Citation: *R. v. Stein*, 2016 YKTC 37

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

REGINA

v.

SHANNON RAYMOND STEIN

Appearances:
Keith D. Parkkari — Counsel for the Crown
Lynn MacDiarmid — Counsel for the Defence

**REASONS FOR SENTENCE**

[1] LUTHER J. (Oral): The Court has considered the arguments of counsel, reviewed the authorities, and I am in a position to render my decision.

[2] Shannon Raymond Stein is before the Court and has pleaded guilty to a number of offences and was also convicted on a number of offences.

[3] In terms of the mitigating factors on sentence, there are very few of them in this particular case. The phrase used by other judges, from time to time, of "career criminal" would certainly apply here. Mr. Stein is 42 years of age. The fact that he pleaded guilty to some charges has saved us a bit of court time, for sure, but the guilty pleas were

certainly not entered in a quick fashion. As to the trial, it is his right, of course, to go to trial — and that would not be held against him — but on the other hand, it is certainly not in his favour that we did not have guilty pleas early on in that particular case. Indeed, throughout the trial, Mr. Stein constantly downplayed his role and sought the Court to put him in a much better light than that of Ms. Firth, who is about eight years his junior.

[4] To summarize my decision — Madam Clerk, could you help me again, please? The date of the conviction was when, please, on the armed robbery attempt?

[5] THE CLERK: June 14, 2016.

[6] THE COURT: Thank you. That was on counts 1, 2, 3, and 6?

[7] THE CLERK: Correct.

[8] THE COURT: Okay, thank you.

[9] So I concluded on that day in June with these thoughts: I believe, based on the evidence, that Mr. Stein and Ms. Firth, in their drugged state, put together a foolish plan to rob the victim, Donald Lajoie. Overdressed, to avoid detection and recognition, they quickly went to the residence of Mr. Lajoie. Once inside, the accused told Mr. Lajoie he was going to be robbed. Mr. Lajoie grabbed Ms. Firth. As the scuffle worsened, Mr. Lajoie cried out for help from Mr. Flemming to help him out, hoping to turn the would-be robbers over to the police. Mr. Lajoie was not injured, other than the spray.

[10] The accused knew that Ms. Firth was extremely unpredictable, had acquired drugs there before, and was carrying bear spray. After less than two minutes, the accused and Ms. Firth escaped and were not arrested until 10 days later. These crimes occurred on 20 October. On 22 October, they were both involved with a serious property offence involving the smashing of a vehicle window. The arrest occurred on 30 October.

[11] The Court does not in any way accept that Ms. Firth was the leader in this criminal duo.

[12] The pleas of guilty are very minor mitigating factors. His accepting responsibility yesterday, I would consider a minor mitigating factor as well. Indeed, what else is he going to say when he is facing a long term of imprisonment?

[13] I am going to review some of the cases but, before that, I want to put this into some context. Mr. Stein has potentially put himself in very serious jeopardy because the maximum sentences for the crimes that he committed are substantial.

[14] For example:

- For 14 October:
    - the 342 charge would be 10 years' imprisonment; and
    - the 354 charge: two years.
- For the events of 20 October:
    - the 267(a) charge: 10 years;
    - the 344 would normally be a life imprisonment, but it was an attempt so that brings down the maximum to 14 years;

    - the 267 further charge would be 10 years; and
    - the 349: 10 years.
- October 22, a further 10 years.
- October 28, two years.
- October 29, two years on each.

[15] Even if we were to consider all the events stemming from each day as a single criminal enterprise or adventure, the offences committed on the same day would be concurrent to one another but generally the offences would be consecutive for the separate days. Mr. Stein has essentially subjected himself to a potential maximum of 38 years' imprisonment because the Crown has proceeded by indictment throughout.

[16] I want to emphasize that Mr. Stein will not be resentenced for the multitudinous crimes from his past but by his persistence in his criminal ways, he has disentitled himself from consideration of lenient sentencing because he shows little to no prospects of rehabilitation. Unfortunately, all that is likely going to slow Mr. Stein down is advancing middle and old age. Indeed, the Crown's position for an overall sentence of seven years represents only about 18.5 percent of what the maximum sentence could be.

[17] It is to be noted that he has a very lengthy property related offences record and that he has three prior federal terms of imprisonment. Ms. MacDiarmid is quite correct to make note of the importance of proportionality and parity.

[18] With regard to Ms. Firth, we know that she was involved with a very early guilty plea and that there was a joint submission from both Crown and defence. We do not

know what the *quid pro quo* might have been in terms of her getting the sentence which she got.

[19] The defence argues that the sentence for Mr. Stein should not exceed that of Ms. Firth. I disagree with that.

**Case Law (Defence)**

[20] In the case of *R. v. J.H.O.*, 2004 BCPC 336, we have in some ways a very similar person before the Court. That is:

- They were both 42 years of age; they had both spent a good part of their life in adult prison; also, a history of street drugs — cocaine, heroin — and criminal records reflecting a lifelong attempt to support a drug habit by crime.
- The offender there was HIV-positive and feared that his health will only deteriorate further. In this case, we understand that the health of Mr. Stein is not too bad.
- For those offences in B.C., the robberies were not planned or sophisticated. In this case, the robbery was planned and not particularly sophisticated.
- In that case, the accused had no weapon. In this case, the co-offender clearly did have the bear spray.
- In that case, there were no verbal threats. In this case, there were.
- In that particular case, the accused admitted responsibility to the police and entered a guilty plea at the earliest opportunity. That is not the case here.
- There was also some history of him staying clean in that case. Here, there is no significant gap in the record as there was there. Indeed, the only gap is from 2010 to 2013, and a fair bit of that time he was serving a federal sentence.

- In that case, the offender had a more troubled background because he was sexually abused as a child.
- And in that case, the judge imposed a sentence of five years.

[21] In reviewing *R. v. Vaneltsi*, 2016 YKTC 14, it is quite clear that Mr. Stein is far more of a career criminal than Mr. Vaneltsi — Mr. Stein is 42, Mr. Vaneltsi at the time was 32 — and also, Mr. Vaneltsi was a First Nations man of 32 years of age with the presence of the *Gladue* principles, which we often hear in First Nations cases here. There was a discussion of the step-up principle in paragraphs 37 and 44, and a reference to the case of *R. v. D.F.B.*, 2006 BCCA 350.

[22] At paragraph 9 of that case contained in paragraph 37 of the *Vaneltsi* case it was stated:

> ...The step-up principle has little application where a sentencing judge determines that the offence in question calls for a sentence in which the primary goals are denunciation and deterrence. ...

[23] Furthermore paragraph 44, refers to the B.C. Court of Appeal case in *R. v. T.A.N.*, 2012 BCCA 498, and then the reference to a case of *R. v. Kory*, 2009 BCCA 146, and then the reference *R. v. Robitaille*, [1993] B.C.J. No. 1404.

[24] At paragraph 7 of the *Kory* case:

> In a case such as this, where the respondent has a lengthy record for which he has received consistently low sentences for the same type of offence, the step-up principle is not of great assistance. It has not worked.

[25] And at paragraph 8:

> Mr. Kory's record shows that he has not been deterred or rehabilitated by the sentences he has received and remains a threat to his community. This was a serious offence, committed by a persistent criminal. The principle of the protection of the public through a denunciatory sentence ought to have taken precedence in this case

[26] Next, the case of *R. v. Gill*, 2006 BCCA 127 with an examination of paragraph 26, for example, gives us a summary of various cases in the B.C. courts. What is particularly interesting about this summary is how many of these cases dealt with men considerably younger than Mr. Stein.

[27] For example:

- In *R. v. Morris*, 2003 BCCA 271 a global sentence of five years was imposed on a 23-year-old who was the getaway driver.
- In *R. v. McKinney*, [1994] B.C.J. No. 421 (C.A.) (Q.L.), a global six-year sentence was upheld for a 19-year-old who robbed a convenience store with an accomplice. A very aggravating factor in that case was that there was a gun which was discharged, which injured the offender and the store clerk.
- In *R. v. Kim*, [1996] B.C.J. No. 1103 (C.A.) (Q.L.), there was six-year sentence for a 19-year-old who robbed a fast food restaurant and pepper-sprayed two employees.
- In *R. v. Johnson*, [1992] B.C.J. No. 1129 (C.A.) (Q.L.), a four-year sentence, consecutive to two years left on an existing sentence for armed robbery, was upheld on a Crown appeal, for a 30-year-old who robbed a gas station using a pellet gun.
- Finally, in *R. v. Poole*, 2005F BCCA 625, a sentence of four years, two-and-a-half months was increased to six years, for a 37-year-old accused who robbed a gas station using a simulated weapon.

[28] All of these people, like I said, were substantially younger than the present offender, except for Mr. Poole, who was 37, and arguably Mr. Johnson, who was 30, but nonetheless, we remember that Mr. Stein is, in fact, 42.

[29] The Court of Appeal concluded in *Gill* at paragraph 29:

> ...while six years is at the high end of the range for similar offenders in similar circumstances, it is not demonstrably unfit for this offender for this offence.

**Case Law (Crown)**

[30] In *R. v. Ayotte*, 2014 YKTC 21, the accused was ultimately sentenced to four years and the judge rolled a number of them together in a concurrent fashion. In that particular case, again, the court dealt with a First Nations man who had spent relatively small periods of time in custody and while he did not have FASD, he did display some of the symptoms. He also had other medical issues. Mr. Ayotte had only spent small periods of time in custody.

[31] In *R. v. Vickers*, 2007 BCCA 554, the B.C. Court of Appeal stated:

> [13] While rehabilitation cannot be overlooked, it is of secondary importance in dealing with a case of this kind. This is particularly so when there is no indication that the offender is a good candidate for rehabilitation. ...

[32] In the case of *R. v. Cornell*, 2007 YKTC 41, Judge Faulkner sentenced an offender whom he described as a career criminal who was only 25 years old at the time. For an attempted robbery in that case, the judge imposed a sentence of three years "consecutive to any sentence now being served."

[33] The case of *R. v. Sidney*, 2008 YKTC 40, involved a female offender and the victim was 83 years of age. As to the offender, herself, she had a significant criminal record containing over 20 prior entries:

> [10]...none of them were apparently sufficiently serious to warrant more than relatively brief periods of imprisonment on the occasions when she did receive custodial sentences.

[34] On the robbery charge with violence, she was sentenced to a period of five years less time served.

[35] It is not particularly a mitigating factor but as a compassionate factor, the Court notes that the mother of this offender is very sick. We talked about that a little bit yesterday. If, indeed, Mr. Stein is a suitable candidate to help out in the organ transplant, I would leave that to the prison authorities to coordinate. He will be housed in a location closer to her than here.

[36] In terms of the victim, in this case, the attempted robbery case, the Court notes that he was about 60 years of age; he was on disability; he was grabbed by the neck and his glasses were broken by this offender; and financially, he has limited means of support. It got so bad that he had to scream for help from his neighbour. As to the effects of the bear spray, which, again, I want to say was, in fact, administered by Ms. Firth, it took him five washes to get his shirt clean and it took him a week to get his eyes better.

[37] The Court is concerned about what I see as the increasing use of bear spray as a weapon of choice in crimes of violence. A statement has to be made that this is totally

unacceptable. Bear or pepper spray is meant for bears or for, perhaps, protection for vulnerable people who may be preyed on by criminals — for example, young women who may be accosted by sex offenders — but it is certainly not to be used as a means of completing a crime.

[38] We do note that Mr. Stein was cleaned up from his drug habit for a while, but he came up here with Ms. Firth. Her brother brought back to the residence some booze and some drugs and he resumed his habit. This is unlike many cases that I see in this jurisdiction where we have offenders, white or First Nations, who encounter significant trauma in their lives after being sober for some time.

[39] For example, I have heard cases where a parent has died suddenly or where other close family members have committed suicide — significant trauma — and one could understand why a person might relapse.

[40] But here, the only cause for the relapse is the brother bringing back some booze and drugs.

[41] Just a brief comment on the kosher food that was not available in the Whitehorse Correctional Centre ("WCC"). It is up to the WCC to accommodate prisoners as best they can. I am sure that, as a result of having Mr. Stein there, they have amended their ways. Clearly, the prison authorities do have to show some sensitivity to rigorously held religious beliefs.

[42] There is a very detailed analysis of how courts should deal with concurrent and consecutive sentences from the Newfoundland Court of Appeal in a case called

*R. v. Hutchings*, 2012 NLCA 2; then we have a case from British Columbia called *R. v. Li*, 2009 BCCA 85; and also an old but true case, standing the test of time, *R. v. Chisholm*, [1965] 2 O.R. 612 (CA) from the Ontario Court of Appeal. It basically says that for a single criminal enterprise or adventure there should be consecutive sentences but if the overall sentence is too severe, it has to be adjusted for totality.

[43] That issue made it to the Supreme Court of Canada. Chief Justice Lamer in the *R. v. C.A.M.* [1996] 1 S.C.R. 500 case said that the cumulative sentence rendered must not exceed the overall culpability of the offender and also that the aggregate must be just and appropriate. In other words, it cannot be unduly harsh and disproportionate.

[44] The Court notes the impact in this case on Mr. Lajoie. Furthermore, I note, with interest, the case involving the lady whose car window was smashed out. It had a very significant impact on her. The two men involved, downtown here by Murdoch's store, were older men and were preyed on by the offender. Also he skilfully, in a criminal fashion, persuaded a man at the Co-op gas bar to give him his PIN number and that resulted in almost $2,000 of loss not to the cardholder, but to the bank and, in a far more general sense, to society.

[45] Given Mr. Stein’s record and the types of sentences that have been imposed in the past ( I do note that it was pointed out correctly that he does not have a record of violence, but he has dozens of offences for property and B&Es and credit cards and frauds, and all of these to support his habit but in the process, victimizing dozens and dozens of people down in the Lower Mainland) despite the fact that he has no crimes of

violence, nonetheless, he has already been sentenced to three terms of federal imprisonment.

[46] The Crown has sought a sentence of seven years less time served. The time served credit has been agreed at 384 days. The defence sought a sentence generally three years and up a little bit, meaning that he could serve the sentence in a territorial institution here at the WCC and be placed on probation for three years.

[47] There have been occasions when there have been cases on the borderline, shall we say, between territorial and federal sentences that I have opted to go the territorial route because there is more effective control over an offender if he is on probation for three years with very, very strict terms. I believe that this offender may be correct that the Parole Board does not impose as onerous conditions.

[48] A recent case would be that of *R. v. Joe*, 2016 YKTC 31, where the Court was looking at a sentence at the borderline and, largely because of his age and his health and his First Nations background, gave a sentence just under the two years with the three year probation coupled with a 10-year driving prohibition.

[49] In this case, I have to say that this is not a borderline situation. Because of his repeated criminality, his persistence in victimizing people, and bearing in mind that many of these maximums are 10 years, the Court is going to impose the sentences as follows, subject to adjustments for totality and subject to the credit for the pre-sentence custody:

- For the offences from 14 October of 2015, the 342 charge and the 354 charge, counts 1 and 2:

- Count 1: 18 months;
- Count 2: 18 months concurrent.

- On the charges from 20 October, the Court is imposing:
  - On the 344 attempt charge, for which the maximum is 14 years: five years.
  - On the 267A: three years concurrent.
  - On the other 267A: three years concurrent.
  - And on the 349: three years concurrent.
  - The five years will be consecutive to the 18 months from October 14th.
- As to the 22 October, the sentence will be fixed at 18 months consecutive.
- And for the 334 charge 28 October, there will be a sentence of one year consecutive.
- And then for the charges from 29 October, that is counts 1 and 2:
  - Count 1: one year consecutive; and
  - Count 2: one year concurrent.

[50] This results in a very heavy sentence of 10 years. Now I shall examine and adjust for the totality principle. We have been given great direction from Chief Justice Lamer in *R. v. C.A.M.* and the B.C. Court of Appeal in *Li*.

[51] Based on what this man has done, I feel that 10 years is excessive and would not stand on appeal. Furthermore, and more importantly in my mind as a sentencing judge, it would not be a fair disposition. Thus, the Court is going to reduce some of these sentences down to arrive at a result that would be considered fair, proportionate, and just.

[52] Therefore, the initial sentence of 18 months is reduced to one year; the sentence of five years is reduced to four; the sentence from 22 October is reduced from 18 months down to one year, and the two remaining ones are reduced to six months, which results in a sentence of seven years. Mr. Stein will be given credit of 385 days and will have that credit, Madam Clerk, on the attempted robbery charge, which is from 20 October.

[53] Ninety-eight percent of the time, I make sure that the victim surcharge is addressed in a responsible way so that the offender is paying to worthwhile victim programs here in the Yukon and even on a sentence of one year or 18 months, I will give them maybe two or two-and-one-half years to pay. But in this case, given the length of the sentence, in this rare circumstance for me, I am going to order that all the victim surcharges of $200 each be payable forthwith. Mr. Stein has more things to worry about than a victim surcharge, especially when he is serving such a lengthy sentence.

[54] As to weapons, under s. 109 it will be for life.

[55] And the DNA, we will run that on the robbery charge, and that is a primary designated offence.

[DISCUSSION WITH COUNSEL]

[56] All right. Mr. Stein, would you stand, please?

[57] You came to the Yukon some time ago, you got involved in all of these offences, you are paying the penalty for that, and you will be taken fairly quickly, I would think,

back down South. I hope that you can resume some type of a relationship with your father and your mother, even though she is in a wheelchair, I understand that.

[58] You are absolutely going to have to stop these criminal ways. Sentences can only go up. That is all I am saying. You are going to have to stop. It is as simple as that.

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LUTHER T.C.J.