

Citation: *R. v. Brooks*, 2012 YKTC 39

Date: 20120427

Docket: 11-10115

11-10122

Registry: Watson Lake

Heard: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Chief Judge Cozens

REGINA

v.

CAMERON KEITH BROOKS JR.

Appearances:

Terri Nguyen

Gordon Coffin

Counsel for the Crown

Counsel for the Defence

REASONS FOR SENTENCING

[1] COZENS C.J.T.C. (Oral): Cameron Brooks has entered guilty pleas to two charges of assault under s. 266; two breaches of probation under s. 733.1(1); and one breach of the terms of an undertaking under s. 145(5.1) of the *Criminal Code*.

[2] The circumstances are that Mr. Brooks was on a probation order that required him to have no contact directly or indirectly or communication in any way with Charlene George while either of them was under the influence of alcohol. On December 24, 2011, he was in a dispute with Ms. George while they were drinking, and in the course of this dispute, he pushed her down and was punching her in an open area of the

apartment building that they were in. He bit her on the nose, leaving a small wound; she had bruises on her arm and under her eye.

[3] He was released on an undertaking. The undertaking required him to have no contact or communication with Ms. George unless he had the prior written permission of his Bail Supervisor. He was still under the terms of the probation order he had been on previously with respect to alcohol. On January 8, 2012, it is stated that police responded to a dispute and in the course of this dispute while both the parties were drinking and while Mr. Brooks was in contact with Ms. George without permission, he was observed rushing at her with his fists up, threatening to strike her.

[4] He has entered guilty pleas to these offences. I was advised that he attempted to go through the Domestic Violence Treatment Option Program but due to residential issues, such as the unavailability of the YARC, and his inability otherwise to be outside of the Whitehorse Correctional Centre, that was simply not feasible. He has been in custody for 111 days.

[5] He has a very significant criminal record for a man of 27 years of age, with a number of failures to comply, but with several assaults, and assault bodily harm charges, and the most recent of which in 2011, was assault with a weapon, for which he received five months jail and nine months probation, in respect of the same complainant. They have been partners for a number of years and have an 18-month old child. She suffers from mental health issues and is certainly in a position of trust and dependency on Mr. Brooks, and clearly these assaults are a violation of the trust

relationship that he has with her, which is made even greater by virtue of some of the difficulties she struggles with.

[6] Mr. Brooks is a member of the Tahltan First Nation, born in Red Deer and has lived in the Lower Post area, between there and Fort St. John, since he was about seven years of age. He was steadily employed for two and a half years, other than the times he was in custody, by Arctic Construction at the Wolverine mine or, at the time of his arrest, working on the bridge in the Toad River area. He had plans to return to this employment.

[7] While in custody, a report has been filed outlining that he had 17 progress log entries that included one negative entry, among them, which related to two occasions, April 12th and 23rd, where he was covering the light in his cell. He was internally disciplined by early lock-up for two days. Other than that, he has been working and appears to be attending to his duties on time and as required. He has also been taking the Respectful Relationships Program, and, in his submission to the Court, also has been seeing three counsellors, including two counsellors that work in the domestic violence area. He is amendable to treatment. He was noted to be generally polite and getting along with the other inmates.

[8] There is an agreement between Crown and defence that a six month period of custody would be appropriate, followed by a period of probation. There is some difference in the range. The Crown is suggesting 18 to 24 months and defence counsel is saying that it could be something different than that, in perhaps a 12 to 18 month range.

[9] With respect to the issue of time in custody, Crown counsel having just reviewed the letter that was provided today, has altered somewhat her stance with respect to one to one credit to accept that, at least with respect to some of the time in custody, he should receive enhanced credit.

[10] Keeping in mind the purpose and principles of sentencing, the serious nature of any assaultive behaviour in the case of Mr. Brooks and Ms. George, I am satisfied that the sentence of six months is within the range of sentence appropriate. But should Mr. Brooks find himself in a similar situation, he could find that he will have crossed the lower threshold of sentencing and could face much more significant sentences in the future, having committed three assaults against his partner in a brief period of time.

[11] The sentence will be six months custody. With respect to time in custody and the credit while he was on remand, I am satisfied that with respect to the area of employment on the evidence provided, and on the area of counselling, that he has done everything that could be expected of him and would, based on the information before the Court in *R. v. Vittrekwa*, 2011 YKTC 64, and the reasoning there, certainly be entitled to time and a half credit in respect of those two areas. Given that there are three different areas, the only issue remains as to whether it should be full time and a half based on behaviour. I am aware from the evidence in *R. v. Vittrekwa*, that not all behavioural issues result in an inmate losing any of the remission that they would earn based on behaviour. Sometimes it is dealt with internally, sometimes they lose a little bit, sometimes they do not lose any, and sometimes they could lose it all.

[12] Looking at all of the circumstances of the report that was filed, the fact that we are dealing with one negative report out of 17, for a fairly minor incident, and that there was internal discipline and it was a fairly minor internal discipline, I am satisfied that Mr. Brooks would, in all likelihood, receive full credit for the behavioural component of his time in custody, as well. Therefore, he will receive one and a half days credit for the entirety of the 111 days. That would give him 167 days credit from the six months, which approximates to about 182 days. That will leave 15 days custody remaining. So, after being given credit for 167 days in custody, there will be a further 15 days in custody.

[13] This will be followed by a period of probation of 18 months. The terms of the probation order will be that:

1. You keep the peace and be of good behaviour; appear before the Court when required to do so by the Court;
2. You notify the Court or Probation Officer in advance of any change of name or address and promptly notify the Court or Probation Officer of any change of employment or occupation;
3. You remain within the Yukon Territory unless you obtain written permission from your Probation Officer or the Court;
4. You report to a Probation Officer immediately upon your release from custody, and thereafter when and in the manner directed by the Probation Officer;
5. You reside as approved by your Probation Officer and not change that residence without the prior written permission of your Probation Officer;

6. You take such alcohol and drug assessment, counselling or programming as directed by your Probation Officer, and, having given the Court your consent, attend and complete a residential treatment program as directed by your Probation Officer;
7. You take such other assessment, counselling, and programming as directed by your Probation Officer;
8. You have no contact directly or indirectly or communication in any way with Charlene George, except with the prior written permission of your Probation Officer in consultation with Victim Services, and Family and Children's Services;
9. You not attend at the residence of Charlene George...

I am going to put the permission exception on it; I am satisfied that such permission would be given, very carefully and after much thought and consultation, so:

...except with the prior written permission of your Probation Officer in consultation with Victim Services and Family and Children's Services;

10. In any event, you are to have no contact directly or indirectly, or communication in any way with Charlene George when either of you is under the influence of alcohol and for 24 hours afterwards, except as permitted by your Probation Officer in consultation with Victim Services and Family and Children's Services;

[14] The reason I am adding this is that in the event that Ms. George is drinking and you are not and there is an issue with respect to access to your child or a need for you to care for your child, there may be some limited contact required, but otherwise it would

be highly unlikely that you would be getting contact after you have been drinking, in any event, for 24 hours.

11. You are to make reasonable efforts to find and maintain suitable employment and provide your Probation Officer with all necessary details concerning your efforts;
12. You are to provide your Probation Officer with your consents to release information with respect to your participation in any programming, counselling, employment that you have been directed to do pursuant to this probation order;

[15] Those are all the terms that I intend to put on the probation order. Any comments?

[16] MS. NGUYEN: No, thank you.

[17] MR. COFFIN: No.

[18] THE COURT: Actually, I am going to put one more term on. Madam Court Reporter, I am going to direct that a transcript be prepared of the proceedings only in respect of comments that were made by Mr. Brooks and my comments in response; while he was speaking. A copy of that transcript is going to be given to you through your Probation Officer, and I am going to have, as a term, that you:

13. Keep a copy of and review with your Probation Officer at his or her direction, the submissions you made to this Court during your sentencing proceeding.

[19] Remind yourself what you told me, which I believe, and I believe you meant, but you need to remind yourself of that when you are tempted to start drinking. I did not put an abstain clause on your probation order. You are going to have to figure that out for yourself, but you have access to all the counselling that you need.

[20] So a copy of this exhibit will go as well [Mr. Brook's letter to the Court]. I would like a copy of that made and provided to the Probation Office, as well, of that, and the transcript.

[21] I am going to waive the victim fine surcharge. I am not, and the Crown is not asking for it, going to make a s. 110 order. Crown proceeded indictably, but it is an assault charge, so it is a discretionary s. 110, and that will not be imposed this time. I am not going to make an order with respect to DNA. Crown is not seeking it and I would expect that that order would have gone, in any event, last year with respect to the s. 267(a) charge.

[22] MS. NGUYEN: The Crown withdraws the remaining counts.

[23] THE COURT: The remaining counts are withdrawn.

[24] THE CLERK: Your Honour, the probation order is attached to which count or?

[25] THE COURT: It will attach just to the s. 266 charges, thank you.