

Citation: *R. v. T.P.T.*, 2013 YKYC 4

Date: 20130503
Docket: 12-03588A
12-03600
Registry: Whitehorse

IN THE YOUTH COURT OF YUKON
Before: His Honour Chief Judge Cozens

REGINA

v.

T.P.T.

Publication of identifying information is prohibited by s. 110(1) of the *Youth Criminal Justice Act*.

Appearances:
John Phelps
David Christie

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCING

[1] COZENS C.J.T.C (Oral): T.T. has entered guilty pleas to having committed offences under s. 266, against Marty Skwarek and s. 348(1)(b) of the *Criminal Code* for breaking and entering into the dwelling house of T.L., and committing the indictable offence of assault causing bodily harm; and two offences under s. 137 of the *Youth Criminal Justice Act* for failing to comply with the conditions of Youth sentences by failing to abstain from the consumption of alcohol.

[2] An Agreed Statement of Facts was filed that I am not going to read out. Briefly, on October 20, 2012, T.T. was on a Youth Probation Order that required him to abstain from the consumption of alcohol. T.T., who had left Old Crow on his own initiative,

came into Whitehorse, went into the Super A in Riverdale and was shoplifting pop and some chips. He was intercepted by Mr. Marty Skwarek, who worked in the store, and T.T. responded by pushing Mr. Skwarek and punching him in the head a couple of times, at which point he was subdued. He was quite intoxicated.

[3] T.T. was back in Old Crow on December 14, 2012, and what happened is he showed up at the house of T.L., kicked her door in and entered the home. He was quite intoxicated by alcohol at the time. T.T. went around the home throwing stuff. He grabbed T.L., began hitting her and held her on the ground. T.T. pursued T.L. outside and continued to punch her. T.L. was quite afraid that he was actually going to kill her at the time. T.L. had a bleeding nose, blood under her chin, a swollen lip, and was very upset. This was emotionally very distressing for her as she ended up being medevaced out of town the next day due to some suicidal ideation, the extent to which it is connected to this I cannot say, but it was certainly close in time. When arrested, T.T. stated, "I fucked up that bitch [T.], okay?" He was very resistant with the officers and physically attempted to resist the arrest.

[4] There is some background, as T.T., who was 17 years of age at the time of the offence and is 18 now, had a relationship with T.L. that he had more expectation of than she did, and it was the dealing with the different expectations that contributed to him acting as he did, but which in absolutely no way excuses it.

[5] T.T. has been in custody approximately four and a half months. T.T. is a member of the Vuntut Gwitchin First Nation. There is a Pre-Sentence Report that was filed. There are support letters that are filed, and there is a psychiatric assessment done by Dr. Lohrasbe that is filed. At the end of all of these, what we have is an

individual who can do really well when he stays away from substance abuse and when he decides to keep doing what is going well. He makes decisions, for whatever reason, to stop what is going well, quit working, go off and start drinking, and everything falls apart for him. There are certainly serious concerns for his potential for future violence if he drinks and goes and commits criminal offences. The violence could have ended a lot worse in this case than it did. It clearly had a significant impact on T.L., and certainly, I would expect, to some extent on Mr. Skwarek, who did not plan on getting punched in the head when he went to work at Super A that day and was only trying to do his job. Neither of these individuals have filed Victim Impact Statements. Mr. Skwarek, takes the high road and hopes that T.T. gets it together. T.L. states that she is not afraid of T.T. if he would be back in the community.

[6] Now, while T.T. has been previously diagnosed with Conduct Disorder, and Dr. Lohrasbe agrees with that diagnosis, the linkage in the Conduct Disorder is the substance abuse, and T.T. is certainly not a threat to society or to individuals if he is not consuming alcohol. If he consumes alcohol, he is a threat. T.T. has no underlying cognitive issues that are apparent: he is intelligent, he is artistic, he is quite capable of living a pro-social life, and, with him, it really comes down to some of the issues he is dealing with as a young man who was essentially abandoned by his parents. He does not know his father, and his mother was struggling early in his life with her own issues, which, to her credit, she has now overcome. She is living a solid life and is a solid support for her son, but all of her issues contributed to T.T.'s growing up with a lot of anger issues. He is impulsive, aggressive; he struggles with some of the circumstances and dealing with these that are not that unusual for young members of a First Nation

growing up in the Yukon, however these are all controllable by him if he does not drink. If T.T. drinks alcohol, the control mechanism is gone and he is a significant risk.

[7] The letters of support filed point to all of the positive engagement that T.T. has had at times with members in the community, and one from a former foster parent. Generally speaking, with respect to the Probation Order T.T. was on, he did really well until he decided to stop doing really well.

[8] There is a joint submission before me and the submission is for a period of open custody for nine months on the s. 348(1)(b) charge and six months probation following that, with a concurrent six month Probation Order on the s. 266 and s. 137 charges. This is all, of course, taking into account the fact that he has spent four and a half months in custody in which he has actually done a pretty good job of getting himself back to a place where he can start off in a positive fashion. There is a lot of support for him here. The joint submission is entirely appropriate in the circumstances, taking into account, but not crediting any time, what T.T. has learned in the last four-and-a-half months. There will be a sentence of nine months open custody with respect to the s. 348(1)(b) and the statutory terms only will be included in the Custody and Supervision Order for that portion of the supervision.

[9] With respect to the Probation Order, the terms of the Probation Order will be as follows:

1. That you keep the peace and be of good behaviour;
2. Appear before the Youth Justice Court when required by the Youth Worker to do so;

3. That you report and be supervised by a Youth Worker;
4. That you will notify the Youth Worker of any change of address, place of employment, education or training;
5. You will attend, as directed by your Youth Worker, at school or any other place of learning, training, or recreation that is appropriate that the Youth Worker is satisfied that a suitable program for the young person is available there;

[DISCUSSION RE WORDING OF PROBATION ORDER]

6. You will reside with any adult that the Youth Worker considers appropriate who is willing to provide for the care and maintenance of the young person. You will abide by the rules of that residence and not change that residence without the prior permission of your Youth Worker;

In other words, you do not leave Old Crow to come to Whitehorse on your own.

7. You must not possess or consume alcohol or use drugs for non-medical purposes;
8. You must take such alcohol, drug, or substance abuse assessment, counselling, and treatment as directed by your Youth Worker,
9. If directed by the Youth Worker, attend and abide by the rules of a residential treatment facility;
10. You must take such other anger management assessment, counselling and treatment as and when directed by the Youth Worker;
11. You are to take any other assessment, counselling and programming as directed by your Youth Worker;

[10] MR. PHELPS: I apologize Your Honour, I did use the court form when I got here and I found it a little difficult to work with, but I neglected to put in the no contact as well, and the no attendance [indiscernible].

[11] THE COURT: I was going to go back to that, because I was actually going to put:

12. You must not have any direct or indirect contact with Marty Skwarek;
13. You are not to attend at the Super A store in Riverdale;
14. You must not have any direct contact with T.L., if you have been consuming alcohol;

I do not care if she does not have any fear of you. If you break rule number one, which is consuming alcohol, there is rule number two that attaches: do not have any direct contact with T.L. I am also going to say:

15. You are not to attend the residence of T.L. if you have been consuming alcohol;

I do not expect that you will get there, because you will not be consuming, right?

[12] THE ACCUSED: Yes.

[13] THE COURT: Okay. I believe that encompasses all of the terms that were being sought on the Probation Order.

[14] This is a primary designated offence, there will be an order that you provide a sample of your DNA. He is a youth, but it is the same.

[15] MR. PHELPS: Yes. I do apologize, Your Honour. With respect to the open custody terms, you placed the statutory terms. Perhaps the no contact provisions with respect to the Riverdale incident could be included. I am advised, I apologize, the Provincial [sic] Director will do so and he will be placed on that provision. Thank you.

[16] THE COURT: Yes. That is why I did not bother going any further than the statutory terms. There will also be the mandatory s. 109 order that attaches on these for the s. 348(1)(b) offence only. I am not imposing anything with respect to the s. 266 offence, the s. 110 order, or the DNA order.

[17] I believe that should be everything, except the remaining counts?

[18] THE CLERK: What was the length of time, Your Honour?

[19] THE COURT: On probation?

[20] THE CLERK: On the s. 109.

[21] THE COURT: That is a mandatory ten -- actually, for a youth, it is --

[22] MR. PHELPS: I believe it is a mandatory ten years, yes.

[23] THE COURT: When I read s. 51:

...when a young person is found guilty of an offence referred to in any para. 109(1)(a) to (d) of the Criminal Code...

So in addition the sentence, there is:

...an order prohibiting the young person from possessing any firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition or explosive substance during the period specified in the order as determined in accordance with subsection (2).

Which says:

(2)(1) Begins on the day on which the order is made and ends not earlier than two years after the young person has completed the custodial portion of the sentence

So it appears that the order against a young person can be between two and ten years, correct?

[DISCUSSION RE SECTION 51]

[24] MR. PHELPS: I apologize, Your Honour, it seems that you are correct. The s. 109 only refers to a ten year or a lifetime, but s. 51 clearly states that there is a range.

[25] THE COURT: From two to ten years, I would say. Yes.

[26] MR. PHELPS: My friend would be open to make a submission to you today; I don't have any submission. The prohibition itself is mandatory, the range, given the fact that he is a young adult with intentions of going back to Old Crow, it may appropriately be at the lower end. That's all I have to say.

[27] MR. CHRISTIE: I would ask for the minimum; the two years, and as I mentioned --

[28] THE COURT: The nine months of the Custody and Supervision Order would run first, and then whatever takes place after that, the way I read this, it

starts immediately and continues, "...not earlier than two years after the young person has completed the custodial portion of the sentence". While in custody, it would be the custodial portion, I expect.

[29] It will be a two year prohibition. Frankly, that is the minimum. Not that the circumstances necessarily call for it, but two years, nine months from now, you are either going to do really well, or you are not, and this would be revisited, let us put it that way. You are a young person, you are a member of your First Nation; hunting is an important activity. You have a long way to go before you are going to be authorized to carry a firearm, in any event.

[30] THE ACCUSED: Yeah.

[31] THE COURT: But if you do well, three years from now, that may be a possibility. All right?

[32] THE ACCUSED: Yeah.

[33] THE COURT: Okay.

[34] MR. CHRISTIE: Thank you.

[35] THE COURT: And the remaining counts are stayed, correct?

[36] MR. PHELPS: Thank you, Your Honour, yes.