

IN THE TERRITORIAL COURT OF YUKON
(Before His Honour Judge Schmidt)

REGINA

v.

MELISSA ANNE GLOVER

John Phelps

Appearing for Crown

Samantha Wellman

Appearing for Defence

REASONS FOR SENTENCING

[1] SCHMIDT T.C.J. (Oral): The act that Ms. Glover committed is an act normally associated with the result of murder. However, in this case, it resulted in assault causing bodily harm because of the fortuitous one centimetre gap between the end of her cutting of this individual and his jugular vein.

[2] Ms. Glover got hold of a Swiss Army knife, she managed to open it, which is not an easy operation, opening a one-and-a-half-inch blade from a Swiss Army knife; certainly it takes some deliberation, and while Mr. Stone was lying on the bed, either asleep or trying to sleep, she slit his throat from about the point of his Adam's apple at the front of his throat around the circumference of his neck to just under the ear lobe.

[3] Ms. Glover has attempted to characterize it as a slashing in defence of some sort, but the pictures show that it was no such thing. It was an attempt to circumnavigate Mr. Stone's neck with what appears to have been a very sharp blade.

[4] Ms. Glover has attempted to also characterize this, for the purpose of sentencing, as self-defence for insults that she had received, during the course of this all-night drinking party, from Mr. Stone, who shortly before had apparently placed his arm across her breasts. That characterization is weak; it in no way is a form of self-defence. It does not form provocation that the Court can in any way recognize in sentencing. I will review the agreed statement of facts for further clarification on this point.

[5] The statement of agreed facts have four people drinking until closing time, then adjourning to a room in a hotel, smoking joints, drinking. Then I will read the remainder, paragraph 5:

Shortly after arriving at the room Glover, Stone and Gatensby were joined by Lilianne Houston and they proceeded to smoke a joint, drink and have a good time. Houston left the room at approximately 3:30 a.m., after Stone had fallen asleep on one of the two beds in the room.

Paragraph 6:

Prior to Houston leaving the room, Glover made several calls attempting to page someone in order to obtain some cocaine, but had not been successful.

Paragraph 7:

After Houston left, Glover called a taxi and told Gatensby to go out and wait for the taxi. When the taxi arrived, Gatensby returned to the room, but the door was locked.

Paragraph 8:

At approximately 4:00 o'clock a.m., Hale heard some noise in the hallway and went to his room to find Gatensby locked out and trying to get back in. Gatensby advised Hale that Glover was trying to steal Stone's credit cards. Hale then asked Gatensby to leave.

Paragraph 9:

At approximately 5:30 a.m. Hale walked down the hallway by his room and noted that the television was very loud. He entered the room and requested Stone turn the volume down, which he did.

Paragraph 10:

Stone [this is the victim] fell back asleep and awoke at approximately 6:00 o'clock a.m. to what he believed was Glover going through his pockets. Glover advised Stone that everyone was trying to rip him off and that she had helped him. Stone got up to find out that all of the beer and cigarettes were gone.

Paragraph 11:

Stone returned to the bed and laid down at which time Glover asked him for \$40.00 again saying that she had helped him out when everyone was trying to steal from him. Stone said no and advised that he just wanted to go back to sleep.

Paragraph 12:

Glover was on the bed beside Stone when she swung her hand across his throat, cutting it with a 1 ½ -inch blade from a Swiss Army knife....

[6] In those facts, the Court can find no level of provocation. This was an act by Glover that was unprovoked, gratuitous and deadly. It is the type of act for which the community expects the Court to provide protection.

[7] The reports that I have read paint a pessimistic picture at the very least. I have sat in these courts for 22 years and rarely felt that there was as pessimistic a

prospect as I see in this case. There are times when the prospects seem very rosy and persons look to Ms. Glover and say they are making progress, but then it appears that hope is dashed.

[8] The psychologist has looked at that difficulty and has pointed to the diagnosis of a Borderline Personality Disorder together with an Anti-Social Behavior Disorder as an explanation for why this may be true. The psychologist says that in a borderline personality the person may well become very associated with the treatment and then suddenly turn their back on it.

[9] All reports indicate a risk to the community at the present time. While defence counsel has criticized the psychological report as not conducting any tests, the report itself indicates that two indices were measured, they are the Psychopathy Checklist and the Historical-Clinical-Risk 20. Ms. Glover may not have known that she was participating in those assessments; I do not know how they are administered, but they may well have been integrated into the interview.

[10] In any event, the psychologist has conducted what appear to be standardized tests and expresses a concern, a moderate to high risk for re-offending. In addition, on page 12, in his conclusion, on the second to the last paragraph:

In my opinion, there is a substantial level of risk to the public that cannot be moderated without significant treatment interventions and a structured release plan with contingencies in place to manage Ms. Glover should problems arise. In my opinion, without significant treatment gains that indicate reductions in her dynamic risk factor levels, it is unlikely that there is any reasonable possibility of eventual control of her risk for future violence with or without the involvement of alcohol or drugs. Importantly, the use of alcohol increases her risk, but does not cause her risk as she claims.

[11] The report of the probation officer reports in the past history that she has been a poor supervision candidate in the community. In just dealing with the recognizance that was issued in this particular case, on page 2, the probation officer says:

During the time she was on a recognizance in the community she was very difficult to supervise given her many and varied problems and her frequent demands. Ms. Glover presents as very co-operative and "people pleaser" when she wants something or when she is not being confronted about her behaviour. As soon as she is confronted she becomes very oppositional, defiant and angry.

When she was first released in February Ms. Glover was on an order to reside with Kirby Rolles, a family friend. Mr. Rolles had numerous conversations with the writer about Ms. Glover's unmanageability and deterioration behavior to the point where he removed his name as surety. Ms. Glover became very angry when confronted with these concerns and blamed the problems on the fact that Mr. Rolles was "after her and wanted to be her boyfriend instead of just a friend." An accusation that Mr. Rolles denied.

[12] She was also released to Mr. Robinson which only lasted one day before she ran away, for three weeks, until she was found, and since that time has been serving her remand time in an institutional custody setting.

[13] As I stated at the beginning, the role of the Court is, in addition to others, a role that is to reduce insofar as possible the danger to the community of persons who have a propensity towards violence.

[14] The principles of sentencing involve the Court in responding in such a way that there is a general deterrent to the public, and in such a way that there is a specific

deterrent to the offender towards behavior of the sort that is evidenced by this offence. The Court also has a role that traditionally, and is now enshrined in the *Criminal Code*, of working towards rehabilitation, looking for the least intrusive sentence for any individual to accomplish the principles of sentencing that I have outlined.

[15] The Court must deter generally, must deter specifically, must address its mind towards a real degree of rehabilitation of offenders, which, of course, is the best possible protection of the public. It is in the area of rehabilitation of this offender that the Court is most pessimistic given the reports that have been filed.

[16] First of all, the Court finds that the general deterrence almost goes without saying, we should not have our throats cut while we are lying in bed in trying to sleep. Specific deterrence in this case the Court finds is of particular value. In reading the reports, the Court sees that Ms. Glover is an intelligent person. Ms. Glover can modify her behavior to suit her goals, has been described in various ways as a "people pleaser". She can become very compliant with treatment if she sees it as being advantageous to herself. The Court finds that if Ms. Glover sees it as being advantageous to herself to behave in such a way that she stays out of jail, she has the capacity to do that.

[17] The Court finds that a period of incarceration in an institution will have the beneficial effect of her desiring to stay out of that institution and the Court finds that she has the capacity to act in such a way that she will not end up back in jail, and that is a specific deterrence. Some people do not have that capacity. In reading these reports the Court finds that Ms. Glover does, in fact, have the capacity to mold her behavior to prevent consequence.

[18] The Court finds that there needs to be a period of incarceration. The Court finds that for reasons of specific deterrence it should be served in an institution, but more than that, the Court finds that she is a substantial risk to the public if she is released at this time.

[19] In page 12 of the psychologist's report, again, I will repeat:

In my opinion, there is a substantial level of risk to the public that cannot be moderated without significant treatment interventions and a structured release plan with contingencies in place to manage Ms. Glover should problems arise.

[20] The conditional sentencing provisions of the *Criminal Code* do not allow for community sentences where there is a substantial risk to the public. Section 742.1 of the *Criminal Code* says :

...the court [must be] satisfied that serving the sentence in the community would not endanger the safety of the community...

The Court finds that a conditional sentence in her case does not meet that criteria.

[21] Ms. Glover has served an equivalent of a six-month sentence after she was incarcerated for failing to live up to her bail terms. The Court is in agreement with the Crown in its range. The Crown has said a range of 15 months to 18 months would be appropriate. The Court agrees and chooses the lower of that range, 15 months, and six months is to be deducted from that as time already served. That means Ms. Glover will have nine months to serve, less any parole that she may become entitled to. Fifteen months is the sentence, six months credit, equaling nine months to serve.

[22] Then following that, in keeping with recommendations of the probation officer and the psychologist for a structured release plan, the best I can do in that case is by way of a probation order. The other structures may be available through the parole system. The Court has no concerns with any of the conditions recommended by the probation officer. It is a fairly full list and will be moderated somewhat by what is available in this community and in this Territory. The Court feels that all of these things could well be of use to Ms. Glover if she does in fact resolve that she does not want to re-enter the institutional setting. They will help her to structure her life in such a way that she can become a useful member of society as she has expressed that she wants to become.

[23] If she resists these conditions, then her history will play itself out again. But, perhaps there will be a change.

[24] Terms: I am going to read directly from the pre-sentence report for the benefit of the clerk:

[25] You are to report to a Probation Officer as and when directed by a Probation Officer, which for the first six months involve frequent reporting of not less than two times per week.

[26] You are to participate in such abuse assessment, counselling and treatment including attendance at a residence alcohol program as directed by a Probation Officer.

[27] You are to participate in psychological assessment, counselling and treatment as directed by a Probation Officer.

[28] You are to attend at the Family Violence Prevention Unit for assessment and counselling and if deemed appropriate for the WEAVER Program, you are to attend, participate in and complete that program including any follow-up.

[29] You are to participate in such other assessments, programs or counselling as directed by a Probation Officer.

[30] You are not to associate with anybody identified in writing by the Probation Officer who are known to be a part of the local drug culture. And you should understand that may or may not include Mr. Blanchard.

[31] You are to have no contact with Cindy Moug, unless given advanced approval in writing by the Probation Officer. I think that addresses the concern that counsel had that this is not a blanket prohibition, but it is a prohibition until the Probation Officer believes it is in your best interests and in society's best interest.

[32] You are to reside in a residence as approved by the Probation Officer and not change that residence without the written permission of the Probation Officer.

[33] You are to abide by a curfew between the hours of 9:30 p.m. and 7:00 a.m.

[34] You are not to attend at any premise whose main purpose is the sale of alcohol.

[35] You are not to leave the Yukon Territory without the permission of the Court or the advanced written permission of the Probation Officer.

[42] THE COURT: No. Just let me review that. You did not, Ms. Wellman, address this extra term of seeking employment?

[43] MS. WELLMAN: I have no issue.

[44] THE COURT: All right. I will make it an additional term. You are to seek and maintain employment or attend regularly at a school program. That does not mean that you have to attend school but you have to be engaged in some sort of educational program. You are to provide proof on demand to the probation officer that you are complying with this condition.

[45] Anything else?

[46] MS. WELLMAN: The sentence on the 145?

[47] THE COURT: There will be a 30 day concurrent sentence. I know that the Crown asked for consecutive, but I believe a global sentence is the appropriate sentence in this case.

[48] MS. WELLMAN: And would Your Honour give any consideration to waiving of the victim fine surcharge?

[49] THE COURT: It will be waived given the financial circumstances of the accused.

[50] MR. PHELPS: Your Honour, before adjourning, I apologize once again for this lack of organization. I am advised by the bail supervisor that

there was negligence on our part to request an abstain clause with respect to the probation order, which was something that she would regularly have requested from this, "Abstain absolutely from the possession or consumption of alcohol or non-prescribed drugs and provide such sample of breath or bodily fluids as requested by a probation officer, peace officer, who has reason to believe that you are not complying with this condition."

[51] THE COURT: Okay. Ms. Northcott, is that a condition that you omitted to put in the term?

[52] MS. NORTHCOTT: No, it was in my first draft, but I must have accidentally deleted it in my second one for my report.

[53] THE COURT: Is it a condition that you believe that would be useful in this?

[54] MS. NORTHCOTT: Definitely. I had talked about this with Ms. Glover, but Ms. Glover has demonstrated that she can be clean when she chooses to be. She was clean from the end of November 2002 through to the end of March 2003. And when she is clean, not using alcohol or drugs, she hopes to control her behavior when she gets in this trouble, especially when she is not using alcohol.

[55] THE COURT: Yes. The psychologist was not quite sure that that was the main risk factor, but he did seem to indicate it was a risk factor.

[56] MS. NORTHCOTT: It is not the main risk factor, but it increases the risk.

[57] THE COURT: Ms. Wellman, do you have concerns? Can you consult your client on that and what would she say with respect to that term?

[58] MS. WELLMAN: Well, my instructions are that she is intent upon remaining clean, so I just have concerns on the basics of who's an addict. Abstain clauses, she has the resolve at this time to remain drug and alcohol free.

[59] THE COURT: I think it would useful in this case to have that term because of the high risk and the advice that she have a structured release; that is one of the structures that should be in place. I will add that term that she abstain from alcohol and submit to a breathalyzer upon demand of a peace officer who believes she has breached that condition, that is alcohol and non-prescription drugs.

[60] MR. PHELPS: And would that include a sample of bodily fluids, as well? It is the only way to enforce the issue with respect to the non-prescribed drugs, Your Honour.

[61] THE COURT: Yes.

SCHMIDT T.C.J.