

Citation: *R. v. Menacho*, 2009 YKTC 129

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08-05336A
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Judge Faulkner

REGINA

v.

DANIEL PAUL CONRAD MENACHO

Appearances:
Melissa Atkinson
Judith Hartling
Fia Jampolsky

Counsel for Crown
Counsel for Territorial Crown
Counsel for Defence

REASONS FOR SENTENCING

[1] FAULKNER T.C.J. (Oral): Daniel Menacho is before the Court to be sentenced on a number of offences which occurred between January and September of this year. They include forcible entry, three breaches of undertaking and a breach of an emergency intervention order, contrary to the *Family Violence Prevention Act*, R.S.Y. 2002, c. 84. That bare recitation of the charges does not really do justice to the situation because in virtually every case the breaches were repetitive and, indeed, with

respect to the breach of the emergency intervention order, actually occurred on four separate days, which also, coincidentally, are days which he was involved in breaches under the *Criminal Code*. So they are the same incidents but the point is that, to make a long story short, he kept doing it.

[2] While all of this has been going on, he has been incarcerated in bits and pieces here and there, until finally in September he was denied further bail. He now has some 94 days of pre-trial custody which, grossed up at the usual 1.5 to one, would be something in the order of 140 days.

[3] I suppose an interesting question arises in this case as to whether Mr. Menacho should receive pre-trial credit at that rate, given that it was his persistent course of conduct in breaching his undertakings that led to his incarceration, but I think I can deal with the matter without reaching that interesting question in this case.

[4] The Crown seeks a global sentence of six months less the time spent. The defence, essentially, seeks a sentence of time served. I think, given the persistence of Mr. Menacho's behaviour, that something beyond time served is called for. Whether one calculates it at 94 days or 141 days really is not the point.

[5] With respect to the breaches of undertaking under the *Criminal Code*, and there are three of them, on each of those matters he is sentenced to one day in addition to time served, which can be shown as 140 days. With respect to the breach of the emergency intervention order, one day in addition to time served. With respect to the charge of forcible entry, 45 days.

[6] I waive the surcharges.

[7] Following his release from imprisonment, Mr. Menacho will be subject to a probation order. The terms will be that:

1. He will keep the peace and be of good behaviour;
2. He will report to the Court as and when required;
3. He will report forthwith after his release from imprisonment to an Adult Probation Officer and thereafter as, when and in the manner directed;
4. He will advise the Probation Officer in advance of any change of name or address and promptly notify her of any change of occupation or employment;
5. He will take such alcohol assessment, treatment and counselling as the Probation Officer directs, including, if directed, attendance for residential treatment;
6. He will not possess or consume alcohol or controlled drugs or substances except in accordance with a prescription given to him by a qualified medical practitioner;
7. He will take such other assessment and counselling as directed by the Probation Officer, including, if directed, attendance at the Spousal Abuse Program or for related counselling;

[8] I think I want to hear from counsel on the question of a no-contact order, as to whether there should be one and, if so, how it should be structured. It is to be noted that, so far as the circumstances were placed before the Court, all of the contacts

appeared to be with the concurrence of the spouse.

[9] MS. HARTLING: Speaking on behalf of Territorial Crown, it's a difficult point to address, because from his persistent behaviour, which includes basically being intoxicated and then turns the violence towards his spouse, one would indicate -- it would indicate a no-contact would be in order, but the letter presented to you this afternoon from the common-law spouse would indicate that she would wish contact.

[10] MS. ATKINSON: Sorry, Your Honour, I'm just coming up to speed here with an email provided by the Victim Services, indicated that she was aware -- she would like her partner to have DVTO programming and she is aware, regarding the issue of the no-contact, that that no-contact be a straight no-contact. But it may be prudent at this time to have the provisions with the permission and subject to -- in consultation with Victim Services, to have the complainant in this matter, Ms. Nukon, to have the availability of doing some safety planning and so forth, may be an adequate way to deal with it.

[11] THE COURT: Ms. Jampolsky.

[12] MS. JAMPOLSKY: Well, Your Honour, that seems completely contrary to the letter that she provided to my office and to the Probation Officer, which says that she's requesting for full contact to be put in place and is expressing some frustration at the amount of time it took to get telephone contact. So it's hard to say. This is a letter that was provided from the complainant herself. In my respectful submission, all of the -- and what Mr. Menacho says is that every time there was a breach, he generally -- it's when the parties, he's been invited back into the home; she comes to find him, wants

to live with him. And so it's creating sanctions on him, which is creating a huge amount of difficulty. So I'm not sure -- again, the email from Victim Services seems contrary to the letter that was provided to all of the parties.

[13] THE COURT: Well, I do not think that the fact that she wants to have contact with him is determinative of the matter, by any means.

[14] MS. ATKINSON: As well, Your Honour, just -- it may be some of the sense of frustration on behalf of the complainant in this matter is that there had been a s. 515(12) made upon his arrest and back into custody for the no-contact provisions, absolutely straight no-contact while he's been in custody as well, that those were granted at the time when he was brought back into custody, certainly, in early September.

[15] THE COURT: I will deal with the matter this way:

8. During the first three months of the probation order, Mr. Menacho will have no contact with Verna Nukon except with the permission of the Probation Officer in consultation with Victim Services. For the remainder of the probation order, he will have no contact with her when he has been consuming alcohol.

[16] MS. JAMPOLSKY: So, Your Honour, the length of the probation order?

[17] THE COURT: I thought I said twelve months. If I did not, it is 12 months.

[18] MS. ATKINSON: Your Honour, with respect to the remaining counts,

the Crown directs a stay of proceedings.

[19] THE COURT: Thank you.

[20] MS. HARTLING: And the same on the Family Violence.

[21] THE COURT: Yes, thank you.

FAULKNER T.C.J.