

Citation: *R. v. Kendi*, 2010 YKTC 104

Date: 20100922
Docket: 08-00712B
10-00443
Registry: Whitehorse

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

REGINA

v.

ARTHUR JULIUS KENDI

Appearances:
Terri Nguyen
David Christie

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCING

[1] CAMERON J.P.T.C. (Oral): Mr. Kendi has pled guilty to two counts under s. 733, one count under s. 266, one count under s. 264.1, and one count under s. 145. The facts before the Court are: on August 27th, while subject to probation with a number of conditions including an abstain and keep the peace and be of good behaviour, Mr. Kendi was involved in a fight outside the Salvation Army, and was very intoxicated at the time.

[2] On September 15th, Mr. Kendi assaulted his common-law spouse, Celia Taylor, spitting in her face. He left and returned, once again, to the Salvation Army area, spit in her face again and at one point threatened to slit her throat with a knife. He was very

intoxicated on the 15th and was in breach of not only his abstain condition, but of his no contact condition with Celia Taylor, and also his curfew condition. He was subject to that condition both via his probation and via an undertaking, and so was in violation of those conditions in regards to his undertaking as well. His blood alcohol level at that September 15th issue was 180 milligrams.

[3] Mr. Kendi is before the Court with a prior record that is very disturbing. There are nine prior violence-related offences and 34 prior process-related offences. The Court is cognizant of the fact that Mr. Kendi has severe cognitive delays and has been diagnosed as FASD, and these are the reasons that he continues to fall into the system. But we have to reach a point, Arthur, where it is just too dangerous to be letting you out, because when you are out and you go drinking, you endanger others. There is a violent streak in you that seems to come forward. For that reason, unfortunately, you are very quickly finding that the door is going to close harder and harder on you at the jail, because if we do not put you in jail, then we are not protecting people from the potential violence that you show when you are drinking. We certainly cannot stop you from drinking. You are the only one that can do that.

[4] I propose to deal with it in this way. On each of the s. 733 counts, there will be 30 days consecutive. On the assault on Ms. Taylor, two months consecutive. On the uttering threats, four months consecutive, and on the s. 145, 30 days concurrent. I will give you eight days credit for the time that you have been in custody at this point. So that should be reduced by eight days.

[5] The victim fine surcharges will be waived on all counts as Mr. Kendi is of limited

means. Any remaining charges?

[6] MS. NGUYEN: Withdrawn, sir.

[7] THE COURT: Are withdrawn.

[8] MR. CHRISTIE: I'm sorry, Your Worship, could I just clarify what -- I was trying to write that with -- the global total amount would be, then?

[9] THE COURT: The global total amount is going to be eight months.

[10] MR. CHRISTIE: Okay.

[11] THE COURT: Well, it is nine months being served in eight, right? It is nine months being served in eight because there is one -- the s. 145 is concurrent.

[12] MR. CHRISTIE: Oh, I see, yes. So eight. Right. Thank you.

[13] THE COURT: And it should be less the eight days that he has been in custody now.

[14] MR. CHRISTIE: Okay. Thank you.

CAMERON J.P.T.C.