Citation: *R.* v. *Balla,* 2015 YKTC 15

Date: 20150605
Docket: 14-00343 A
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before: His Honour Judge Cozens

REGINA

v.

TEGAN GENE EVANY BALLA

Appearances:
Eric Marcoux — Counsel for the Crown
Jennifer Cunningham — Counsel for the Defence

REASONS FOR SENTENCING

Overview

[1] Tegan Balla has entered a guilty plea to having committed the offence of assault causing bodily harm. Crown counsel has elected to proceed by way of summary conviction.

[2] The circumstances of the offence are as follows. On June 29, 2014, Ms. Balla punched Brendan Morton in the face, breaking his glasses and causing significant damage to his eye. The assault occurred in a local bar after Ms. Balla intervened in an incident in which her boyfriend, “Shayne” was being belligerent and offensive towards Mr. Morton and his friend, and was attempting to start a physical fight.

[3] While Ms. Balla's intervention was intended to remove her boyfriend from the situation, she took offence against something Mr. Morton said to Shayne that involved her and struck him in the face. Shayne had told Mr. Morton to "Suck my dick" and Mr. Morton replied "That's what your girlfriend is for". All the parties had been consuming alcohol and were intoxicated to varying extents.

[4] Mr. Morton's eye was cut and he was medivaced to Vancouver for treatment, which included stitches in the eye and having it glued shut.

[5] Mr. Morton filed a Victim Impact Statement and spoke further in Court. He stated that his cornea was replaced and he now has a glass lens in his eye. He stated that he suffered considerable pain and physical and emotional distress for a number of months, and that this distress is ongoing. He also stated that he lost his job as a result of the assault and has incurred financial losses. While he has no ill feelings towards Ms. Balla, and appreciates her apology for her actions, he is not able to forgive her for the harm she has caused him. He stated that he does not require that Ms. Balla be placed on a condition that she have no contact with him.

Positions of Counsel

[6] Crown counsel submits that a sentence of 14 to 18 months custody should be imposed, to be followed by two years of probation. Counsel is not opposed to this sentence being served conditionally in the community.

[7] Counsel for Ms. Balla submits that she should receive a suspended sentence attached to a period of probation.

[8] Both counsel agree that there should be a restitution order in the amount of $5,000.00. This is an amount suggested by Ms. Balla and for which she proposes making payments in the amount of $150.00 to $200.00 each month.

Circumstances of Ms. Balla

[9] At the time of sentencing, Ms. Balla was 24 years of age. She has resided in Whitehorse for most of her life. The day before Ms. Balla turned 16 her mother left home, leaving Ms. Balla in the care of an abusive step-father. She has never met her biological father.

[10] A letter was provided by Ms. Balla's maternal grandmother that confirms the difficulties of Ms. Balla's childhood. This letter also notes the significant steps Ms. Balla has taken since this incident to address her underlying issues and to improve her life situation.

[11] Ms. Balla left home at the age of 16 and has been essentially self-supporting since then, working at several jobs. She is currently employed as a Pharmacy Technician in a Whitehorse pharmacy.

[12] Ms. Balla resided in a hostel for some time. She attended the Individual Learning Centre and graduated from there at the age of 17. She briefly resided with her mother in Alberta. Her mother was in an abusive relationship at the time. Ms. Balla provided her mother some financial support.

[13] Ms. Balla has been involved in regular counselling to address her underlying issues. These include issues with alcohol and anger, as well as those related to the

physical and mental abuse she suffered as a child at the hands of her step-father. It is only since the occurrence of this incident that Ms. Balla has come forward with the details of her abusive childhood. Confirmation of Ms. Balla's engagement in counselling and her positive motivation to work on her issues was provided by her counsellor.

[14] Ms. Balla also provided the Court with several positive letters of support from friends and her landlord. It is clear that the picture these individuals have of Ms. Balla, places her assaultive behaviour as being at odds with the person they know.

[15] Ms. Balla is remorseful for her actions. She apologized for her actions shortly after the incident and has provided a further apology letter. It is clear that she has suffered considerable financial and emotional distress as a result of her actions, although, to be clear, she recognizes that the suffering endured by Mr. Morton is by far the most significant. There is no question that she accepts full responsibility for her actions and the consequences of them.

[16] Ms. Balla has no prior criminal convictions. She did, however, receive a conditional discharge on May 31, 2013 for having committed an assault. This discharge was completed on May 31, 2014, approximately just one month before she assaulted Mr. Morton. Filed as an exhibit is an Agreed Statement of Facts from this prior assault. On this prior occasion, while on the dance floor at a local bar, Ms. Balla elbowed and punched the victim in the face, causing her to fall to the floor and to suffer a scrape and bruising to her left eye.

Case law

[17] A number of cases were provided to the court, setting out a wide range of sentences imposed for assaults in somewhat similar circumstances.

[18] In seeking a lengthy custodial disposition, Crown counsel notes as aggravating factors the nature of the assault, in that it was unprovoked, the fact that Mr. Morton suffered significant injuries, and Ms. Balla's prior conditional discharge. In mitigation counsel notes Ms. Balla's early guilty plea and apology.

[19] In ***R.*** v. ***Hillier***, [1986] Y.J. No. 82 (S.C.), Maddison J., on appeal, overturned a sentence of 30-days custody on an accused that had assaulted his spouse. The accused had previously been granted a conditional discharge for a prior assault on his spouse.

[20] In pp. 2 and 3 Maddison J. stated as follows:

> …Counsel for the accused admitted that the accused had previously assaulted his wife and had been granted a conditional discharge. Counsel also admitted that his client had driving convictions.
>
> In imposing sentence, the learned Territorial Court judge took into consideration the offence for which the accused had received a conditional discharge. She said this (at p. 9 of the transcript):
>
> > As indicated by your record, this is not the first time an incident of this sort has happened. You have a conviction for assaulting you[r] wife in 1984, at which time you received a conditional discharge. Obviously the message was not brought home to you that you cannot simply go around violating other people's person. I disagree with submissions made by counsel. I think a term of incarceration is appropriate, and I will impose a term of incarceration of 30 days.

Maddison J. goes on to state:

> The learned Territorial Court judge was entitled to consider the conditional discharge for one purpose only: to ascertain whether, in the case before her, a further discharge would be in the best interests of the accused and not contrary to the public interest. See F. v. Tar (1974), 22 C.C.C. (2d) 184, B.C.C.A. and see also F. v. Nickerson, [1975] 3 A.P.R. 145, Trainor, C.J.P.E.I. She was not entitled to take that into consideration in imposing a greater penalty. In doing so, she erred.

[21] I am, of course, bound by the decision of Maddison J.

[22] In the case before me, Ms. Balla is not seeking a further discharge. In my opinion, however, I am not convinced that the decision in ***Hillier*** requires that I must treat the circumstances of the prior discharge as if those these events had never occurred.

[23] In ***R.*** v. ***Naraindeen*** (1990), 40 O.A.C. 291 the Court considered the use of a prior discharge in sentencing an offender. The Court stated as follows in paras. 42 and 43:

> 42 The more substantial ground of appeal respecting the sentence is that the trial judge erred in taking the "previous record of assault" into account. Although there is no express mention of it in the transcript, which simply indicates that the appellant was "found guilty of assault" in November of 1988, we are informed that this finding of guilt was followed by an absolute discharge.
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> 43 This court has held that a discharge precludes a person from being treated as having been previously convicted, although the discharge may be taken into account on an application for a further discharge: R. v. Murray, Ont. C.A., Martin, Lacourciere and Zuber JJ.A., June 2, 1976 [summarized at (1976-77), 19 Crim. L.Q. 26], and R. v. McLean (1978), 7 C.R. (3d) S-3 (Ont. C.A.). See also R. v. Tan (1974), 22 C.C.C. (2d) 184, [1975] 2 W.W.R. 747 (B.C. C.A.) and R. v. Nickerson (1975), 7 Nfld. & P.E.I.R. 145 (P.E.I. C.A.). However, this court has also held that the past conduct of an offender may be taken into account on sentencing even

> though it was not the subject of adjudication (R. v. Roud (1981), 58 C.C.C. (2d) 226, 21 C.R. (3d) 97 (Ont. C.A.) [leave to appeal to S.C.C. refused (1981), 58 C.C.C. (2d) 226n]) and it has also been held, persuasively, that this conduct may be taken into account when it resulted in a discharge (R. v. Panagiotou (1989), 57 Man. R. (2d) 156 (Q.B.)). Applying the first two mentioned decisions of this court it appears that the trial judge erred in treating the previous discharge as a criminal record.

[24] In ***R.*** v. ***Jwada Hedar-Kadhim***, 2014 BCCA 356, the offender was being sentenced after trial on one count of assault causing bodily harm and one count of uttering threats for an incident that had occurred outside of a Legion. The pre-sentence report made mention of the offender's admission to having been involved in a bar fight four years previously that did not result in any charges being laid. In rejecting the offender's appeal against sentence, the Court stated as follows in paras. 18 and 19:

> [18] …While the appellant has no criminal record, he committed a vicious, unprovoked assault, which has caused lasting injury to his victim. The trial judge took into account all the appropriate principles of sentencing. She was aware of the appellant's lack of criminal record. The judge did not err in the referencing the appellant's prior aggressive conduct in response to defence counsel's submission that this assault and threatening was a one-off and out of character for the appellant. As stated recently in this Court in *R.* v. *Wesley*, 2014 BCCA 321, where a similar argument was dismissed:
>
> > [17] Nor was it otherwise wrong, in my view, for the judge to refer to the statements recorded in the pre-sentence report concerning prior incidents. The judge properly used those statements to determine Mr. Wesley's character and risk of re-offending. In *Angelillo*, Justice Charron explained:
> >
> > > [32] ... Finally, the court must draw a distinction between considering facts establishing the commission of an uncharged offence for the purpose of punishing the accused *for that other offence*, and considering them to establish the offender's character and reputation or risk of re-offending for the purpose of determining the appropriate sentence for *the*

> *offence of which he or she has been convicted*. In my example, the sentence imposed on a violent offender may well be more restrictive than the sentence imposed on an offender who has committed an isolated act, but this is in no way contrary to the presumption of innocence. [Emphasis in original.]
>
> [19] In this case, the sentencing judge did not err in principle, fail to consider relevant factors or overemphasize the appropriate factors. The sentence is not demonstrably unfit.

[25] It would be illogical to be able to consider past acts of an offender that did not result in charges being laid, in determining the appropriate sentence for an offence, and yet not be able to consider past acts which resulted in a finding of guilt, notwithstanding that in the end a conviction was not entered as a result of a discharge being granted.

[26] This said, it is clear that the consideration of the circumstances of a discharge must not be for the purpose of increasing the punishment for the current offence for which the offender is being sentenced. The “step” principle, which increases the severity of a sentence based upon a prior conviction, does not apply where the prior act resulted in a discharge.

[27] As such, Ms. Balla must be sentenced for this offence as a first offender. In this case, as she is not seeking a discharge, her prior actions in committing the offence for which she received a discharge are relevant only to an assessment of her character and her risk of committing further offences. The appropriate sentence, while taking the circumstances of the prior offence into account, must not further punish her for her actions as could be the case were she convicted of this earlier offence, and not discharged.

[28] Thus, as per Maddison J., the only use of the discharge itself, as shown on the Canadian Police Information Centre ("CPIC") printout, is in consideration of the submission for a further discharge. The facts underlying the circumstances of the discharge, however, are relevant to any submission that the present offence is out of character for the offender, not a submission made by counsel for Ms. Balla, and to an assessment of Ms. Balla's prospects for rehabilitation and risk for the commission of further offences by her.

[29] As such, I consider that the sentence sought by Crown counsel is well outside the appropriate range.

[30] In ***Hedar-Kadhim***, filed by Crown counsel, the offender received a nine-month jail sentence for the s. 267(b) offence, which was at the high end of the six to nine month range submitted by Crown counsel as appropriate. The offender waited outside the bar for the victim where he struck him repeatedly until the victim fell to the ground. He then kicked the victim repeatedly and deliberately pulled out the victim's leg and stomped on it, breaking it. The victim suffered significant harm, both physically and psychologically, and the injury to his leg had permanent debilitating impacts.

[31] The sentencing judge found that the only mitigating factor was the lack of a criminal record, finding that the offender had not accepted responsibility for the offence. The Court of Appeal, in upholding the decision of the sentencing judge, stated that the assault was vicious and unprovoked with lasting injury to the victim.

[32] In ***R.*** v. ***Johnson***, 2011 YKTC 70, Gower J. imposed a sentence of 15 months to be served conditionally after a guilty plea to having committed the offence of assault

causing bodily harm. The victim and Mr. Johnson, who were known to each other, were involved in a heated argument in a bar. They were ejected, the victim out the back and Mr. Johnson out the front. The victim came around to the front of the bar and a fight started between them. The victim twice put his hands up and stated that he was "done". Mr. Johnson continued to kick the victim, and, as the victim was being helped up, kicked him in the head knocking him unconscious. Mr. Johnson tried to kick the victim again but was stopped by several bystanders.

[33] Mr. Johnson had no prior criminal record for violence. There were a number of mitigating circumstances, including his lack of a violent criminal record, a positive performance on his undertaking, his steady employment for the prior four years, his stable relationship and the fact that the victim was the aggressor. There was also his guilty plea. This was considered to be out of character conduct for Mr. Johnson.

[34] In ***R.*** v. ***Tutin***, 2014 YKSC 51, Veale J. acceded to a joint submission on appeal that a 12-month conditional sentence was appropriate in circumstances where Mr. Tutin, acting as a bouncer at a local establishment, lost control, struck the victim twice with his fist and then flipped him over and dropped him on his head, knocking the victim unconscious and causing him to suffer a concussion. The 12-month sentence took into account the fact that Mr. Tutin had already served four months on probation on the suspended sentence originally imposed.

[35] Defence counsel filed several cases in which offenders received probationary dispositions for having committed the offence of assault causing bodily harm.

[36] In ***R.*** v. ***Rodrigue***, 2015 YKTC 5, I imposed a conditional discharge on a young Aboriginal offender in circumstances where she, while intoxicated and involved in a dispute in a bar, threw a glass at the victim, causing her to receive a severe laceration to her eyebrow. The victim threw a glass back at Ms. Rodrigue, causing her to receive a significant laceration to her nose. This was considered to be an out of character offence for Ms. Rodrigue.

[37] In ***R.*** v. ***Boone***, 2013 BCSC 1306, the offender was given a suspended sentence and placed on probation for three years for attacking, without provocation, a random passerby after being ejected from an Alcoholics Anonymous meeting. Mr. Boone, who was intoxicated at the time, punched the victim several times in her face, knocking her to the ground, where he continued to punch and kick her. She suffered a broken nose, black eyes and bruising. She continued to suffer recurring headaches 32 months after the assault, as well as anxiety, fear and insomnia.

[38] Mr. Boone had a prior criminal record that included, as it appears from the decision, 12 prior convictions for offences of violence. He was on probation at the time of the commission of this offence.

[39] In the 32 months between the assault and the time of sentencing, Mr. Boone had complied with his strict bail conditions. He had abstained from the consumption of alcohol, a significant factor in reducing his risk for the commission of further offences. There had been a significant and dramatic change in his demeanour and personality. He provided the court with numerous letters of support that indicated that Mr. Boone was totally committed to his sobriety and that he had "…adopted a course of conduct

and is on a track that will maintain a life without alcohol", which as a factor in most if not all of his criminal convictions, would allow him to live "hopefully a life without any further attention from the courts".

[40] The Court found that the prior convictions for Mr. Boone attested more to his inability to control his behaviour after consuming alcohol, than to him being of bad character.

[41] The Court went on to state in para. 35 that:

> It is to be remembered that a suspended sentence is not a discharge or simply a sentence of an individual to a period of probation or supervision. While the concept has fallen into disuse over the past several decades, the nature of such a disposition, while it is still contained in the *Criminal Code* under s. 731, is a suspension of the passing of sentence. The facility that is provided by the law is that there is facility in the court to, at any time up until the expiry of the supervisory term imposed by the court, bring the accused back for the imposition of sentence, not for the breach of condition or the violation of whatever provisions are contained in the supervisory order, but for sentence on this offence. That step is rarely, if ever in modern times, taken. Perhaps there are concerns to whether the provisions would withstand a *Charter* challenge or perhaps because of the imposition and creation of many flexible remedies for the breach of conditions of probation.

[42] The sentencing judge, while being mindful of the principles of denunciation and deterrence, considered it preferable to impose a suspended sentence and the longest probationary period that he could in law, being three years.

[43] In ***R.*** v. ***Spencer***, 2005 BCPC 487, a 21-year-old offender was given a suspended sentence with a one-year probationary period for an impulsive act wherein he "wrongly perceived a dangerous situation and responded by hitting the victim in the face with a beer glass", while not being aware or conscious of the beer glass being in

his hand. He was found guilty of two counts of assault causing bodily harm against two separate victims as a result of this one impulsive act.

[44] In ***R.*** v. ***Perry***, 2011 ABPC 221, a baseball coach was given a suspended sentence with one year of probation for a conviction for assault causing bodily harm. He approached another coach, with whom he had been having a heated argument, from behind, sucker-punching him in the face causing injuries to his nose that required reconstructive surgery. This occurred in the presence of both coaches' children and a number of youth baseball team players and spectators. This was an unprovoked attack.

[45] There were a number of aggravating factors, in particular the presence of a number of youth for whom Mr. Perry was a role model, the high gravity of the offence and high moral blameworthiness, and Mr. Perry's attempt to excuse his act of physical violence as being an appropriate response in the circumstance.

[46] Mr. Perry was otherwise of good character and had a positive pre-sentence report.

[47] The court considered that the issues of specific and general deterrence, and denunciation, were significant.

[48] In a case not placed before me, ***R.*** v. ***Mervyn***, 2000 YTCA 1, the Court of Appeal upheld a six-month conditional sentence for an offender who committed the offence of assault causing bodily harm. The circumstances, not set out in the appellate decision, were that Mr. Mervyn walked out of a bar and, without provocation, head-butted an

innocent bystander, causing him to fall to the ground and strike his head, causing considerable injury. In paras. 2 and 3 the Court stated as follows:

> 2 The offence was a serious one involving mindless unprovoked violence against a completely innocent victim who suffered quite a serious head injury. The respondent has a minor record for previous assault and an apparent pre-existing tendency towards violence, but the learned Territorial Court judge made an assessment of the situation and decided that the case was one where the best chance for rehabilitation was by way of a conditional sentence followed by probation.
>
> 3 I have no doubt that the sentence that was imposed was on the low side, having regard to the circumstances of the offence and the circumstances of the offender. As the trial judge said, the case in some circumstances could have called for a term of imprisonment in the penitentiary. But exercising his judgment, the trial judge decided on what I am sure he thought was a more enlightened decision, to proceed by way of a conditional sentence, probation and restitution.

[49] Mr. Mervyn had a positive post-sentence report and the court noted that, instead of making restitution in installments, Mr. Mervyn had taken out a bank loan and paid the victim in full.

Application to Ms. Balla

Principles of sentencing

[50] Sections 718 to 718.2 of the *Criminal Code* read as follows:

> 718. The fundamental purpose of sentencing 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:
>
> (a) to denounce unlawful conduct;
> (b) to deter the offender and other persons from committing offences;
> (c) to separate offenders from society, where necessary;
> (d) to assist in rehabilitating offenders;

(e) to provide reparations for harm done to victims or to the community; and
(f) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims and to the community. …

718.1 A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender. …

718.2 A court that imposes a sentence shall also take into consideration the following principles:

(a) a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender, and, without limiting the generality of the foregoing,
(i) evidence that the offence was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation or any other similar factor,
(ii) evidence that the offender, in committing the offence, abused the offender's spouse or common-law partner,
(ii.1) evidence that the offender, in committing the offence, abused a person under the age of eighteen years,
(iii) evidence that the offender, in committing the offence, abused a position of trust or authority in relation to the victim,
(iii.1) evidence that the offence had a significant impact on the victim, considering their age and other personal circumstances, including their health and financial situation,
(iv) evidence that the offence was committed for the benefit of, at the direction of or in association with a criminal organization, or
(v) evidence that the offence was a terrorism offence

shall be deemed to be aggravating circumstances;

(b) a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;
(c) where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh;

> (d) an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances; and
> (e) all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of aboriginal offenders. …

[51] A just sentence is one that considers these purposes and objectives and takes into account the applicable principles in a manner that provides a balanced approach, not over or underemphasizing any purpose, objective or principle. Society requires fairness in our justice system and each offender must be sentenced in accordance with the circumstances of the offence and the offender in the individual case.

[52] The principles of specific and general deterrence are applicable here, as is denunciation. Disputes are not to be resolved by resorting to acts of violence, such as the one Ms. Balla engaged in here, in particular in public places where alcohol is consumed.

[53] This was not entirely an isolated and out-of-character incident for Ms. Balla, given her prior history.

[54] The level of provocation here is very low, although I cannot say entirely absent. The verbal comment directed at Ms. Balla's boyfriend while she was in earshot was insulting to her, although she would have done much better to ignore the insult and leave the scene, either with or without her boyfriend. Her spontaneous decision to react by striking the victim has resulted in very significant consequences to the victim, as well as to herself.

[55] There was no premeditation in this assault, and no continuous acts of violence, which cause the circumstances to vary from some of the cases filed before me where the level of moral culpability and blameworthiness is, in my opinion, higher.

[56] Ms. Balla is clearly remorseful and has taken significant steps to address the underlying issues that may have contributed to her actions that day. She has been on conditions since her release from custody on September 2, 2014 and I have no information to suggest that she has done anything other than abide by these.

[57] She has volunteered to make restitution to the victim in a significant amount, through monthly payments, payments which will, I expect, cause her some financial difficulty.

[58] Ms. Balla comes before the court as a first offender in law, having been conditionally discharged for a prior offence.

[59] In my view, the range of sentence available in these circumstances is from a suspended sentence to a short period of custody that could be served conditionally in the community.

[60] Counsel for Ms. Balla has not sought a conditional discharge and I would not have considered a discharge to be an appropriate disposition, given Ms. Balla's antecedents.

[61] I am required to consider the least restrictive sentence that is available in the circumstances, keeping in mind that this sentence must nonetheless give full effect to all the applicable purposes, objectives and principles of sentencing, and in particular in this

case, deterrence and denunciation. Society must be protected against acts of violence such as occurred in this case.

[62] Is a jail sentence necessary in order to achieve an appropriate sentence? I conclude that it is not. I am satisfied that a fairly lengthy period of probation attached to a suspended sentence will accord with the requirements of ss. 718 - 718.2 and will provide for both the protection of the public and for Ms. Balla to continue on the pathway towards a positive and pro-social life, something that she has already demonstrated she has the potential to live.

[63] While I cannot say that there is no risk of Ms. Balla re-offending in a similar manner, I am satisfied that a suspended sentence and probation on the terms I will impose will make the risk manageable.

[64] Should Ms. Balla be found to have contravened any of the terms of this probation order she can, on application, be brought back before the court and sentenced for this offence.

[65] I suspend the passing of sentence and place you on probation for 18 months.

[66] The terms of the Probation Order will be as follows:

1. Keep the peace and be of good behaviour;

2. Appear before the court when required to do so by the court;

3. Notify the Probation Officer, in advance, of any change of name or address, and promptly, of any change in employment or occupation;

4. Report to a Probation Officer within two working days and thereafter as and when directed by the probation officer;

5. Not possess or consume any alcohol and/or controlled drugs or substances that have not been prescribed for you by a medical doctor;

6. Not attend any premises whose primary purpose is the sale of alcohol including any liquor store, off sales, bar, pub, tavern, lounge or nightclub;

7. Attend and actively participate in all assessment and counselling programs as directed by your Probation Officer, for the following issues:

    a. Substance abuse;

    b. Alcohol abuse;

    c. Anger management;

    d. Psychological issues; and

    e. Any other issues identified by your Probation Officer

    and provide consents to release information to your Probation Officer regarding your participation in any program you have been directed to do pursuant to this Order.

8. Perform 30 hours of community service as directed by your Probation Officer or such other person as your Probation Officer may designate. Any hours spent in programming may be applied to your community service at the

discretion of your Probation Officer.

9. Make restitution by paying into the Territorial Court the minimum amount of $150.00 monthly, commencing July 15, 2015 and continuing by the 15th day of every month thereafter.

[67] This is a primary designated offence under s. 487.04 and you are therefore required to provide a sample of your DNA.

[68] I decline to make a s. 110 firearms prohibition.

[69] There is a $100.00 Victim Surcharge. I will allow 12 months time to pay this surcharge.

[70] There will also be a Restitution Order under s. 738 in the amount of $5,000.00 payable to Mr. Morton. Any monies paid as per the terms of the Probation Order will, of course, be applied against this $5,000.00.

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COZENS T.C.J.