

Citation: *R. v. Netro*, 2011 YKTC 73

Date: 20111109
Docket: 10-00792
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: Her Honour Judge Ruddy

REGINA

v.

ROBERT COLLIN NETRO

Appearances:
Ludovic Gouaillier
Bibhas Vaze

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCING

[1] RUDDY T.C.J. (Oral): Robert Netro is before me for sentencing with respect to four counts upon which I convicted him following the trial with respect to these matters.

[2] Now, it is a somewhat unusual case in that the charges which were tried before me were significantly more serious, having included an assault with a weapon and a choking offence, than what I ultimately found Mr. Netro guilty of, which was a common assault.

[3] My findings of fact would be more detailed, obviously, in the decision at trial, but basically what I found as a fact was that Mr. Netro returned home intoxicated and angry. He began ranting and screaming at his then-spouse, Ms. Young. He grabbed her by the arms and began shaking her. She backed into a closet and crouched down

covering her head with her arms. He attempted to pull her out of the closet and attempted to force her to look at him by grabbing at her face. As I indicated at trial, after that, the account became so murky, I think was the word that I used, that it was unclear to me what had happened past that point, but that I was satisfied that a common assault had occurred as outlined.

[4] Mr. Netro is now before me for disposition. It is some time later, to allow for the preparation of a pre-sentence report, which I have reviewed with respect to the sentencing today. Of note, Mr. Netro comes before the Court with a prior criminal record. There are eight prior convictions for violence, dating back into the 90's. In fact, I believe the majority of them occurred in the 90's with some in the 2000's. Of particular note and particular concern, two of those convictions are convictions for spousal assaults on Ms. Young for which Mr. Netro was sentenced in 2010 to concurrent four-month conditional sentences and a six-month probationary term, having successfully completed the Domestic Violence Treatment Option program and successfully completed spousal abuse program. He successfully completed, without issue, the four-month conditional portion of the sentence, but was on probation at the time that these offences occurred.

[5] So the question then arises as to what the appropriate disposition is on the circumstances before me. Counsel are not particularly far apart with respect to appropriate length of sentence. The issue really comes down to whether or not a conditional sentence is appropriate in all of the circumstances.

[6] Crown takes the position that it would not be appropriate in these circumstances to grant Mr. Netro an opportunity to serve his sentence conditionally within the

community, his having already been given that opportunity with respect to similar offences in 2010, and notes the importance in the circumstances of addressing the issues of denunciation and deterrence, which I would agree are very important factors with respect to any offences of domestic violence, which must be viewed seriously by this Court.

[7] Defence counsel on behalf of Mr. Netro, on the other hand, asserts that in this particular case it would be appropriate to respond by way of a conditional sentence, because of steps that Mr. Netro has taken with respect to addressing, in particular, the underlying alcohol issue, which was a significant factor in the commission of not just this offence, but in the commission of other offences on his record.

[8] I have, as I indicated, been provided with a pre-sentence report, which does provide a fair amount of information with respect to Mr. Netro's background and circumstances. His background, sadly, is not one that is unusual in this particular territory, particularly not in the Old Crow area. There is a reason that Old Crow is now a dry community. It was that community in which Mr. Netro spent his formative years, and did so in circumstances where there was clearly serious abuse of alcohol on the part of his mother. His father, who does not appear to have had similar problems, was unfortunately lost to Mr. Netro as a result of a stroke when Mr. Netro was ten years of age. Mr. Netro's own experiences with alcohol begin, I believe it was at the age of 11, the report indicated, and by age 15 had become a significant, serious problem for him. Again, it is sad to say that that is not an uncommon story for me to hear in this courtroom.

[9] His efforts up until, I would say, his more recent stint in residential treatment had

come in fits and starts in terms of trying to address that issue. He did take positive steps in completing the DVTO program on the last occasion, but the report indicates to me that there was no real effort as part of that disposition to address the underlying alcohol problem. He appears to have been successful in maintaining sobriety when things were going well, and that was confirmed for me by Ms. Young on the stand that he had been doing extremely well. However, when he lost his mother in January of this year, she indicated, and I accept, that his ability to manage, in particular his sobriety, deteriorated quickly, culminating in this particular offence before the Court in which it is evident that he was extremely intoxicated.

[10] Since that time, there have been changes. The one that stands out most significantly for me is the fact that Mr. Netro has now attended and completed the six-week residential treatment program at Round Lake in B.C. He has also attended four one-to-one counselling sessions with respect to his alcohol addiction. I have learned from him and through the report that he has learned a significant amount about grieving, about his own triggers, about relationships, and about the need for him to aggressively pursue the role that alcohol plays in his life if he is to keep himself, quite frankly, out of jail.

[11] In addition, both Ms. Young and Mr. Netro have recognized that theirs is not a healthy relationship. They have decided to separate, but both appear to be committed to ensuring that their three children are appropriately cared for and supported, and appear to have been successfully managing that over the last several months.

[12] Mr. Netro has been on strict bail conditions, and for all intents and purposes appears to have performed well on those conditions. Also, to his credit, he has a good

employment history. He is a journeyman carpenter and has since 2005 been employed with TSL Contracting, and he has, in September of this year, branched out to develop his own business with bids in with his First Nation, the Vuntut Gwitchin First Nation, which, if awarded, would result in a fair amount of work in the Old Crow area beginning in January or February building homes for the First Nation.

[13] As indicated, the primary issue in this particular case is whether or not a conditional sentence order is appropriate, and it is a difficult case in which to make that decision. Crown is quite right, the easiest way for me to address denunciation and deterrence in this particular case, particularly given the two prior related convictions, would be simply to send Mr. Netro directly to jail. When I look at all of the factors, however, it is a case, notwithstanding the priors that I think warrants consideration of alternatives for the following reasons: Number one, there is Mr. Netro's First Nations status that does require me to consider s. 718.2(e). As I indicated, his is a background which is altogether too common in this territory and which has led to a significant overrepresentation of First Nation offenders within, particularly, the Yukon Justice System, which is incredibly concerning.

[14] So, I do have to consider the comments made by the Supreme Court of Canada in *R. v. Gladue*, [1999] S.C.J. No. 19, in determining whether or not, pursuant to s. 718.2(e), there are other options beyond jail which could meet the principles of sentencing I am required to apply in this particular case. When I consider those principles of sentencing, the Crown is quite right. Because of the priors, denunciation and deterrence are significant factors here, and, as indicated, the easiest way to meet those is a jail sentence. Can they be met in another way in this particular case?

Referencing the *R. v. Proulx*, [2000] S.C.J. No. 6, decision, I would note that the Supreme Court of Canada has made it clear that a conditional sentence, if sufficiently restrictive, can also meet the principles of denunciation and deterrence. The Court notes that where competing principles are at stake, denunciation and deterrence on the one hand, and rehabilitation on the other, those competing principles can perhaps better be addressed by a conditional sentence.

[15] So that is the backdrop for the law that I am considering in determining whether or not a conditional sentence can even be considered. I am satisfied that it can. In this particular case, is it appropriate? The major factor which says to me it may not be are the priors, but the factors that suggest that perhaps it may be appropriate really relate to the personal circumstances of Mr. Netro.

[16] Firstly, and most importantly in my mind, is the programming and the counselling. He did complete the spousal abuse program before this. It is concerning that he was not able to sustain the progress that he had made because of the slips relating to alcohol that led to this offence, but I am fully aware by the people that I see in front of me every day that a wellness journey is not always a straightforward one; sometimes there are slips along the way. One hopes that those slips do not involve someone getting hurt, as in this case, but it is not always a straightforward journey. But to Mr. Netro's credit, I know from him, I know from Ms. Young, and I know from the pre-sentence report that he had been doing extremely well up until his mother's death, that his struggles with alcohol returned as a result of his inability to cope with grief. It is evident that there are significant questions with respect to Mr. Netro's coping skills overall in relationships when things are difficult, especially in grieving situations;

however, he has recognized that he must take significant steps to ensure that this does not happen again. One such step was the termination of the relationship, and the other was a much more vigorous pursuit of treatment and programming to address the significant underlying alcohol issue. It is, I think, significant to note that Mr. Netro took those steps on his own while awaiting trial. He contacted Kwanlin Dun Counselling Services. He attended with them for programming and he, on his own initiative and at his own cost, attended and completed the Round Lake Treatment Program. It is evident when I hear from him that that was an enlightening experience that has had a significant impact on his life. The question now is his ability to sustain that over the long term, which is going to require ongoing support and services, but it is significant to me that he took those steps on his own initiative.

[17] The other thing that I would note is, since the last time that Mr. Netro was sentenced when the risk assessment before the Court was high risk or substantial, his efforts to take steps to address the alcohol issue have reduced the risk that he presents to medium; not as low as I would like to see it, but that is still a significant difference in my mind. Finally, I would note, which is equally significant to me as she has been supervising him for the past several months, Ms. Couch-Lacey, who prepared the pre-sentence report -- I should ask -- she has been supervising you?

[18] THE ACCUSED: Mm-hmm.

[19] THE COURT: Okay. I made that assumption because that is normally the case, but I should not perhaps have made that. But as she has been supervising Mr. Netro for the last eight or nine months, her views on his ability to be

successful on a community disposition are important and the report does indicate that she would support a community-based disposition for Mr. Netro.

[20] So, at the end of the day, it is a case where there are strong arguments on both sides as to whether or not there should be a custodial or a conditional sentence. In this particular case, because Mr. Netro has taken significant steps on his own initiative, which in many ways compliment and complete the work that he had started under the DVTO, and also considering s. 718.2(e), I am prepared to find, in this particular case, that while it is very close, very close to going the other way, I am prepared to give Mr. Netro the benefit of the doubt in terms of allowing him to serve his sentence within the community. I am satisfied he is capable of complying with conditions. I am satisfied that that will address any public safety issues that there are. I am satisfied that the termination of the relationship goes a significant way in addressing any concerns I have specifically for Ms. Young's safety, and they both appear to have made appropriate and positive choices in relation to that, and I am satisfied, as I pointed out, that the principles of sentencing being denunciation, deterrence and also rehabilitation in this case, can most effectively be met by imposition of a conditional sentence. I am equally satisfied, however, that it needs to be a very strict conditional sentence, and that it needs to be a lengthy one.

[21] The Crown had suggested a range of eight to 12 months; it would certainly be, for this one, on the upper end of that range if it is going to be conditional. I may well have considered significantly lower if we were doing a straight custodial term, in which case six months would likely have been appropriate. But in this particular case, if it is going to be done conditionally within the community with Mr. Netro's background, it

needs to be a lengthy one to ensure a long-term period of supervision and structure for Mr. Netro so that he is supported in his efforts to deal with alcohol and does not return before this Court with additional offences.

[22] There will be a sentence of 12 months with respect to the common assault. With respect to the keep the peace breach, there will be a concurrent sentence of 30 days. With respect to the no contact breach, there will be a concurrent sentence of 60 days, and with respect to the abstain breach, there will be a concurrent sentence of 30 days. Just so we are clear, if it is not obvious, the one that I view most seriously is the breach of the no contact provision, particularly in the circumstances of this case. That condition is put in place to ensure Ms. Young's safety. In this particular case it did not work in the way that it should have, and did not work because you breached it.

[23] However, as I indicated, I am satisfied that all of them should be concurrent sentences and that Mr. Netro should be allowed to serve that sentence conditionally within the community. The terms and conditions will be as follows:

1. That Mr. Netro keep the peace and be of good behaviour;
2. Appear before the Court when required to do so by the Court;
3. Report to a Supervisor immediately --

So you need to get over there right from here after you have signed your order. You get over to Probation and you start your reporting.

-- and thereafter when required by the Supervisor and in the manner directed by the Supervisor;

4. You are to remain within the Yukon Territory unless you have written

permission from your Supervisor, and you are to notify the Supervisor in advance of any change of name or address and promptly notify the Supervisor of any change of employment or occupation;

With respect to residency, because employment will require residency both here and in Old Crow, I am going to require that:

5. You reside as directed by your Supervisor, abide by the rules of that residence, in the event that you are residing with Mr. Campbell again here in Whitehorse, and you are not to change that residence without the prior written permission of your Supervisor;

So, as you move back and forth, you need permission to do that, and a direction from them as to what you can do, but they need to know where you are.

[24] As indicated, I am satisfied that this absolutely has to be a house arrest situation, not a curfew situation.

6. You will be required at all times to remain within your place of residence except with the prior written permission of your Supervisor, or except for the purposes of employment including travel directly to and directly from your employment. You must present yourself at the door or answer the telephone at reasonable hours for curfew checks, failure to do so will be a presumptive breach of this condition;

You have been on a conditional sentence, so you know what it means, but I want to remind you that in any case where it says you can do something with the permission of

your Supervisor, make sure you get that first in writing because you cannot fix it after.

And if you breach a conditional sentence, particularly in these circumstances, there is a very good chance you will serve the rest of it in custody, and that is a long period of time to be sitting there.

7. You will be required to abstain absolutely from the possession or consumption of alcohol and controlled drugs or substances, except in accordance with a prescription given to you by a qualified medical practitioner;

I realize the primary issue here is alcohol. I do not want you to be resorting to something else as a crutch in between. You have to get a handle on the problem overall and figure out how it is that you develop the appropriate coping skills that do not rely on either alcohol or elicit substances.

8. You are not to attend any bar, tavern, off sales, or other commercial premises whose primary purpose is the sale of alcohol;
9. You are to take such alcohol assessment, counselling or programming as directed by your Supervisor;
10. You are to report to the Family Violence Prevention Unit to be assessed and attend and complete the Spousal Abuse Program as directed by your Supervisor;

I know you have already been through, but I have an offence before me that suggests a refresher might well be in order for you.

11. You are to take such other assessment, counselling, and programming as

directed by your Supervisor;

They may well determine that programming specific to grief or relationships might be in your best interests, so I want them to have the authority to direct you into that kind of programming.

12. You are to have no contact, directly or indirectly, or communication in any way with Lori Young, except with the prior written permission of your Conditional Sentence Supervisor in consultation with Victim Services and Family and Children Services;

I am not suggesting there should not be any contact to allow for the joint business of raising your children, but I want that contact to be monitored and approved by the Supervisor to ensure safety. You are not to have any contact with her in any way until you have written permission allowing you to do so, so you will want to talk to them about that today so that they can look into what is appropriate.

13. You are to provide your Supervisor with consents to release information with regard to your participation in any programming, counselling, employment or educational activities that you have been directed to do pursuant to this conditional sentence order.

I am going to require also that:

14. You make reasonable efforts to find, even though I know you have it, but to find and maintain suitable employment and provide your Supervisor with all necessary details concerning your efforts.

I view your employment and income as a positive for you and maintaining your sobriety, and obviously it is critical for your family in terms of providing for your children.

[25] The sentence as it relates to the common assault will be followed by a probationary term. As I view this pretty much as your last chance, Mr. Netro, my hope is that this sentence is one which gets you to the point where you have the appropriate network around you personally to be able to manage the issues you need to manage over the long term on your own, but because I do have a concern about your ability to sustain this over the long term, I do want there to be extended supervision to ensure that there is monitoring of you and making sure that you do access the resources you need to maintain your sobriety. I am going to place you on probation for a period of two years. That is intended to pick up where the conditional sentence leaves off.

[26] If your Probation Officer determines that you have reached sufficient stability, you can bring it back to terminate it, but my view right now is this is a long-term prospect. You did not start abusing alcohol overnight; you are not going to address it overnight. So with respect to probationary term, you will be required to:

1. Keep the peace and be of good behaviour;
2. Appear before the Court when required to do so by the Court;
3. Notify the Probation Officer in advance of any change of name or address, and promptly notify the Probation Officer of any change of employment or occupation;

4. Report to a Probation Officer immediately upon completion of your conditional sentence and thereafter, when, and in the manner directed by the Probation Officer;
5. Reside as approved by your Probation Officer and not change that residence without the prior written permission of your Probation Officer;
6. Abstain absolutely from the possession or consumption of alcohol and controlled drugs or substances, except in accordance with a prescription given to you by a qualified medical practitioner;
7. Not attend any bar or tavern, off sales, or other commercial premises whose primary purpose is the sale of alcohol;
8. Take such alcohol assessment, counselling and programming as directed by your Probation Officer;
9. Report to the Family Violence Prevention Unit to be assessed and attend and complete the Spousal Abuse Program as directed by Your Probation Officer;
10. Take such other assessment, counselling, and programming as directed by your Probation Officer;
11. Provide your Probation Officer with consents to release information with regard to your participation in any programming, counselling, employment, or educational activities you have been directed to do pursuant to this order;
12. Have no contact, directly or indirectly, or communication in any way with Lori Young, except with the prior written permission of your probation

officer, consultation with Victim Services, and Family and Children Services.

[27] So there are similarities between the two orders. The big difference is the house arrest, because that is the punitive aspect of the conditional sentence order, but the other conditions really are about rehabilitation, and so those I want continued on the Probation Order.

[28] He does have the ability to pay, which means for the victim fine surcharge with the indictable election it will be \$100 on each count for a total of \$400. So how long would he need to pay that?

[29] MR. VAZE: He's indicated to me April 1st of 2012.

[30] THE COURT: Okay. How many months is that?

[31] MR. VAZE: That is five --

[32] THE COURT: December, January, February, March, April.

[33] MR. VAZE: -- five months.

[34] MR. GOUAILLIER: Five months.

[35] THE COURT: About five months. Is that an issue for the Crown?

[36] MR. GOUAILLIER: No.

[37] THE COURT: I will make it six months time to pay, so you have time to get -- it is not my intention to disadvantage your children as a result, but you do have

the ability to pay, so you should be paying that particular fee. That leaves me with, I believe, the DNA.

[38] MR. GOUAILLIER: Yes.

[39] THE COURT: Do you have any submissions with respect to that?

[40] MR. VAZE: Quite frankly, I hadn't been anticipating that application. I suppose the only thing I can say is that this doesn't, in terms of the facts of this particular offence, doesn't accord with what I usually hear as far as DNA requests are concerned, but the Court is much more familiar with that than I am, and so I leave it in the Court's hands.

[41] THE COURT: In all the circumstances, when I consider the nature of the offence as convicted and the circumstances of the offence, I am not satisfied that this is a necessary or appropriate case for me to make the DNA order, and I would decline to do so.

[42] I think the remaining counts have already been addressed; they were withdrawn at the time of trial. So I believe that completes all matters?

[43] MR. GOUAILLIER: Yes, that's correct.

[44] THE COURT: Thank you.

RUDDY T.C.J.