

Citation: *R. v. Lutz*, 2009 YKTC 14

Date: 20090204

Docket: 07-10053

07-10056

07-10105

07-10105A

07-10162

08-00214

08-00214A

Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: His Worship Justice of the Peace Cameron

REGINA

v.

RANDY WILLIAM LUTZ

Appearances:

Jennifer Grandy
Gordon Coffin

Counsel for Crown
Counsel for Defence

REASONS FOR SENTENCING

[1] CAMERON J.P.T.C. (Oral): Mr. Lutz has pled guilty to one count under s. 430(4), one count under s. 72(1), two counts under s. 266, one count under s. 253(b) and five counts of process, three of them s. 145 and two of them s. 733.

[2] Essentially, it lays out as follows, chronologically. On July 5, 2007, in Watson Lake, Mr. Lutz smashed out the back window of a vehicle. The resulting damage was

\$221.71. He was on probation at the time, and was in breach of his curfew, a condition of that probation, July 13th.

[3] Also on July 13th in Watson Lake he kicked in the door of his mother's residence, thus constituting a forcible entry.

[4] On September 30, 2007, in Watson Lake he assaulted his girlfriend, Tanya Charlie, threw her to the ground, slapped her several times, took her against her will to his father's residence and confined her there until he passed out.

[5] On January 3, 2008, in Watson Lake in the early morning hours, he assaulted his brother by punching and kicking him, resulting in a small cut. Again, he was in breach of his curfew and a condition that he was not to attend Watson Lake.

[6] On January 7, 2008, in Watson Lake, he failed to report as directed, which was a condition of his recognizance.

[7] On May 25, 2008, in Whitehorse, there was some erratic driving. He was stopped and was given an approved screening device demand, and failed. It was 140 and 130. This put him in breach of an abstain condition. He was required to attend court on July 2nd and failed to do so.

[8] This is a young man, who has amassed a considerable record. There are nine process convictions on it and one prior violence conviction. The Crown is seeking a global sentence in the range of 12 months and 12 months of probation. Mr. Lutz has spent 140 days in remand which, at one and a half to one, works out to 210 days.

[9] We are presented with a letter of support from Wilson Lutz, Randy's father, and a pre-sentence report that clearly outlines serious ongoing difficulties with alcohol. It, however, also outlines that Mr. Lutz is clearly trying to and wishes to make changes in his life. He does have options that would and could become available to him upon his release in regards to treatment. One of those programs is a 28-day program here. Was I to understand that this 28-day program would take place in Watson Lake or here in Whitehorse?

[10] UNIDENTIFIED SPEAKER: Here in Whitehorse, Your Worship.

[11] THE COURT: Here in Whitehorse. The start date would be March 29th. He would need to be out and available for interviews in order to have them completed by the 15th, if he was to make that program. I also have been tendered a letter of support from Phil Gatensby indicating Randy's involvement with the Gathering Power program while at WCC, and that he has been actively involved and clearly is making efforts and trying to change his life.

[12] I am a bit concerned. His plans, if released pending the program, are to return to Watson Lake to reside with his father. He could make connection with Andy Nieman if he was in Watson Lake.

[13] This is perhaps a turning point in your life, Mr. Lutz, because there are a lot of things that seem to be lining up for you which, if you can take advantage of them, may ultimately be able to turn your life around. Should you fail to follow through on your commitment to do so, then you find it more and more difficult to convince the Court further down the road that you are now ready for change. So you have got to

understand that the Crown initially seeking 12 months was certainly within the range of what you should be receiving.

[14] I am going to impose less than that, based on the fact that it would appear there are things that are in line and are being worked on in the way of support and programming for you that you seem committed to, and I am going to give you the chance to, in fact, walk your talk and do that.

[15] So it is going to be dealt with in this way. For the s. 430, it will be 30 days. For the assault on his girlfriend, 90 days consecutive. For the assault on his brother, 60 days consecutive. For each of the process offences, Madam Clerk, it will be 30 days concurrent to each other but consecutive to the other time. For the breaking of his mother's door, 30 days consecutive. For the s. 253, it will be one day, deemed served.

[16] Now, the total of that, Mr. Lutz, is 240 days. I am going to credit you with 210 days having been served, so it means you have got 30 left to serve.

[17] On top of that there will be a restitution order that is attached to the s. 430. It is a restitution order requiring that you compensate Aggie Magun in the amount of \$221.71, and that you must make that restitution within six months.

[18] Finally, connected to the impaired, there will be an 18-month probationary term. Probation is going to be the following conditions, and you will start serving that probation upon your release from custody.

1. You are to keep the peace, be of good behaviour and appear before the court when required to do so by the court.

2. You are to notify the court or your probation officer in advance of any change of your name or address and promptly notify the court or your probation officer of any change of employment or occupation.
3. You must remain within Yukon Territory unless you obtain written permission from your probation officer or the court.
4. You are to report to your probation officer immediately upon your release from custody and thereafter as often and in the manner directed by your probation officer.
5. You are to reside as approved by your probation officer and abide by the rules of that residence and not change that residence without the prior written permission of your probation officer.

This means you cannot simply pick up and move on when you want to. You have got to keep your probation officer in the loop.

6. You are to abide by a curfew by remaining within your place of residence between the hours of 10:00 p.m. and 7:00 a.m. daily except with the prior written permission of your probation officer or unless in the actual presence of another responsible adult approved in advance by your probation officer. If you are exercising either of these exceptions, the written permission must be carried on you at all times. If you are not, then you must present yourself at the door or answer the telephone during reasonable hours for curfew checks, and failure to do will be a presumptive breach of this condition.
7. You must abstain absolutely from the possession or consumption of

alcohol and/or controlled drugs or substances except in accordance with a prescription given to you by a qualified medical practitioner.

I strongly caution you that if you do get approval from your probation officer to go back to Watson Lake, as indicated that you wish to do, it is going to make it very difficult for you to abide by this condition. Watson Lake is not a place where you would be able to abstain, not before you have had programming, at least.

8. You are not to be found in attendance in any bar, tavern, off-sales or other commercial premises whose primary purpose is the sale of liquor or alcohol.
9. You are to take such alcohol and/or drug assessment counselling or programming as directed by your probation officer.

[19] I understand that you are willing to give the Court your consent to attend and complete a residential treatment program as directed by your probation officer. Do you consent to that?

[20] THE ACCUSED: Yeah.

[21] THE COURT: Do you consent that you will, if your probation officer finds a treatment program for you to attend, will in fact attend it?

[22] THE ACCUSED: Yeah.

[23] THE COURT:

10. You are to take such psychological assessment, counselling and programming as directed by your probation officer.

11. You must participate in such education or life skills programming as directed by your probation officer.
12. You must make reasonable efforts to find and maintain suitable employment and provide your probation officer with all the necessary details concerning those efforts.
13. You must provide your probation officer with a consent to release information with regards to your participation in any programming, counselling, employment or educational activities that you have been directed to do so, pursuant to this order.

[24] THE ACCUSED: Yeah.

[25] THE COURT:

14. You are not to have in your possession any firearms, ammunition, explosive substance or weapon.
15. You are to have no contact, directly or indirectly, or communicate in any way with Tanya Charlie except with the prior written permission of your bail supervisor (sic) in consultation with victim services.
16. You must report to the Family Violence Prevention Unit to be assessed and attend and complete the spousal abuse program as directed by your probation officer.

[26] The no contact condition includes if she approaches you. It does not make it right. That is having contact. So you have to make sure that your probation officer is in agreement with you having contact before you can carry on that contact. Do you

understand?

[27] THE ACCUSED: Yeah.

[28] THE COURT: The victim fine surcharge will be waived on all matters since the Court is of the view that the restitution should take priority in regards to Mr. Lutz's finances.

[29] The probation order is for a period of 18 months. In addition, pursuant to s. 259 of the *Criminal Code*, you are prohibited from operating a motor vehicle on any highway, public property or public roadway for a period of 12 months. That is Canada-wide, as well as in the Yukon. That includes cars and trucks, but is not limited to them. It also includes motorcycles, ATVs, skidoos, et cetera.

[30] The Court is certainly content that, after the first three months of that prohibition, you should be allowed to apply for the Interlock program and, if accepted, you could finish off your prohibition operating a motor vehicle that had an operational interlock device in the vehicle as long as you, of course, also had a valid driver's licence.

[31] I think that has covered everything. Have I missed something?

[32] MS. GRANDY: I would just ask for the remaining counts to be marked as withdrawn, please.

[33] THE COURT: Thank you. The remaining charges are withdrawn.