

Citation: *R. v. James*, 2007 YKTC 28

Date: 20060718
Docket: T.C. 05-00593
Registry: Whitehorse
Heard: Carcross

IN THE TERRITORIAL COURT OF YUKON
Before: His Honour Judge Lilles

REGINA

v.

MICHELLE LUCY JAMES

Appearances:
Samantha Oruski
Emily Hill

Counsel for Crown
Counsel for Defence

**REASONS FOR SENTENCING
AT CIRCLE SENTENCING HEARING**

[1] LILLES T.C.J. (Oral): First of all, I should remind everybody that this is a very serious matter, arson involving a house. It is not unusual, even in cases involving individuals who have had limited contact with the courts for sentences of up to two years incarceration. Such sentences are not unheard of in arson cases. The concern, of course, is not just the property damage that has occurred in this particular case. It is the other potential danger, the other things that could happen: people could die in a house fire.

[2] The very significant penalties that are imposed are designed, in part, to send a very strong, deterrent message, a message that arson is a very serious matter. There is an example in this case of how outcomes that are not planned can happen. A cat

died in the fire. Michelle did not intend to have the cat die. That was totally an accident. In other circumstances, there could have been a different unintended consequence: an individual could have died. So let us be very, very clear about what our starting point here is. We are dealing with the charge of arson. It is a very, very serious matter considered by, I think, everyone, not only community members, but certainly by the justice system.

[3] Last day we highlighted some aggravating factors in this case. We are dealing with something that happened in a spousal relationship. The *Criminal Code* says if you are in a relationship with someone, living with someone, even if you have just broken up with them, that is a special relationship. If there is an assault, if there is anything else that happens in that relationship that amounts to a criminal offence, it is to be considered more serious. We talk about it, and the *Code* talks about it, as a breach of trust. So this happened in what I call domestic or quasi-domestic relationship. So that makes it more serious.

[4] The property lost was significant. We are talking here about the structure that can be repaired. I understood, from what I heard last day, that there were personal belongings lost that will never be replaced. So it is not just a question of putting some two by fours, insulation and materials back into a house. Some things have been lost forever.

[5] There is a guilty plea in this matter and that is a mitigating factor. It is a very important mitigating factor, but again, I remind everyone that that guilty plea was not entered right away. There was a period of time when suspicions were cast on other

individuals. That was an uncomfortable time, I am sure, for that other individual. But it is important that after a relatively short period of time, Michelle did the right thing. She came forward and told her sister. Clearly, I think people agreed this was a cry for help on her part. She wanted to start addressing the things in her life that needed to be addressed.

[6] I have many, many pages of notes. I suppose I could go on for an hour or so, but I will not. Michelle is sitting there wondering if the judge is going to review all of the information. I think I can start talking about what needs to be done. I am putting it forward as a suggestion at this point. I want people in the circle to respond to it, including counsel.

[7] I am not looking for a five year jail sentence. To the contrary, I am looking at an order that is going to cover approximately two years. There will be close supervision during that two years to get her started. Then she is going to have to carry the responsibility on her own shoulders. She is going to have to, as Patrick said in his very instructive anecdote, learn to ask for help. My sense is she has already learned how to do that. So it is a question of doing it.

[8] In terms of the two-year period, part of that is going to be a conditional sentence and part of that is going to be probation. I would take into account the fact that she has been on very stringent conditions, I think from January on, if I recall correctly. Is that right, Michelle?

[9] THE ACCUSED: I don't know what you mean by stringent.

[10] THE COURT: Well, you are on a recognizance, no contact order, other conditions?

[11] THE ACCUSED: Mm-hmm, yes, that's correct.

[12] THE COURT: January 4th, so almost seven months. The conditions that I would normally impose on a conditional sentence would be very similar to the conditions in her recognizance. So I consider that, in effect, she has served something like seven months of a conditional sentence already. I am thinking of having her serve another six months on the conditional sentence in the community with a curfew. We will talk about the curfew.

[13] I do note, however, that with the children at home, Michelle is not likely to be out walking the streets too often after their bedtime. Somebody has got to be there with them and somebody has got to put them to bed. I am considering a curfew of 9:00 p.m. to 6:00 a.m. That is a 9:00 p.m. curfew, but there will be generous exceptions to that curfew. I will address those exceptions. Colleen, the probation officer, will be in a position to make exceptions as well for any activities that she considers are appropriate.

[14] There will be an abstain clause. I think, Emily, you spoke about this before, but I would want, both during the probation period and the conditional sentence, a requirement that she provide samples of her breath and urine on demand by a peace officer who believes she may be in breach of this condition. Have you had a chance to talk to her about continuing that term?

[15] MS. HILL: I have not, but I can.

[16] THE COURT: I know I often talk to people with addictions and I ask them, "How would you feel about having that kind of a term?" They all say, "it will help me if I know that if I goof up, there is an objective test that will hold me accountable, because it will help me deal with the rationalization process I go through as an addict". That is, the rationalization process that addicts go through, that alcoholics go through, and that is: if I have this one drink nobody will know; I will not be found out; there is no way they can -- then it is two drinks, it is three drinks and then pretty soon they have crossed the line. So I want to hear from Emily and Michelle on that, because, for me, that would be an important condition.

[17] There will be terms involving alcohol and drug programming and counselling at the Family Violence Prevention Unit; you have already made contact with them. There will be other general counselling and assessments. I am taking up the suggestion that that general counselling assessment would include, but not limited to, parenting skills. I understood now for the first time, that your children were back with you and that you are parenting them.

[18] I want to say something to the Carcross Tagish First Nation. The last thing the First Nation should do is to place such significant financial demands on her that increase the stress, and, indeed, interferes with her ability to do the very best for her children. The very worst thing you could do is end up having the children taken away from her because of the financial pressures of paying for the house that needs to be rebuilt. I think everybody needs to take a step back and put it all into perspective. Let us not lose sight of the forest through the trees. You can win a battle, that being getting

payment for the house, but lose the war. What are we here for? We are here for people; we are not really here for property. People come first.

[19] In the six month conditional sentence order, I propose to continue the no contact order with George Sheppard, except with prior permission from the conditional sentence supervisor, but my thinking at this point, is not to continue it beyond six months. I think Michelle will have sorted out her relationship with Mr. Sheppard by that time, if she has not already done so.

[20] THE ACCUSED: I would prefer if we could have no contact at all. I do not want any type of contact with him.

[21] THE COURT: Well, that is fine. I will still put it in unless you ask your supervisor or there is some arrangement made. It amounts to the same thing; do not ask or it will not happen. But I am proposing only to do it for the six month period and not to put it into the probation order.

[22] This is just going to be a two-year order. There has to be limits on restitution. We have talked about it. Emily has talked about it. I am proposing wording such as this:

1. You are to make reasonable contributions towards restitution, payable to the Carcross Tagish First Nation.
2. The total amount of restitution is not to exceed \$4,800 a year to be paid in two week instalments, in amounts specified by your supervisor or, if

necessary, by the Court, depending on your employment, income, child-related expenses and other budget requirements.

[23] There may be an agreement or may not be an agreement with Carcross Tagish First Nation, but it is the Court and the supervisor or the probation officer who will ultimately make a determination as to what needs to be paid as part of a court order, the breach of which may result in jail. That is different from the point Emily was making. You can have a contractual arrangement that is different from a court order made in a criminal case.

[24] What is absolutely imperative is that Michelle and her supervisor, Colleen, need to sit together and they need to prepare a budget. They need to see what is required, what her expenses are, what the children need, what the children will need in September. Is one of them going to school yet?

[25] THE ACCUSED: Yeah.

[26] THE COURT: Yes. All those things have to be taken into account. Once that budgeting is done, we will have a better idea of what can reasonably be paid. That is the amount that the Court will require you to pay. Any agreement that you make apart from that, that is fine, but it is not something I am going to require as part of this order.

[27] I would propose that there be an 18 month probation period with the same terms, excepting the curfew. The great bulk of these terms are program and treatment oriented. The fact that all these terms are in this one order does not mean that they all

have to be done at the same time. Some might be completed in the two-year period; other things might just be started, and she will want to complete them after this order is done. It is up to her and her supervisor and probation officer to identify the priorities

[28] Madam Crown?

[29] MS. ORUSKI: I am good with everything you have said.

(Comments by circle sentencing participants)

(Proceedings adjourned)

(Proceedings reconvened)

[30] MS. HILL: Maybe I'll just respond to the terms and then if Michelle has anything to add, she can do so. I was just speaking with Michelle and her dad and they raised a question as to whether - I may have misheard - but whether there could be a reside as approved clause?

[31] THE COURT: Yes.

[32] MS. HILL: There is?

[33] THE COURT: There is intended to be.

[34] MS. HILL: Okay.

[35] THE COURT: Reside as approved by her supervisor and not change that residence without the prior written permission of your supervisor.

[36] MS. HILL: Michelle's dad wanted to make sure everyone knew he was not kicking her out, but he wanted to make sure she had the option of moving if that was appropriate.

[37] The curfew, Michelle's only question was whether there could be an exception right in there with regard to being in a public or a general area. I understand she was not able to attend this year's General Assembly because she knew that he would be there --

[38] THE ACCUSED: (Indiscernible) no contact.

[39] MS. HILL: Sorry, the no contact, thank you. That is the concern with the no contact. She is in agreement that it could be in place, absolutely, for six months, but some sort of exception that if there is inadvertent contact in a public place, or they are in the same place together, that that not be construed as contact.

[40] THE COURT: Well, to me that would not be contact. If they were in the same hall -- if he speaks to her, she has got to walk away from him, but if she speaks to him, it is contact. But being in the same hall, same building, classroom, is not contact by itself. Colleen, do you interpret that any differently?

[41] MS. GEDDES: The way you clarified it; that is fine.

[42] THE COURT: We will often say to people, when we talk to them, and be a little more strict because we are concerned that if they end up in the same room or hall, because things are so inflamed between the two of them, that they will be at each other's throats. So we might say to them, give them advice, you know, look, if

he is there, do not stay or whatever, but strictly speaking, in terms of a breach, contact does not mean be near. That would be different terminology. So contact means speaking to, passing messages, internet messages, letters, telephone, that is what contact is.

[43] MS. HILL: Okay, I do not think that that is an issue, if that helps. With regard to the samples, Michelle will consent to providing those samples, provided that there are reasonable grounds.

[44] THE COURT: Yes.

[45] MS. HILL: I wonder if you could provide me again with the wording with regard to restitution, so I can make sure I --

[46] THE COURT: Well, it was a draft, but the intention here was to make it very clear that the monthly payments will be determined by the supervisor or the probation officer, based on objective budgeting information. In the absence of their ability to do so, the Court will do it. So that is what the wording intends. Make reasonable contributions towards restitution, payable to the Carcross Tagish First Nation. The total amount of restitution is not to exceed \$4,800 per year, to be paid in two week payments, in amounts specified by her supervisor or, if necessary, by the Court, taking into account her income, child-related expenses and other budget items.

[47] One of the things we should understand, we should all understand, is that as an employer, the Carcross Tagish First Nation is in a very strong position to make

deductions from wages where debts are owed. Again, that should not be abused for obvious reasons.

[48] MS. HILL: I think that is fine. I was just speaking with Colleen and Michelle, just to make sure that -- the requirements of that is there is a maximum total per year and that payments will be made every two weeks. I think that gives Michelle and Colleen enough information to work out what that amount is, and for Colleen to raise a red flag if payments are not being made. So I think that is fine.

[49] THE COURT: I have to specify an upper limit in my order.

[50] MS. HILL: Those are my only comments.

[51] THE COURT: If someone has any additional comments with respect to the order, blink rapidly or wave your hand and we will pass the feather to you, but otherwise, I am not going to repeat what I said earlier. Michelle will have to sign the documents once they are prepared today.

(Proceedings adjourned to November 14, 2006 at 12:00 for review)

LILLES T.C.J.