

Citation: *R. v. Charlie*, 2018 YKTC 44

Date: 20181212
Docket: 17-00191
17-00191B
17-00488A
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before His Honour Judge Cozens

REGINA

v.

FRANKLIN JUNIOR CHARLIE

Appearances:
Noel Sinclair
Lynn MacDiarmid

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCE

[1] Franklin Junior Charlie was convicted after trial of the offence of aggravated assault contrary to s. 268(2) of the *Criminal Code*, as well as an offence contrary to s. 259.

[2] At the date of his sentencing hearing, Mr. Charlie also entered guilty pleas to having committed offences contrary to ss. 253(1)(b), 259 and 145(3).

[3] With respect to the s. 268(2) conviction, in my Reasons for Judgment, *R. v. Charlie*, 2018 YKTC 26, para. 72, I stated that on the offence date of June 18, 2017:

... Mr. Olsen was clearly the victim of a serious assault.I find that Mr. Olsen either specifically went to Mr. Amos Dick's residence or that he was passing by on his way elsewhere and that he engaged in a verbal confrontation with Mr. Ollie and Mr. Charlie outside of Mr. Dick's residence. This verbal confrontation escalated into a physical confrontation in which I am satisfied that Mr. Olsen was the aggressor. I find that he knocked Mr. Charlie to the ground and then turned to Mr. Ollie to begin fighting with him. Mr. Ollie, with legal justification, struck Mr. Olsen, as he testified to, and threw him to the ground. At this point, Mr. Charlie kicked Mr. Olsen twice, striking him in the head, and causing the injuries suffered by Mr. Olsen, in particular, those to his left eye area.

[4] In paras. 5 and 6, I noted Mr. Olsen to have suffered injuries as follows:

5 ...

- a 1 cm laceration over his left eye;
- a fracture of the orbital floor and inferior orbital rim in the left eye area, known as a "left orbital blowout fracture", with a long-term prognosis placing him at an increased risk for high blood pressure, glaucoma, and possibly permanent vision damage;
- an abrasion to the right shoulder; and
- facial bruising.

6 I note that the treatment and community health notes that form part of the medical information that was filed noted a bruise and laceration on the lower right leg and pain in the left rib area...

[5] At trial, counsel for Mr. Charlie conceded that he had been driving his All-Terrain vehicle that same evening and morning while he was disqualified from doing so as a result of a one-year driving prohibition imposed September 13, 2016.

[6] With respect to the ss. 253(1)(b) and 259 offences committed on October 6, 2017, the facts are that in the early evening hours RCMP officers in Whitehorse responded to an anonymous complaint of a possible impaired driver. They located the

vehicle and followed it into a parking lot. The vehicle, which was being driven by Mr. Charlie, struck a parked car while attempting to park.

[7] Mr. Charlie displayed symptoms of intoxication and, after being arrested for impaired driving, provided two breath samples of 270 mg/%.

[8] As a result of consecutive one-year driving prohibitions imposed at the September 13, 2016 sentencing hearing, Mr. Charlie was still subject to a driving prohibition.

[9] With respect to the s. 145(3) offence, on August 29, 2018, Mr. Charlie was bound by a recognizance that required him to remain 40 km away from the community of Ross River, except in prescribed allowable circumstances. On that date, Mr. Charlie was located in Ross River contrary to the terms of the recognizance.

Positions of Counsel

Crown Counsel

[10] Crown counsel submits that Mr. Charlie should be sentenced to a period of custody of three years in respect of the June 18, 2017 ss. 268(2) and 259 offences; an additional consecutive sentence of three to five months on the October 6, 2017 ss. 253(1)(b) and 259 offences; and a further 60 days on the s. 145(3) offence.

[11] Counsel is also seeking a three-year driving prohibition.

[12] Counsel submits that the rehabilitative options within the Yukon for Mr. Charlie are insufficient for his needs. Only a federal sentence will provide him with access to appropriate rehabilitative programming.

Defence Counsel

[13] Counsel for Mr. Charlie submits that an appropriate sentence would be in the range of 12 months for the s. 268(2) offence.

[14] For the remaining offences, counsel submits that the four and one-half months of remand credit Mr. Charlie had at the time of the sentencing hearing would be appropriate.

[15] Counsel submits that a three-year period of probation should follow.

[16] Counsel submits that, in general, Mr. Charlie has been making progress with respect to reducing his involvement in the criminal justice system and that further rehabilitation can be accomplished through a territorial sentence followed by probation.

Victim Impact

[17] No Victim Impact Statement was filed, despite Mr. Olsen having been provided the opportunity to do so. I have no difficulty concluding on the evidence that the injuries Mr. Olsen suffered, besides the short-term impact on him, will continue to have a detrimental impact, given the uncertainty of the long-term prognosis.

Circumstances of Mr. Charlie

[18] Mr. Charlie is a 33-year-old member of the Kaska Nation from Ross River.

[19] Mr. Charlie is well-known to the Yukon Justice system. He has a lengthy criminal record, a copy of which is attached as Appendix “A” to this decision.

[20] Mr. Charlie’s first adult sentence of significance was imposed by Faulkner J. in 2008 in respect of 14 offences. Mr. Charlie received a custodial disposition of two years plus one day in respect of a s. 348(1)b) offence, with all other custodial dispositions made concurrent to this sentence. The sentencing decision is set out in **R. v. Charlie**, 2008 YKTC 9.

[21] Of particular significance for the present sentencing hearing are Mr. Charlie’s prior convictions for two s. 344 offences, his ss. 266 and 270(1) convictions, his two s. 249(1)(a) convictions, his two ss. 249.1(1) convictions, and his s. 253(1)(b) conviction.

[22] On December 16, 2011, Mr. Charlie received an effective sentence of 33 months’ custody from Lilles J. for robbery contrary to s. 344(b).

[23] In his Reasons for Sentencing, **R. v. Charlie**, 2012 YKTC 5, Lilles J., sets out in considerable detail the personal circumstances of Mr. Charlie’s life.

[24] Lilles J. had before him a **Gladue** Report, (**R. v. Gladue**, [1999] 1 S.C.R. 688), a MediGene FAS Diagnostic Clinic FAS evaluation, and a Psycho-Educational Assessment.

[25] In paras. 9 and 35 – 40 of his decision, Lilles J. stated as follows:

9 This history of F.C.'s family is important because it identifies a direct link between the colonization of the Yukon and the government's residential school policies to the removal of children from their families into abusive environments for extended periods of time, the absence of parenting skills as a result of the residential school functioning as an inadequate parent, and their subsequent reliance on alcohol when returned to the communities. F.C.'s FASD [Fetal Alcohol Spectrum Disorder], is the direct result of these policies of the Federal Government, as implemented by the local Federal Indian Agent. Ironically, it is the Federal Government who, today, is prosecuting Mr. F.C. for the offences he has committed as a victim of maternal alcohol consumption.

...

35 In finding a just and appropriate sentence for Mr. F.C., I must consider the circumstances that have brought him before the Court, both individual and systemic. In the course of my consideration of an appropriate sentence, I must ask the following questions:

For this offence, committed by this offender, harming this victim, in this community, what is the appropriate sanction under the *Criminal Code*? What understanding of criminal sanctions is held by the community? What is the nature of the relationship between the offender and his or her community? What combination of systematic or background factors contributed to this particular offender coming before the courts for this particular offence? How has the offender who is being sentenced been affected by, for example, substance abuse in the community, or poverty, or overt racism, or family or community breakdown? Would imprisonment effectively serve to deter or denounce crime in a sense that would be significant to the offender and community, or are crime prevention and other goals better achieved through healing? What sentencing options present themselves in these circumstances? (*Gladue, supra*, para. 80)

36 While not couched in terms of proportionality, these questions highlight the centrality of an individual's experience as an Aboriginal person to a determination of a fit and just proportionate sentence and again relate back to s. 718.1 of the *Criminal Code* (*R. v. Cooper*, 2010 ONCA 452, at para. 91).

37 As demonstrated by the *Gladue* Report filed in this matter and as discussed earlier in this decision, Mr. F.C.'s FASD is a direct result of the residential school policies of the Federal Government. There is an indisputable link between his Aboriginal status and his disability.

...

38 As stated in the MediGene FAS Evaluation:

FASD is not an excuse for antisocial behaviour. F.C. should be held accountable for his behaviours and salient consequences must be provided.

This means that the consequences should be meaningful, proportionate to the seriousness of the offence and his moral blameworthiness, and reflect his experience as an Aboriginal person. Except in those few instances where concerns relating to protection of the public overwhelm these considerations, the punitive aspect of the sentence imposed will be reduced for offenders like Mr. F.C.

39 I have already discussed the impact of Mr. F.C.'s FASD diagnosis has on the relevant sentencing objectives. Denunciation and general deterrence are not apt, as, given Mr. F.C.'s limitations, they can have little application to other members of the community. Similarly, because of his limited understanding of the big picture or the impact of his behaviours, specific deterrence will not be met by punitive sanctions.

40 Mr. F.C. is not affected by prison as others might be. As pointed out in the FAS Assessment, he finds it a safe place with clear rules and expectations. He functions well in that setting. But it is not a rehabilitative environment for him, because the programs do not recognize and build on his strengths. As a result, after spending two years in a penitentiary, he reoffends again, almost immediately. As stated in the MediGene assessment, prison and cognitive-based programming do not contribute to specific deterrence or rehabilitation of most FASD offenders like Mr. F.C. When he is released from prison again, he will reoffend again, unless he is provided with the supervision, structure and programming identified in his FAS Evaluation.

[26] On April 23, 2014, I sentenced Mr. Charlie to an effective sentence of 14 months and nine weeks' custody for a further offence of robbery (*R. v. Charlie*, 2014 YKTC 17).

[27] In addition to the documents which were before Lilles J. in his sentencing hearing for Mr. Charlie, I had an updated *Gladue* Report and a Psychiatric Assessment that had

been ordered under s. 672.11 to assess Mr. Charlie's mental status at the time of the offence.

[28] I did not repeat many of the details of Mr. Charlie's personal circumstances as set out in Lilles J.'s decision, although I was certainly cognizant of them and took them into account in my decision.

[29] At para. 78, I stated as follows:

78 There is considerable information before me regarding Mr. Charlie's challenges and his capabilities. It may be that, on a good day, and with the structured supports in place, he can operate at a level above the 10- to 12-year-old range the MediGene evaluation concludes he functions at and that was relied upon by Lilles J. in sentencing him. However, in the absence of such supports, it is clear from the materials provided that Mr. Charlie struggles to control his behaviours. As noted in these materials, when Mr. Charlie consumes alcohol, things deteriorate quickly and his negative behaviours are magnified. Underlying Mr. Charlie's decision to consume alcohol are, of course, the cognitive limitations he has as a result of his suffering from FASD. It is a circle from which the avenues of escape are narrow and limited and one that Mr. Charlie is often drawn back into, in large part due to a lack of support. Notwithstanding the strength and capabilities that Dr. Lohrasbe knows Mr. Charlie to, at least at times, and in pockets, possess, I find that Mr. Charlie is an individual of diminished moral culpability to whom the objectives of denunciation and deterrence are of somewhat limited applicability.

[30] In upholding the sentence I imposed, the Yukon Court of Appeal (*R. v. Charlie*, 2015 YKCA 3), also considering the decision of Lilles J., stated as follows in paras. 32, 33, 42 and 43:

32 The evidence is clear that Mr. Charlie suffers from the effects of FAS and that the effect is serious, although potentially not as serious as was thought at the time of sentencing before Lilles T.C.J. Nonetheless, the FAS effects are directly linked to his parents' forced placement in a residential school. Specifically, the FAS is the product of Mr. Charlie's mother consuming high levels of alcohol during her pregnancy, which

consumption of alcohol is linked to her experience in the residential schools.

33 The judge was aware that these circumstances, while important and relevant to sentencing, do not relieve Mr. Charlie from responsibility for the offence; they do, however, reduce his moral culpability, in keeping with the jurisprudence in *R. v. Gladue*, [1999] 1 S.C.R. 688 and *R. v. Ipeelee*, 2012 SCC 13.

...

42 Mr. Charlie presents a serious challenge to the sentencing process. He is seriously compromised, but has the potential to do well in a controlled community environment. Although he is the author of his misdeeds, they flow from his inability to control himself when he consumes alcohol or drugs. This inability derives from his FAS, which, in turn, originated from problems flowing from his Aboriginal background. Without rehabilitation, his pattern of offending clearly will continue. With rehabilitation, he has a chance to lead an effective life. Society is best served if that were to occur.

43 These are the factors that led the judge to impose the sentence that he did. In my view, he did not err. In a sense, this may be Mr. Charlie's last chance. He is given the opportunity to turn his life around. If he does not, society cannot continue to be compromised by his conduct.

[31] Since the Court of Appeal decision, Mr. Charlie's criminal record consists of ss. 266, 270, 733.1(1) x 7, 145(3) x 2, 129, 249.1(1) and 253(1)(b) convictions.

[32] Setting aside for a moment the current matters set for disposition, I concur, to a limited extent, with counsel for Mr. Charlie's submission that Mr. Charlie has made some limited progress in moderating his violent behaviours. There have been no further offences of robbery for example or behaviours consistent with this type of offence. The ss. 266 and 270 convictions were for offences that occurred in 2015. I would not say, however, that Mr. Charlie has taken particularly significant steps to turn his life around.

[33] In saying this, I recognize that the consequential impact of Mr. Charlie's FASD diagnosis not only impacts the choices he makes and the behaviours he exhibits in

committing criminal offences, it also impacts his abilities to make the right choices and commitment to follow through with his rehabilitative steps.

[34] Clearly, however, Mr. Charlie continues to struggle with compliance with court orders. He continues to commit offences that put the public at risk.

[35] Mr. Charlie has a long way to go before he can be considered to not pose a risk of danger to the community. However, to the extent that the Court of Appeal stated that this may have been Mr. Charlie's "last chance", obviously my discretion in sentencing is not fettered. I must consider the very different circumstances in this case from those in the case for which he had been sentenced and was before the Court of Appeal, in imposing sentence in this case.

[36] I understand that as of the date of the sentencing hearing Mr. Charlie had attended four one-on-one counselling sessions and two more were scheduled.

[37] Mr. Charlie had expressed interest in attending residential treatment and had completed an application for attendance at Tsow Tse Lum.

[38] Mr. Charlie had enrolled in the Substance Abuse Management Program at Whitehorse Correctional Centre ("WCC"), slated to start November 7.

[39] Mr. Charlie continues to be involved, as he has been since 2012, with the Fetal Alcohol Syndrome Society of the Yukon ("FASSY").

Case Law

[40] In *R. v. Quash*, 2018 YKTC 43, a sentencing decision I rendered last week after Mr. Quash was convicted of the offence of aggravated assault, I reviewed numerous cases involving the sentencings of offenders for the offence of aggravated assault.

[41] The *Quash* case involved one blow struck with a knife, which caused a severe laceration to the face of the victim from his chin to his ear, with a life-long impact on the victim. I found that the offender, while having a subjective belief that he may need to repel the threat of force being used against him, used force that far exceeded what was acceptable in the circumstances. Mr. Quash received a 10-month custodial disposition, followed by a 30-month probation order.

[42] In *Quash*, I concurred with the reasoning of Lilles J. in *R. v. Porter*, 2017 YKTC 13, that the general range of sentencing in cases of aggravated assault is from six months to six years' custody.

[43] In saying this, I am aware that in *R. v. Craig*, 2005 BCCA 484, the Court of Appeal stated that in the circumstances of that case, the range of sentence for similar cases of aggravated assault was from between 16, 18 or 24 months to six years. Additionally, in *R. v. Bland*, 2006 YKTC 103, Faulkner J. held that the range of sentence for aggravated assault was between 16 months to six years in the circumstances of that case.

[44] However, the nature of an aggravated assault can vary substantially, from a deliberate and intentional act without any provocation or aspect of self-defence, to a

spontaneous and unplanned response to an act of provocation, or use of force in response to an actual or perceived threat of force, or an excessive act within a consensual fight for example.

[45] The nature of the injuries can also vary substantially from life-threatening and/or life-altering to injuries of a much lesser degree.

[46] As stated in para. 39 of *R. v. Kim*, 2010 BCCA 590, and by the Court of Appeal in para. 30 of *Charlie*, a range is simply a set of guidelines and is not a hard and fast limitation with respect to an available sentence. A fit and appropriate sentence needs to be imposed taking into consideration all the relevant purposes and principles of sentencing, and the particular circumstances of the offence and the offender before the court.

[47] In my opinion, the generally applicable sentencing range of six months to six years for an aggravated assault offence encompasses most of the circumstances of an offence and an offender being sentenced for the offence of aggravated assault.

Application to Mr. Charlie

[48] Unlike in the prior s. 344 convictions, Mr. Charlie did not go out with the intent to commit an offence in which there would be the use of violence. Mr. Charlie was reacting to an initial act of physical aggression by Mr. Olsen, in which Mr. Olsen initially had the upper hand.

[49] However, it was clear that Mr. Charlie's actions in kicking Mr. Olsen in the head when he was in a vulnerable position went far beyond any acceptable use of force in the circumstances.

[50] Unlike in **Quash**, where the aggravated assault was committed at a time when Mr. Quash had an objectively reasonable subjective fear that he may be required to use force to counter the threat of force being used against him, at the time that Mr. Charlie struck Mr. Olsen, the threat of force had been largely negated. Mr. Olsen was in a vulnerable and defenceless position, and Mr. Charlie took advantage of Mr. Olsen's vulnerability to assault him.

[51] The aggravating factors with respect to the s. 268(2) offence are as follows:

- The use of force on the vulnerable victim, involving kicks to the head;
- The seriousness of the injuries suffered; and
- Mr. Charlie's significant criminal record.

[52] The mitigating factors are as follows:

- Mr. Charlie was responding to an initial act of aggression; and
- The **Gladue** factors, including Mr. Charlie's diagnosis as suffering from FASD and associated cognitive issues.

[53] Mr. Charlie lacks the mitigating factor of a guilty plea in respect of the s. 268(2) offence. He has entered guilty pleas to the remaining offences and, notwithstanding the not guilty plea to the s. 259 offence from June 18, 2017, he did not contest his guilt at trial. He is entitled to the mitigating factor of a guilty plea in respect of these other offences.

[54] Crown counsel filed a Correctional Service of Canada Program Description for the Integrated Correctional Program Model (ICPM). This document includes an Aboriginal Multi-Target Stream component. The Introduction to the High Intensity Aboriginal Multi-Target Program states:

The high intensity Aboriginal Multi-Target Program is an integrated program for high-risk offenders and target dynamic factors related to criminal behaviour via social learning and cognitive-behavioural strategies.

The main objectives of the programs are to teach skills that help reduce risky and/or harmful behaviour and help change anti-social attitudes, beliefs and associates including goal-setting, problem-solving, interpersonal and communication skills, coping skills, arousal reducing strategies and self-management skills. The program has been developed to teach Aboriginal offenders effective strategies and skills for risk management in a culturally-appropriate context.

[55] There is no information filed before me with respect to the programming currently available at Whitehorse Correctional Centre (“WCC”).

[56] I am aware, based upon my experience as counsel and then as a sitting judge in the Yukon, that both the Federal Correctional system and WCC offer programming options, and that perhaps more in the way of programming options is available on paper within the Federal Correctional system.

[57] Certainly, the programming described in the ICPM would appear to be useful and helpful for Mr. Charlie.

[58] I am not certain, however, how much of this programming Mr. Charlie would actually have the opportunity to benefit from. As I noted in *R. v. Taylor*, 2017 YKTC 3, in paras. 115 – 143 and 151, 152, what is theoretically available for programming on

paper, is not always available, accessible and beneficial, and particularly so in the case of Aboriginal offender programming.

[59] Simply on the basis that there may be, or even is likely to be, better programming in the Federal Correctional system for Mr. Charlie than what is available in WCC, I cannot impose a sentence on Mr. Charlie for the aggravated assault that exceeds what I consider to be appropriate, taking into account the purposes and principles of sentencing, the circumstances of this offence and of Mr. Charlie, and the jurisprudence in this area.

[60] What I see in the information provided and recommendations within the various reports provided to me is that little has changed in the personal circumstances of Mr. Charlie since I sentenced him in 2014.

[61] He continues to require structured support in his day-to-day living situation. While he will receive some benefit from in-custody counselling and other programming, it is when Mr. Charlie returns to live in his community that the necessary structures and supports need to be available, if Mr. Charlie is to avoid continuous contact with the criminal justice system.

[62] Of course, Mr. Charlie needs to make the right decisions that will enable him to take advantage of these structures and support. One of these decisions, perhaps the most important, will be to stop consuming alcohol, as Mr. Charlie's addiction to and consumption of alcohol is a significantly contributing factor to his commission of criminal offences.

[63] Taking into account the aggravating and mitigating factors, the circumstances of this offence and those of Mr. Charlie, I find that a sentence of 14 months' custody is appropriate for the s. 268(2) offence.

[64] Crown counsel has filed a Notice of Intention to Seek Greater Punishment with respect to the s. 253(1)(b) offence. The minimum sentence is therefore 30 days and a two-year driving prohibition. With the aggravating factors of the prior convictions for ss. 249(1)(a) and 249.1(1) offences, however, as well as the extremely high blood alcohol readings, I find that an appropriate sentence is one two months' custody and a three-year driving prohibition. This sentence will be served consecutive to the s. 268(2) offence.

[65] Mr. Charlie has no prior convictions for having committed a s. 259 offence. It is generally the case in the Yukon that a custodial disposition in the 30-day range is imposed for a first s. 259 offence. It is aggravating with respect to the October 6, 2017 offence that Mr. Charlie, while already charged with a s. 259 offence, was not dissuaded from continuing to drive while prohibited from doing so. The sentence will be one month for the June 18, 2017 offence, and a further one-month consecutive for the October 6, 2017 offence. These sentences will be served consecutively to the sentence imposed for the ss. 253(1)(b) and 268(2) offences.

[66] For the s. 145(3) offence, the sentence will be 45 days. In consideration of the principle of totality, this sentence will be served concurrently with the ss. 259 offences.

[67] Mr. Charlie has been in custody on remand for a total of 142 days, which at the usual credit of one and one-half to one, allows for a total of 213 days or the equivalent of approximately seven months' custody to be applied to his sentence.

[68] I will therefore allow for the sentences for the ss. 259, 253(1)(b) and 145(3) offences to be calculated as time served, therefore using four months of Mr. Charlie's available credit for his time in remand custody.

[69] The additional available three months' remand credit will be applied to his sentence for the s. 268(2) conviction, therefore leaving him a remanet of 11 months' custody.

[70] Mr. Charlie will be subject to a probation order for a period of 30 months. The terms of the Probation Order will be as follows:

1. Keep the peace and be of good behaviour;
2. Appear before the court when required to do so by the court;
3. Notify the Probation Officer, in advance, of any change of name or address, and, promptly, of any change in employment or occupation;
4. Have no contact directly or indirectly or communication in any way with Steven Olsen, except with the prior written permission of your Probation Officer. Remain five metres away from any known place of residence, employment or education of Steven Olsen except with the prior written permission of your Probation Officer;

5. Remain within the Yukon unless you obtain written permission from your Probation Officer or the court;
6. Report to a Probation Officer immediately upon your release from custody and thereafter, when and in the manner directed by the Probation Officer;
7. Reside as approved by your Probation Officer and not change that residence without the prior written permission of your Probation Officer;
8. For the first 15 months of this order, abide by a curfew by being inside your residence between 10:00 p.m. and 6:00 a.m. daily except in the actual presence of a responsible adult approved in advance by your Probation Officer, or otherwise as permitted in writing by your Probation Officer. You must answer the door or the telephone for curfew checks. Failure to do so during reasonable hours will be a presumptive breach of this condition;
9. Not be outside your residence if under the influence of alcohol;
10. Not attend any premises whose primary purpose is the sale of alcohol including any liquor store, off sales, bar, pub, tavern, lounge or nightclub;
11. Attend and actively participate in all assessment and counselling programs as directed by your Probation Officer, and complete them to the satisfaction of your Probation Officer, for the following issues: substance abuse, alcohol abuse, anger management and any other issues identified by your Probation Officer, and provide consents to release information to your Probation Officer

- regarding your participation in any program you have been directed to do pursuant to this condition;
12. Participate in such educational or life skills programming as directed by your Probation Officer and provide your Probation Officer with consents to release information in relation to your participation in any programs you have been directed to do pursuant to this condition;
 13. Make reasonable efforts to find and maintain suitable employment and provide your Probation Officer with all necessary details concerning your efforts;
 14. Not possess any firearm, ammunition, explosive substance or any weapon as defined by the *Criminal Code* except with the prior written permission of your Probation Officer.

[71] Mr. Charlie will provide a sample of his DNA.

[72] He will be subject to a firearms prohibition for a period of 10 years.

[73] Mr. Charlie will pay the victim surcharges of \$200 each on the two indictable convictions and \$100 each on the three summary convictions for a total amount of \$700. I order this to be payable forthwith, note Mr. Charlie to be in default, and direct that he serve his default time concurrent to the time remaining to be served on the s. 268(2) conviction.

[74] As noted earlier, with respect to the s. 253(1)(b) conviction, Mr. Charlie is prohibited for operating a motor vehicle on any street, road, highway or public place for a period of three years.

COZENS T.C.J.

Appendix "A"



Public Prosecution Service of Canada
Service des poursuites pénales du Canada

**Consolidated Criminal Record
From CPIC and PPSC Records**

**CHARLIE, Franklin Junior - DOB: 1985-01-18
(aka CHARLIE, Franklin Peter, CHARLIE, Franklin Slim)**

Conviction Date/ Community	Charge/ RCMP/ Docket	Disposition
<u>Youth Convictions:</u>		
1999-03-24 Ross River YT	1. s. 348(1)(a) B&E with intent	1. 4 months secure custody & probation 1 year
	2. s. 348(1)(b) x5 B&E & Commit	2. 4 months secure custody concurrent
	3. s. 430(4) Mischief under \$5000 (RCMP: 98-575)	3. 4 months secure custody concurrent
2001-01-11 Whitehorse, YT	1. s. 145(3) Fail to comply w. u/t	1. 2 weeks open custody
	2. s. 335 x2 Take auto w/o consent (RCMP: 00-641)	2. 2 weeks open custody on each chg. concurrent but consecutive, probation 6 months
2001-05-02 Ross River, YT	1. s. 355(1) Possession of property obtained by crime over \$5000 (RCMP: 01-105)	1. Probation 6 months

The above noted additions to the attached CPIC criminal record document arise from a review of our PPSC Yukon Regional Office internal records. The Crown intends to rely upon both the CPIC records and the above noted supplementary PPSC records for trial or sentencing purposes. Please advise Crown counsel in advance of the trial or the sentencing hearing if you have any concerns about the accuracy of the CPIC records or any of the above noted supplementary PPSC records.

Conviction Date/ Community	Charge/ RCMP/ Docket	Disposition
<u>Adult Convictions:</u>		
2004-08-11 Ross River, YT	1. s. 733.1(1) Fail to comply with probation order	1. Time served (14 days)
2004-12-06 Ross River, YT	1. s. 145(3) Fail to comply w. u/t (DOCKET: 04-00205A)	1. 1 day jail (credit for 50 days pre-sentence custody)
2004-12-06 Whitehorse, YT	1. s. 145(1)(a) Escape lawful custody	1. 1 day (50 days pre-sentence custody)
	2. s. 733.1(1) Fail to comply with probation order	2. 1 day (50 days pre-sentence custody)
	3. s. 733.1(1) Fail to comply with probation order	3. 14 days pre-sentence custody
2006-03-29 Whitehorse, YT	1. s. 733.1(1) Fail to comply with probation order	1. 30 days conditional sentence
	2. s. 430(4) Mischief under \$5000 (RCMP: 05-730061)	2. 30 days conditional sentence consecutive & probation 9 months
	3. s. 145(3) x2 Fail to comply with u/t	3. 30 days conditional sentence concurrent
2008-02-01 Whitehorse, YT	1. s. 348(1)(b) B&E & theft	1. 2 years & 1 day jail
	2. s. 348(1)(b) B&E & commit mischief	2. 6 months jail concurrent
	3. s. 249(1)(a) Dangerous operation of a motor vehicle	3. 6 months jail concurrent, 2 year driving prohibition

The above noted additions to the attached criminal record result from a review of various government files or databases. The Crown intends to rely upon these records of convictions for trial or sentencing purposes. Please advise Crown counsel in advance of the trial or sentencing hearing if you have any concerns about the accuracy of the above noted entries.

Conviction Date/ Community	Charge/ RCMP/ Docket	Disposition
	4. s. 354 Possession of property obtained by crime under \$5000	4&5 3 months on each charge concurrent and concurrent
	5. s. 430(3) Mischief over \$5000	
	6. s. 249(1)(a) Dangerous operation of a motor vehicle	6. 4 months concurrent, 2 year driving prohibition
	7. s. 354 Possession of property obtained by crime under \$5000	7. 3 months concurrent
	8. s. 249.1(1) Flight while pursued by peace officer	8. 2 months concurrent
	9. s. 145(3) Fail to comply with u/t	9. 30 days concurrent
	10. s. 430(1)(a) Mischief	10. 18 months concurrent
	11. s. 733.1(1) Fail to comply with probation order	11&12 30 days on each charge concurrent and concurrent
	12. s. 145(2)(b) Fail to attend court (RCMP: 07-1235241, 06-952042, 07-914035, 07-538134, 07-538079, 07-120910)	
	13. s. 145(3) x2 Fail to comply w. Recog. (Pacific Institute RTC)	13. 30 days on each charge concurrent and concurrent

The above noted additions to the attached criminal record result from a review of various government files or databases. The Crown intends to rely upon these records of convictions for trial or sentencing purposes. Please advise Crown counsel in advance of the trial or sentencing hearing if you have any concerns about the accuracy of the above noted entries.

Conviction Date/ Community	Charge/ RCMP/ Docket	Disposition
2011-12-16 Ross River, YT	1. s. 145(3) Fail to comply with u/t (RCMP: 10-1166379)	1. 30 days jail
	2. s. 344(b) Armed Theft (RCMP: 10-516919)	2. 2 years and 9 months jail (credit for 27 months pre- sentence custody), 3 year Probation, 10 year Firearm Prohibition
	3. s. 145(2) Fail to attend court (RCMP: 10-516919)	3. 30 days jail
2014-04-23 Ross River, YT	1. s. 344 Theft (RCMP: 13-546788)	1. 9 weeks jail (in addition to 14 months pre-sentence custody), 3 year Probation, Lifetime Firearm Prohibition
2015-02-11 Whitehorse, YT	1. s. 733.1(1) Fail to comply with probation order (RCMP: 14-1358884)	1. Pre-sentence custody, 9 days
2015-08-21 Whitehorse, YT	1. s. 145(3) Fail to comply w. Recog.	1&2 1 month on each charge concurrent
	2. s. 145(3) Fail to comply w. Recog. (RCMP: 15-882886)	
2015-08-21 Whitehorse, YT	1. s. 266 Assault	1. 4 months
	2. s. 270(1) Assault peace officer	2. 3 months
	3. s. 129 Obstruct peace officer (RCMP: 15-403491)	3. 2 months

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Conviction Date/ Community	Charge/ RCMP/ Docket	Disposition
2015-11-04 Whitehorse, YT	1. s. 733.1(1) Fail to comply with probation order (RCMP: 15-1370082)	1. 30 days jail
2016-09-13 Whitehorse, YT	1. s. 249.1(1) Flight while pursued by peace officer 2. s. 253(1)(b) Driving w. more than 80 mgs of alcohol in blood (RCMP: 16-20519)	1. 1 day (credit for the equivalent of 90 days pre- sentence custody), 1 year driving prohibition 2. 1 day jail, 1 year driving prohibition
2016-09-13 Whitehorse, YT	1. s. 733.1(1) Fail to comply with probation order (DOCKET: 13-00104D)	1. 1 day deemed served (in addition to 6 days pre- sentence custody)
2016-09-13 Whitehorse, YT	1. s. 733.1(1) Fail to comply with probation order (RCMP: 16-865072)	1. 1 day (credit for 6 days pre- sentence custody)
2017-04-07 Whitehorse, YT	1. s. 733.1(1) Fail to comply with probation order (RCMP: 17-85172)	1. 21 days (9 days pre- sentence custody) /
2017-04-07 Whitehorse, YT	1. s. 733.1(1) Fail to comply with probation order (RCMP: 16-1244965)	1. 1 day (30 days pre-sentence custody)

The above noted additions to the attached criminal record result from a review of various government files or databases. The Crown intends to rely upon these records of convictions for trial or sentencing purposes. Please advise Crown counsel in advance of the trial or sentencing hearing if you have any concerns about the accuracy of the above noted entries.

Conviction Date/ Community	Charge/ RCMP/ Docket	Disposition
2017-04-07 Whitehorse, YT	1. s. 733.1(1) Fail to comply with probation order (RCMP: 17-305235)	1. 30 days concurrent

Date of Verification: May 30, 2018

Initials: jmp

Signature: 

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