Citation: *R.* v. *Smarch,* 2008 YKTC 34 Date:20080328
Docket: T.C.07-00293
Registry: Whitehorse

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

REGINA

v.

AARON GREYWOLF SMARCH

Appearances:
Samantha Oruski Counsel for Crown
Emily Hill Counsel for Defence

REASONS FOR SENTENCING

[1] LUTHER T.C.J. (Oral): Aaron Smarch pled guilty and is here to be sentenced today on the following two counts. On or about the 21st day of May, 2007, at or near Carcross, Yukon Territory, did unlawfully commit an offence in that he: wounded Adam Anderson and Adrian Neill, thereby committing an aggravated assault contrary to s. 168 of the *Criminal Code*.

[2] Also Count 3, on or about the 21st day of May, 2007, at or near Carcross, Yukon Territory, without reasonable justification or excuse and with intent to obtain money, did induce Adrian Neill by violence to pay money to Aaron Greywolf Smarch, contrary to s. 346(1.1)(b) of the *Criminal Code*.

[3] The maximum sentence under s. 268 of the *Criminal Code* is a period 14 years imprisonment. Additionally, for s. 346(1.1)(b), the maximum sentence would be life imprisonment.

[4] The facts are straightforward and not in contention. On the long weekend of May 2007, two couples from Whitehorse headed out to the Carcross desert, one of the most awesome and picturesque settings in this Territory, to rest and relax and enjoy the camping experience. What had the potential to be an uplifting experience of the great outdoors at its best, with tranquility, peacefulness and outstanding scenery, turned into a living nightmare of horrific proportions, which will never be forgotten by the four victims. It all started very well.

[5] After tents were set up, the party of four met with the offender and his group, who were, amongst other things, running their dirt bikes through the desert sand. On the Sunday night, all enjoyed a campfire together; alcohol was consumed. After midnight, the group separated.

[6] Thereafter, the offender and his friends returned to the campsite of the victims, aggressively demanding beer. In a very unruly and uncivilized manner, the offender jumped on top of their cooler, ate some of the potato chips and spat them out. During this first totally unprovoked confrontation, the offender punched Adrian Neill and broke his nose. During this rather one-sided struggle, a hooded sweater was torn. The offender and his company left, only to return a second time.

[7] On this occasion, having already violently assaulted Adrian Neill by breaking his nose, the offender not only demanded beer but also $70 for the damaged attire. A

hurting and disadvantaged Adrian Neill turned over $50 to the offender but no beer. For this, the victim received a severe punch in the face from the offender, which caused his jaw to break. The offender left again. As if this were not enough, the offender and his company returned for a third major confrontation demanding more money. Obviously dominated by feelings of fear and horror, Sarah Neill turned over $20 to the offender. By this time, the party of four had already partially prepared for a premature departure from what was to have been an idyllic long weekend.

[8] The offender and another assailant pushed Adam Anderson to the ground, kicking him while he was down, rupturing his eardrum. After the assailants left, the victims proceeded to the local nursing station and then headed for further necessary treatment at the Whitehorse Hospital.

[9] The RCMP, during that early morning, went to the desert and the young men fled into the darkness. Later that day, the police arrested the offender, who did give a statement. While the four victims are Caucasian and the offender and his cohorts were Aboriginal, there is no evidence that these heinous crimes were racially motivated.

[10] The dominating factors outlined by the Crown are not in disagreement. We have a very promising young man here with no previous record and he has entered a guilty plea. Defence counsel acknowledged these to be very serious offences but emphasizes that her client is a young man on a positive path, other than, of course, these offences. The defence agreed that the appropriate sentence would be jail but pressed for a conditional sentence order.

[11] The Crown stressed that there were three separate unprovoked attacks, that the offender was the leader of the pack, that the physical injuries to the two young men were very serious, and that the repeated, terrorizing criminal acts proved to be emotionally devastating to the two young couples, as was clearly evidenced from their victim statements.

[12] These horrendous criminal acts of violence were definitely beyond the offender's immature understanding, as reflected in the pre-sentence report, that he "wrecked their weekend". In fairness though, I do believe, as a result of the sentencing hearing two days ago, that he has a better appreciation of the consequences of his violent acts. This appreciation on his part will increase as he is able to reflect in the near future with liberty deprived, and in the further future as he gets older and matures.

[13] While I understand the Crown's position that these repeated violent acts were tantamount to home invasions, the Court does not fully accept this position. The Crown claims that the offender has little insight into his addiction issues and, as such, continues to pose a danger to the community. The offender apparently gave up hard liquor but has continued to regularly drink beer since the offences.

[14] Referencing page 5 of the pre-sentence report, he indicated that he drinks to get drunk and will often drink a case of beer while watching a hockey game. He has never received any treatment for his drinking as he does not see the need. With regard to marihuana he states, "I don't have the money for that stuff." Surprisingly, he was released with no conditions for these major crimes. The pre-sentence report stated that

he is at medium risk to re-offend. Again, quoting from the pre-sentence report, he has a 43.8 percent likelihood of re-offending within one year.

[15] The Crown has submitted for my consideration eight cases, and the defence, three. I will refer to most of them. In *R*. v. *Bland*, [2006] YKTC 23, the Honourable Chief Judge Faulkner of this Court, dealing with another instance of aggravated assault, at paragraph 7 it was stated:

> … I agree with the submission that the range here is from something in the order of sixteen months, more or less, to six years imprisonment….

He quoted two cases from 2006: *R*. v. *Johnson*, [2006] YKTC 52 (QL) and *R*. v. *Wiebe*, [2006] YKTC 75 (QL):

> I also agree with the comments in *Johnson* that the sentences at the lower end of the range would tend to be imposed in fight situations, where the altercation escalates, and that the sentences at the higher end of the range would tend to be imposed in situations where victims are attacked with a weapon, without provocation, and without any opportunity to defend themselves.

The *Bland* case involved a knife. The conclusion of the trial judge was as follows:

> As I say, taking into account the global effect of all of the sentences and the fact that you have been in custody for some period of time, and giving you credit for your pre-trial custody, the sentence of the Court in this matter is that you serve a period of two years in a federal penitentiary.

[16] A more recent case of Chief Judge Faulkner was that of *R*. v. *Dick,* [2008] YKTC 6 (QL). In that case, the defence counsel sought a conditional sentence order. In paragraph 10 of the decision, the Chief Judge determined that a conditional sentence would not be appropriate in this case, and he sentenced the offender to 16 months imprisonment.

[17] The case of *R*. v. *Gonzales,* [1999] N.W.T.J. No. 69, comes to us from the Northwest Territories Supreme Court. Mr. Gonzales was sentenced for aggravated assault. At paragraph 46 of that decision, Judge Schuler stated as follows:

> I have given this case a great deal of thought since yesterday's hearing. While I have no doubt that Mr. Gonzales, with his past good character, his lack of criminal record, and his remorse, is the type of person for whom a conditional sentence should be considered, I am troubled by the facts of the case, the way and the number of times the knife was used. To permit a conditional sentence, I would have to be satisfied that the safety of the community would not be endangered and the requirement has caused me some hesitation for the reasons that I have just mentioned.
>
> On the whole, there is nothing really unusual about the circumstances of this case. Above all, however, I am not persuaded that a conditional sentence would be proportional to the gravity of the offence or that it would be effective to discourage others who would take up weapons.

[18] Now, in this case, of course, there are no weapons like there were in many of these other cases. I will address that issue a little bit further.

[19] Mr. Gonzales was sentenced to 20 months in jail. The same principles would apply to a case such as this where there was no knife or other weapon of that sort. The principle is to discourage others who, while not using weapons other than their fists and feet, would physically harm, with no provocation, two smaller victims by breaking the nose, breaking the jaw and shattering the eardrum.

[20] Next, I am going to refer to a case from the Manitoba Court of Appeal called *R*. v. *Leask*, [1996] M.J. No. 586. In that case, they were dealing were three very young adult offenders without prior criminal involvement. They had been sentenced to one

year imprisonment for a brutal assault causing bodily harm to a stranger. At paragraph 4, Mr. Justice Twaddle stated:

> What we have in this case are three young men who were 18 or 19 years of age at the time of the offence and had no prior criminal record either as a youth or adult. The assault in which they were involved, though brutal, was neither premeditated nor an adjunct to other criminal activity. Along with others, these young men came to the rescue of a friend who had become embroiled in an altercation with a stranger. The force they used was unjustified and excessive, but may be attributed to the overexuberance of youth and extremely poor judgment.

In paragraph 5, this particular court felt that:

> The sentence must be a deterrent one, to discourage these young men and others from engaging in such callous behaviour, but a deterrent sentence does not have to be an incarcetory one. A fine or order of community service, accompanied by a supervised probation, can have a deterrent effect if substantial enough. Such a sentence has a better chance of rehabilitating the offenders than one which places them in the company of experienced criminals and may cause them to lose their employment.

It is to be noted that the three young adult offenders had already served a significant portion of their time.

[21] In paragraph 9:

> The reductions for time served may be calculated on the assumption that each would have served one-half of the sentence. The time served may then be calculated as a percentage of the time which would have been served on the original sentence....

In other words, the three young adults had already served some time. The Court of Appeal released them with an emphasis on fines and community service work, but it was a significant deprivation of their liberty.

[22] The Court notes that this was a 1996 decision from Manitoba. While I have not had the opportunity to check into the economic circumstances prevailing in Manitoba in 1996, it is fair to say that the employment prospects in this Territory are substantial. The unemployment rates are at cyclical lows, and this young man, with sufficient resolve, will be able to continue his employment at some point in the future.

[23] Some courts have, in the past, placed in my view, too strong a concern about this concept of placing them in the company of experienced criminals. Based on the sentencings that I have done in this Territory, and the cases that I have read from this Territory, it is my opinion that the Correctional Centre here is not a graduate school for crime as most offenders are not sophisticated, advanced criminal types, but rather are there for various property and violent offences committed, for the most part, while under the influence of intoxicants.

[24] I am also going to refer to the *R*. v. *Everitt*, [1996] Y.J. No. 132 at paragraph 54. This was a decision from Judge Lilles from October 1996 involving the sentencing for assault causing bodily harm. At paragraph 54, the judge stated in question format:

> Is the Court satisfied that ordering Mr. Everitt to serve the nine month sentence in the community would not endanger the safety of the community? The following information is relevant.

He quoted nine factors. I am going to comment on four of the factors listed by Judge Lilles and how they are different in that case than the present one:

> 1. The accused plead guilty to the charge before the Court.

The same in that case as in this one.

> He feels "lousy" about what he did and has an understanding how the victim feels.

In this case, Mr. Smarch clearly feels bad about what he did. However, I am not satisfied that he has a good understanding of how the victim feels.

> 2. He has a realistic view of the need for laws, "right" and "wrong" and the consequences of his behaviour.

Again, I feel that Mr. Smarch does have a view of the need for laws, but I am not satisfied that he fully understands the consequences of his behaviour.

> 4. … He understands now that he must stay away from alcohol and drugs, and has demonstrated during the past nine months that he can do so.

That is clearly different in the present case.

> 5. The offence occurred while he was living away from home for the first time.

In that case, the judge had concerns about the lack of supports and the unique situation of him being away from home for the first time. That is not the case here.

[25] The *Criminal Code* relevant statutory provisions are set out by the Supreme Court of Canada in the case of *R*. v. *Wells*, [2000] 141 C.C.C. (3d) 368. At page 374 through 376, the Supreme Court of Canada laid out the relevant statutory provisions. These, of course, include s. 718, s. 718.1, s. 718.2, s. 742.1, s. 742.3, s. 742.6(9). These, of course, are very relevant statutory provisions in the case before me today. Wells was convicted of a sexual assault in attempting to have sexual intercourse with an 18-year-old complainant. There was no evidence of penetration.

[26] The offender there had two prior convictions for assault. He was sentenced to 20 months incarceration. It was appealed to the Alberta Court of Appeal. The sentence of imprisonment was upheld. It was appealed to the Supreme Court of Canada, and again the sentence was upheld.

[27] I am going to read portions of the decision in *Wells*. Paragraph 48:

> I cannot conclude that the trial judge misconstrued the seriousness of the crime. In addition, the judge's use of the words "near major" or "major" instead of "serious" does not constitute a reversible error. I find no error in principle, no overemphasis of the appropriate factors, nor a failure to consider a relevant factor, and, accordingly, defer to the trial judge's assessment of the particular circumstances of the offence and the offender. Therefore, the trial judge made a reasonable determination as to the availability of a conditional sentence.

Paragraph 49:

> I would like to add at this point that the reasons in *Gladue, supra,* do not foreclose the possibility that, in the appropriate circumstances, a sentencing judge may accord the greatest weight to the concept of restorative justice, notwithstanding that an aboriginal offender has committed a serious crime. As was concluded in *Gladue,* at para. 81, the remedial purposes of s. 718.2(e) directs the sentencing judge not only to take into account the unique circumstances of aboriginal offenders, but also to appreciate relevant cultural differences in terms of the objectives of the sentencing process.
>
> . . .

Paragraph 50:

> The generalization drawn in *Gladue* to the effect that the more violent and serious the offence, the more likely as a practical matter for the similar terms of imprisonment to be imposed on aboriginal and non-aboriginal offenders, was not meant to be a principle of universal application. In each case, the sentencing judge must look to the circumstances of the aboriginal offender.

[28] In quoting from *R*. v. *Gladue*, (1997), 119 C.C.C. (3d) 481, in the second part of paragraph 49, the Court quoted as follows:

> The sentencing judge is required to take into account all of the surrounding circumstances regarding the offence, the offender, the victims, and the community, including the unique circumstances of the offender as an aboriginal person.

[29] This particular offender, unlike some other First Nations people, had the benefit of a stable upbringing, and did complete high school and has committed no crimes prior to this. He has essentially victimized himself by putting his life on hold as he has committed these very serious crimes.

[30] I am not going to read it entirely, but I will quote excerpts from the various victim statements. Stephanie Yetman wrote that:

> The incident has me afraid of all natives I see. I have never been a racist person, I think it's disgusting. I now find myself thinking in generalities about natives, and that upsets me greatly. I'm always afraid that I'm going to be attacked. Sometimes I feel like he's going to try to come to get us.

[31] Sarah Neill:

> I am not the same person I was before this happened, and neither is my husband. I do not have the same coping defense mechanisms I once had and I hate that I can't change what happened to us. This shouldn't have happened. Because of the attack, my plans to move back home with my husband and go to school have changed drastically, directly caused by the actions of Aaron Smarch. This incident has put a strain on my marriage and made me into a scared, sad, racist and angry person.
>
> This compounded stress has made me have 3 emotional breakdowns, 1 of which was in front of my boss at work. I am seeing myself weaken emotionally because I cannot make sense of such a senseless act. It was awful enough to

> have to witness that kind of violence towards my loved ones, but then also watching my already underweight husband lose even more weight, no matter what I fed him on his liquid diet, well it wasn't fun.

[32] Adam Anderson:

> He beat me around the face and I've received two black eyes, bruises and a smashed nose (not broken). He also smacked my ear with his palm a few times, and my right eardrum was burst. At the Carcross nursing station I was inspected and cleaned but received no treatment. I then drove to Whitehorse General Hospital and received painkillers. The doctor who inspected my ear said it was blown right out; he could see right through. No treatment was given, though there may be permanent damage to my ear.

Those were his physical injuries. As to the emotional injuries:

> I was shocked and amazed when this happened. I've been camping several times in the Carcross desert with other groups of campers around and this kind of behaviour is unheard of. It's made me distrustful or even afraid of groups of natives. I feel like the world's not as safe as it was before. I feel like I let down my friends because I took them camping and it ended up that way. Poor Adrian got so beat up and I didn't help him. I don’t know if I could have or not. I tell myself it would have made it worse. I think about it all the time and it depresses me.

[33] Adrian Neill as to the physical injuries:

> I suffered a broken nose, a broken jaw and bruising to my legs. The result of having a broken jaw is the equivalent of being imprisoned for 6+ weeks. My jaw had to be wired shut surgically at Whitehorse General Hospital, this is a procedure that is extremely painful, as it leaves you unable to open your mouth at all, and fills your mouth with sharp stainless steel bits. Having my jaw wired, prevented me from communicating with friends and family, preventing me from brushing and flossing my teeth, causing several new cavities to form. I lost a significant amount of weight from being unable to eat normally. I suffer from an eating disorder and was already below my safe/healthy weight before being injured.

> My nose is now noticeably crooked, and as it's only "cosmetic" damage, the doctors have refused to fix it. This is a permanent disfigurement that I will have to carry with me for the rest of my life. Every time I look in the mirror I see this reminder of the Senseless violence we experienced while trying to enjoy the beauty of the Carcross desert on a camping trip with our close friends. I still have dark markings under my eyes from the damage to my nose.

Like the others, he also suffered significant emotional injuries:

> My injuries, and the anger, fear, and depression resulting from my convalescence has put a severe strain my marriage. I thank god that Sarah loves me enough to have stayed with me during this troubling time.

[34] Under s. 718 of the *Criminal Code* it is important for the Court:

> a) to denounce unlawful conduct;
>
> b) to deter this offender and other persons from committing offences;
>
> c) to separate offenders from society, where necessary;
>
> d) to assist in rehabilitating offenders;
>
> e) to provide reparations for harm done to victims or to the community; and
>
> f) to promote a sense of responsibility in offenders and acknowledgment of the harm done to victims and to the community.

[35] Section 718.1:

> A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

[36] Obviously, in this case, the gravity of the offence is very high and the degree of the responsibility of the offender is very high as well.

[37] If this had been a situation where the offender violently assaulted the first victim and broke his nose, the Court clearly would have considered a conditional sentence order. With the second wave of violence, that option became highly unlikely, and with the third wave, definitely not [even a responsibility].

[38] The sentencing today by the Court is going to be a very balanced approach. It is purposely going to address the concerns of protection of the public, but is very much going to be focused as well on the rehabilitation of this particular offender. I read with interest a case from the Ontario Court of Appeal called *R*. v. *Davies*, (2005) 199 C.C.C. (3d) 389. At paragraph 37 of that decision the Court wrote as follows:

> A proper balancing of all the foregoing factors leads me to the conclusion, therefore, that a blended sentence combining both incarceration (for the breach of trust offences) and a conditional sentence (for the fraud offences) is the appropriate disposition in the circumstances of this case. This court held that it is legally permissible to blend a custodial sentence with a conditional sentence, when an offender is being sentenced for more than one offence, so long as the sentences, in total, do not exceed two years less one day and the court is satisfied that the pre-conditions in s. 742.1(b) have been met in respect of one or more of the offences.

[39] Not only has Mr. Smarch victimized himself by putting his life on hold, and victimized these four people to my left, but I believe the community has been harmed in the sense that there has been, undoubtedly, at least for a temporary period, a negative reputation as to the potential for violence from local youth in the area of the Carcross desert for local people who may have been pursuing tourism initiatives. This may have cost them. Unfortunately, bad news often travels more than good news and, in my view, there was even a setback here possibly in race relations.

[40] In the end, balancing the interests of society, of the community, and never losing sight of the substantial prospects of rehabilitation of this young man, the Court feels, based on all of the authorities presented, and guidance from the Supreme Court of Canada, that the sentence should be as follows: With regard to Count 1, there will be a sentence of 12 months imprisonment. There will be a DNA order. I believe this is a primary designated offence, and there will also be a 10 year firearm prohibition. There is no evidence in the pre-sentence report that this young man was an ardent hunter. The Court is going to waive the victim surcharge in both of these in view of the substantial jail sentence.

[41] As to Count 2, the Court is going to impose a conditional sentence order of 10 months and the terms are as follows:

1. Report to the supervisor immediately upon your release from custody and thereafter when required by the supervisor and in the manner directed by the supervisor;
2. Remain within the Yukon Territory unless you have the written permission from your supervisor;
3. Notify the supervisor of any change of name or address and promptly notify the supervisor of any change of name, employment or occupation;
4. Reside as approved by your supervisor;
5. Abide by a curfew remaining within your place of residence between the hours 7:00 p.m. and 6:00 a.m. daily, except with the prior written permission of the supervisor, and 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.

Now, of course, if this young man obtains employment, and I am confident that he will, and his employment requires that he be out after 7:00 p.m., that would be very good reason for the supervisor to grant this permission.

6. Abstain absolutely from the possession or consumption of alcohol;
7. Provide a sample of your 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.

Notwithstanding the recent ruling from the Supreme Court of Canada, this provision is still available on conditional sentence orders.

8. Not attend any bar, tavern, off-sales or other commercial premises whose primary purpose is the sale of alcohol;
9. Take such alcohol, drug assessment, counselling or programming as directed by your supervisor;
10. Attend and complete a residential program as directed by your supervisor if necessary;
11. Take such psychological assessment, counselling and programming as directed by your supervisor;
12. To take such other assessment, counselling and programming as directed by your supervisor;

13. Not contact directly or indirectly or communicate in any way with Adrian Neill, Sarah Neill, Adam Anderson, Stephanie Yetman and Tor Davies.

[42] Now, I think the Crown had another name, did you? Did you want me to order him to stay away from?

[43] MS. ORUSKI: Tor Davies.

[44] THE COURT: How do you spell that?

[45] MS. ORUSKI: It's in the pre-sentence report.

[46] THE COURT: Okay.

[47] MS. ORUSKI: D-A-V-I-E-S is the last name. I can't remember how to spell the first name. It's T-O-R.

[48] THE COURT: Okay, Tor Davies, okay.

14. Not attend at or within 100 metres of Polarcom or Lamarche Pearson, except with the prior permission of the supervisor.

[49] Again, there is flexibility of these conditional sentence orders. If he has a very good reason for being within 100 metres of these establishments, then the supervisor can grant that permission.

15. Participate in such educational, life skills, programming as directed by the supervisor;

16. Make reasonable efforts to find and maintain suitable employment and provide your supervisor with all necessary details concerning your efforts;

17. 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;

18. Also, very importantly, with the help of your supervisor, write meaningful, separate, minimum 500-word letters of apology for the four victims.

[50] Now, while the technical charge spells out two victims with physical injuries, the Court has already referred at great length to the fact that really, there were four victims in this case.

[51] Following the conditional sentence order, the Court is going to impose a period of probation for two years with many of the same conditions. They are all outlined on this sheet. The only ones I will comment on are the ones that are different. This sheet is available for counsel to see in case there is any question. In the interests of time, I do not want to read all these things over again.

[52] There will be no curfew on the probation order. With regard to the abstention, there will be an abstention order for alcohol and controlled drugs for the first year of the two years, and similarly, not attend any bar, tavern, et cetera for the first year. Also, under s. 738 of the *Criminal Code*, the Court is going to make a restitution order in the amount of $3,726 in favour of Adrian Neill. This will be filed in the Supreme Court and will be enforced accordingly.

[53] In conclusion, I would like to state that I believe there is much hope for this young man. He clearly has positive role models in his father and Donna Geddes, both of

whom spoke sincerely at the sentence hearing. The offender is very helpful at home, provides grocery money and is caring to family members, particularly his seven-year-old step-sister. The letter from Heather Jones indicates that there is good community support. In this letter dated March 19th, she stated:

> It's my understanding that Aaron hopes to continue developing his skill as a carver and find his place working alongside his father with works of their own. It has been a pleasure to witness Aaron's growth and deepening appreciation for the importance of personal commitment as this project has progressed. I look forward to his continuing contribution.

[54] Mr. Smarch, would you stand, please. I would just like to address you directly and say this: It is really unfortunate that you put yourself in this position. I do believe that you will, over the course of time, fully understand what harm you have done to these four people here. There are present in this case many mitigating factors, including your age, the fact that there is no prior record and that you are remorseful. But for these strong mitigating factors, because of the repeated violence in this case, the Court would have clearly considered a federal sentence of three or four years, but that would have been excessive, clearly excessive. That is why I have gone with the blended sentence that I have come up with.

[55] I do believe you are a young man who has much potential, and it is very important that you fully comprehend what you have done. I believe that when you are released, when you get through the conditional sentence and your probation, that you will make a valuable contribution to your community. You have a long life ahead of you and I believe a substantial amount of promise.

[56] Now, are there any questions for the defence?

[57] MS. HILL: Only just because we have not seen the sheet that you are referring to with probation. To be clear, that the probation order does not include the enforcement clauses with regard to the abstain, just for the benefit of the clerk?

[58] THE COURT: No, that is struck. About providing the samples of breath and urine, no, that is clearly contrary to the ruling of the Supreme Court of Canada and I have actually got this crossed out. Was there any other question?

[59] MS. HILL: There wasn't, that's fine.

[60] THE COURT: Okay. And for the Crown?

[61] MS. ORUSKI: The only thing is I would direct a stay of proceedings on the remaining counts.

[62] THE COURT: Okay, and that stay is ordered. Is there anything else then today for the case involving Aaron Smarch?

[63] MS. HILL: I don't believe so.

[64] THE COURT: Okay. That is all then.

_____

LUTHER T.C.J.