

Citation: *R. v. Blackjack*, 2013 YKTC 31

Date: 20130402
Docket: 12-00592B
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Chief Judge Cozens

REGINA

v.

STEWART CLYDE BLACKJACK

Appearances:
Ludovic Gouaillier
Melissa Atkinson

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCING

[1] COZENS C.J.T.C (Oral): Stewart Clyde Blackjack has entered guilty pleas to having committed an offence contrary to s. 267(b) of the *Criminal Code* and an offence contrary to s. 266 of the *Criminal Code*. These offences took place between June 26, 2012 and August 24, 2012. Crown has elected to proceed by indictment on these matters.

[2] An Agreed Statements of Facts was filed. I will not repeat it in detail, but in brief, Mr. Blackjack was in a relationship with Patricia Evelyn Wight that ended up in them becoming married. Ms. Wight suffers, and has for years, from multiple sclerosis and the associated physical limitations that come with it. Mr. Blackjack assaulted

Ms. Wight regularly over the period of time that is alleged; punching, slapping, kicking, choking and pinching her, leaving her with multiple bruises and scratches. On one occasion during an assault, he broke her finger. I have seen photographs, and I have read the Victim Impact Statement. While Ms. Wight may have recovered from the physical injuries, to a large extent, it is clear that the emotional injuries were substantial.

[3] Crown and defence come before the Court with a joint submission on custody and a range of probation between 18 to 24 months. Mr. Blackjack has a criminal record; it is not particularly lengthy. He is 47 years of age, a member of the Little Salmon Carmacks First Nation. Mr. Blackjack's record goes back to 1991. The only offence of violence on his record is in 2008 and he received a three-year sentence for sexual assault. He was released from custody in 2010 and shortly thereafter ended up in a relationship with Ms. Wight.

[4] A Pre-Sentence Report has been provided. Mr. Blackjack comes from what seems to be a fairly stable and supportive family. He did not mention any violence or form of abuse. His parents quit drinking in the 1970s. Mr. Blackjack was, however, taken to the Yukon Hall Residential School with some of his siblings, and he has mixed emotions and feelings about what took place there. Most significant, from his point of view, was the emotional stress, in large part associated from a belief that his parents had forsaken him. He suffered the loss of a former fiancée that, it is unclear, appears to have been murdered. He has not had any large number of significant relationships.

[5] Alcohol was not a factor in these offences, as I understand it, and alcohol is not

an issue for him at this point in life, although it was earlier on in his life. Mr. Blackjack is rated by the LS/CMI as being at a high risk for reoffending, the elevation in large part due to struggles with family, marital, and leisure/recreational activities. It is quite clear that Mr. Blackjack struggles with understanding the appropriate ways to handle himself in domestic relationships. As I understand it, Ms. Wight is proceeding with divorce and there is, at this point in time, no intention that the parties would end up back together. This is something that Mr. Blackjack has struggled with, but as it appears to the author of the Pre-Sentence Report, is prepared to accept. He clearly is remorseful for what he has done.

[6] While the guilty pleas on the two charges that he is being sentenced for today were entered quite early, there were other issues associated with this matter that took time to be resolved, but I have no issue giving him full credit for his guilty pleas. As I understand as well, it would have been extremely stressful on the complainant to testify in this case, and that is certainly something that she is not required to do as a result of Mr. Blackjack's guilty pleas.

[7] He has letters of support. I note in some of these letters of support that while they know Mr. Blackjack in one context, and they state that it is not like him to commit acts of violence, the reality is that he has on more than one occasion. That said, there are certainly some positives in these letters. These include the fact that Mr. Blackjack has completed some violence prevention programming while in custody, and has very positive reports from his participation in that programming.

[8] He has been in custody since August 25th, and when I look at the math, I am in agreement with the counsels' position that 11 months pre-trial custody credit should be given. That is at time-and-a-half, and as I understand it, jointly put forward. Therefore, with respect to the s. 267(b) charge, the sentence will be 11 months' time served. With respect to the 266 charge, it will be seven months consecutive.

[9] There will be a period of probation. I am going to make the probation two years. If Mr. Blackjack does well, it can certainly be shortened to something less than that. So, really, the control as to how long it is will, to a large extent, be placed back in his hands because the two years is to give him the maximum opportunity available to deal with some of the issues that he needs to deal with. If he is doing well with that, I would expect that upon a favourable review, which would likely have a lot of agreement, this Probation Order could be shortened. The terms of the Probation Order are to:

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 notify the Probation Officer of any change of employment or occupation;
4. Report to a Probation Officer immediately upon your release from custody and thereafter, when and in the manner directed by the Probation Officer;
5. Reside as approved by your Probation Officer and not change that residence without the prior written permission of your Probation Officer;
6. Take such assessment, counselling, and programming as directed by your

- Probation Officer;
7. Report to the Family Violence Prevention Unit to be assessed and attend and complete a Spousal Abuse Program if and as directed by your Probation Officer;
 8. You are to have no contact directly or indirectly or communication in any way with Patricia Wight, except with the prior written permission of your Probation Officer for the purpose of your participation in legal proceedings;
 9. You are to not attend at the residence of Patricia Wight, the place of employment of Patricia Wight, or place of worship of Patricia Wight.
 10. You are to provide your Probation Officer with consents to release information with regard to your participation in any programming or counselling that you have been directed to do pursuant to this Probation Order.

[10] I am not going to make an order for restitution with respect to the VISA. Crown is not seeking it. Certainly, there are other civil remedies available that will deal with your legal obligation and, in the circumstances, I believe that this a matter best left to those proceedings or to your voluntary participation, as you have indicated you are willing to do, in the event that there is no further legal remedy.

[11] There will be the mandatory s. 109 firearms prohibition order for a period of 10 years. There will be the DNA order, as this is a primary designated offence.

[12] I will waive the Victim Fine Surcharges, as you will be in custody longer, and I would rather any money you have go to assist Ms. Wight with respect to the debts that

she has incurred during the time of your marriage. Is there anything further?

[13] MR. GOUAILLIER: No. I believe that covers it all. There will be a stay of proceedings on the remaining matters.

[14] THE COURT: Stay of proceedings on the remaining charges.

COZENS C.J.T.C