

Citation: *R. v. Webb*, 2013 YKTC 55

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Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Judge Thompson

REGINA

v.

BRANDON LEE WEBB

Appearances:

Keith Parkkari

Lynn MacDiarmid

Counsel for the Crown

Counsel for the Defence

REASONS FOR SENTENCING

[1] THOMPSON T.C.J. (Oral): This was a vicious, horrific assault on Mr. Stewart; there is no other way to describe it. The accused, Mr. Brandon Webb, may not be entirely responsible, in the sense that someone ran over him with an all-terrain vehicle; he participated, but the nature of his participation is not entirely clear. Mr. Webb was not the driver at least, so he is given the benefit of the doubt, of course, at every turn, and he is given some benefit of the doubt on that. But still and all, it was a vicious assault as described, stomping on Mr. Stewart's head repeatedly, and we cannot lose sight of the

results thereof, although, ultimately, what I have to look at is the assault and what happened here. It seems to be a merciless assault, and this accused has a lengthy record that I have to take into account.

[2] The timeline provided to me described a series of out of control, non-compliance with anything during this period for which he is being sentenced here today. I do not want to lose sight of any of that. Deterrence and denunciation loom large in a case such as this. This accused's conduct has to be denounced and I do so, I hope, in the clearest possible terms. This - I will say again - was a vicious assault that almost defies human imagination of how someone can do such a vicious thing. That conduct is denounced, and certainly, this accused, Mr. Webb, and society generally, has to be deterred from this kind of conduct.

[3] Mr. Webb is not quite 20 years of age; he will be 20 in July. At his young age, and despite his lengthy record, both as an adult and as a young offender, Mr. Webb is entitled to have rehabilitation loom in the considerations. Moreover, there are *Gladue* considerations to be taken into account as well, in terms of balancing what is an appropriate sentence. In the end, I look to what is the global sentence, what is the result, and what is the intention that the Court has in terms of pronouncing sentence on this young adult.

[4] Mr. Webb has to take adult responsibility. A uniform point of view, even from the family, was "he must go to jail." In fact, I do not think there is anyone who could possibly disagree with that theory, and it has to be for a lengthy, substantial period in custody. What is, then, an appropriate sentence, given these considerations, and others I may

not have highlighted or mentioned here, still loom in terms of all of the material that I have read.

[5] I am favourable, if it is possible, to have a blend of a custodial sentence and probation to follow. Let me hasten to say that I tend to, on balance, agree with the Crown's general assertion that there has not been much shown in the track record thus far that would give us promise for rehabilitation. Nonetheless, it needs to be a consideration, and nonetheless, Mr. Webb is given the doubt, in the sense of the need to afford him at least the opportunity to be rehabilitated. I come down on the side of, in the result, having a period that is in a provincial institution, two years less a day, together with a period of probation, two years, I should think, along with all the terms set out; I am not going to deviate from them. So that is the result I seek.

[6] An appropriate sentence in my view is 30 months on the assault; I think it is within the range. It takes into account a balancing of the youth of this offender against what I have called already, more than once, a vicious assault that has to be denounced and deterred. Further, I would think, then, two months consecutive as follows on the drive disqualified, and in each instance on the possession of stolen property. The other offences would sound in two months concurrent to each other, but consecutive to the other sentences. The total, then, is six months, plus 30 months for a total of 36 months. I am going to effectively give Mr. Webb credit for one year and a day, and he will not end up in the penitentiary with the obvious objective which I set out at the beginning, that is the balancing in terms of those aspects.

[7] The terms of probation will be as set out in the report. There will also be a 10 year firearms' prohibition, a DNA order, and a three year driving prohibition in connection with the drive-disqualified.

[DISCUSSION RE CLARIFICATION OF SENTENCE BY CROWN]

[8] THE COURT: I might hasten to say that Mr. Webb, at his young age, will have many opportunities yet to go to the penitentiary if that is where he chooses to find himself. Anything like this, clearly, would result in just that, as far as I can see.

[9] I want to thank the family for the letters that you provided; they were instructive and helpful. I would certainly thank the professionals as well who provided the reports that we received today.

[DISCUSSION RE CLARIFICATION OF SENTENCE BY DEFENCE]

[10] THE CLERK: Should the Probation Order pertain to all files?

[11] THE COURT: My intention is to have the Probation Order. If there is an easier way to do that, in terms of one charge, or what makes sense.

[12] MR. PARKKARI: For Madam Clerk, I expect that administratively just tying it to the aggravated assault may be easiest.

[13] THE COURT: Perfect. I agree with that; go with the most significant and clearly the most glaring offence here.

[14] THE CLERK: Victim Fine Surcharge?

[15] THE COURT: Waived in the circumstances of a custodial sentence.

[16] MS. MACDIARMID: Thank you.

THOMPSON T.C.J.