

Citation: *R. v. Skea*, 2017 YKTC 15

Date: 20170403
Docket: 16-00357
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before Her Honour Chief Judge Ruddy

REGINA

v.

BRUCE MACKENZIE SKEA

Appearances:
Kevin W. MacGillivray
Amy Steele

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCE

[1] RUDDY C.J. (Oral): Bruce Skea is before me for sentencing with respect to a single count of spousal assault, for which he was convicted following a trial earlier this year.

[2] The facts, as I found them at the end of the trial, involved Mr. Skea assaulting his then spouse by striking her several times in the head and chest area. There was some bruising and a bump that resulted from the assault on Ms. Branigan.

[3] I have also heard from her today in terms of the impact. She has highlighted, as she did in the trial itself, that the incident made her feel badly, particularly so because she and Mr. Skea had been friends for an extended period of time. Indeed, she referred to him as having been her best friend prior to this incident.

[4] Ms. Branigan also notes that he was an individual who had figured prominently in her son's life. Fortunately, her son was not present at the time of this incident, but this has been a loss that he has suffered as well. It is clear to me that Ms. Branigan has suffered a fair amount of confusion and distress as to why this incident happened.

[5] Mr. Skea comes before the Court with a prior criminal record. It is largely unrelated. There are some convictions for impaired driving and for failing to comply with conditions. The closest, in terms of the nature of the offences, would be convictions in 2006 for careless use of a firearm and unauthorized possession of a firearm. His record is spread out between 1987 and 2012, with some significant gaps.

[6] Crown is suggesting in all of the circumstances, noting that this was an unprovoked incident of spousal violence, that a conditional sentence order in the range of three months plus a nine-month probationary term would be appropriate.

[7] The information I have from defence counsel is as follows.

[8] Mr. Skea is 54 years of age, single, with no dependents.

[9] He is currently in a living arrangement with John and Terry Michael, a couple he has been friends with for an extended period of time. Both have medical issues. They are providing him with board and he is assisting them around the home and with some of the other supports they need while dealing with their medical issues.

[10] He is currently on social assistance. He has not held employment for some two years, but prior to that had a rather varied work history, everything from working as a

plumber, to a welder's helper, to working with young offenders back in the nineties. He has indicated an interest in retraining, though no steps have been taken in this regard.

[11] I understand, through his counsel, he has had a long-term problem with alcohol and he is struggling to deal with it at this point in time primarily by attending AA sessions, something in the range of 30 to 35 meetings. He has also attended Many Rivers on six occasions and has just been assigned a counsellor through Alcohol and Drug Services that he should be starting with next week.

[12] Defence is suggesting that this is a case in which a conditional discharge would be appropriate, given the negative impact a record may have on Mr. Skea's interest in retraining to work on the frontlines in the social work field. Alternatively, she suggests a suspended sentence is appropriate in all of the circumstances.

[13] I will say, in considering the submissions, I am not of the view that a conditional discharge would be appropriate in all of the circumstances.

[14] Firstly, with respect to whether or not such a sentence would be in Mr. Skea's best interests, what I have before me is essentially a question about whether or not a criminal record for spousal violence might preclude some of his future employment goals. The difficulty that I have is that there are no confirmed retraining or employment opportunities before me, on top of which there are other things on his record that may well have that undesired impact as well, in particular the careless use of the firearm.

[15] Presumably, the first impaired driving conviction did not have that kind of impact, as he worked in the nineties at the Young Offenders Facility, but certainly I suspect that

the other convictions relating to the firearms may well have the same impact that an assault conviction might. Either way, what I do not have is confirmation that would satisfy me, firstly, that the assault conviction would indeed have the impact that has been suggested; and secondly, that some of the other convictions on his record would not have the very same impact.

[16] With respect to the public interest, this is a situation where there was not an acceptance of responsibility. This matter did proceed to trial.

[17] We do impose discharges quite frequently for individuals who accept responsibility at an early stage; who attend and fully complete our Domestic Violence Treatment Option program; and who, by virtue of their performance in that program, dramatically reduce the risk that they present, hence making it in the public interest to support that kind of behavioural change by imposing a discharge.

[18] To impose a discharge in these circumstances post-trial, without the domestic violence programming having been done — recognizing that Mr. Skea has done some other types of programming which is important and is certainly in his best interests — but I would have some grave difficulty in sending a message that one could go to trial, not accept responsibility, not do the domestic violence programming we have, and still obtain a discharge at the end of it.

[19] It would seem to me that we would have a difficulty with proportionality in such circumstances, when I compare the outcomes that we see with clients who accept responsibility and successfully complete the Domestic Violence Treatment Option program.

[20] Recognizing this is an incident of spousal violence for which responsibility was not accepted at an early stage, I am not satisfied that I could conclude it would not be contrary to the public interest to impose a discharge and I would not be prepared to do so in all of the circumstances.

[21] I want to be very clear, Mr. Skea, I am not prejudicing you for going to trial. What happens, though, when someone accepts responsibility is they gain a discount, as it were, for accepting responsibility, and not requiring a victim to attend and testify at trial. That is the piece that is missing here.

[22] You were entitled to trial. You had your trial. What you are not entitled to is the discount you get for accepting responsibility.

[23] In most cases where there is a conviction at trial, we consider a period of time in actual custody as the appropriate disposition. What opens the door for me to look at something different in this case is the fact you have taken some steps to try and address the alcohol problem that you have, which I think is an important step forward. I am of the view that you need some additional programming, in particular, the programming that relates to managing anger and how to have healthy relationships. That is something that is certainly going to be required.

[24] But what I am satisfied of is that the steps that you have taken open the door, in my mind, to allowing for a conditional sentence, though they do not open the door, in my mind, to a discharge or a suspended sentence in these circumstances. I am satisfied that a conditional sentence to be followed by some additional probation is appropriate in all of the circumstances.

[25] I am further satisfied that the length, as suggested by the Crown, gives ample time both for a conditional sentence with restricted liberty to address the punitive elements that would be demanded by the principles of denunciation and deterrence, but also allow the rehabilitative elements that would appear to be warranted given the initial steps that Mr. Skea has taken in relation to addressing the alcohol problem, to be addressed through the term of probation.

[26] What I am going to do is impose a sentence of three months followed by a period of probation of nine months, but allow you to serve that within the community. I want to ensure that there is sufficient time to allow for all the programming to be completed.

[27] The terms and conditions of the conditional sentence will be as follows. The statutory terms that I am required to impose are that you are to:

1. Keep the peace and be of good behaviour;
2. Appear before the court when required to do so by the court;
3. Report to your Supervisor immediately upon your release from custody and thereafter, when required by your Supervisor and in the manner directed by your Supervisor;
4. Remain within the Yukon unless you obtain written permission from your Supervisor;
5. Notify your Supervisor in advance in advance of any change of name or address, and promptly of any change of employment or occupation;

6. Have no contact directly or indirectly or communication in any way with Sheila Branigan and/or her son;
7. Not to attend at any known place of residence, employment, or education of Sheila Branigan or go to Hillcrest at all except on one occasion while in the presence of a police officer, at a prearranged time to be determined through consultation with Victim Services, for the purposes of retrieving your personal belongings;
8. Reside as directed by your Supervisor and not change that residence without the prior written permission of your Supervisor;
9. Abide by a curfew by being inside your residence or on your property except with the prior written permission of your Supervisor. You must answer the door or the telephone to ensure you are in compliance with this condition. Failure to do so during reasonable hours will be a presumptive breach of this condition.
10. Not possess or consume alcohol and/or controlled drugs or substances that have not been prescribed for you by a medical doctor. Provide a sample of your breath or urine or blood for the purpose of analysis upon demand by a peace officer who has reason to believe that you may have failed to comply with this condition;
11. Not attend any premises whose primary purpose is the sale of alcohol, including any liquor store, off sales, bar, pub, tavern, lounge or nightclub;

12. Attend and actively participate in all assessment and counselling programs as directed by your Supervisor, and complete them to the satisfaction of your Supervisor, for the following issues:

substance abuse,
alcohol abuse,
spousal violence,
any other issues identified by your Supervisor,

and provide consents to release information to your Supervisor regarding your participation in any program you have been directed to do pursuant to this condition;

13. Not possess any firearm, ammunition, explosive substance or any weapon as defined by the *Criminal Code*, except with the prior written permission of your Supervisor.

[28] Those are the conditions of the conditional sentence.

[29] That is to be followed by a period of probation of nine months on the following terms and conditions.

1. Keep the peace and be of good behaviour;
2. Appear before the court when required to do so by the court;

3. Notify your Probation Officer in advance in advance of any change of name or address, and promptly of any change of employment or occupation;
4. Have no contact directly or indirectly or communication in any way with Sheila Branigan and/or her son;
5. Remain 100 metres away from any known place of residence, employment, or education of Sheila Branigan;
6. Report to your Probation Officer immediately upon completion of your conditional sentence;
7. Reside as approved by your Probation Officer and not change that residence without the prior written permission of your Probation Officer;
8. Attend and actively participate in all assessment and counselling programs as directed by your Probation Officer, and complete them to the satisfaction of your Probation Officer, for the following issues:

substance abuse,

alcohol abuse,

spousal violence,

any other issues identified by your Probation Officer,

and provide consents to release information to your Probation Officer regarding your participation in any program you have been directed to do pursuant to this condition.

[30] The Crown is also suggesting a community work condition. In my view, that is something I may well have included if I was suspending the passing of sentence. Given that there is a three-month conditional sentence order, which is effectively a jail sentence, I am not of the view that community work service is necessary or appropriate in all of the circumstances.

[31] I believe that would leave me with the question of the victim surcharge that I would be required to impose. It is a summary election so it would be \$100.

[32] In his financial circumstances, I am not adverse to an extended period of time to pay, so \$100 and one year as time to pay.

[33] I would decline to make the discretionary firearms prohibition, having made a limited one in the conditional sentence order.

[34] With respect to the DNA order, this being a secondary designated offence, I am required to consider it. I am not of the view based on the information that is before me, in particular the record and the history, that this is a case that would warrant that order being made, so I would decline doing so.

RUDDY C.J.T.C.