

Citation: *R. v. Germaine and Moses*, 2007 YKTC 90

Date: 20071004
Registry: Whitehorse
Heard: Mayo

IN THE TERRITORIAL COURT OF YUKON
Before: His Honour Chief Judge Faulkner

T.C. 07-00224
07-04618
06-00500C

REGINA

v.

WILLIAM NORMAN GERMAINE

T.C. 07-00223

REGINA

v.

PHILLIP JAMES MOSES

Appearances:
Michael Cozens
Malcolm Campbell

Counsel for Crown
Counsel for Defence

REASONS FOR SENTENCING

[1] FAULKNER C.J.T.C. (Oral): On July 8, 2007, Phillip Moses entered the home of Archie Lucas here in Mayo. Mr. Moses believed, quite wrongly, that Mr. Lucas had provided information to the police that had led to a charge against Mr. Moses. Mr. Lucas, who had been drinking, was in his bed.

[2] Mr. Moses attacked Mr. Lucas and dragged him from the bed and onto the floor, where he began administering a beating to Mr. Lucas, punching and kicking him as he lay on the floor. At about this time, William Germaine came into the house. For reasons which will forever remain obscure, he decided to join Mr. Moses in his attack on Mr. Lucas.

[3] Eventually, both men dragged Mr. Lucas to the bathroom, threw him in the bathtub and discharged a fire extinguisher on him, with Mr. Moses saying "That is what happens to rats." It should also be mentioned that during the course of this attack, one or both of the attackers had resorted to an axe that was in the premises. There is, however, no evidence that it was actually applied to the person of Mr. Lucas, but it was used to attack the bed and the toilet in the bathroom, damaging both.

[4] Eventually, Mr. Germaine decided that things had gone far enough, and he persuaded Mr. Moses to stop, and both men then left the residence. Mr. Lucas suffered significant injuries, including numerous cuts and bruises. After he was taken to the Mayo nursing station, there were a large number of sutures required to close three of the more significant wounds. As a result of a subsequent police investigation, both Mr. Moses and Mr. Germaine were apprehended and charged.

[5] Today, Mr. Moses entered a plea of guilty to a charge of breaking and entering a dwelling house, and committing therein the indictable offence of assault causing bodily harm. For his part, Mr. Germaine has pleaded guilty to a charge of assault causing bodily harm. He also entered guilty pleas to an unrelated charge of breach of probation,

which had to do with his failure to pay restitution in respect of an earlier conviction, and a *Liquor Act* ticket for consuming alcohol in a restricted public place.

[6] It goes without saying that the attack on Mr. Lucas was extremely serious. Not only were the injuries significant but the victim has suffered severe emotional impact from the incident, not surprisingly, since, as he indicated in his victim impact statement, that during the course of the attack he thought that he was going to die. Matters are made worse still when one considers Mr. Moses' craven motive for the attack. It must also be said that Mr. Germaine's willingness to gratuitously join in is almost equally as chilling. Mr. Moses has an absolutely horrendous criminal record replete with related entries. Mr. Germaine's record is only slightly less breathtaking and most likely this is only because he is a much younger man.

[7] Both offenders have been in custody since mid-July and have served 89 days in pre-trial detention. Given the antecedents of both accuseds and the serious nature of what occurred, substantial custodial sentences are necessary, not only for deterrence and denunciation, but for the safety and protection of the public.

[8] With respect to Mr. Moses, counsel jointly submitted that an effective sentence of three and a half years be imposed, allowing a half a year credit for the three months already served. The Crown conceded that two for one credit would be appropriate in Mr. Moses' circumstances, since he would be receiving a penitentiary sentence.

[9] I am of the view that the sentence contended for is at the very lowest end of the range that could be considered fit for this offender and this offence, but at the same

time, it does not appear to me that it would be so manifestly unfit that I should depart from the joint submission of counsel.

[10] In the result, Mr. Moses is sentenced to three and a half years to be served in a federal penitentiary and I allow him six months credit for the time already served, leaving a remanet of three years. There will also be orders for Mr. Moses to provide samples of bodily substances for the purpose of DNA, analysis and banking. There will also be an order whereby he will be prohibited from having in his possession any firearm, explosives or related substances as outlined in s. 109 of the *Code* for life. The surcharge is waived.

[11] With respect to Mr. Germaine, the positions of Crown and defence were described as joint, but were not, in actual fact. Mr. Cozens, for the Crown, contended for a sentence of 18 months in addition to the time served. Mr. Coffin agreed with the 18 months, but said that the remand time should be credited against it. Given that Mr. Germaine was not the instigator, given that he was the first to cease and desist, he is clearly in a different position than Mr. Moses. As well, of course, is the fact that he stands convicted of assault causing bodily harm and not breaking and entering a dwelling and committing assault causing bodily harm, again in distinction to Mr. Moses.

[12] That having been said, the circumstances are still very grave. They probably cannot be described as the worst offence by the worst offender, but they could be suggested as being within striking distance thereof. A sentence in the range of two years less a day would be entirely fit. Allowing Mr. Germaine credit at the usual rate of one and a half times from such a sentence would in fact result in a sentence longer than

that contended for by the Crown. So the 18 months is by no means out of line, even allowing credit for the pre-trial custody.

[13] There is, however, one additional factor, that of proportionality. If one compares the degree of involvement of this offender to that of Mr. Moses and his three and a half year sentence, an effective sentence of two years for Mr. Germaine might be considered to be slightly excessive.

[14] In the result, I sentence Mr. Germaine to a period of 15 months imprisonment in addition to the time already served. On the breach of probation charge, 30 days. With respect to the liquor charge, a fine of \$100 and a surcharge of \$15 payable forthwith. Following your release from imprisonment, Mr. Germaine, you will be subject to a probation order for a period of 18 months. The terms will be:

1. Keep the peace and be of good behaviour;
2. Report to the Court as and when required;
3. Report to a probation officer within two working days after the order comes into force and thereafter as when and in the manner directed;
4. Advise the probation officer in advance of any change of name or address, promptly notify him of any change of occupation or employment;
5. Take such alcohol or substance abuse assessment, treatment or counselling as your probation officer directs;
6. Take any other assessment and counselling as directed by the probation officer;
7. Have no contact directly or indirectly with Archibald Lucas.

[15] With respect to the restitution, I did not know how much was owing.

[16] MR. COZENS: One thousand dollars was still owing to the First Nation.

[17] THE COURT: Thank you.

8. Make restitution by paying into the Clerk of the Territorial Court the sum of \$1,000 in trust for Na-Cho Nyak Dun Housing. That restitution will be made within one year after the probation order comes into force.

The surcharges are waived.

[18] MR. COZENS: With respect to Mr. -- sorry, Your Honour.

[19] THE COURT: I was not quite finished. With respect to Mr. Germaine, there will also be an order that he provide samples of bodily substances for the purpose of DNA analysis and banking; prohibited from having any firearm, ammunition or similar items as described in s. 109 in the *Criminal Code*. That order will be in effect for a period of 10 years following his release from imprisonment.

Surcharges are waived.

[20] MR. COZENS: My question simply was with respect to the credit for time served for Mr. Germaine: Is that to reflect time at one and a half to one or two to one, simply for the record?

[21] THE COURT: At one and a half. I did not make that clear.

[22] MR. COZENS: There will be stay of proceedings on the remaining charges.

FAULKNER C.J.T.C.