

Citation: *R. v. Vittrekwa*, 2010 YKTC 144

Date: 20101215
Docket: 09-11034
Registry: Dawson City

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Judge Lilles

REGINA

v.

KELLY DIANE VITTRUKWA

Appearances:
Jennifer Grandy
Emily Hill

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCING

[1] LILLES T.C.J. (Oral): I am now dealing with the matter of Kelly Diane Vittrekwa. Ms. Vittrekwa is a 26-year-old young woman who has entered a plea of guilty to a charge of assault with a weapon, contrary to s. 267(a) of the *Criminal Code*. It goes without saying that this is a very serious charge, and the circumstances are also very serious.

[2] More specifically, the circumstances are as follows: Ms. Vittrekwa is currently in a relationship with and plans on cohabiting with Mr. Eric Thomasen. I am pleased to say that Mr. Thomasen has been in court throughout this morning and participated very positively in this court proceeding.

[3] On October 13, 2009, they were both drinking and an argument ensued. During that argument, Ms. Vittrekwa cut Mr. Thomasen in the hand. These were relatively minor cuts and were treated at home, but the argument continued. This time, Ms.

Vittrekwa lashed out with the knife and cut Mr. Thomasen on the wrist. This was a serious wound resulting in significant bleeding and ultimately involved medical treatment and five stitches.

[4] I think it is important to note, as counsel did, that this could have been, in fact, much more serious. I am aware that wounds like this have, on other occasions, resulted in death, particularly in those cases where medical treatment was not immediately available.

[5] Ms. Vittrekwa also pled guilty to a breach of her bail conditions. On February 27, 2010, she was arrested in Whitehorse in the company of Mr. Thomasen in an intoxicated condition, and this was a violation of her release conditions. She was in the company of Mr. Thomasen. That contact was restricted as part of her bail conditions.

[6] There are a number of factors that are relevant to the sentencing in this case. Some are historical, and these were canvassed quite thoroughly in discussions with Ms. Vittrekwa's parents during the hearing. Others are more current. All help to explain why this incident occurred and, more importantly, what can be done, primarily by Ms. Vittrekwa, to minimize the likelihood of an event such as this happening again.

[7] Although I had mentioned to Phyllis, Ms. Vittrekwa's mother, that I was less concerned about family history, and I wanted everyone to focus their energies on the future, I will summarize Kelly's family history briefly. She was born in Inuvik and raised primarily in Dawson after the age of five. She was an only child in a family where alcohol abuse took place from time to time. Her isolation was compounded by the absence of any relatives or extended family in Dawson. Her parents were often absent

during weekends, during periods of their drinking. On the other hand, when her parents were sober, according to her, they were really good. They both worked, and Ms. Vittrekwa did not lack for anything. Kelly's mother and father currently live in Dawson. She has a continuing relationship with her mother, and a good relationship with her mother when they are both sober, but when Kelly and her mother both drink, there is a risk of violence between them. The police have been called on several occasions as a result of arguments between them.

[8] Both Kelly's mother, and James, her father, understand that their alcohol abuse is a significant negative factor in Kelly's rehabilitation. They indicated very clearly to the Court that they plan to be active members of the team working towards a solution. They will not continue to be part of the problem. If Kelly is to be successful in dealing with her issues, their participation and contribution will be important.

[9] One of the current issues for Ms. Vittrekwa, as disclosed in the pre-sentence report, is her self-imposed isolation. This is not a recent occurrence. After Grade 8, she withdrew from mainstream schooling and took correspondence courses instead. At the time, she felt bullied by her classmates. When that happened, that is to say when she was involved in the bullying, her interest in school, quite understandably, faded. I heard today that more recently she has again isolated herself from social contacts in the community.

[10] I inferred from something her Probation Officer said, that this more recent isolation may have resulted from the charges that were brought in October of 2009. I will underscore the fact that this isolation is of concern to the Court. I was pleased to

hear that Kelly herself appreciates that this is unhealthy for her, and that she is determined to address this issue. She is planning on attending Yukon College in the new year. Eric, her partner, suggested that they could join a church group; something that may be a positive development. In any event, they will both be seeking sober supports in their community.

[11] Ms. Vittrekwa has almost no employment experience and no job skills. She has been supported by Eric, her partner, and by her parents. As Mr. King, her Probation Officer, stated, by so doing, they have actually enabled Kelly to maintain her isolation. I think both the parents and Eric understand that being overly supportive financially can be a negative factor. Kelly needs to be encouraged to upgrade her education and find part-time and, eventually, full-time employment. Eric was very clear in saying that he strongly supported that kind of initiative on the part of Kelly. Everyone agreed that Kelly needs to stand on her own two feet financially and socially. As she herself pointed out, the first step in achieving this goal will be to go back to school and obtain some academic credentials.

[12] Ms. Vittrekwa also has a serious alcohol problem. In part, this is learned behaviour, learned from her parents and some of her social contacts. She understands that she must address this problem, and she knows also that she must not have contact with people who abuse alcohol. That includes Eric and her parents. Both Eric and Kelly's parents have indicated that they understand this and they have indicated that they want to be part of the solution, not part of the problem.

[13] Ms. Vittrekwa has already had contact with counselling resources in Dawson and

in Whitehorse: alcohol abuse counselling, domestic violence programming and relationship counselling are all called for. Eric has indicated that he too is participating in counselling and, at the appropriate time, will join Kelly in counselling as a couple. Ms. Vittrekwa understands that some of her issues are emotional and psychological. She states that she has been seeing her family doctor in Dawson. She will continue to maintain those contacts, and I understand that she has an appointment with Dr. Heredia in Whitehorse in the new year, and is going to follow up on that appointment as well.

[14] As I indicated to counsel earlier, I have concluded that neither a conditional sentence of imprisonment nor conditional discharge is appropriate on the facts of this case. With respect to the s. 267(a) charge, I am ordering a suspended sentence with 18 months of probation on the following terms. Again, I ask counsel to follow along and I will be asking them for suggestions, omissions, and deletions or tweaking as they consider appropriate.

[15] The statutory terms will apply, and just very quickly, Kelly, those statutory terms are:

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

[16] Madam Clerk, can you tell me when the next court circuit is?

[17] THE CLERK: February 22nd.

[18] THE COURT: February 22nd, that is a Tuesday. I am going to direct that you appear at two o'clock on February 22, 2011, for a review of this order.

Kelly, at that time, the judge will want to hear how well you are doing at Yukon College. I know you are going to be doing really well, and you will have some good information to report. I want your parents to be here, and Eric to be here, and you should all be prepared to report how things are going.

[19] It is also a statutory condition that you:

3. Notify your Probation Officer in advance of any change of name or address, and any change in employment or occupation;

[20] I understood from the presentence report that you had hope of getting improved accommodation in the new year?

[21] THE ACCUSED: Yeah, in the spring.

[22] THE COURT: Is that still happening?

[23] THE ACCUSED: Yeah. Yeah.

[24] THE COURT: Is it specific that you have a date for the move or still open?

[25] THE ACCUSED: They just said spring, yeah.

[26] THE COURT: In the spring. Okay. Well, that is good. And of course, you will have to keep your Probation Officer advised of all of that.

4. You are to remain within the Yukon Territory, unless you obtain written permission from your Probation Officer or the Court;
5. You are to report to a Probation Officer within two working days, and

thereafter when and in the manner directed by your Probation Officer;

[27] Now, I understand that he is in Whitehorse most of the time. So some of that reporting will be by telephone, but he comes here every two weeks. So he will want to see you personally, and hopefully he will touch bases with Eric and your parents as well while he is there.

6. You are to reside as approved by your Probation Officer and not change that residence without the prior written permission of your Probation Officer;
7. For the first three months of this order, you are to abide by a curfew by remaining within your place of your residence between the hours of 10:00 p.m. and 6:00 a.m. daily, except with the prior written permission of your Probation Officer. If outside the place of residence during these time periods, you will carry with you that written permission at all times, and upon request make it available to a Peace Officer;

There is another exception, and that exception would be if you are in the actual presence of another responsible adult person approved in advance by your Probation Officer.

8. 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 order;
9. You are to abstain absolutely from the possession or consumption of alcohol;

10. You are to tell your Probation Officer immediately of any breaches of this order;
11. You are not to attend any bar, tavern, off-sales or other commercial premises whose primary purpose is the sale of alcohol, including the premises known as Gertie's in Dawson City;
12. You are to take such alcohol assessment, counselling, and programming as directed by your Probation Officer;
13. You are to take such psychological assessment, counselling, and programming as directed by your Probation Officer;

Again, you are already doing many of these things. This term here is merely acknowledging the efforts you have already taken in this regard. Then there is a general term that says:

14. Take such other assessment, counselling, and programming as directed by your Probation Officer, including, but not limited to, issues of domestic violence and relationships;

[28] If I could go back to my concerns with respect to alcohol, and we talked about this previously. You are not to have contact with anyone who is consuming alcohol or is under the influence of alcohol and, in particular, will not permit such individuals to remain in your residence. Eric, we talked about this. Do you understand what you have to do? If you have been drinking you are not to attend her residence. Otherwise, you will put her at risk.

15. You are to perform 60 hours of community service as and when directed by your Probation Officer, or such other person as your Probation Officer may designate. This community service is to be completed by the first six months of this order, unless extended by your Probation Officer. Any hours of counselling or programming may be counted, in the discretion of the Probation Officer, as community service hours;

[29] You recall that I mentioned that the Justice of the Peace had suggested to me that one of the opportunities for community service might be in the library, because they were looking for help there on Saturdays. So that would be something that you and the Probation Officer could pick up on right away.

[30] THE ACCUSED: Mm-hmm.

16. You are to take steps to enrol in Yukon College for the new year, and will use your best efforts to complete your school upgrading;
17. You are to participate in such other education or life skills programming as directed by your Probation Officer;
18. You are to make reasonable efforts to find and maintain suitable employment when not in full-time attendance at school, and provide your Probation Officer with all necessary details concerning those efforts;
19. You are to provide your Probation Officer with consents to release information with regard to your participation in any treatment, programming, counselling, employment or educational activities that you have been directed to do pursuant to this probation order;

20. You will use your best efforts to develop a support group of sober individuals and report the names of those individuals to your Probation Officer.

[31] Now, I am going to come to counsel in a minute to see if there is anything that they want to add. I just wanted to say, this sounds like a long, long list of things to do. Most of them are things that you have already undertaken to do or, are already doing. I do not think there is anything here that we did not talk about, is there? Is there anything that I said that jumps out as being, "Where did that come from? I don't think I can do that"?

[32] THE ACCUSED: No.

[33] THE COURT: No. If there is, you can tell your counsel and she will bring it to my attention.

[34] Before I deal with the other matter. Does anything concern you, Madam Crown? Are you content with that?

[35] MS. GRANDY: No.

[36] THE COURT: She is okay with all of that. Let me just speak very quickly, then, to the breach matter on February 27, 2010. At that time, she was found in the company of Mr. Thomassen in Whitehorse, contrary to her undertaking, and she was under the influence of alcohol as well. As indicated during our discussion during the hearing proper, taking into account the fact that she was in custody for five days pursuant to her arrest on that charge and that she then ended up living for

approximately 30 days at Kaushee's Place. The sentence for this charge will be one day in custody deemed served today. So there is nothing further happening with respect to that matter.

[37] With respect to both matters, the victim fine surcharges are waived.

[38] The police have in their possession one or two weapons that were used; they were kitchen knives that were used in the assault. It is mandatory that those be forfeited and I so direct.

[39] Anything else from Madam Crown?

[40] MS. GRANDY: It is a primary designated offence with respect to DNA.

[41] THE COURT: The DNA order will go as requested.

[42] MS. GRANDY: And if the remaining charges could be marked as withdrawn, please.

[43] THE COURT: Sorry, I did not hear that.

[44] MS. GRANDY: The remaining charges can be marked as withdrawn, please.

[45] THE COURT: Thank you.