

Citation: *R. v. Nolan*, 2013 YKTC 9

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Registry: Whitehorse
Heard: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: Her Honour Judge Ruddy

REGINA

v.

KERRY ELAINE NOLAN

Appearances:
Ludovic Gouaillier
Malcolm Campbell

Counsel for the Crown
Counsel for the Defence

REASONS FOR JUDGMENT

[1] RUDDY T.C.J (Oral): Kerry Nolan is before me for sentencing with respect to a number of counts to which she has entered pleas of guilty, beginning with an offence contrary to s. 129(a) and an offence contrary to s. 733.1, occurring on October 7, 2010.

[2] At that time, Ms. Nolan was residing in a local hotel with her child. There were some issues arising with respect to a male in the room who was not supposed to be there. It appears that Ms. Nolan actually contacted the front desk to see about having

him removed, but when a staff member came up, she refused to let them in and was verbally abusive. The same thing happened when the police arrived. They noted Ms. Nolan to be intoxicated. She was arrested and was uncooperative and belligerent, and kicked the officer in the thigh. She was noted to be visibly intoxicated, contrary to the terms of her probation order.

[3] Ms. Nolan then, on January 16, 2011, was involved in an incident where the police had attended at her residence with respect to a report they had received. She tried to punch the officer and then kicked him in the groin. Again, Ms. Nolan was belligerent throughout and was noted to be grossly intoxicated.

[4] On May 15, 2011, there was an attempt to shoplift \$1,100 worth of goods from Walmart. The most serious of the offences before me, which is an assault on a local barmaid whom she grabbed by the ponytail and hit three times in the face with her fist, occurred on June 16, 2011. Again, Ms. Nolan was intoxicated when arrested, contrary to the terms of her release. We then have a more recent incident of attempted shoplifting of some \$250 worth of merchandise from BoardStiff. We also have a number of offences to which pleas were not entered, most of which were breaches over the course of these matters being resolved by the Court.

[5] Ms. Nolan entered into the Wellness Court program, a Wellness plan was completed for her, and there are a number of things that she has done as a result of her involvement in this process. Those are all outlined in reports that have been filed through the course of her journey with us.

[6] Now, I will say, just in terms of determining the appropriate outcome, that I had had some dealings with Ms. Nolan some time ago and reviewed a number of reports at various times which related to some of the offences that show up on her criminal record which begins in 2007. It is a fairly short record, but there are some pretty serious offences of violence on it, including an assault causing bodily harm and an aggravated assault. My assessment at that time was that she was a very troubled young woman who had a significant amount of difficulty regulating her own behaviour, and that there were serious concerns about her potential for violence.

[7] In the Wellness Court process, as has been pointed out, we had a pretty rocky start. There were a lot of slips and a lot of breaches towards the beginning of the process, and she really struggled, but she never gave up. She hung in there, and she kept working. The other factor that I think is very important is that her treatment team never gave up on her. A number of times we came back and said, "Okay. Is she in or is she out," because we had some new issues, but I want you to know you had a huge amount of support in the room with people that were arguing that you should stay in and that you should be given another chance. Ms. Couch-Lacey in particular, I will say, always argued very strongly in your favour and never gave up on you.

[8] So my sense is that that paid off. There was a shift, I thought, in September where I started to see that the slips were farther apart, the behaviour when you slipped was less serious, you got back on track more quickly, and you seemed to be making strides throughout that demonstrated that you were learning the skills to start regulating your own behaviour.

[9] I will say that I have noticed a significant change, and I was actually quite disappointed when I heard that you were not going to finish the program, because I am very hopeful for your chance of long term success based on what I have seen. I cannot think of anybody that we have had in Wellness Court to date that we asked as much of in terms of programming as we asked of you. Now, part of that was because you had more issues to deal with than a lot of the people that we see, but nonetheless there were some pretty high demands in terms of programming and appointments and meetings and you hung in there, and you followed through.

[10] Now, those are all outlined in the report. They include a number of substance abuse programs, a number of trauma counselling sessions, the DBT program, which is a six month program, along with a number of other matters that are listed in the report that you were asked to do. Including the letter I received today, every one of the reports about your performance indicates to me that you were actively engaged in the programming, you were an active participant, you came prepared, you did your work in between, you brought appropriate examples to work through in group that helped not just you but the people around you, and in fact, when you had decided to pull out of the CWC program, I know that Ms. Van Delst, who runs the DBT program, was very concerned about your being able to continue and complete that program because you have become a significant asset to the group.

[11] So there are still some struggles ahead and a long, long way to go, but you have come an awful long way as well. I think you should be very, very proud of yourself and, as I said, while I was disappointed you were not completing the program, the fact that you sat down and reviewed your options with respect to the latest slip and were able to

make a decision that you felt was in the best interests of your child, says to me that you are starting to make appropriate decisions, and you are starting to take responsibility for your own behaviour. As I said, I am extremely hopeful for your chances of long term success, particularly with all of the support that you have around you and the people that have taken the time to be here today.

[12] I will also note, just for the purposes of this decision, that you have also made significant strides with respect to rebuilding relationships with your family and those around you, which creates an even larger support network for you than you started out with.

[13] The sentence that is being suggested before me today is essentially a time served sentence with a probationary term that would allow you to continue the work that you have been doing. I do think it is important that there be probation for two reasons. You know and I know that you are not finished yet, that you have still got a ways to go. So I think you need the probation for the support it can give you, and, to some extent, for the supervision that it will give you as well. I think all of those things are important and I am satisfied that the sentence that is being suggested is entirely appropriate. It is my hope, actually, that we can get you back into the DBT program, continuing Wednesday night and that you can complete the final month of that.

[14] THE ACCUSED: Yeah. I believe what was said was, if I was sentenced today and I can look out for Wednesdays, they will --

[15] THE COURT: They will take you back. Good. I am very glad to hear it. So let us get you on your way.

[16] I have before me seven counts and here is what I am going to do. The remand credit amounts to about four months. There is going to be a sentence of one day deemed served by your attendance in court today on each of those counts. Credit is going to be apportioned as follows: I am satisfied, because of your history in particular, that the most serious is the assault offence, and I would note that one of the most positive things I have seen over the last year or so is the significant reduction in violence and responding in a violent way to things that you do not like; that has been a huge step forward for you. So that one I am going to have reflected as credit for four months.

[17] With respect to all of the other counts, there is going to be concurrent credit for 30 days on each of them. I would also note that I am factoring in the fact that you spent a significant period on house arrest, where there were significant limitations with respect to your movements and you have still managed to make it to all of your programs with the permissions that you were given. That will be followed by a period of probation of 18 months to give you some ongoing support and assistance and access to programs.

[18] The terms will be that you:

1. Keep the peace and be of good behaviour. Appear before the Court when required to do so by the Court;
2. Remain within the Yukon Territory unless you have written permission from your Probation Officer;
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 your release from custody and thereafter when required by the Probation Officer and in the manner directed by the Probation Officer;
5. Reside as approved by your Probation Officer and abide by the rules of the residence and not change that residence without the prior written permission of your Supervisor;
6. Abide by a curfew by remaining in your place of residence between the hours of 10:00 p.m. and 7:00 a.m. except with the prior written permission of your Probation Officer or except in the actual presence of a person approved in advance, in writing by your Probation Officer. You must present yourself at the door or answer the telephone during reasonable hours for curfew checks. Failure to do so will be a presumptive breach of this condition;

So somewhat less than house arrest, but I think it is a good idea for you to still have that kind of structure in place.

7. You are 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;
8. You are to provide a sample of breath or urine for the purposes of analysis upon demand by a Peace Officer who has reason to believe that you may have failed to comply with this condition;
9. You are not to attend any bar, tavern, off-sales or other commercial premises whose primary purpose is the sale of alcohol;

10. Take such alcohol and or drug assessment, counselling or programming as directed by your Probation Officer, and attend and complete a residential treatment program as directed by your Probation Officer;

That was on the list I believe. So we will see if we can still get you into that.

11. Take such psychological assessment, counselling and programming as directed by your Probation Officer. Take such other assessment, counselling and programming as directed by your Probation Officer and provide your Probation Officer with the consent 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 probation order.

[19] So that is the probation order. The conditions are similar; there is not quite as many of them as you were on, but there are some similarities. So things should, I hope, continue as they have been in terms of your programming and your supports.

[20] Any questions? No, okay. I will waive the victim fine surcharge given your recent custodial status, and I want to very much extend my thanks to all the people that have been here, to Ms. Couch-Lacey for all of her hard work; to the social workers who have come to be here from Family and Children Services and who have been working with Ms. Nolan; family members, and we also have someone here from Kaushee's and someone from the Whole Child program. It is evident that your changes in behaviour have also allowed you to increase your circle of support. My thanks to all of you for being here today. I know it is a long afternoon and it is much appreciated.

[21] The remaining counts?

[22] MR. GOUAILLIER: There will be a stay of proceedings.

[23] THE COURT: All right. Ms. Nolan, you are done in front of me. I want to wish you the best of luck. You have come an awful long way, and I do not know at the beginning whether everybody thought that you would or that you could.

[24] THE ACCUSED: I didn't know if I could.

[25] THE COURT: So you need to be very, very proud of yourself for what you have done, but hang in there because you have got some work ahead of you and you have a lot of people around you prepared to help you out. Good luck to you.

[26] MR. CAMPBELL: Is the probation order attached to the 266, or?

[27] THE COURT: I will attach it to the substantive offences, not to the breaches. I will attach it to the 266, because I think that is the one that is the most concerning.

RUDDY T.C.J.