

Citation: *R. v. Gontcharov*, 2011 YKTC 76

Date: 20111116
Docket: 11-00092
11-00092A
11-00092B
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before: His Worship Justice of the Peace Cameron

REGINA

v.

OLEG NIKOLAEVICH GONTCHAROV

Appearances:
Susan Bogle
Tyrone Duerr

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCING

[1] CAMERON J.P.T.C. (Oral): Mr. Gontcharov has pled guilty to one count under s. 266, one count under s. 145(5.1) and one count under s. 145(3).

[2] The facts before the Court are that back on March 1st of this year Mr. Gontcharov was in an argument with his wife. As the argument escalated, she pushed him away from her and he responded by slapping her in the face with an open hand.

[3] He was released by the police at that time with a no contact condition, to have no contact with his spouse or his children. He was in breach of that condition on July 8th, July 12th, and July 18th. In each case, he found ways and means of flagging down Ms. Gontcharov on the highway and gave her groceries in one instance, to give her a trailer in another, and to beg her to take him back in another.

[4] He was then actually released once again on an undertaking to the Court, which continued to have a no contact condition, and he continued to breach that condition frequently in September on the 15th, 16th, 18th and 20th.

[5] Mr. Gontcharov has no prior criminal history. He has now been in custody for very close to 60 days. While in custody, Mr. Gontcharov has made positive moves. He has attended a Violence Prevention Program; nine sessions. He has been a model prisoner. The Crown has indicated that they would not be opposed to a conditional discharge, given the circumstances that Mr. Gontcharov has presented.

[6] Mr. Gontcharov clearly has a good work history and has a background that shows that he has been a very productive member of society, both abroad and in Canada. There have been tendered many letters of support from a variety of individuals that have had dealings with him professionally and as a friend, even letters from the children of his first marriage. He has a local support present here, Mr. Doug Hitch, who will offer him a place to stay if released.

[7] I think the Court can take from all of the information that it has been given today that this is certainly an out of character situation for Mr. Gontcharov. It is clear that the relationship that he was in had become less and less stable, and that this particular action may very well have been triggered by frustration. It is not to say that it is acceptable in any way, but it does show that this is not something that Mr. Gontcharov is comfortable with or is part of his normal character.

[8] For those reasons, I believe the conditional discharge that is sought is appropriate. I am going to discharge you conditionally, Mr. Gontcharov. I will place you on probation for a period of six months. The terms and conditions of that probation are

going to be as follows:

1. You must keep the peace and be of good behaviour;
2. You are to report immediately to a Probation Officer, and thereafter as often and in the manner directed by the Probation Officer;
3. You are to attend for such assessment, counselling and programming as directed by your Probation Officer. This may include the Domestic Violence Programming, but is not limited to that; it may also include some other programming;
4. You are to have no contact, direct or indirect, or communicate in any way with Eugenia Gontcharov except through counsel or through a lawyer for purposes of setting up an access arrangement for your children;
5. You are to reside at the home of Doug Hitch, abide by the rules of his residence, and not change that residence without the prior written approval of your Probation Officer;

[9] In regards to firearms, the Court is of the view that firearms, of course, must be considered, but I think are not of a particular concern in regards to Mr. Gontcharov. There is absolutely nothing before me that would indicate that at any time did Mr. Gontcharov even mention or talk about the use of firearms in anything but an appropriate way; and because of Mr. Gontcharov's background, the firearms situation would be one that he would ultimately have to likely have access to firearms if he was to take the employment that may be offered to him in the near future. So, I am not going to make any firearms restrictions.

[10] There will be a victim fine surcharge of \$50 that will be applied. How long would

it take for Mr. Gontcharov to come up with that \$50?

[11] MR. DUERR: He can pay that within the month.

[12] THE COURT: One month time to pay.

[13] MR. DUERR: Your Worship, there's one issue that I failed to mention, and it just occurred to me. Mr. Gontcharov owns a number of items that are -- still remain in the matrimonial home. All of his belongings, essentially, are -- continue to [indiscernible], continue to be there. I'm wondering if it would be possible for him to -- for there to be one condition that would allow him to coordinate with the RCMP for the attendance and retrieval of his belongings from that matrimonial home at a time and in a way that's convenient to the complainant. And it can even be --

[14] THE COURT: The matrimonial home, is it [...]?

[15] MR. DUERR: Yes.

[16] THE COURT: That is the matrimonial home?

[17] MR. DUERR: Yes. Yes, Your Worship.

[18] THE COURT: Okay.

[19] MR. DUERR: And Mr. Hitch can perhaps even assist with that.

[20] THE COURT: Yes. The way the condition would read is that you:

6. Not attend on the premises of [...] here in Marsh Lake, in Yukon Territory, except in the direct company of an RCMP officer for the purposes of gathering your personal effects.

[21] Now, what that means is that the only time that you can go there is if you are in

the company of a police officer. If your friend, Mr. Hitch, knows what to get, he can certainly go and pick that stuff up, but you could not go with him. The other thing you must be very careful of is that if he was going to do that, he cannot convey messages to Ms. Gontcharov from you. The no contact condition means you cannot phone her, you cannot write her notes, you cannot tell somebody to tell her something, you cannot fax her or e-mail her, leave messages on phone answering machines, pagers, you cannot use social media such as Twitter, Facebook, chat lines, et cetera. If she does attempt to make any communications with you, you would have to break it off or you would be violating this condition. Now, the exception is through your counsel; because you have divorce proceedings going, you each have lawyers. Through lawyers, you can certainly convey messages back and forth, but that is the exception, all right?

[22] THE ACCUSED: Yes.

[23] THE COURT: Any of the other conditions that you do not understand, Mr. Gontcharov?

[24] MS. BOGLE: Your Worship --

[25] THE ACCUSED: No, I understand everything.

[26] THE COURT: You understand them all.

[27] MS. BOGLE: Just on that point, I have no problem with that exception, but did Your Worship, or I'm not sure if I mentioned that condition about not attending the residence, generally, and her place of employment. That employment, that was on the original recognizance.

[28] THE COURT: Yes, we did not mention that. The place of

employment, where does she work?

[29] MS. BOGLE: It's just a -- the Marsh Lake Dump. It just indicated the place of employment, and yes, the Marsh Lake Dump.

[30] THE COURT: At Marsh Lake Dump?

[31] MS. BOGLE: Yeah.

[32] THE ACCUSED: She has no reason [indiscernible - coughing].

[33] THE COURT: There would be a not attend at the Marsh Lake Dump when Ms. Gontcharov is there. So, I mean, if you have to go there to dump garbage that is fine, but if she is working that day or there, you cannot go there.

[34] MR. DUERR: Thank you, Your Worship.

[35] THE COURT: Thank you. And Counts 2 and 3?

[36] MS. BOGLE: Yes, the Crown will enter a stay of proceedings.

CAMERON J.P.T.C.