

Citation: *R. v. Germaine*, 2010 YKTC 133

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Registry: Whitehorse  
Heard: Carcross

**IN THE TERRITORIAL COURT OF YUKON**

Before: Her Honour Chief Judge Ruddy

REGINA

v.

WILLIAM NORMAN GERMAINE

Appearances:  
Eric Marcoux  
Nils Clarke

Counsel for the Crown  
Appearing as Agent for Emily Hill

**REASONS FOR SENTENCING**

[1] RUDDY C.J.T.C. (Oral): William Germaine is before me having entered pleas of guilty to seven different offences, arising on different dates. They include, firstly, a mischief, which involved his being in the residence, which I take it this, Ms. Johns, would this be your residence where the window was broken, where your mother was staying? Okay. So it was in his partner's residence; it was actually her mother, Ms. James, that called the police. He was intoxicated, asked to leave as there were children present. He pushed a table over, walked out, and subsequently broke a window. At the

time, Mr. Germaine was on a condition requiring him to abstain, and when located by the police there was indicia of impairment. He has an additional breach of his probation order for failing to abstain, which encompasses two incidents, one on June 25th, and one on July 2nd.

[2] Next, there is an unlawfully in a dwelling house charge, it is actually a lesser included offence, to which he has entered a plea of guilty, which involved his attending at his father-in-law's home, which had been padlocked, and when his father-in-law returned, Mr. Germaine was located inside boiling eggs. There was damage noted to the door.

[3] The last set of incidents were the subsequent day. Mr. Germaine was located by the police, at which time he fled, giving rise to the s. 129 charge to which he has entered a plea of guilty. He was located on the following day at the beach, intoxicated, again, in breach of his abstain condition.

[4] There is a joint submission before me, which has taken into account a number of factors, including the fact that Mr. Germaine comes before the Court with a lengthy criminal record with numerous related offences on it, and also the fact that he has now done some three months in remand.

[5] Of particular note to me, with respect to Mr. Germaine, is that he was last before me on an application for his release to allow him to attend an articulated rock truck course in B.C. I granted that application. There were a number of conditions, including that when he returned to the Yukon, he turn himself into custody. I am quite pleased to note that Mr. Germaine was entirely compliant with that release order. Not only did he

attend and complete the course, but there is a great deal of information before me suggesting that he did extremely well in the course and now has a number of potential job offers, which he can consider upon completion of the sentence that relates to all the matters that are before me today.

[6] In addition, I am mindful of the fact that Mr. Germaine and his spouse have a baby due in February, and I am aware, both from when he was before me last time, and also in the information that he has provided to me today, that he considers this a time when he needs to get his life in order and change his behaviour in preparation for the baby that is coming.

[7] All of those factors suggest to me that the joint submission, while on the lower end of the range, is entirely appropriate in this particular case, Mr. Germaine. So I am prepared to adopt the joint submission that is put before me by counsel.

[8] The sentences will break down as follows: I am satisfied that a 90 day sentence is appropriate on the offence for being unlawfully in a dwelling house. I am going to credit you the three months in remand with respect to that charge. So there will be a sentence of one day deemed served by your attendance in court today, and your record will reflect that you are being credited for the three months spent in remand.

[9] With respect to the two offences arising on May 2nd, the mischief and the abstain breaches, there will be a sentence of 45 days on each of those, concurrent to each other. On the stand-alone Information alleging an offence contrary to s. 733.1, the abstain breaches on June 25th and July 2nd, there will be a sentence of 45 days consecutive. On the Information alleging the offences contrary to s. 129(a), and the two

breaches, there will be a sentence of 30 days consecutive. On the s. 129, and on each of the breaches, there will be sentences of 45 days concurrent. That should leave us a remaining four months to be served.

[10] That will be followed by a probation order. The probation order should attach to the substantive offences. It will be on the following conditions:

1. That you keep the peace and be of good behaviour;
2. That you appear before the Court when required to do so by the Court;
3. That you notify your Probation Officer in advance of any change of name or address; and promptly notify the Probation Officer of any change of employment or occupation;
4. That 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. That you reside as directed by your Probation Officer, abide by the rules of the residence and not change that residence without the prior written permission of your Probation Officer;
6. That for the first nine months of your probation order you abstain absolutely from the possession or consumption of alcohol;
7. That you not attend any bar, tavern, off-sales or other commercial premises whose primary purpose is the sale of alcohol;

Do you want that limited to the first nine months as well?

[11] MR. MARCOUX: No. No, it's for the full year.

[12] THE COURT: Okay. Is that an issue?

[13] MR. MARCOUX: That was part of our discussions.

[14] THE COURT: Okay. That will be for the full year then.

8. You will take such alcohol assessment, counselling or programming as directed by your Probation Officer;

9. You will take such other assessment, counselling and programming as directed by your Probation Officer;

10. You will provide your Probation Officer with consents to release information with regard to your participation in any programming, counselling, employment or educational activities you have been directed to do pursuant to this order;

[15] That leaves us restitution.

11. You will make restitution by paying into the Territorial Court a sum to be determined by your Probation Officer upon receiving the receipts confirming the amounts paid to repair -- is it the door and the window?

[16] MR. MARCOUX: That's correct.

[17] THE COURT: The two different incidents?

[18] MR. MARCOUX: Yes.

[19] THE COURT: Okay. The door and the window, in trust for -- and it is CTFN?

[20] MR. MARCOUX: Yes.

[21] The Carcross/Tagish First Nation, such restitution to be paid within nine months of today's date. Does that wording work?

[22] MR. CLARKE: Sure. Yes. I understand the amount is not that high. So I am not that concerned about, yeah -- yeah.

[23] THE COURT: What I am just looking for is somebody to get the receipts of what was paid to the Probation Officer --

[24] MR. CLARKE: Yes.

[25] THE COURT: -- and then she is going to tell you the amount you have to pay. If there is a problem with the receipts or a dispute, you can bring it back before me on a future circuit and we can talk about it, but I think it should be pretty straightforward.

[26] I will waive the victim fine surcharge given the current custodial status. Yes?

[27] CORINNE CARVILL: Your Honour, Lynn Rose was just saying that the damage that was done to Clifford Johns' door, it was just given to him. Capital didn't install it. So as part of the sentence, we would like William to -- as part of his restitution, go over and help his father-in-law fix the door, put it in and fix the steps that were -- that were broken. So she was compelled to tell you that.

[28] THE COURT: Okay.

[29] MR. MARCOUX: Okay. I was not aware of that.

[30] THE COURT: Okay. Well, I will add a condition -- is that an issue for you, Mr. Germaine, to help put the door in?

[31] THE ACCUSED: No.

[32] THE COURT: Okay. So there will be a condition:

12. That you assist Clifford Johns with the installation of the new door as and when directed by your Probation Officer.

[33] The remaining counts?

[34] MR. MARCOUX: Stay of proceedings.

[35] THE COURT: Okay. Thank you. Mr. Germaine, Ms. Johns, good luck with the new baby when it arrives, and, Mr. Germaine, congratulations on the course; I am happy to hear that it went well, and that you performed as well as you did. So, I am hopeful that I will not see you back. Good luck.

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RUDDY C.J.T.C.