

Citation: *R. v. Edwards*, 2011 YKTC 44

Date: 20110627

Docket: 09-00820

09-00820A

09-00820B

09-00820C

09-00820D

09-00820E

09-00820F

09-00820G

09-00820H

09-00820I

09-00820J

09-00820K

09-00820L

10-00137

10-00138

Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Chief Judge Cozens

REGINA

v.

KERRY MARTIN EDWARDS

Appearances:

John Phelps

David Christie

Counsel for the Crown

Counsel for the Defence

REASONS FOR SENTENCING

[1] COZENS C.J.T.C. (Oral): Kerry Edwards has entered guilty pleas to a number of offences. Two of the offences are break and enters into the Selkirk Centre Store in Pelly Crossing that occurred on July 31, 2009, and January 24, 2010. There is

also a theft of a snowmobile that occurred on March 5, 2010. There is a guilty plea of failing to appear in court when required to do so, and the facts relevant to some other failures to appear were read in pursuant to s. 725. Mr. Edwards was at times released on an undertaking to a peace officer on recognizances before a justice or a judge that had curfew terms and abstention of alcohol terms. He has entered guilty pleas to several of those, with the facts of other instances in which he failed to abstain or abide by curfews, also read in pursuant to s. 725.

[2] There were a number of files before the Court and it is obvious considerable work was put in by Crown and defence to sort out the agreed statement of facts that was filed before me, to sort out the pleas and the facts that were going to be read in as aggravating circumstances, and to reach the joint submission that is before me. Because of the agreed statement of facts that is filed on this, I have not gone through the facts in any more detail and do not propose to do so. I am satisfied that the joint submission in this case is appropriate.

[3] Mr. Edwards has participated in the Community Wellness Court, and a summary was prepared and filed that basically indicates that Mr. Edwards has taken some steps, but he has not been particularly successful at completing many of the steps that he has taken. He did complete the White Bison program, but I do not have a report as to how he did there. He did fail to complete the multi-target program between December 6 and March 3 of this year, although beginning it. He had opportunities to attend a treatment centre, but did not follow through on the medical portion of the application process. He has been involved in Alcoholics Anonymous meetings, but did not take the steps necessary to secure a sponsor.

[4] He has worked at times, but failed to continue with his employment for a variety of reasons that included a failure to follow through with intentions. He moved out of Whitehorse Correctional Centre into the YARC and it started well, but over time there were problems that arose. Again, this is, from my review of everything, somewhat indicative of the lack of commitment by Mr. Edwards to follow something through to completion. Although well intentioned at the start and making initial steps, there is a lack of commitment to conclusion in the process, and this is perhaps indicative of a lack of the kind of motivation that he would have needed to successfully complete this in Community Wellness Court.

[5] He is a young man of 23 years of age. I understand from his counsel he has recently completed a six-week violence prevention course. He has, by his inability to complete the Community Wellness Court successfully, put himself in a position where he is, as a result of the numerous charges before him, certainly looking at a further period of incarceration. However, hopefully, he will be able to benefit from what he has learned and move on and appreciate that not following through to completion is not the way to completely turn his life around and make it successful.

[6] The joint recommendation that is before me takes into account the 111 days of pre-trial custody that Mr. Edwards has. This custody, under the joint recommendation, is being attributed to Mr. Edwards at one to one.

[7] The sentence that will be imposed is as follows: On the 10-00137, s. 348(1)(b) Information, the sentence will be 90 days time served. On the 09-00820B Information, the s. 145(2) offence, it will be 21 days time served consecutive. That will account for

the entirety of the 111 days time served. On the 09-00820, s. 348(1)(b) offence, the sentence will be five months custody to be followed by 24 months of probation. That custody will start from today, so it is consecutive to the time being served on the other offences. With respect to the 10-00138, s. 334(a) offence, there will be a further sentence of two months. This is to be consecutive to the five months in custody, and it will also be followed by 24 months of probation.

[8] With respect to the remainder of the offences, which are the 09-00820H, 09-00820I, 09-00820K, 09-00820C, and the 10-00138, s. 145(3) offence, the sentences will be 30 days on each, concurrent to each other, and they will be concurrent to the five months in custody that is being served.

[9] The terms of the probation order will be as set out in the Community Wellness Summary, and they will be:

1. To keep the peace and be of good behaviour, and appear before the Court when required to do so by the Court;
2. To notify the Court or the Probation Officer in advance of any change of name or address, and promptly notify the Court or the Probation Officer of any change of employment or occupation;
3. Report to a Probation Officer immediately upon your release from custody and thereafter when and in the manner directed by the Probation Officer;
4. Reside as approved by your Probation Officer and not change your residence without the prior written permission of your Probation Officer;
5. Abstain absolutely from the possession or consumption of alcohol and/or

controlled drugs or substances except in accordance with a prescription given to you by a qualified medical practitioner;

Having noted your consent through your counsel's submissions:

You are to provide a sample of your breath and/or urine for the purposes of analysis upon demand by a peace officer who has reason to believe that you may have failed to comply with this condition;

6. Not attend any bar, tavern, off-sales or other commercial premises whose primary purpose is the sale of alcohol;
7. Having given the Court your consent, take such alcohol and/or drug assessment, counselling or programming as directed by your Probation Officer;
8. Take such other assessment, counselling and programming as directed by your Probation Officer;
9. Do not attend within 25 metres of the Selkirk Centre, Highway Number 2, Pelly Crossing, Yukon; Selkirk Centre Store, Pelly Crossing, Yukon; or the First Nations Administrative Building, Pelly Crossing, Yukon, outside of business hours;
10. Make reasonable efforts to find and maintain suitable employment and provide your Probation Officer with all necessary details concerning your efforts;
11. Provide your Probation Officer with consents to release information with regard to your participation in any programming, counselling, employment or educational activities that you have been directed to do pursuant to this

probation order.

[10] These are all the terms that were in the Wellness Plan. These terms are satisfactory?

[11] MR. PHELPS: Yes, Your Honour.

[12] THE COURT: All right, so that is for a period of 24 months. Certainly, if you are doing well, upon review, this can be made shorter. Certainly, again, had you not participated in the Community Wellness Program and made the steps you had, you could have been looking at a significantly longer period of custody. You should not look at the fact that you have been through the program, did not complete it, and are being sentenced to a further period of custody as a failure. You have made some progress, and that is something you can build upon, and I hope you are able to do that.

[13] I am going to waive the victim fine surcharges. I am not going to make the secondary designated DNA order with respect to the s. 348(1)(b) offences. I am not satisfied it is necessary. Crown is not seeking it in the circumstances. The remaining counts?

[14] MR. PHELPS: Direct a stay of proceedings, Your Honour.

[15] THE COURT: All right.