

Citation: *R. v. Germaine*, 2012 YKTC 64

Date: 20120626  
Docket: 11-00567  
Registry: Whitehorse

**IN THE TERRITORIAL COURT OF YUKON**

Before: Her Honour Judge Ruddy

REGINA

v.

WILLIAM GERMAINE

Appearances:  
Ludovic Gouaillier  
Lynn MacDiarmid

Counsel for the Crown  
Counsel for the defence

**REASONS FOR SENTENCING**

[1] RUDDY T.C.J. (Oral): William Germaine is before me for sentencing on a single count of assault causing bodily harm to which he has entered a plea of guilty. The offence occurred on the 14th day of November 2011, in Carcross.

[2] There is an Agreed Statement of Facts which has been filed. It is not my intention to read all of it into the record. Suffice it to say, Mr. Germaine and his then spouse, Ms. Lynn Rose Johns, got into an argument on the date in question, which escalated to violence. Mr. Germaine admits that an assault did occur and that bodily harm resulted. In particular, there is an indication that she received a right orbital blow-out fracture. It does not appear, from what the Crown has been able to determine, that

there are any long term problems as a result, but it did require medical intervention immediately following.

[3] Mr. Germaine comes before the Court with a lengthy criminal record. He is only 29 years of age but does have an extensive record with an extensive history of violence, including at least three prior assaults causing bodily harm, one assault with a weapon and two common assaults. The most recent of those is an assault causing bodily harm in 2009, which was spousal in nature as well. When I look at just the record and the facts of the offence, obviously both are very concerning and would have me looking at a fairly significant amount of time in custody as a result.

[4] We are in a somewhat different situation today in that I have a joint submission before me from counsel suggesting, essentially, a time served sentence which would amount to approximately 12 months with credit, to be followed by a one year probationary term. The test for me in determining whether or not to adopt that joint submission is whether or not it falls within the range and whether it is in the public interest. On its face, the record and the facts of the offence would suggest that it is extremely low. However, I am also aware that a significant amount of time and effort has gone into attempting to resolve this case, which had a number of inherent difficulties, not the least of which was the fact that Ms. Johns refused to provide a statement and was not cooperative. It was a matter in which the Crown would have been forced to proceed based on utterances she made while in an intoxicated state in the hopes that that would be sufficient to obtain a conviction.

[5] In addition, there is evidence suggesting that Ms. Johns was also in a snowmobile accident, which could account for some of the other injuries that were observed, although Mr. Germaine does admit to having caused the injury to her eye area. That would have further complicated the case had it proceeded to trial. Furthermore, both parties were extremely intoxicated, I understand, at the time, which raises its own complications when one is attempting to assess evidence that is being provided. So it is a case in which, I understand from both counsel, that there are some significant frailties, and as a result of those frailties, there is a joint submission suggesting that I consider something that would be significantly lower than what I would have imposed had this been a sentencing following conviction at trial.

[6] Because of those frailties, and because of the information that I have been provided with respect to Mr. Germaine, which suggests to me that it is not the time to abandon hope of rehabilitation, I am of the view that the joint submission as proposed is appropriate in all of the circumstances of this particular case.

[7] I do want to highlight some of the circumstances with respect to Mr. Germaine which indicate to me that there are perhaps, at this point in time, some reasons to believe that Mr. Germaine may be more successful in addressing his issues and his rehabilitation now than he has been in the past. Specifically, while in custody, he has completed the Violence Prevention Program. He has been in weekly contact for counselling by telephone with Many Rivers for the past five months. He has maintained a relationship by phone with Bill Stewart as well, and Mr. Stewart is well known to this Court for the work that he does in those areas that Mr. Germaine is specifically in need of, including addiction issues and underlying trauma.

[8] There is an indication that while Mr. Germaine was fortunate to have been raised in a fairly stable environment with his aunt and uncle, and I would note his uncle is present in the courtroom today, there was nonetheless some significant abuse suffered by him, by an extended family member, that he is struggling to come to terms with. He recognizes that a lot of his issues stem from that and that he has a need to be vigilant in addressing that issue if he is going to be successful overall.

[9] I am also mindful of the fact that more recently he has made some changes in his life in terms of education and employment. He was able to successfully upgrade and complete his Grade 12 over 2010 and 2011, along with some additional courses, and ultimately was able to complete a heavy equipment course in 2010 in British Columbia. There has also been the significant addition of his son, who was born in January of 2011, and it is evident to me that he does have concerns about being there for his child. It is my hope that his child will serve as the incentive he needs to follow through on the changes that he needs to make.

[10] Mr. Germaine was also employed up until last September with Pelly Construction with the expectation that he would return in November, which obviously was not possible as a result of the offence that is before me. There is an expectation, or at least a possibility, that he can return either to Pelly Construction or other employment with the Minto Mine. It is his plan not to reconcile with Ms. Johns, which is probably a smart decision at this point if Mr. Germaine is going to concentrate on the efforts that he needs to concentrate on. It has been a rocky relationship and a difficult one, and probably not the best context within which to get a handle on addressing both the trauma and the addiction issues. It is obvious that he has made some choices about

what he needs to do if he is going to be successful. So he will be returning to his family in Mayo and does appear to have a plan in place.

[11] All that being said, because there are some rehabilitative prospects here, because there are serious frailties in the case, I am satisfied the joint submission is an appropriate one. Mr. Germaine has served some eight months in custody. Counsel are jointly agreed that credit at one and a half to one is appropriate, which would effectively be a 12-month sentence, to be followed by a one-year term of probation, and considerable work appears to have been done as well in agreeing on the terms to address the various issues with respect to both rehabilitation and protection of the public in this particular case.

[12] The sentence will be one day deemed served by Mr. Germaine's attendance in Court today, and I would ask that the record reflect that he is being credited for 12 months in pre-trial custody. There will be a probation order of 12 months on the following terms and conditions. That you:

1. Keep the peace and be of good behaviour;
2. Appear before the Court when required to do so by the Court;
3. 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;

Those are statutory terms I am required by law to include, but in addition to those you will be required to:

4. Report to a Probation Officer immediately upon your release from custody and thereafter when and in the manner directed by the Probation Officer;

So you want to go there today as soon as you are released before you head back to Mayo with your uncle.

5. Have no contact directly or indirectly or communication in any way with Lynn Rose Johns except with the prior written permission of your Probation Officer in consultation with Offender Services, Victim Services and Family and Children's Services;
6. You are not to attend at the residence of Lynn Rose Johns except with the prior written permission of your Probation Officer in consultation with Offender Services, Victim Services and Family and Children's Services;
7. You are not to attend at or near Carcross, Yukon Territory, except with the prior written permission of your Probation Officer;
8. You are to abstain absolutely from the possession or consumption of alcohol and controlled drugs or substances except in accordance with a prescription given to you by a qualified medical practitioner;

That condition is really important if you are going to be successful. To help you, I am going to order that you are:

9. Not to attend any bar, tavern, off-sales or other commercial premises whose primary purpose is the sale of alcohol;

It is a little difficult to stay sober when everybody around you is drinking.

10. For the first six months of this order you are to abide by a curfew by remaining within your place of residence between the hours of 11:00 p.m. and 6:00 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;
11. Take such assessment, counselling and programming as directed by your Probation Officer including, but not limited to, the Respectful Relationships Program, if so directed.

[13] Now, Ms. MacDiarmid; DNA? Any issue? It is a primary designated offence.

[14] MS. MACDIARMID: No, no issue. And in terms of the firearms I think there was previously one, so I think the ten years is probably --

[15] THE COURT: And I believe with the indictable election it is mandatory.

[16] MR. GOUAILLIER: It makes it mandatory, yes.

[17] MS. MACDIARMID: That it be ten years.

[18] THE COURT: Yes, all right. Because of the nature of the offence I am required to make an order that you provide such samples of your blood as are necessary for DNA testing and banking.

[19] It is also a case in which there is a mandatory firearms prohibition because of the indictable election and the nature of the offence. It is not fully clear to me whether there is a prior, which might change the length, but in this particular case, I think there is agreement that ten years is appropriate. So I am going to make the order that for a period of ten years you are prohibited from having in your possession any firearms, ammunition or explosive substances.

[20] There are possibilities to seek exceptions. If, in particular, subsistence hunting is something that is a significant part of your life, or if it forms a significant part of your cultural activities. I should probably state for the purposes of the decision that Mr. Germaine is First Nations. He does appear to have the support of his First Nation in accessing employment and some programming, and I do recall, I believe, that it was the First Nation that funded and supported the heavy equipment course in British Columbia. So that is something else that I have factored in in recognizing that in all the circumstances, this is an appropriate joint submission.

[21] The victim fine surcharge is waived, given his custodial status.

[22] MR. GOUAILLIER: There will be a stay on the remaining charges.

[23] THE COURT: Okay.

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RUDDY T.C.J.