

Citation: *R. v. Grunerud*, 2014 YKTC 29

Date: 20140514
Docket: 12-00897A
12-00897B
Registry: Whitehorse

TERRITORIAL COURT OF YUKON
Before His Honour Judge Chisholm

REGINA

v.

KEVIN ROY GRUNERUD

Appearances:
Terri Kaur
Melissa D. Atkinson

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCING

[1] CHISHOLM T.C.J. (Oral): Mr. Kevin Grunerud pleaded guilty to three *Criminal Code* offences in which the Crown had proceeded by indictment: Assault contrary to s. 266; unlawful confinement contrary to s. 279(2); and disobeying a court order, s. 127.

[2] Agreed statements of fact have been filed with the Court with respect to the various offences.

[3] Based on the unlawful confinement conviction, the Crown applied to have Mr. Grunerud declared a dangerous offender pursuant to s. 753 of the *Code*. The Crown has satisfied the statutory requirements of such an application, having filed notice, the consent of the Attorney General, and an assessment report.

[4] The Crown and the defence are making a joint submission on the appropriate disposition of this matter, namely that Mr. Grunerud be declared a dangerous offender, pursuant to ss. 753(1)(a)(i) and (ii), and that he receive a sentence of 30 months' imprisonment for the unlawful confinement offence, 30 months concurrent for the assault conviction, and four months consecutive for disobeying a court order, after which time he would be subject to long-term supervision for a period of 10 years.

[5] In addition to the Assessment Report prepared by Dr. Lohrasbe, I have the benefit of a comprehensive *Gladue* report, as well as a pre-sentence report.

[6] Mr. Grunerud is 37 years of age and a member of the Carcross/Tagish First Nation. His mother attended residential school in Carcross, as indicated in the *Gladue* report. The "community certainly is still struggling to come to terms with the fact that it was home to a school that brutalized its students while disenfranchising them of their aboriginal heritage." Mr. Grunerud experienced what could be described as a difficult upbringing, and he left home around the age of 15.

[7] As an adult, he has had a series of violent spousal relationships which resulted in his being convicted for serious offences and, in two cases, his receiving significant terms of incarceration.

[8] He has taken counselling and treatment for domestic violence but, to date, has not displayed any changed behaviour.

[9] It is for the Crown to prove beyond a reasonable doubt that Mr. Grunerud is a dangerous offender. Based on all the facts, his criminal record, and the materials

presented at this sentencing hearing, I find that the statutory terms in ss. 753(1)(a)(i) and (ii) are met with respect to Mr. Grunerud. The offence of unlawful confinement is a serious personal injury offence, and Mr. Grunerud constitutes a threat to the life, safety or physical or mental well-being of other persons on the basis of evidence establishing: (i) a pattern of repetitive behaviour by him, of which the offence for which he has been convicted forms a part, showing a failure to restrain his behaviour and the likelihood of causing death or injury to other persons or inflicting severe psychological damage on other persons through failure in the future to restrain his behaviour; and (ii) a pattern of persistent aggressive behaviour by Mr. Grunerud, of which the offence for which he has been convicted forms a part, showing a substantial degree of indifference on his part respecting the reasonably foreseeable consequences to other persons of his behaviour.

[10] As such, I declare Mr. Grunerud to be a dangerous offender.

[11] Section 753(4.1) creates a presumption for the imposition of an indeterminate sentence unless I am satisfied "by the evidence adduced during the hearing of the application that there is a reasonable expectation that a lesser measure under paragraph 4(b) or (c) will adequately protect the public against the commission by the offender of murder or a serious personal injury offence."

[12] In determining which of the available sentences is appropriate, including whether or not the presumption of an indeterminate sentence is rebutted, public safety is the paramount consideration. I must also consider other sentencing principles enunciated in s. 718, including *Gladue* principles.

[13] The psychiatric assessment of Dr. Lohrasbe assists me in determining whether there is a reasonable possibility of eventual control within the community and within the timeframes of long-term supervision.

[14] Dr. Lohrasbe outlines two things that Mr. Grunerud must do in order to succeed: Never consume alcohol again, and not enter into any committed live-in intimate relationship.

[15] Dr. Lohrasbe concludes his report by indicating that, although all the preconditions to safe management in the community may be daunting, they are not outside the realm of reasonable possibility. He also indicates the greater the period of supervision to which Mr. Grunerud is subject, the greater the chances of success. I agree with his comments in that regard.

[16] Based on all of the above, I am prepared to accede to the joint submission of counsel.

[17] Mr. Grunerud, you are sentenced for the offence of forcible confinement to a term of imprisonment of 30 months, for the offence of assault to a term of imprisonment of 30 months concurrently, and for the offence of disobeying a court order a term of four months to be served consecutively to the other sentences. You shall also be subject to long-term supervision for a period of 10 years.

[18] Mr. Grunerud has been in custody for the equivalent of twenty-five-and-a-half months, and I give him credit for his time in remand. That leaves eight-and-a-half months remaining on his sentence.

[19] I also make the following Orders:

1. You are prohibited from possessing any firearm, crossbow, restricted weapon, ammunition, or explosive device, for life, pursuant to s. 109 of the *Criminal Code*.
2. You will also provide a sample of your DNA, and that will be through giving samples of your bodily substances, for the purposes of forensic DNA analysis and recording.
3. I also direct that you are to have no contact with Corine Carrita while in custody.

[20] The Victim Fine Surcharges are waived.

[21] I further make the following recommendations to Corrections Canada and to the Parole Board:

1. Mr. Grunerud shall be allowed to serve the remainder of his sentence at the Whitehorse Correctional Centre;
2. Mr. Grunerud shall have no contact with Corine Carrita, Marcia Telup, or Catherine Johnson while under long-term supervision;
3. While in the community and subject to supervision, Mr. Grunerud shall not be permitted to attend at or near the respective residences or respective workplaces of Corine Carrita, Marcia Telup, or Catherine Johnson; and

4. While in custody or in the community and subject to supervision, Mr. Grunerud shall not be permitted access to the Internet, except for the purposes of employment or education, and that he shall be specifically barred from registering for or using online dating sites, either directly or indirectly.

[22] The other matters are withdrawn at the request of the Crown.

CHISHOLM T.C.J.