

Citation: *R. v. Porter*, 2008 YKTC 103

Date:20081202
Docket: 07-10170
07-10170A
07-10170B
06-10086A
Registry: Watson Lake

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

REGINA

v.

VALENTINE EDWARD PORTER

Appearances:
Peter Chisholm
Gordon Coffin

Counsel for Crown
Counsel for Defence

REASONS FOR SENTENCING

[1] FAULKNER T.C.J. (Oral): Valentine Porter was convicted after trial on a charge of assault causing bodily harm. He subsequently entered pleas of guilty to a charge of breach of probation and a charge of breach of undertaking.

[2] With respect to the assault causing bodily harm charge, the injuries suffered by the victim of the offence were significant, the most significant of those injuries being, as I said earlier, a broken arm.

[3] Mr. Porter is certainly not a man without a related criminal history, including a conviction in the not too distant past for the self-same offence of assault causing bodily harm.

[4] Given the antecedents of the offender and given the seriousness of the injuries produced, I think I would be first inclined to a sentence closer to being measured in years than months. However, it has to be noted that the circumstances of this offence were somewhat singular. As I have already indicated, it has to be accepted that Mr. Porter found, at best a trespasser, at worst an intruder, in his house. I have found that he dealt with that intruder in a grossly excessive fashion but, nevertheless, those are the circumstances, so it was not a situation that Mr. Porter sought out, and he did find himself in somewhat provocative circumstances. Keeping that in mind, I think the sentence should be tempered substantially.

[5] With respect to the breach charges, the one is being found in a bar when he was forbidden by his probation order to be in such a place. The breach of undertaking was a fail to report to his bail supervisor. Neither of the breaches contain any particularly egregious circumstances beyond that brief recitation of their facts. Given the offender, they also merit custodial sentences, but they, again, should be tempered somewhat by the rather plain vanilla flavour of those offences coupled with the global effect of the fact that Mr. Porter is to be sentenced for three separate offences.

[6] In the result, with respect to the charge of assault causing bodily harm, Mr. Porter is sentenced to a period of imprisonment of five months. On the breach of probation

charge, 15 days consecutive. On the breach of undertaking charge, 15 days consecutive to any other sentence.

[7] The Crown having proceeded summarily, the surcharges are \$50 in each case.

[8] Following your release from imprisonment, you will be subject to a probation order for a period of nine months. The conditions are:

1. You keep the peace and be of good behaviour, and report to the Court as and when required.
2. You are to report within two working days after the order comes into force to an adult probation officer and thereafter as, when and in the manner directed.
3. You are to advise the probation officer in advance of any change of name or address and promptly notify him of any change of occupation or employment.
4. You are to take such alcohol or substance abuse assessment, treatment and counselling as the probation officer directs, and you take any other assessment and counselling the probation officer directs.

[9] Gentlemen, correct me if I am wrong. This is a primary designated offence for purposes of a DNA order?

[10] MR. COFFIN: There is a DNA order that has been made earlier. It shows on his record.

[11] MR. CHISHOLM: That's correct, yes.

[12] THE COURT: All right. Thank you. And what about firearms prohibition? Are you not seeking that?

[13] MR. CHISHOLM: I believe since the Crown proceeded summarily, that it is discretionary upon the Court.

[14] THE COURT: It is, yes.

[15] MR. CHISHOLM: I think that it might be appropriate for a period of time just based on his antecedents and this charge.

[16] THE COURT: Any submissions, Mr. Coffin?

[17] MR. COFFIN: No, I have no submissions.

[18] THE COURT: Mr. Porter is prohibited from having in his possession any firearm, ammunition or any of the other items as more compendiously described in s. 110 of the *Code* for a period of five years following his release from imprisonment, and I direct that he surrender forthwith to the R.C.M. Police at Watson Lake any such items now in his possession.

[19] Are you requesting time to pay the surcharges?

[20] MR. COFFIN: Yes. In the circumstances I would suggest perhaps eight months?

[21] MR. CHISHOLM: No submissions.

[22] THE COURT: Eight months time to pay.

[23] MR. CHISHOLM: The Crown directs a stay of proceeding with respect to the outstanding charge.

[24] THE COURT: Thank you.

FAULKNER T.C.J.