewhat easier while you are incarcerated but while you are out, if you are able to demonstrate this, I am sure you will be able to do well for yourself. I hope you will be able to continue on the path that you started in Whitehorse Correctional Centre and have been working towards. I appreciate seeing all the work that you have done.

[21] I am prepared to accept the joint submission put forward by counsel.

[22] I did note that I thought perhaps four months to be noted on Mr. Scurvey's record for the assault was somewhat short, given his prior criminal record, but I am satisfied based on Ms. Budgell's submissions that it is appropriate. Essentially, it is time served, which is 568 days for a global sentence of 19 months. Mr. Scurvey has 11 days remaining, I understand. I would like it to be reflected that there are 15 months on the breach and four months on the assault.

[DISCUSSIONS]

[23] My understanding is that s. 267 of the *Criminal Code* is a primary designated offence and there would be a mandatory DNA order. I also understand that there would be a mandatory firearms order, but I would like to hear submissions on that if that is applicable in this situation.

[DISCUSSIONS]

[24] Mr. Scurvey, because the Crown proceeded by way of Indictment, there is a mandatory firearms prohibition order. I make an order prohibiting you from possessing any firearm, crossbow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition, and explosive substance for a period that ends not earlier than 10 years after your release from custody on the s. 267 assault offence.

[25] Because s. 267 is a primary designated offence, there is a mandatory DNA order. Therefore, I will make an order pursuant to s. 487.051(1) of the *Criminal Code* authorizing the taking from you of the number of bodily samples of body substances required for the purposes of this DNA analysis.

[26] I am proposing that the victim surcharge be waived.

[27] MR. NDLOVU: He has been in custody for a year. No issue with it being waived.

[28] THE COURT: Thank you.

[29] And the remaining charges?

[30] MR. NDLOVU: If they may be withdrawn.

[31] THE COURT: Withdrawn.

CAIRNS T.C.J.