

Citation: *R. v. Abel*, 2010 YKTC 85

Date: 20100806
Docket: 10-00148
10-00198A
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: Her Honour Chief Judge Ruddy

REGINA

v.

DEREK PAUL ABEL

Publication of information that could disclose the identity of the complainant or justice system participant on file 10-00198A has been prohibited by court order pursuant to section 486.5 of the *Criminal Code*.

Appearances:
Bonnie Macdonald
Kimberley Hawkins

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCING

[1] RUDDY C.J.T.C. (Oral): Derek Abel is before me having entered pleas of guilty to three offences, a spousal assault and two offences of obstruction by threatening a witness.

[2] The spousal assault occurred in Pelly on May 30th of this year. Mr. Abel's spouse, Berdina Hager, was home with the children and, I am assuming, a friend, Ms. Harper, when Mr. Abel arrived home in an intoxicated state. He was told to leave but indicated that he would be retrieving some tools first. Amongst those that he was taking

was a chainsaw. It appears there was some dispute as to the ownership of the chainsaw and this led to an altercation between Mr. Abel and Ms. Hager in the presence of the two children. I understand that Mr. Abel, in the course of that altercation, pushed Ms. Hager, also grabbed her by the arms and was heard to call her a number of names. She ultimately struck him with the telephone and was able to push him out of the residence and call the RCMP, who located him, found him to be in an intoxicated state, and to be both aggressive and uncooperative.

[3] The two s. 139 charges relate to the upcoming trial of what appears to be a friend of Mr. Abel's, M.P., and there is a witness that is scheduled to testify with respect to Mr. P.'s trial. I understand that the two incidents that are before me, in which Mr. Abel threatened Mr. B. in an attempt to dissuade him from testifying in the upcoming trial, are the second and third occasions upon which this particular witness has been threatened in relation to Mr. P.'s trial.

[4] The two occasions that are before me occurred in June of this year. On June 8th Mr. Abel approached Mr. B. and indicated to him that Mr. P. was like a brother to him and that the complainant was a dead man, and that he had better change his statement or he would end up dead. Subsequently, on June 16th, the complainant, Mr. B., was before Staples and Mr. Abel was heard to yell at him from the bus stop across the way, yelling at him to come over to where Mr. Abel was. Mr. B. waved at him to go away after which Mr. Abel was heard to yell, "I'll get you, you rat son of a bitch," which Mr. B. took to be a continuation of the previous incident in which Mr. Abel threatened him to prevent him from testifying against Mr. P.

[5] There is a joint recommendation before me with respect to these matters. It is not my intention to speak at length with respect to this particular decision as I am satisfied that the joint submission before me is an appropriate one.

[6] I have been provided with some information with respect to Mr. Abel. He does have a criminal record. There are some offences of violence included on that record, and various other offences as well. He is now 38 years of age, a member of the Vuntut Gwitchin First Nation, has been in a nine-year common law relationship with Ms. Hager, and they have four children. He advises, through his counsel, that the incident involving the struggle with Ms. Hager is an unusual one for them. He also wanted the Court to be aware that his threats to Mr. B. were done on his own initiative and not at the request of anyone else, most particularly, Mr. P.

[7] Of particular note to me, as the joint recommendation would involve a penitentiary term, counsel for Mr. Abel stressed his desire to get into the federal system, to access programming available through that system, as he finds that there is nothing within Whitehorse Correctional Centre. Having spent the last few weeks in Whitehorse Correctional Centre, there is nothing there that he finds would be of assistance to him at this point in time and he therefore would like to explore what he can access within the federal system.

[8] I am satisfied that the joint submission is appropriate and well within the range, having sentenced Mr. Lamarche with respect to the first incident of threatening to dissuade Mr. B. from testifying, and I believe that was an 18-month sentence, if I remember correctly, and it was a threat by telephone as well, from the correctional

facility. This having been a threat in person, there having been two incidents, I am satisfied that what is being suggested before me today is entirely appropriate.

[9] In coming to that conclusion, I also note that counsel are suggesting that no credit be given for time served. So that is a factor that I have considered as well in determining whether or not the joint recommendation as suggested is appropriate.

[10] Given the seriousness, in particular, of the s. 139 offences, the seriousness with which the Court views that particular offence with the concerns that it raises for the administration of justice, and, therefore the need for any sentence to send a strong message that such behaviour will not be tolerated, I am prepared to adopt the joint submission.

[11] The sentence, Mr. Abel, will be as follows: With respect to the assault on Ms. Hager, I am satisfied that a 90-day sentence is appropriate. Although there has not been any history put before me of conflict between you and her, I am concerned about the nature of the assault and in particular that your children were present. So I am satisfied that a 90-day sentence is appropriate for that offence.

[12] For both offences contrary to s. 139(2), there will be sentences of 21 months on each. They will be concurrent to each other but consecutive to the sentence with respect to the spousal assault and to any other sentence being served.

[13] I would waive the victim fine surcharge, given your custodial status. I will, however, make the order that you provide such samples of your DNA as are necessary for testing and banking.

[14] That leaves us with the firearms prohibition, which was something of a concern for you, Mr. Abel, given your indication through your counsel that you have a long history of subsistence hunting, something that is important to you from a cultural perspective, and also to your family. The process, as it stands now, is that because this is a mandatory offence for a firearms prohibition that order will have to be made today. There is a provision that would allow you to make application for an exception. That does require, however, that you provide an evidentiary basis for an exception. Your counsel will speak to you further about how that can be done and the type of information that she will need. So it can be brought back at a later date to further argue whether or not you should be given exceptions to the prohibition to allow for subsistence hunting. But as of today's date, I would make the order, it being a mandatory order as there has been an indictable election with respect to the two s. 139(2) offences. This is a first prohibition?

[15] MS. MACDONALD: I believe so, yes.

[16] THE COURT: I ask only because there are a couple of firearms offences in the '90s.

[17] MS. MACDONALD: And it appears that the prohibition that was imposed was a s. 110.

[18] THE COURT: So, Mr. Abel, you will be prohibited from having in your possession any firearms, ammunition or explosive substances for a period of ten years, pursuant to s. 109. Do you wish me to adjourn this to a date specific for the

application, or do you simply want to contact the trial coordinator to set it back down when you are ready to proceed?

[19] MS. HAWKINS: I think that might make sense.

[20] THE COURT: Okay. The remaining counts?

[21] MS. MACDONALD: Anything to which a guilty plea was not entered the Crown enters a stay of proceedings.

RUDDY C.J.T.C.