

SUPREME COURT OF YUKON

Citation: *R. v. Pope*, 2012 YKSC 42

Date: 20120514
Docket S.C. No.: 11-01505
Registry: Whitehorse

BETWEEN:

HER MAJESTY THE QUEEN

AND:

COREY CURTIS POPE

Before: Madam Justice D. Martinson

Appearances:
Terri Nguyen
André Roothman

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCING DELIVERED FROM THE BENCH

[1] MARTINSON J. (Oral): Mr. Pope has pleaded guilty to the offence that he:

On or about the 25th day of February, 2011 at Destruction Bay, Yukon did maim Graham Henderson thereby committing an aggravated assault contrary to section 268 of the Criminal Code.

[2] Crown counsel is asking for a sentence of two years imprisonment plus probation for three years, with the appropriate DNA and weapons mandatory restrictions. While recognizing that this is a first offence for Mr. Pope and the guilty plea, the Crown says that in this case the sentencing principles of denunciation and deterrence are particularly important. The Crown relies on two cases in particular, *R. v. Malcolm*, 2008 YKTC 45, and *R. v. Derkson*, 2009 YKSC 66, to support its argument that imprisonment

is called for. The Crown says that the cases relied upon by Mr. Pope's lawyer, in which suspended sentences were given, are British Columbia cases, do not reflect the law and circumstances in the Yukon and are different from this case, particularly in that they involved young offenders.

[3] Mr. Pope's lawyer, on the other hand, argues that while the assault was serious, in Mr. Pope's particular circumstances the principles of sentencing, including denunciation and deterrence, can be met by a suspended sentence with suitable conditions, including compensation. Mr. Pope, he points out, has no record, in spite of the challenges of living in the Yukon much of his life and having Aboriginal status. He has pleaded guilty, has always been employed, supported his dependents, and is genuinely sorry for what he has done. He has apologized to Dr. Henderson and others who were impacted by his actions.

[4] Mr. Pope's lawyer has presented two cases, both, as I have said, from British Columbia, in which suspended sentences have been given, even where there has been very serious violence. Even though the accused people in those cases were younger, it is argued that they had previous convictions. He argues that the cases the Crown relies on are very different from this one. He says that though Mr. Pope is 35, he deserves recognition for his otherwise lawful and productive life. His lawyer also points out that while there are sentencing guidelines, I can exercise the discretion that I have to do something different, so long as the general sentencing principles are applied.

[5] I am going to give my decision in this way. First, I will summarize the facts, which are found in the more detailed Agreed Statement of Facts. Second, I will

summarize the principles of sentencing that I must apply. Third, I will say how those principles relate to Mr. Pope's circumstances. Finally, I will say what sentence that I think is appropriate.

The Facts

[6] The victim in this case, Graham Henderson, is a medical doctor in his 60s who has practised rural medicine, which included providing medical service at Burwash Landing for many years. He was at a community event there that evening socializing, was driven to his hotel in Destruction Bay and initially went to his room. This happened against the backdrop of Mr. Pope's actions relating to the recent end of a relationship he had with Sarah Shepherd. He thought Ms. Shepherd was involved in a relationship with a person who has been described as Phil. He angrily accused Ms. Shepherd of this at the social event and then left to go to the hotel. Ms. Shepherd, Dr. Henderson, and another person, were also proceeding towards the hotel. Mr. Pope was there when they arrived. He then began knocking on doors trying to find Phil. He was told to leave by others, but did not. Instead he again began accusing Ms. Shepherd. Dr. Henderson opened his door and tried to calm him down. Mr. Pope, without any provocation, turned and punched Dr. Henderson in the head, knocking him unconscious.

[7] Dr. Henderson remained on the ground for several minutes, resulting in a pool of blood forming on the ground. He was eventually medevac'd to Whitehorse for treatment. He received three stitches to his lip and has little feeling left in that area of his lip. He remained unsteady on his feet for at least a month, and had to work on a reduced schedule, losing significant income as a result. His teeth were loosened and

he needs significant dental work, which could cost over \$20,000. Dr. Henderson has prepared a very helpful Victim Impact Statement in which he discusses the impact of the assault on his short-term memory and his experience of being frightened, even in his own home. He still has amnesia with respect to the event itself.

Principles of Sentencing

[8] That brings me to the second part of my decision relating to a summary of the principles of sentencing that I am required to apply. Section 718 of the *Criminal Code* of Canada sets out the fundamental purpose of sentencing which is to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives: to denounce unlawful conduct; to deter the offender and other persons from committing offences; to separate offenders from society where necessary; to assist in rehabilitating offenders; to provide reparations for harm done to victims or to the community; and to promote a sense of responsibility in offenders, and acknowledgement of the harm done to victims and to the community.

[9] That section also says it is a fundamental principal that a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender. Further, I am required as the judge, to take into account: aggravating and mitigating factors; that a sentence should be similar to sentences imposed on similar offenders for similar circumstances; that an offender should not be deprived of liberty if less restrictive sanctions may be appropriate; and that all available sanctions other than imprisonment that are reasonable in the circumstances should be considered, with

particular attention to the circumstances of aboriginal people.

Application to this Case

[10] I will now explain, as I said I would, how these principles work in this case. Here, there are a number of aggravating factors; by that I mean points that make this crime more serious. There are also mitigating factors, and by that I mean points that work in Mr. Pope's favour.

Aggravating Factors

[11] I will start with the aggravating factors, the one that makes it more serious. Mr. Pope's actions were not provoked. Instead Dr. Henderson was trying to help out and calm things down when Mr. Pope was angry and acting irrationally, always a dangerous combination.

[12] The consequences to Dr. Henderson personally, which I have described, are very serious. I agree with Crown counsel that Dr. Henderson could have been much more seriously injured as a result of Mr. Pope's assault. I agree with the Crown that Dr. Henderson was in a vulnerable position and that not denouncing this conduct could have a chilling effect on other doctors who may otherwise wish to practice rural medicine in this way.

[13] It is also significant that Mr. Pope acted like he did as a result of the break-up of a relationship. He had no business whatsoever approaching or dealing in any way with either Ms. Shepherd or the man identified as Phil. I can take note of the fact that doing what he did can lead to dire consequences. It is no excuse in this respect that he was

upset, both about this and the death of a person close to him.

Mitigating Factors

[14] I will now speak about the mitigating factors, those which work in Mr. Pope's favour. I have considered everything in the Pre-Sentence Report and all of what his lawyer Mr. Roothman has said. It is significant that Mr. Pope does not have a criminal record. It is also important that he pleaded guilty even though there was a preliminary inquiry. It is to Mr. Pope's credit that he has been employed throughout his life and has met his commitments to those dependent upon him. I have taken into account the comments of Kelly Suits, his employer, that Mr. Pope is a valuable employee who is dependable and trustworthy. I am glad to hear and take into account the fact that he has a relationship with his children and provides support to them. I accept that given his circumstances, it may well have been more difficult for him to accomplish these things than for some other people. It is positive that Mr. Pope is very sorry for what he did. I think his remorse is genuine.

Decision

[15] In the result, this case requires a proper balancing of denunciation, general and specific deterrence with rehabilitation. There are many serious, aggregating factors. I have concluded that a term of imprisonment is needed because of them. Were it not for the factors I have described that are in Mr. Pope's favour, I would give a sentence of two years imprisonment. However, because of the mitigating factors, and in particular the fact that this is a first offence, Mr. Pope is doing well in the community and has close ties with his family and genuine remorse, and the unlikelihood that he will do this again,

I am going to give a lower prison sentence, and a two year probation order, as well as a compensation order.

[16] Mr. Pope, I would ask that you please stand up. I sentence you to three months imprisonment. In addition to that, you will be placed on probation for a period of two years. I accept the terms of the probation set out in the Pre-Sentence Report, except for the need for a curfew. Given your age and your employment and your family commitments, I do not think that a curfew is important or that it works in the best interests of your children. In addition, you are to pay by May 31, 2013, a compensation order in the amount of \$3,000 for the benefit of Dr. Henderson, as partial compensation for his financial loss. In addition, I grant both the DNA order and the weapons prohibition order sought by the Crown.

[17] I will, as I am required to do, review with you the terms of the probation order.

You are to:

1. Keep the peace and be of good behaviour;
2. Appear before the Court when required to do so by the Court;
3. Remain within the Yukon Territory unless you have written permission from your Supervisor or the Court;
4. Notify the Supervisor in advance of any change of name, address, and promptly notify your Supervisor of any change of employment or occupation;
5. Report to a Supervisor immediately upon your release from custody, and thereafter when required by the Supervisor and in the manner directed by the Supervisor;

6. Abstain absolutely from the possession or consumption of alcohol and controlled drugs or substances, except in accordance with a prescription given to you by a qualified medical practitioner;
7. Provide a sample of your breath and/or urine for the purposes of analysis upon demand by a Peace Officer who has reason to believe that you may have failed to comply with this condition;
8. Not to attend any bar, tavern, off-sales, or other commercial premises whose primary purpose is the sale of alcohol;
9. Take such assessment, counselling, and programming as directed by your Supervisor, and I am adding this, including anger management counselling;
10. To have no contact directly or indirectly or communication in any way with Dr. Henderson, except with the prior written permission of your Supervisor;
11. Not to attend at or within 50 metres of Dr. Henderson's residence or place of employment, except with the prior written permission of your Supervisor;
12. To provide your Supervisor with consents to release information with regard to your participation in any programming, counselling, employment or education activities that you may have been directed to do pursuant to this order.

[18] Do you understand those conditions, Mr. Pope?

[19] THE ACCUSED: Yeah.

[20] THE COURT: Thank you. Are there any other provisions that I am required to deal with, such as the victim surcharge?

[21] MS. NGUYEN: The victim surcharge, yes. It's \$100 for an indictable offence, as I understand it.

[22] THE COURT: Any submissions in that respect, Mr. Roothman?

[23] MR. ROOTHMAN: None, Your Honour. However, there's something else flowing --

[24] THE COURT: I will grant the victim surcharge of \$100. Go ahead, please.

[25] MR. ROOTHMAN: In respect of the period of custody, since it's three months, there's a possibility that my client could do that intermittently, which would definitely address some serious problems about sort of how the sentence would impact on his work; he would still be able to maintain his work and the income, take care of his financial commitments towards his children, and so forth. So I have instructions to pursue that with the Court. My client advised me he has a schedule of his comings and goings in his truck, he will need five minutes to retrieve it, if the Court would consider the sentence to be served intermittently.

[26] THE COURT: All right. Thank you. I will hear from the Crown in that respect.

[27] MS. NGUYEN: Well, I do have some concerns. The jail sentence is a

jail sentence. An intermittent sentence is really hard to enforce in Burwash Landing, where they don't even have a police detachment.

[28] MR. ROTHMAN: My client lives in Whitehorse.

[29] MS. NGUYEN: If he's living in Whitehorse, I have less of a concern, but again, this is a serious offence, the sentence has to be taken quite seriously. It is only a three month sentence. I have no doubt from the Pre-Sentence Report that he's not going to lose his job. He'll be employable again when he's released.

[30] THE COURT: Thank you. Do you wish to reply?

[31] MR. ROTHMAN: Yes. Well, it's certainly in the discretion of the Court. We have the situations where people who've received three months for other offences, they get the opportunity to serve it intermittently if the circumstances warrant it. In this particular case, it's not so much as to get his work back. At the end of the day, I agree with my friend that my client will likely be re-employed. It's about the financial consequences and how that's going to impact on his commitments towards his children that I am particularly concerned. It will just put him in a very difficult position, at the end of the day, and if he is to serve the sentence intermittently, he will do his time whenever he is back from camp. That in itself will mean that he's not going to have his two weeks, or whatever the case, off, in between work, and he will do his time and he will be taken -- he will be able to take care of all his financial commitments.

[32] THE COURT: Thank you. I did turn my mind to the question of an intermittent sentence when considering what an appropriate sentence might be, and I

have, of course, considered the submissions that I just heard. However, I have already taken into account all of the factors that you, Mr. Roothman have described in reducing what would otherwise be a higher sentence to three months. So it is my view that an intermittent sentence would not be appropriate in these circumstances.

[DISCUSSION]

[33] THE COURT: The firearms prohibition will be for ten years. Mr. Pope will have six months to pay the victim fine surcharge. The compensation order is payable to the Court in trust for the benefit of Dr. Henderson. Mr. Pope has permission to apply for an extension of time to pay with respect to the compensation order if his financial circumstances warrant it.

MARTINSON J.