

Citation: *R. v. Dickson*, 2015 YKTC 13

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Docket: 14-00248
14-00012
13-00518
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before His Honour Judge Cozens

REGINA

v.

GERALD PATRICK DICKSON

Appearances:
Paul Battin
Lynn McDiarmid

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCING

[1] COZENS T.C.J. (Oral): Gerald Dickson has entered guilty pleas to having committed offences contrary to ss. 267(b), 266, and 145(3) times three. He was convicted after trial of having committed an offence contrary to s. 267(a).

[2] The facts with respect to the offences for which he has entered guilty pleas are as follows.

[3] Assault causing bodily harm (s. 267(b)): On October 22, 2013, in Burwash Landing, Mr. Dickson was having an argument with Krista Hartling, his partner of

approximately six months. Mr. Dickson had been consuming alcohol. In the course of this argument, Mr. Dickson struck Ms. Hartling with his hands, a chair, and a mirror, causing her to suffer injuries to her face, arms, wrist, and body. He also pulled out some of her hair. In the photographs extensive bruising was visible on her face and on her side. He continued his assault on Ms. Hartling despite her repeatedly asking him to stop.

[4] Read in as aggravating factors in accordance with s. 725 were that at that time Mr. Dickson was bound by a probation order that required him to keep the peace and be of good behaviour and to abstain from consuming alcohol. Mr. Dickson entered into the Domestic Violence Treatment Option Court (“DVTO”), and after completing all the required programming was scheduled to be sentenced in April 2014. However, on April 6, 2014, he committed further offences.

[5] Assault (s. 266): On April 6, 2014, Mr. Dickson and Ms. Hartling were having an argument in public. Mr. Dickson became angry at Ms. Hartling. As a result, Ms. Hartling left and walked away. Mr. Dickson ran after her and pushed her to the ground, causing her glasses to cut her nose.

[6] Failed to comply with a recognizance (s. 145(3)): At that time, Mr. Dickson was subject to a recognizance that required him to abstain from the possession and consumption of alcohol and have no contact with Ms. Hartling without permission of his bail supervisor. He was intoxicated and did not have the requisite permission.

[7] Failed to comply with a recognizance (s. 145(3)): On May 24, 2014, Mr. Dickson was consuming alcohol, contrary to the conditions of the recognizance that he was bound by.

[8] With respect to the conviction on the s. 267(a) charge, after trial, I found that on May 24, 2014, at Burwash Landing, Mr. Dickson assaulted Jonathon Carlick. In particular, I found that Mr. Carlick entered into the residence of Dwayne Johnson to find Austin Dickson, Gerald Dickson's younger brother, striking Owen Miller, who was sitting in a chair, defenceless. Gerald Dickson was standing behind Austin Dickson, although not noticeably involved in the assault. As Mr. Carlick reached to grab Austin to stop his assault on Mr. Miller, Mr. Carlick fell to the ground, breaking the coffee table while doing so. Austin and Gerald Dickson then began to assault Mr. Carlick, striking him with one of the table legs that had broken off. As Mr. Carlick struggled to defend himself, all three ended up crossing the living room to the bedroom.

[9] I found that Gerald Dickson struck Mr. Carlick over the head with a rifle, breaking the stock. I also found that Gerald Dickson, either himself or in concert with Austin, struck Mr. Carlick on the head with the broken leg from the coffee table. I found that Gerald Dickson was not acting in self-defence at any time during this event, and that he assaulted Mr. Carlick with a weapon, as charged.

[10] I found that Owen Miller's injuries were entirely suffered at the hands of Austin Dickson and that there was no evidence that Gerald Dickson struck Mr. Miller. I also found that the Crown did not prove beyond a reasonable doubt that Gerald Dickson

participated in the assault against Mr. Miller, and thus I acquitted him of all charges in relation to the assault against Mr. Miller.

[11] Mr. Carlick suffered five serious lacerations to his head area that required in excess of 30 sutures to repair. Some were sutured at the nursing station in Destruction Bay and the rest in Whitehorse after he had been medevaced there. Mr. Carlick was treated for his injuries at Whitehorse General Hospital and released.

Positions of Counsel

[12] Crown counsel submits that for the s. 267(b) offence against Ms. Hartling, Mr. Dickson should be sentenced to a period of probation. This is in recognition of Mr. Dickson completing the DVTO programming. With respect to the s. 266 offence, counsel submits that Mr. Dickson should be sentenced to a period of custody of three months, in particular as this was a further assault against Ms. Hartling while he was awaiting sentencing for the prior one. With respect to the s. 267(a) offence, counsel submits that Mr. Dickson should be sentenced to a period of incarceration of 16 to 18 months, followed by a period of probation of two years.

[13] Counsel for Mr. Dickson agrees with the suggested dispositions on the ss. 267(b) and 266 offences; however, she states that time served or a short additional period of custody should be an appropriate disposition for the s. 267(a) offence.

[14] As I understand the submissions of counsel, Mr. Dickson has spent 196 days in custody on remand in respect of the s. 267(a) offence. This is limited to 1:1 credit, as a s. 524 application was made. Counsel also noted that Mr. Dickson spent 27 days in

pre-trial custody on the s. 267(b) offence and five days on the s. 266 offence, which are not similarly limited to 1:1 credit.

Circumstances of Mr. Dickson

[15] Mr. Dickson is 24 years of age. He is a member of the Kluane First Nation. He has previously been convicted of the following criminal offences: In 2010, a s. 253(1)(b), for which he received a \$1,000 fine and a one-year driving prohibition; in 2012, a s. 259(4)(a), for which he received a 30-day conditional sentence order; he was arrested 26 days later for a breach of this order, and the remainder of the sentence was collapsed; in 2013, a s. 430(4), for which he received a four-month suspended sentence, and a s. 145(5.1), for which he received a \$150 fine.

[16] According to the pre-sentence report, Mr. Dickson describes his upbringing as “chaotic and dysfunctional”. His parents separated when he was approximately five years of age. Mr. Dickson resided with his mother in Whitehorse, as she had full custody of him. During the summers he would reside with his father in Burwash Landing. While residing with his mother, he frequently witnessed her being physically abused by her boyfriends. He also witnessed other violence in the home. There were frequent parties in the home. At times his mother would leave the home for extended periods. She drank heavily and abused crack cocaine.

[17] Mr. Dickson and his younger siblings often had to fend for themselves. He would have to steal food at times as there was often no food in the home. He and his siblings were removed from the home on several occasions by Family and Children Services, only to be returned there.

[18] When he was 14, Mr. Dickson's mother simply walked away from the home and did not return. He and his younger brother Austin did not realize that she had left the home for good until the landlord showed up looking for rent. Mr. Dickson has seen his mother on two occasions since then and he describes their relationship as not being good. He describes his relationship with his father, however, as being good. His father moved to Whitehorse to care for Gerald and Austin after their mother left.

[19] Mr. Dickson left home at 16, however, and dropped out of school, spending his time partying and drinking. He subsequently moved to Burwash Landing, where he lived in a cabin for approximately one year. He resided with his father for a further period of time in Burwash Landing until the First Nation provided him a residence there. Mr. Dickson states that through his relationship with his father and paternal family members he has learned cultural traditions such as hunting, fishing, and trapping.

[20] Mr. Dickson has a Grade 9 education, dropping out in Grade 10. He stated that he was in a lot of fights at school. His mother did not care about what he was doing at school and often did not get up in the mornings to get him and his brother ready for school and often did not provide them with lunches.

[21] Since leaving school, Mr. Dickson has completed a number of courses at Yukon College. These include chainsaw operation and maintenance, WHMIS, rigging and hoisting, transport of dangerous goods, and first aid. He has also completed an eight-week cabin-building course. He intends to work towards an apprenticeship to be a carpenter.

[22] Mr. Dickson has worked since the age of 13, starting with summer employment for the Kluane First Nation. He has worked in various construction jobs with several companies since the age of 17, as well as for the Kluane First Nation and more recently for the Little Salmon Carmacks First Nation. He states that he considers it important to work and he does not like to sit around. He is currently unemployed while awaiting the resolution of these matters.

[23] In a December 17, 2013, Offenders Supervision and Services Treatment Option Report, Mr. Dickson was considered as being at a low risk for reoffending in a spousal context. Following his April 6 offences, he was reassessed as being at a moderate risk of reoffending. He was reassessed and considered suitable to be further involved in the DVTO programming. It was recommended that he attend individual sessions to prepare for the Respectful Relationships group program to be held in the fall as well as the Substance Abuse Management program. This did not occur as planned, due to his being charged with having committed the May 24th offences. I do note that the Pre-Sentence Report (“PSR”) states that the Mr. Dickson completed the Respectful Relationships Program with Ms. Hart, Counsellor, Offender Services, in April of 2014.

[24] Mr. Dickson states that he has benefitted from learning about and participating in his First Nation’s cultural, traditional and language activities.

[25] Mr. Dickson was exposed to alcohol and drugs at an early age through his mother. When working, he drank as a binge drinker in order not to miss work. He stated that he has been sober for several months at a time in response to certain events that occurred, including from November 2012 until October 2013. He stated that he

began drinking heavily again when he returned to Burwash Landing in April 2014. He acknowledges that he has an addiction problem with alcohol and that he needs treatment for his addiction. Prior to the May 2014 assault, Mr. Dickson had taken steps with a First Nation's counsellor to attend a residential treatment program in British Columbia. This has been delayed pending outcome of his sentencing. It is hoped that he will access this programming in future.

[26] Mr. Dickson scores as having a severe level of problems related to alcohol abuse. He scores as having no problems related to drug abuse.

[27] Mr. Dickson accepts full responsibility for the assaults against Ms. Hartling. Given his position at trial that he did not assault Mr. Carlick, there is not an acceptance of responsibility for this event.

[28] On the criminogenic risk assessment, he is noted as requiring a medium level of supervision and as having a medium criminal history risk rating and a medium level of criminogenic needs. He is noted through the Spousal Abuse Risk Assessment ("SARA") to be at a moderate level to reoffend violently against a partner or against strangers or acquaintances. He is considered by the author of the PSR as being a good candidate for community supervision.

Victim Impact

[29] Krista Hartling did not file a victim impact statement. I have little difficulty accepting, however, that the offences of violence of which she was a victim, having

occurred in a domestic relationship with the breach of trust that is inherent in such relationships, was at the least hurtful and likely has had a negative impact upon her.

[30] With respect to Mr. Carlick and Mr. Miller, the events of that evening have had a very significant impact upon the family members of Mr. Miller and Mr. Carlick, as well as upon Mr. Miller himself. Victim impact statements were filed at the sentencing of Austin Dickson, and the mothers of both Mr. Miller and Mr. Carlick spoke in court at the sentencing at that time. By agreement of counsel, what Mr. Carlick's mother stated at Austin Dickson's sentencing was also available for me to consider at Gerald Dickson's sentencing. Also with the consent of counsel, Mr. Miller's mother spoke at Gerald Dickson's sentencing. Mr. Carlick did not file a victim impact statement at either sentencing.

[31] This event was obviously very traumatic for the mothers of both Mr. Miller and Mr. Carlick. The victims and the offenders are related to each other, and this has created many difficulties. It has created what has been termed as "layers of pain" in the community. The mothers of the victims of these assaults consider it important for both Austin and Gerald Dickson to accept responsibility and move on wiser, humbler and healthier. They offer forgiveness.

[32] Mr. Miller filed a victim impact statement as well. It is clear that the assault upon him has caused him to suffer negative ongoing impacts beyond the physical injuries he suffered. I keep in mind in referring to the victim impact statements of Ms. Miller and Mr. Miller that Mr. Dickson is not convicted of having assaulted Mr. Miller. The assault upon Mr. Miller, however, was part of and inextricably linked to the assault upon

Mr. Carlick, for which Mr. Dickson is convicted. While being mindful of this distinction, I consider it appropriate that this information also be before me.

[33] I have no problem, viewing the photographs and considering the evidence at trial, in noting that Mr. Carlick suffered considerable physical injury that would have caused him some discomfort, notwithstanding that he did not file a victim impact statement.

Analysis

[34] I have no difficulty with accepting the sentences proposed for the ss. 267(b) and 266 offences. These involve a breach of trust with a victim who was in an intimate relationship. While recognizing the lesser level of violence involved in the s. 266 offence than the s. 267(b) offence, the fact that Mr. Dickson was on the verge of being sentenced for the s. 267(b) offence after having completed the required DVTO programming component when he committed the assault is an aggravating factor. It certainly shows a lack of insight and lack of anger management that is concerning.

[35] Therefore, for the s. 267(b) offence, taking into account the 27 days' pre-trial custody but without crediting any of that to the sentence, the sentence will be one day deemed served and a period of probation. I will, however, impose a period of probation of two years.

[36] For the s. 266 offence, there will be a sentence of 90 days' custody. Mr. Dickson has five days in custody on remand in respect of this offence, for which he is entitled seven and a half days' credit. Therefore, the sentence will be 82 days. This will also be followed by a period of probation of two years.

[37] For the two s. 145(3) offences committed on the same date, there will be concurrent sentences of 30 days.

[38] More difficult is the s. 267(a) offence. Crown counsel has filed a number of cases to set out the range of sentences available for serious assaults (*R. v. Germaine and Moses*, 2007 YKTC 90, *R. v. Johnson*, 2011 YKTC 70, *R. v. Currie*, 2008 YKTC 23, *R. v. R.R.J.*, 2012 YKTC 14). These cases involve offenders being sentenced for assaults that are somewhat comparable to the offence committed by Mr. Dickson. The injuries suffered were comparable to or worse than those suffered by Mr. Carlick. The circumstances of the offences and the offenders are of course distinguishable on numerous levels. The sentences imposed ranged from a six month conditional sentence order to 18 months custody.

[39] Considering the principle of parity, I will start, however, with the sentence imposed upon Austin Dickson for the same incident. Austin Dickson, after receiving credit at 1.5:1 for 69 days of pre-trial custody on remand, the equivalent of 104 days, was sentenced to a further six months' custody to be served conditionally in the community, to be followed by 12 months of probation. Crown counsel re-elected to proceed summarily against Austin Dickson. Therefore, he effectively received an approximately nine-and-a-half-month custodial sentence.

[40] In Gerald Dickson's case, Crown counsel has chosen to continue to proceed by indictment. Therefore, in the event that I consider a further custodial disposition to be warranted, the conditional sentence option is not available to me.

[41] Austin Dickson had no prior criminal record. He was 20 years of age at the time of sentencing. He pled guilty to two s. 267(b) offences against Mr. Miller and Mr. Carlick. He was remorseful and had apologized for his actions. He was taking steps to address the issues that contributed to his having committed these offences. He had the support of his girlfriend and his girlfriend's parents.

[42] Certainly the circumstances of Gerald Dickson differ from those of Austin Dickson. Gerald is older and has a prior criminal history, although no prior convictions for offences involving violence. This said, he had committed prior acts of violence for which he is only being sentenced today.

[43] Gerald Dickson was in violation of the terms of a recognizance he was bound by when he committed the s. 267(a) offence. Gerald Dickson did not enter a guilty plea to the s. 267(a) offence. This is not, of course, an aggravating factor. He is not entitled, however, to any reduction in sentence that would have resulted from pleading guilty to this offence. His counsel notes, however, that Mr. Dickson is remorseful about the entirety of events of that night.

[44] Austin Dickson surrendered himself voluntarily to the police when they came to arrest him the morning of the offence. Gerald Dickson was arrested after he had left his father's residence through the back door in an attempt to avoid being arrested. Austin Dickson, attributable at least in part to his guilty plea, has been more proactive in taking steps to address the underlying factors that contributed to his actions in assaulting Mr. Miller and Mr. Carlick. Gerald Dickson, less so. Again, Gerald Dickson's counsel notes that he took steps while in custody to avail himself of programming

opportunities. She notes that it has been more difficult for him to do so while residing in Carmacks since his release from custody on December 5, 2014.

[45] This said, Austin Dickson was convicted of assaulting a virtually defenceless Mr. Miller as well as Mr. Carlick, while Gerald Dickson was convicted of assaulting only Mr. Carlick. Further, I do not consider Austin Dickson to be any less of a participant in the assault against Mr. Carlick than Gerald Dickson. Certainly Austin Dickson's two acts of violence that evening were more egregious than the single act of violence committed by Gerald Dickson.

[46] Considering all of these factors, I simply cannot agree with the Crown's submission that Gerald Dickson should receive a sentence between six-and-a-half and eight-and-a-half months higher than the sentence Austin Dickson received. In my view, this would offend the principle of parity. In my opinion, there are no other purposes, objectives, and principles of sentencing that come into play in a manner that would justify me departing so significantly from the sentence imposed upon Austin Dickson.

[47] I have considered the range of sentences established in the cases before me. Certainly based upon these cases, the sentence imposed upon Austin Dickson would be towards the lower end of the range.

[48] This is a case where s. 718.2(e) applies. Mr. Dickson's maternal grandmother attended residential school. While I do not have detailed information before me, it would not be too difficult to conclude that the chaotic and dysfunctional upbringing Mr. Dickson endured while living with his mother may have some connection to his

mother's upbringing, which may well have been impacted by her mother's residential school experiences.

[49] There is a further aspect to the upbringing of Mr. Dickson when compared to that of Austin. Being approximately four years older, Gerald Dickson was likely more aware of the circumstances, and thus more impacted by the chaotic and dysfunctional home he was raised in than Austin was. I do not have any specific evidence in this regard, but as the older of the two by approximately four years, I find that there is some common sense in considering this as a likely possibility.

[50] There is much that is positive in Mr. Dickson's PSR. He has a good employment record. He completed the DVTO program and was accepted back into the program. He understands his need for programming and alcohol addiction treatment and wishes to engage in it. I understand Crown counsel's submissions in regard to the less than aggressively proactive approach Mr. Dickson has taken in respect to accessing programming.

[51] This was a very serious crime that could have had tragic consequences beyond what we are fortunately dealing with. Denunciation and deterrence are very significant considerations. Certainly the sentence imposed upon Austin Dickson is relevant in determining what the appropriate sentence is for Gerald Dickson. Austin Dickson received a sentence that, in my opinion, gave full credit to his youth, lack of prior criminal record, acceptance of responsibility, positive performance on conditions after his release from custody, and proactive steps towards rehabilitation. I note that this was a joint submission.

[52] Gerald Dickson is older and has a prior limited criminal record, although not for offences of violence. He has committed two offences of violence against Ms. Hartling, which he is also being sentenced for. While this does not result in him receiving a higher sentence for the s. 267(a) offence, it is nevertheless a factor when I consider the antecedents of Mr. Dickson and the risk of further violent offending he poses to the community, in determining an appropriate sentence. Mr. Dickson violated court-ordered conditions in committing this offence, as well as in committing the assaults against Ms. Hartling. He took this matter to trial and does not have the mitigation afforded by a guilty plea and acceptance of responsibility. Gerald Dickson has not taken the same proactive steps towards rehabilitation that Austin did.

[53] Gerald Dickson is, however, being sentenced for the assault against Mr. Carlick only, an assault that, while serious and potentially capable of having resulted in more severe and long-lasting impacts, and which involved weapons, did not involve a vulnerable victim whose injuries would appear to be more significant and longer-lasting both physically and emotionally, than in the case of Mr. Miller.

[54] I do not consider Gerald Dickson to be more morally culpable than Austin for the events that occurred that day. Gerald Dickson is not without a reasonable hope of rehabilitation. He is considered to be a good candidate for community supervision. He has a fairly solid work record and his prospects for employment are reasonable. He was actively involved in participating in alcohol and drug counselling services while in custody on remand at Whitehorse Correctional Centre (“WCC”), successfully completing the Substance Abuse Management program. He completed the For the Sake of the

Children program because it was available, although he does not have any children. He actively participated in a Men's Healing Circle program in November 2014.

[55] There are a number of factors set out in ss. 718 to 718(2)(e) of the *Code*, with which denunciation and deterrence, while at the forefront, also need to be balanced. The sentence must be proportional to the gravity of the offence and the degree of responsibility of the offender. Restraint needs to be used in all cases and to the extent possible where the application of this principle does not offend or unduly minimize any of the other purposes, objectives, and principles of sentencing.

[56] Mr. Dickson is an Aboriginal offender, and s. 718.2(e) requires that all sanctions other than imprisonment that are reasonable be considered. There is no question in my mind that Mr. Dickson's Aboriginal heritage is a contributing factor to the chaotic and dysfunctional upbringing he had as a child. This does not excuse his actions in committing the offences that he did. It does place them in a context, however.

[57] Mr. Dickson has spent 196 days in pre-trial custody, the equivalent of approximately six and a half months. But for the limitation on credit for pre-trial custody through the application of s. 719(3) and (3.1) as interpreted by the Yukon Court of Appeal in *R. v. Chambers*, 2014 YKCA 13, Mr. Dickson would have been entitled to be credited with an additional 98 days; therefore, an additional three-and-a-quarter months. Therefore, he has already served what would have been credited at 9.75 months had he pled guilty and been sentenced shortly after committing this offence and served his time as a sentenced inmate, or had he been released on bail pending the sentencing or to have commenced and served his sentence in its entirety as a

sentenced inmate. I cannot, however, consider this additional three-and-a-quarter months' credit for time in remand, as time served and apply this to the sentence I will impose upon Mr. Dickson.

[58] This additional time in actual custody as a result of the s. 524 order does not alter the duty on me to impose a sentence that falls within an appropriate range. It is simply an acknowledgment of the fact that the sentence that I impose upon Mr. Dickson will result in his actual time in custody being greater than what his criminal record will reflect, given the presumption of release from custody after serving two-thirds of a sentence noted by the Court in *R. v. Summers*, 2014 SCC 26.

[59] Taking into account all the aggravating and mitigating factors, the sentencing range for this offence committed in these circumstances, including the circumstances of Gerald Dickson, the sentence imposed upon Austin Dickson, and the interaction of this sentence with the sentences imposed for the other offences for which he is being sentenced, and the fundamental purposes and principles of sentencing set out in ss. 718 to 718.2 of the *Code* and in particular the principle of parity, I am satisfied that the appropriate sentence for the s. 267(a) offence is six-and-a-half months' time served.

[60] This is at the lowest end of the range for this offence committed in these circumstances by an offender with the antecedents of Mr. Dickson. Standing alone, I may have been persuaded that a longer custodial sentence should be imposed. I simply cannot, however, view the distinctions that exist in the personal circumstances of Gerald Dickson and Austin Dickson, and the distinction between the mitigation afforded Austin Dickson for his guilty pleas, a mitigation not available for Gerald Dickson, as

justifying the imposition of a custodial disposition that would have the single offence committed by Gerald Dickson treated more harshly than the two offences committed by Austin Dickson arising out of the same set of circumstances. The gravity of the offences that were committed that day derive the seriousness with which they should be treated from the facts of the offences and the circumstances of the offenders themselves and not from the election that was made as to how to proceed.

[61] The remanet of 82 days for the s. 266 offence shall be served consecutively to the time served on the s. 267(a) offence. For the s. 145(3) offence of breaching the abstain condition of his recognizance on May 24, 2014, given the aggravating circumstances, including that Mr. Dickson was only in Burwash having obtained permission to be there from his bail supervisor, there will be a consecutive sentence of 60 days. Thus, there is a total sentence of 142 days remaining to be served.

[62] I am satisfied that this sentence, along with the two 30-day sentences on the other s.145(3) charges, can be served conditionally in the community. I am aware that Mr. Dickson failed to successfully complete his 30-day conditional sentence imposed in January 2012. He breached his sentence four days from completion by consuming alcohol. He is also before the Court having failed to comply with conditions of his probation order and the recognizances he was bound by.

[63] While this raises concerns about Mr. Dickson's ability to abide by the terms of a conditional sentence order, in my opinion there are enough reasons to believe that he can do so and that the safety of the community will not be unduly put at risk by allowing him to serve his sentence in the community. I am also satisfied that allowing

Mr. Dickson to serve his sentence in the community is consistent with the fundamental purposes and principles of sentencing.

[64] Since December 5, 2014, Mr. Dickson has been able to comply with the conditions of his release order. He has shown a willingness and an ability to attend and complete programming. He has shown an aptitude to take courses in support of his employment and to regularly be gainfully employed. Employment is important for Mr. Dickson, and, certainly in my view, steady employment would be an important factor in Mr. Dickson being able to live a pro-social life in the future. It is nearing the end of March and the summer work season is looming. A conditional sentence would allow Mr. Dickson to take the best advantage of this work season. This, in my opinion, contributes to the positive prospects for Mr. Dickson's rehabilitation and would best provide for the protection and safety of the community.

[65] He is considered to be a good candidate for community supervision by the author of the PSR. In considering s. 718.2(d) and (e), which require me to impose a custodial disposition on an offender only when less restrictive sanctions are not available and particularly, albeit not exclusively, when sentencing an Aboriginal offender to consider all other options than imprisonment, I must also consider the difference between the imposition of a conditional sentence and a sentence to be served in custody at WCC.

[66] While a conditional sentence is still a custodial disposition, the ability to serve a sentence in the community allows for the offender to pursue employment and function in a pro-social fashion within the community, all the while under close supervision that will, while providing support, also hold the offender accountable for any breach of the

conditions the offender is serving the sentence on. So to the extent that jail is necessary in a particular case, as is the case here, a conditional sentence allows for a custodial disposition to be imposed while nonetheless also allowing for the principle of restraint and a consideration of the special circumstances of Aboriginal offenders. Of course, in order to impose a conditional sentence, I must first be satisfied that doing so will not endanger the safety of the community and is consistent with the fundamental purposes and principles of sentencing. I am satisfied that the conditional sentence I am imposing in this case meets these requirements.

[67] With respect to the terms of the conditional sentence, and subject to any comments of counsel, these will be as follows:

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

6. For the first 82 days of this Order, at all times you are to remain inside your residence or on your property, except with the prior written permission of your supervisor, including for the purposes of employment, including travel directly to and from your place of employment and except for the purpose of counselling, including travel directly to and directly from your place of employment. You must answer the door or the telephone to ensure you are in compliance with this condition. Failure to do so during reasonable hours will be a presumptive breach of this condition;
7. For the final 60 days of this Order, you will abide by a curfew by being inside your residence between 8 p.m. and 6 a.m. daily except with the prior written permission of your supervisor or except in the actual presence of a responsible adult approved in advance by your supervisor. You must answer the door or the telephone for curfew checks. Failure to do so during reasonable hours will be a presumptive breach of this condition;
8. You will not possess or consume alcohol and/or controlled drugs or substances that have not been prescribed for you by a medical doctor;
9. You will not attend any premises whose primary purpose is the sale of alcohol, including any liquor store, off-sales, bar, pub, tavern, lounge, or nightclub;
10. You will attend and actively participate in all assessment and counselling programs as directed by your supervisor and complete them to the

satisfaction of your supervisor for the following issues: alcohol abuse, anger management, spousal violence, or any other issues identified by your supervisor, and provide consents to release information to your supervisor regarding your participation in any program you have been directed to do pursuant to this Order;

11. You are to have no contact directly or indirectly or communication in any way with Jonathon Carlick or Owen Miller, except with the prior written permission of your supervisor and with the consent of Jonathon Carlick and Owen Miller;

12. You are not to attend any known residence or place of employment of Jonathon Carlick or Owen Miller, except with the prior written permission of your supervisor and with the consent of Jonathon Carlick and Owen Miller;

13. You are to have no contact directly or indirectly or communication in any way with Krista Hartling, except with the prior written permission of your supervisor and with the consent of Krista Hartling;

14. You are not to attend any known residence or place of employment of Krista Hartling, except with the prior written permission of your supervisor and with the consent of Krista Hartling;

15. You are to make reasonable efforts to find and maintain suitable employment and provide your supervisor with all necessary details concerning your efforts;
16. You are to not possess any firearm, ammunition, explosive substance, or any weapon as defined by the *Criminal Code*, except with the prior written permission of your supervisor for the purposes of sustenance hunting or as required by your employment;
17. You are not to attend in the community of Burwash Landing until further order of the Court or with the prior written permission of your supervisor after completion of a residential treatment program;
18. You are not to return to reside in the community of Burwash Landing until further order of the Court.

[68] With respect to the period of probation that will follow, as I stated, this will be for two years and again, subject to any comments by counsel, would be on the following terms.

1. You will keep the peace and be of good behaviour;
2. You will appear before the Court when required to do so by the Court;
3. You will notify the probation officer in advance of any change of name or address and promptly of any change of employment or occupation;

4. You will report to a probation officer immediately upon completion of your conditional sentence and thereafter when and in the manner directed by the probation officer;
5. You will reside as approved by your probation officer and not change that residence without the prior written permission of your probation officer;
6. For the first three months of this probation Order, you will abide by a curfew by remaining within your place of residence between the hours of 10 p.m. and 7 a.m. daily, except with the prior written permission of your probation officer. You must present yourself at the door or answer the telephone during reasonable hours for curfew checks. Failure to do so will be a presumptive breach of this condition;
7. When in the community of Burwash Landing, you are not to possess or consume alcohol and/or controlled drugs or substances that have not been prescribed for you by a medical doctor;
8. When outside the community of Burwash Landing, you are not to be under the influence of alcohol outside your residence;

[69] These are the same conditions that Austin Dickson is on, and given your severe level of problems with alcohol abuse, I am reluctant to put a blanket abstain clause on, but certainly it would be my hope that you would learn to abstain, or we will see you back again.

9. You are not to attend any premises whose primary purpose is the sale of alcohol, including any liquor store, off-sales, bar, pub, tavern, lounge, or nightclub except for the purpose of purchasing alcohol and leaving immediately after;
10. You are to attend and actively participate in all assessment and counselling programs as directed by your probation officer and complete them to the satisfaction of your probation officer for the following issues: alcohol abuse, anger management, spousal violence, or 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;
11. You are to have no contact directly or indirectly or communication in any way with Jonathon Carlick, Owen Miller, or Krista Hartling except with the prior written permission of your probation officer and with the consent of Jonathon Carlick, Owen Miller, and Krista Hartling;
12. You are not to attend any residence or place of employment of Jonathan Carlick, Owen Miller, or Krista Hartling except with the prior written permission of your probation officer and with the consent of Jonathon Carlick, Owen Miller, and Krista Hartling;
13. You will make restitution by paying into the Territorial Court the amount of \$300 in trust for Jonathon Carlick by the end of the first year of the probation Order;

[70] As you have not been convicted of the assault against Mr. Miller, I am not going to order restitution. I note that your brother is required to pay \$300 in restitution. You can decide yourself whether you want to voluntarily make an equal contribution.

14. You are to make reasonable efforts to find and maintain suitable employment and provide your probation officer with all necessary details concerning your efforts;
15. You will not possess any firearm, ammunition, explosive substance, or any weapon as defined by the *Criminal Code* except with the prior written permission of your probation officer or except as required by your employment or except for the purpose of sustenance hunting;
16. You will not attend in the community of Burwash Landing until further order of the Court or with the prior written permission of your supervisor after completion of a residential treatment program. You are not to return to reside in the community of Burwash Landing until further order of the Court.

[71] The probation will attach itself only to the s. 267(b) the s. 266 and the s. 267(a) offences.

[72] I will comment that, to the extent possible with such changes as are required, the conditional sentence order and the probation order are very similar to those that Austin Dickson also received arising out of the same circumstances.

[73] There is the mandatory DNA order with respect to the s. 267(a) and (b) offences. I make that order. I do not make it in respect of the s. 266 offence, as it is discretionary.

[74] There is the mandatory s. 109 firearms prohibition; this is for a period of 10 years. I believe I may have said this in the case of Austin Dickson, that a s. 113 application can be brought forward upon proper notice and necessary evidence being filed. The reason for the inclusion in the conditional sentence order and the probation order of the exceptions for the possession of firearms is simply in the event that a s. 113 application is brought and an order granted that would allow the possession of firearms. This order will attach to both the s. 267(a) and (b), as they were both proceeded on by indictment.

[75] With respect to the victim surcharge, I will waive it on the s. 267(b) that was October 22, 2013 but there is the mandatory \$100 on the s. 266 and \$100 on each of the s. 145(3) offences, and \$200 on the s. 267(a) and \$200 on the s. 145(3), because it was indictable as well. That is \$700 in victim surcharges; I'm going to give you nine months' time to pay.

COZENS T.C.J.