

Citation: *R. v. Dick*, 2008 YKTC 6

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Registry: Whitehorse
Heard: Ross River

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Chief Judge Faulkner

REGINA

v.

DENNIS IVAN DICK

Appearances:
Jennifer Grandy
Keith Parkkari

Counsel for Crown
Counsel for Defence

REASONS FOR SENTENCING

[1] FAULKNER C.J.T.C. (Oral): Dennis Ivan Dick was convicted after trial on a charge of aggravated assault and associated charges of uttering threats and carrying a weapon for the purpose of committing an offence. In addition, he has entered guilty pleas to a charge of possession of stolen property, being an all-terrain vehicle, and a breach of undertaking, the breach in question being a failure to reside at the residence that the undertaking specified.

[2] The most serious of the offences, it goes without saying, is the charge of aggravated assault. In a nutshell, what happened in that case was that there was some apparent bad blood between Mr. Dick and Nathan Moon and some associates of Mr. Moon's. On the date in question, Mr. Dick started out the proceedings by stopping a vehicle that he was riding in, getting out and confronting Mr. Moon and his associates with a baseball bat, uttering threats against them.

[3] At that point in time, matters went no further than that, but later on in the evening of the same day, Mr. Dick decided to go to Mr. Moon's residence whilst armed with a baseball bat and a knife. Ultimately, there was a confrontation between the offender, Mr. Dick, and the victim, Mr. Moon, during the course of which Mr. Dick assaulted Mr. Moon with a knife, causing several wounds. The most serious was a wound to the chest that penetrated Mr. Moon's lung.

[4] The Crown suggests, and the defence does not dispute, that a custodial sentence is warranted. It would be warranted simply on the facts of the aggravated assault, but there is also the additional matter of Mr. Dick's prior record, which is, to say the least, extensive, and contains many related entries going over a large number of years. The maximum sentence which could be imposed for the charge of aggravated assault is 14 years. The Crown, however, seeks a total sentence for all matters toward the high end of the Territorial range of sentences, which is to say a sentence of two years less a day.

[5] The defence, in the person of Mr. Parkkari, as I say, did not dispute that a custodial sentence was warranted but submitted that I should consider imposing a

conditional sentence in this case. He also submitted that the range of sentence contended for by the Crown might have been somewhat above the mark, relying primarily upon the case of *David Harris Blanchard*, [2007] Y.J. No. 64 (QL), a decision of Deputy Judge Schmidt of this court.

[6] In that case, there was a knife attack which produced some serious injuries. However, Mr. Blanchard's case is not directly comparable to the present for a number of reasons, not the least of which is that Mr. Blanchard was convicted of the charge of assault with a weapon contrary to s. 267(a) of the *Code*, and not the charge of aggravated assault. The report of the decision does not indicate whether the Crown proceeded summarily or by indictment, but even if they had proceeded by indictment, the maximum would have been less than what the *Code* provides for on a conviction of aggravated assault.

[7] So I guess I am in the position of, perhaps not unsurprisingly, agreeing with myself when I said earlier, in the *Bland* case, [2006] Y.J. No. 116 (QL), that the range for aggravated assault is a fairly wide one, going from something in the order of 16 months to as much as six years, depending upon the circumstances of the offence. In this case, matters, I suppose, could be said to be towards the lower end of the range, given that it appears to have been something in the order of a fight that escalated, and not, as in *Bland*, a sort of premeditated attack on somebody, taking them by surprise. That having been said, it has to be remembered that it was Mr. Dick who was clearly pushing matters here, and pushed them on more than one occasion on the date in question.

[8] So I am satisfied that the range of sentence here is towards the upper end of Territorial time. There is, however, the fact that Mr. Dick is before the Court to be sentenced for a number of matters, so, of course, I have to take the global effect of all of the sentences into account. That said, it seems to me that in total, even allowing for the other offences, the ultimate result will be something less than two years, minus a day, so I still must consider whether or not a conditional sentence can be imposed.

[9] In that regard, Mr. Parkkari submitted that Mr. Dick had been doing well on release in recent months, and I accept that he has been. There has been no report otherwise, and Mr. Parkkari points to that as suggesting that Mr. Dick could be counted upon or trusted to carry out the terms of a conditional sentence order. However, we have his recent performance, on the one hand, to balance against a criminal record which extends in more or less unbroken fashion from 1978 until 2004 in terms of prior offences, and that record, as I have said before, is replete with related entries, in which danger was caused to public safety.

[10] I also have two, I think, generally unfavourable pre-sentence reports, unfavourable in the sense of there being little material which would suggest that Mr. Dick would be a good candidate for a conditional sentence. We have, as well, the nature of the offence, and it seems to me that it would be difficult to argue that a conditional sentence for an offence of this kind would be in accordance with the overall principles in the purposes of sentencing, even if I were satisfied that Mr. Dick was otherwise a good candidate. Consequently, I am of the opinion that a conditional sentence would not be appropriate in this case.

[11] In the result, Mr. Dick, with respect to the charge of aggravated assault, I sentence you to a period of imprisonment of 16 months. On the charge of possession of stolen property, three months consecutive. On the breach charge, one month consecutive. On the charge of threats, three months concurrent. On the charge of carrying a weapon for the purpose of committing an offence, three months concurrent. The surcharges are waived.

[12] Pursuant to s. 109 of the *Criminal Code*, you are prohibited from having in your possession any firearm, crossbow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition or explosive substance, for a period of 10 years following your release from imprisonment. You are directed to surrender forthwith to the RCM Police at Ross River any such items now in your possession.

[13] There will also be an order whereby you will provide samples of bodily substances for the purpose of DNA analysis and banking.

[14] THE CLERK: The remaining charge, Your Honour?

[15] MR. PARKKARI: If I might just have a moment, Your Honour?

[16] THE COURT: Apparently, there is still an outstanding charge of --

[17] MS. GRANDY: Yes, I would ask -- that's the 145, the fail to attend.

[18] THE COURT: Yes.

[19] MS. GRANDY: I'd ask that be withdrawn, please.

[20] THE COURT: And no plea? Withdrawn at the request of the Crown.

[21] MR. PARKKARI: Your Honour, Mr. Dick would like to address the Court.

[22] THE ACCUSED: The time I got right now, it's -- what was it? Eighteen?

[23] MR. PARKKARI: Twenty months.

[24] THE COURT: Twenty months.

[25] THE ACCUSED: Twenty months? I don't think I could handle that, doing time up in the Whitehorse Correctional. So I don't know, maybe you should just give me more time and send me down, because it's harder for me up there than anywhere else.

[26] MR. PARKKARI: I'm leaving that submission to Mr. Dick. I think what he's asking for is that rather than having two years less a day, that a sentence of two years be imposed so that he can serve it in a penitentiary rather than the Whitehorse Correctional Centre.

[27] THE COURT: Well, I understand the submission.

[28] MS. GRANDY: I don't have any submissions.

[29] THE COURT: What do you say, Mr. Parkkari?

[30] MR. PARKKARI: It's Mr. Dick's submission. The Court imposed a sentence which is within the range and is appropriate. A period of incarceration of two years globally would also be within the range. It's something that Mr. Dick didn't think

the sentence to be imposed by the Court would be quite that long, and he had not discussed the option of penitentiary time with me. I have no further submission to it as to whether it be appropriate other than it is in the range, and I'm not sure whether, before making that submission, Mr. Dick would like to consider it further before asking for more time, and what would show up as a far more substantial sentence on his criminal record, and being out of the Yukon.

[31] THE COURT: Well, it seems to me I have imposed a sentence I thought was fit and that matters should stay at that point.

FAULKNER C.J.T.C.