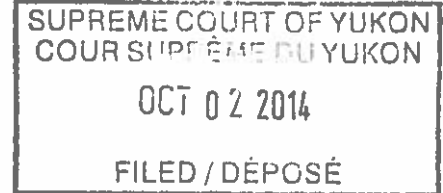


**SUPREME COURT OF YUKON**

Citation: *R. v. Tutin*, 2014 YKSC 51

Date: 20140909  
S.C. No.: 14-AP003  
Registry: Whitehorse



**BETWEEN:**

**HER MAJESTY THE QUEEN**

**Appellant**

**AND:**

**DONALD STEPHEN TUTIN**

**Respondent**

Before the Honourable Mr. Justice R.S. Veale

Appearances:  
Eric Marcoux  
Donald Stephen Tutin

Counsel for the Crown  
Appearing on his own behalf

**REASONS FOR JUDGMENT**

[1] VEALE J. (Oral): Just for the record in this matter, Mr. Tutin was a doorman at a local bar and he had a serious altercation with a fellow named Calvin Lindstrom. They know each other well, as I understand it. Mr. Tutin lost control, essentially, and struck Mr. Lindstrom, punched him twice with his fist, and flipped him over and dropped him on his head, causing Mr. Lindstrom to become unconscious and suffering from a concussion. Mr. Lindstrom also required seven stitches to close a laceration about an inch and a half long on his scalp. Apparently, these events were captured on a surveillance video.

[2] At sentencing, to be fair, Mr. Tutin entered a guilty plea, which has to be taken

into consideration in these matters, and his counsel recommended to the Court, or submitted to the Court, that there should be a 12-month conditional sentence to be served in the community in his home.

[3] The Crown was seeking either a jail term for that amount or a conditional sentence of 16 months, as I understand it.

[4] The trial judge apparently takes the position, rather frequently, that if he is unable to send an Aboriginal person to jail or feels that he is unable to, then he will not order a conditional sentence but prefers to use the method of a suspended sentence with a probation order.

[5] The Crown appealed that sentence, rightly so I think, based on the precedents in this jurisdiction and specifically in *R. v. Johnson*, 2011 YKTC 70, a decision of Justice Gower sitting as a Territorial Court Judge.

[6] However, the Crown also feels that it would be appropriate in this circumstance, where Mr. Tutin has already served four months of the probation under the suspended sentence, to essentially agree to a 12-month conditional sentence, giving him credit for the four months that he has spent in his suspended sentence on the terms and conditions that were just read out and to which I am satisfied that Mr. Tutin fully understands and agrees to.

[7] I am going to make an order that the appeal -- I guess I am going to make it as though we went through the appeal in the sense that it will be a decision on the appeal that there be a conditional sentence of 12 months with a four-month credit for the time that Mr. Tutin has already served under a suspended sentence. The conditional sentence will be on the terms that have been read out by the Crown and will be typed

up and read out to Mr. Tutin for a signature. I am satisfied that he understands those conditions. The first four months will be under house arrest, which means he does not leave his premises unless he meets the conditions set out in the conditional sentence; and the second four months will be done under a curfew from 10 P.M. to 6 A.M.

[8] I am satisfied that that is an appropriate sentence in the circumstance.

[9] Mr. Tutin, I hope, in all of this, you have learned a good life lesson and will curb your temper in those situations and probably avoid being a doorman and dealing with people you know, although I appreciate that is a difficult thing to do in this town because you end up knowing everybody at one time or another.

[10] Thank you for agreeing to it. The Clerk will draw it up for you and you have to sign it before you leave. I wish you good luck.

[11] Thank you, Mr. Marcoux.

[12] MR. MARCOUX: Thank you, Your Honour. Could you, on the record, make the DNA order and the victim surcharges?

[13] THE COURT: Yes, there will also be a DNA order and a victim surcharge of \$100.

[14] Time to pay?

[DISCUSSION OFF RECORD]

[15] THE COURT: We will give you time to pay to September 30.

[16] Thank you very much.

  
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VEALE J.