

Citation: *R. v. Huebschwerlen*, 2008 YKTC 16

Date: 20080218
Docket: T.C. 06-00636
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: Her Honour Judge Ruddy

REGINA

v.

RONALD LEE HUEBSCHWERLEN

Appearances:
Jennifer Grandy
Gordon Coffin

Counsel for Crown
Counsel for Defence

REASONS FOR SENTENCING

[1] RUDDY T.C.J. (Oral): Ronald Huebschwerlen is before me in relation to three counts to which he has entered pleas of guilty. The first of those is an assault causing bodily harm on his current spouse. Accompanying that charge was a breach of his probation order. He was on probation for another spousal assault conviction and his probation order required him to abstain. The final charge is, as well, an abstain breach, but of his release conditions.

[2] The circumstances arise on the 7th of January 2007. Both Mr. Huebschwerlen and his partner had been drinking. The facts indicate that he backhanded her a number of times in the face while at a friend's place. Later, at home, he punched her in the face a number of times, she fell to the ground, he kicked her in the face and pulled her by the

hair. As a result of the assault, his partner suffered a broken nose, which required medical intervention. Mr. Huebschwerlen was located and found to be under the influence of alcohol. At the time, as noted, he was on probation with a condition requiring him to abstain; thus, he was in breach of that condition.

[3] He was released on January 9, 2007, again, with a condition requiring him to abstain from the possession or consumption of alcohol. On May 7, 2007, he was observed exiting the liquor store with a 15 pack of beer in his possession.

[4] Mr. Huebschwerlen comes before the Court with a prior criminal record. Of particular note and concern to me, he has three prior convictions for spousal assault, which, in my mind, is a significantly aggravating factor as it relates to my job today in sentencing him on the spousal assault. There are also a number of breaches on his record.

[5] Crown is suggesting that the appropriate range of sentence would be eight months on the assault causing bodily harm, and 30 to 45 days on the breaches, to be followed by a lengthy probation order. Defence is suggesting that a somewhat lesser term would be appropriate, arguing that he received six months conditional on his last spousal assault, and as conditional sentences are normally lengthier than custodial sentences, if I am to apply the step-up principle, I should consider a sentence in the four to six month range as a more appropriate custodial term in all of the circumstances.

[6] Mr. Huebschwerlen is a 39-year-old member of the Kwanlin Dun First Nation. He appears to have a fairly solid employment history, and there is work waiting for him. He also is currently a single parent of three boys, who I understand are staying with family

members at this point in time. His concern is a release as early as possible for both work and parenting purposes.

[7] Mr. Huebschwerlen has made some efforts for which he is entitled to credit in relation to obtaining programming. The difficulty I have when looking at it, is his motivation to get programming appears to be significantly higher when he is in custody than when he is not. He has indicated to the probation officer throughout the pre-sentence report that he is interested in treatment for both his violent behaviour and for his alcohol consumption. However, when on release and given the opportunity to follow through on that, he was successful in attending only two of 13 appointments which he had scheduled with Mr. Kasper in relation to one-to-one counselling.

[8] Similarly, his efforts with respect to alcohol seem to be much more motivated while he is in custody than while he is not. In custody, he has done well. He has taken what programming is available to him, attending AA programming, a traditional parenting course, and a men's program that is offered within the facility. He did also make efforts to attend the SAM program, but was unable to as it was already full. I also need to consider the fact that he has spent some 62 days in remand time in relation to these matters and he is in entitled to credit for that time spent as well.

[9] In all of the circumstances, I think it is important to note that Mr. Huebschwerlen has been through the spousal abuse program on four prior occasions. Notwithstanding, the amount of resources that have been expended on him, he is before the Court yet again with a spousal assault, and a significantly more serious spousal assault than his three prior convictions. In all of the circumstances, I am of the view that the primary

considerations for sentencing at this point in time, have to be denunciation, deterrence and protection of the public, in particular, his current and any potential future partners.

[10] He has been assessed using the SARA and is assessed at being at high risk to re-offend in the future against an intimate partner, something which is obviously not surprising, given his record for related behaviour.

[11] As I noted, Defence was suggesting that the range indicated by the Crown is too high if I am to apply the step-up principle when I consider the sentences he received for his prior convictions. The only thing I would point out in response to that is we are not talking about a fourth common assault. We are talking about an assault causing bodily harm in which the complainant suffered a broken nose, which is not, in my mind, on the minor end of the scale as it relates to bodily harm.

[12] For that reason, I am of the view that the range suggested by the Crown is entirely appropriate in the circumstances and is in keeping with the dominant sentencing principles in this particular case. However, I am also of the view that we cannot lose sight of the potential for rehabilitation and the need for rehabilitation in this particular case. I am satisfied that what can be accomplished in that area can be accomplished with a probation order to follow.

[13] So the sentences are going to be as follows. He is entitled to credit for the time that he spent in custody. So I am going to deal with the s. 145 as follows: There will be a sentence of one day deemed served by his attendance in Court today, and I would ask that the record reflect that he is being given credit for one month of the time that he spent in custody. I think it is appropriate for him to receive credit of three months altogether.

[14] With respect to the s. 267(b), there will be a sentence of eight months, but I am going to reduce that by credit for the remaining two months that he spent in custody, so it will be a sentence of six months, to be followed by a probation order of 18 months.

[15] With respect to the breach of probation that is attached, there is going to be a sentence of 45 days, but it will be concurrent to the sentence being served on the s. 267(a), as it arises out of the same set of circumstances. With respect to the probation order, there will be the following terms and conditions, Mr. Huebschwerlen, 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;
4. Report to a probation officer immediately upon your release from custody and thereafter, when and in the manner directed by the probation officer;
5. Abstain absolutely from the possession or consumption of alcohol;
6. Not attend any bar, tavern, off-sales or other commercial premises whose primary purpose is the sale of alcohol;
7. Take such alcohol assessment, counselling or programming as directed by your probation officer;
8. Report to the Family Violence Prevention Unit to be assessed and attend and complete the Spousal Abuse Program as directed by your probation officer or such other counselling as directed by your probation officer;

9. Take such other assessment, counselling and programming as directed by your probation officer;
10. Have no contact directly or indirectly or communication in any way with Tahirih Schinkel, except with the prior written permission of your probation officer in consultation with Victim Services and Family and Children Services;
11. Make reasonable efforts to find and maintain suitable employment and provide your probation officer with all necessary details concerning your efforts;
12. Provide your probation officer with consents to release information with regard to your participation in any programming, counselling, employment or educational activities that you have been directed to do pursuant to this order.

[16] Any submissions, counsel, as it relates to conditions?

[17] MR. COFFIN: Your Honour, with respect to the no contact order, I am not sure what Ms. Schinkel's position on that is at the present time; although she has contacted me requesting that whatever no contact terms there might have been existing at that time, be dropped.

[18] THE COURT: I am not surprised to hear that. However, I am not prepared to drop it based on the information that I have before me.

[19] MS. GRANDY: Yes, I would ask that it stay. In any event, she is a witness on another trial matter. So in the short term, I'd ask that it stay in any event.

[20] THE COURT: Ms. Goldsmith.

[21] MS. GOLDSMITH: In the Spousal Abuse Program, can it be added to have a consultation (indiscernible)?

[22] THE COURT: I am sorry, yes, it should have been included, thank you.

13. On the no contact condition, it will also require consultation with the Spousal Abuse Program.

[23] Any submissions as it relates to the DNA order, Mr. Coffin?

[24] MR. COFFIN: No, Your Honour.

[25] THE COURT: Okay. It being a mandatory order then, there will be an order that Mr. Huebschwerlen provide such samples of his blood as are necessary for DNA testing and banking. I will waive the victim fine surcharges in the circumstances.

[26] MS. GRANDY: Thank you. If I could ask for the remaining charges on the 636 Information to be marked as withdrawn.

[27] THE COURT: Okay.

[28] MS. GRANDY: And then the 636(b) Information is going to go to --

[29] MR. COFFIN: March 7th at 2:00 p.m.

[30] THE COURT: Okay, March 7th at 2:00 p.m.

[31] MR. COFFIN: Yes.

[32] THE COURT: Yes. For plea.

RUDDY T.C.J.