Citation: *R.* v. *Marada*, 2010 YKTC 62

Date: 20100528
Docket: 09-00872
09-00941
Registry: Whitehorse

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

REGINA

v.

STEVEN JOSEPH MARADA

Appearances:
Noel Sinclair — Counsel for the Crown
Melissa Atkinson — Counsel for the Defence

REASONS FOR SENTENCING

[1] COZENS T.C.J. (Oral): Steven Marada was convicted after trial for having committed an offence contrary to s. 88 of the *Criminal Code*, possession of a hammer for a purpose dangerous to the public peace, and for uttering a threat, contrary to s. 264.1(1)(a) of the *Criminal Code*.

[2] Briefly, the circumstances upon which Mr. Marada was convicted were that there was an outstanding dispute of some form between Mr. Marada and Amanda Ledgerwood and/or her family. As a result of some of the pre-existing issues, Ms. Ledgerwood confronted Mr. Marada outside of her residence and the residence just over two doors down of a friend that Mr. Marada was visiting. I will say at this time that

I have no idea as to the validity of any of the concerns that may have led to this confrontation and I do not make any findings and they have no impact upon my decision, what may or may not have pre-existed the confrontation, but the circumstances are that, in the course of this confrontation, I found that Mr. Marada went to his vehicle, pulled a hammer out, held it up in a manner that could be perceived as threatening and, at points in the confrontation and while leaving, told Ms. Ledgerwood that she was, “A fucking dead bitch.”

[3] The incident was somewhat spontaneous in nature and Mr. Marada did not deliberately seek out Ms. Ledgerwood in order to confront her with the hammer and make the threats, but he made them nonetheless. So those are the circumstances of the trial matter.

[4] Mr. Marada has also entered a guilty plea to an amended count, that on February 17, 2010, he possessed cocaine and marihuana for the purpose of trafficking, contrary to s. 5(2) of the *Controlled Drugs and Substances Act* (R.S.C. 1996, c. 19.)

[5] The circumstances of that offence are that the RCMP had been conducting an investigation involving Mr. Marada since June 2009 due to information they had that he was trafficking in drugs. He was living, on February 17, 2010, in the two-storey log building on Lambert Street. I think he was living upstairs and had the main floor for anticipated business purposes. Due to source information, the RCMP executed a warrant on February 17, 2010 and located 28 grams of powder cocaine, 168 grams of loose marihuana and 22 grams of compressed marihuana; as well as drug paraphernalia, including two sets of scales, sandwich bags, a score sheet, a cell phone

and, inside a safe in the residence, $1,100 in cash. $360 in cash was located on Mr. Marada. They also searched the vehicle that the source information had indicated he would use to deliver drugs on occasion and found bear spray in the vehicle.

[6] Mr. Marada was cooperative with the RCMP and immediately provided a statement indicating that he was selling drugs in order to support himself. He was selling to select customers. He was generally dealing one ounce of cocaine per week to these customers, and his indication to the police at that time was that he sort of self-monitored his customers to see whether there was a negative impact on them, and if he felt there was, then he would not sell them any more cocaine. He also sold small amounts of marihuana to individuals, according to what he said in his statement. He opened the safe for the RCMP and provided them a key to his residence, and has entered a guilty plea fairly early in these proceedings.

[7] While he was detained for approximately seven days after that initial arrest, his residence was broken into, there was a fire and he suffered considerable personal loss as a result. It appears that other individuals are, perhaps, under investigation for that offence. The issue here is that there was some additional consequence to him as a result of his arrest, keeping in mind, of course, that his arrest was due to his involvement in illegal activities, and the consequences of such choice, as to be involved in the commission of criminal offences often are going to carry consequences that may not be foreseen. It is not a mitigating factor; it is simply the context in which Mr. Marada is being sentenced.

[8] He was detained on March 19th after his arrest on the uttering threats and

possession of the weapon charges. In total, Crown and defence say that, taking into account the time before the legislation came into effect with respect to the attribution of remand credit, and afterwards, that he should be given 12 weeks credit for his pre-trial custody, which is a blend of 1.5 to one and one to one, and I concur that is the appropriate amount.

[9] Mr. Marada is 40 years of age. I count on his criminal record approximately 48 prior convictions going back to 1985. Some of these are youth entries; however, he committed adult offences shortly after he was no longer a youth, thus bringing into account, for the purposes of sentencing today, his youth record. These offences include, relevant to the uttering threats, an aggravated assault as a youth, assault with a weapon in 1992, possession of a prohibited weapon in 1993, assault causing bodily harm in 1995, a spousal assault in 1997, and an uttering threats in 2005. I say they are relevant, keeping in mind, of course, that the greater distance in time an offence is removed the less aggravating it can be considered as compared to offences that are more current or recent.

[10] With respect to the drug charge, he has possession of a narcotic in 1988 and another one in 1999, for which he received custody on both. He has a possession of a narcotic conviction for the purpose of trafficking in 1992 and in 1993, for which he also received two months and 90 days in custody respectively, and an intervening possession of a narcotic in 1992 for which he received 60 days. His record, although somewhat dated with respect to the related offences, is still an aggravating factor in sentencing.

[11] The Crown stresses that the principles in sentencing applicable in this case are denunciation and general deterrence primarily, and looking in particular at the drug offences, specific deterrence is, of course, also an important consideration, and that applies to all three of the offences before the Court. Crown is seeking a sentence in the higher end of the territorial range, keeping in mind totality, in particular, 15 months on the s. 5(2) *CDSA* offence, and a sentence in the six to eight month range on the weapons and the threats.

[12] Defence counsel is suggesting an appropriate sentence would be 12 to 15 months in totality for all of the offences.

[13] Mr. Marada, in a letter that was filed with the Court, indicated his wish that his sentence be served conditionally and filed in support is a letter that indicates he has the prospect of immediate employment at Jake's Corner in the Yukon. Defence counsel is not arguing for a conditional sentence, noting that there is really a dearth of information before the Court; however, the Court still must consider whether it is appropriate, should the sentence be less than two years.

[14] Cases filed by the Crown include the case of *R.* v. *Silver*, 2006 YKTC 32, in which a sentence of 15 months was given on what the Court considered totality principles, stating that 18 months to two years would have been the appropriate sentence. There was a firearm at the time that this first-time offender was arrested with the drugs, for which he received a one-year minimum sentence as well. There was a substantial quantity of cocaine, approximately 59.3 grams, I believe, and this was after trial.

[15] In the case of *R.* v. *Naiker,* 2007 YKTC 58, 14 months was imposed for six grams of cocaine.

[16] Both *Naiker* and *Silver* were commercial purpose cases which is consistent with the case before me today, as it is clear that Mr. Marada was trafficking drugs regularly, purely for commercial reasons. I will say at this time that I consider him to be more than a low-level trafficker in the sense that he was running his own business and regularly distributing. However, he does not appear to be connected as part of a large, sophisticated scheme, but more of a sole proprietor in his drug trafficking enterprise. He is certainly not a high-level or not quite at the mid-level range where we see some others, but close to the mid-level range. Mr. Naiker was 23 years of age.

[17] The case of *R.* v. *Bourne, Auclair and Devellano*, 2007 YKTC 81, was filed and Mr. Bourne, on a joint submission, received a sentence of 18 months, keeping in mind he received 15 months on weapons charges consecutive, involving very significant weaponry. Mr. Bourne was 35 years of age with two prior drug possession offences and in this case there was 40 grams of cocaine found.

[18] The case of *R.* v. *Holway,* 2003 YKTC 75, often cited in this jurisdiction, involved a young man caught on a single transaction, trafficking two ounces of cocaine for profit and considered to be in the lower level of trafficker with a very limited record. *Holway*, of course, includes the comment that has been well-cited in these courts and which maintains itself as true in that:

> … northern communities are already struggling with disproportionately high rates of addiction, while scant resources are available to deal with the problem. The last

> thing we need is more drug traffickers. Courts in the North have quite properly held that they are entitled to take these local conditions into account and have consistently held that deterrent sentences are warranted and that, given our circumstances, the need to maintain a deterrent trumps other sentencing considerations in cases involving trafficking in hard drugs.

As I said, that principle remains true today and it is not a question of comparing ourselves to other jurisdictions; it is just simply the reality of what it is like here and the impact that drugs has on our communities in the north. The fact that we may be becoming more sophisticated and have more access to the outside world does not change the significant impact that trafficking in drugs and, in particular, hard drugs, has on the Yukon community. Notwithstanding Mr. Marada's statement to the RCMP in which he indicated that he was attempting to self-monitor the impacts on his clients, that does little to mitigate against the hard reality of drugs period. The ongoing trafficking of drugs in the Yukon is much bigger than Mr. Marada and his involvement is part of the entire bigger picture and the entire bigger negative consequence.

[19] And finally, the case of *R.* v. *Hale*, 2007 YKTC 79, in which two ounces of cocaine resulted in a sentence for a young person of 12 months who had made sincere efforts at rehabilitation. *Bourne, Holway* and the *Hale* cases all involved guilty pleas.

[20] Defence counsel filed the case of *R.* v. *Friesen and Motz*, 2008 YKTC 104, in which Mr. Motz, who was the primary individual, received a sentence of one year for possession of cocaine for the purpose of trafficking, the total amount of drugs being 31 grams of cocaine. Mr. Motz was 64 years of age and in very poor health, a factor that Judge Faulkner considered very significant in deciding that 12 months custody was

appropriate. His record had 30 entries and had 2002 entries for possession for the purpose of trafficking in marihuana and producing a scheduled substance. Ms. Friesen, who was the lesser player, received a six-month sentence. In the *Friesen and Motz* case Judge Faulkner stated this with respect to conditional sentences, that:

> [21] Apart from the *Corcoran* case, there are precious few cases where drug trafficking in this jurisdiction has resulted in a conditional sentence. The reasons for that remain as stated in *R.* v. *Curtis,* [1982] Y.J. No. 4; *R.* v. *Holway*, [2003] Y.J. No. 118; *R.* v. *Hale*, [2007] Y.J. No. 77, and countless other cases.
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> [22] A conditional sentence for drug trafficking in hard drugs will not generally be in accordance with the purpose and objectives of sentencing set out in s. 718, nor would it conform with the principle in s. 718.2(b) that similar sentences should be imposed for similar offences by similar offenders in similar circumstances.
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> [23] In this case there is the added factor that both offenders have prior and related records, including a prior history of dealing drugs in concert. This makes it extremely difficult to conclude that the safety of the community would not be endangered by the imposition of a community-based sentence.

[21] Defence counsel has pointed to the personal loss Mr. Marada suffered as a result of his detention, the break-in and fire that took place, and certainly he has suffered some loss. As I stated earlier, that loss, while it is the context in which all of this takes place and not something I make light of, it still is not a significant mitigating factor with respect to the appropriate sentence for the offences for which he is being sentenced today.

[22] There is also mention by defence counsel of an article that appeared in the *Whitehorse Star* in which a statement made by Ms. Ledgerwood, while giving her evidence, was quoted, that she had accused him in the argument of being a goof, a rapist and a skinner, and that this has had some negative consequences on him in custody, due to the allegation of him being a rapist. I looked up the article on the break. It is on the Internet, May 19th; that is what was said, and I want to make it clear at this point in time, there is absolutely nothing in Mr. Marada's criminal record that points to any sexual offence having been committed, and there is nothing I have heard in any evidence that would give any credit to what Ms. Ledgerwood said. It is not a factor I take into account for the purposes of sentencing, but because that was stated in the newspaper article, sometimes things gain weight, and I want to make it clear in this decision that I have no evidence anywhere that Mr. Marada has ever been accused or convicted of a sexual offence.

[23] So in consideration of all the circumstances, the aggravating and mitigating factors, and in consideration of the sentences that have been handed out for similar offences to similar and dissimilar offenders in the community, I consider the appropriate sentence in this case to be as follows: For the s. 5(2) *CDSA* offence, the sentence will be 14 months. For the s. 264.1(1), the sentence will be four months. That will be consecutive. For the s. 88 weapons offence, that will be two months concurrent.

[24] There will be one year of probation to follow. The terms will be:

1. To keep the peace and be of good behaviour;
2. To appear before the Court when required to do so by the Court;

3. To notify the Court or Probation Officer in advance of any change of name or address and promptly notify the Court or Probation Officer of any change of employment or occupation;
4. To report to a Probation Officer immediately upon your release from custody and thereafter when and in the manner directed by the Probation Officer;
5. To reside as approved by your Probation Officer and not change that residence without the prior written permission of your Probation Officer;

Because there were some allegations in the trial matter that Mr. Marada may have been under the influence at the time, I am going to put a general clause on:

6. To take such assessment, counselling and programming as directed by your Probation Officer.

There may or may not be any required.

7. To have no contact, directly or indirectly, or communication in any way with Patricia Ledgerwood, Christopher Ledgerwood or Amanda Ledgerwood, and not attend at or within 25 metres of the residence of Patricia Ledgerwood, Christopher Ledgerwood and Amanda Ledgerwood;
8. To make reasonable efforts to find and maintain suitable employment and provide your Probation Officer with all necessary details concerning your efforts;
9. To provide your Probation Officer with consents to release information with regard to your participation in any programming, counselling or

> employment that you have been directed to do pursuant to this probation order.

Those are all the terms I propose to put on the probation order. I am not going to impose a cell phone or pager term in these circumstances, as really, the probation order is more directed at the uttering threats and the s. 88 charge in this case.

[25] There will be a s. 109 firearms order prohibiting Mr. Marada from possessing any firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition and explosive substance for a period of ten years. As stated in (2), it will end not earlier than ten years after his release from imprisonment.

[26] There will be a DNA order on the uttering threats as a secondary designated offence.

[27] There will be an order of forfeiture for the following items: the drugs that were seized, the two scales that were seized, the shopping bags that were seized, the score sheet, the cell phone, the bear spray, and the $1,460 in cash. I am going to allow the safe to be returned as there are other legitimate purposes for the safe.

[28] I also order that any other contents of the safe or anything else in the RCMP's possession, other than what I have stated is forfeited, should be returned to Mr. Marada.

[29] The victim fine surcharges are waived. Is there anything further?

[30] MR. SINCLAIR: Might I suggest that we add Jessica Smith to the no-contact order? That's Amanda's sister and there was some evidence that she may have been sort of embroiled in the dispute between them.

[31] THE COURT: Right. I recall her being mentioned peripherally. Is there any concern about that?

[32] MS. ATKINSON: No issue.

[33] THE COURT: We will add Jessica Smith to both the no-contact and the residence clauses.

[34] MR. SINCLAIR: Crown directs a stay of proceedings on Count 2 of the *CDSA* Information.

[35] THE COURT: All right. Stay of proceedings.

[36] MR. SINCLAIR: And I can state for the record that the Crown is not seeking forfeiture or estreatment of bail, given that we dismissed the charge on the breach.

[37] THE COURT: All right. So the bail monies will be returned to Mr. Marada.

[38] MS. ATKINSON: Your Honour, just one question in relation to the distribution of jail time and -- the 12 weeks, how that has been factored in.

[39] THE COURT: Oh, yes, thank you. I did not mention that he shall be given 12 weeks credit for his pre-trial custody, which of course will be deducted from the sentence, and I will attribute that 12 weeks to the s. 5(2) offence.

[40] MR. SINCLAIR: And victims of crime surcharge?

[41] THE COURT: Yes, that was waived.

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COZENS T.C.J.