

Citation: *R. v. Charlie*, 2006 YKTC 58

Date: 20060501
Docket: T.C. 05-00660
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Judge Lilles

REGINA

v.

TITUS WILLIAM CHARLIE

Appearances:
Ludovic Gouaillier
Lynn MacDiarmid

Counsel for Crown
Counsel for Defence

REASONS FOR JUDGMENT

[1] LILLES T.C.J. (Oral): Titus Charlie is before the Court having been charged with an offence contrary to s. 175(1)(a)(ii) of the *Criminal Code*, causing a disturbance in or near a public place, Tim Hortons, by being drunk, and also for breaching a probation order made by Judge Faulkner, namely, not to possess or consume alcohol or controlled drugs or substances, except in accordance with a prescription.

[2] The issues of fitness and state of mind were raised, I think in fairness, by both counsel at a very early date. Certainly, when it came before me, this matter was proceeding in the direction of an evaluation or an assessment. I am not sure whether it was raised by either counsel or by the Court prior to my involvement on the Court's own

behest, but it is very clear to me that that assessment was appropriate and that the information that the Court has received since, has been very helpful.

[3] I have previously referred to Dr. Tomita's report. During the course of various court appearances, it became apparent that if Titus were sent back to the community in any capacity, he would require assistance. As a result, the people in whose care he was, the Department of Corrections, cooperated and initiated an application, pursuant to the *Adult Protection and Decision Making Act*, S.Y. 2003, c. 21, and the application for guardianship under that legislation, and in particular, Dr. Heredia assessed and prepared an incapability assessment report, which was filed with the Court. Although this Court does not deal with that issue, the information in that report was extremely helpful.

[4] As discussed earlier, my understanding is that as he is returning to the community and that this application will continue. But, depending on what the ultimate disposition of this matter is down the road, there may or may not be a role for the Public Guardian to play. It is very clear that that resource has been notified, the public trustee/public guardian is aware of the issue and, as I understand it, is supportive of making sure that appropriate safeguards are put in place, including those that may be required in the future. But I do repeat that that order will ultimately be made in another Court, rather than in this Court.

[5] Now, back then to the question of fitness to stand trial. We talked about that quite a bit previously. I spoke about Dr. Tomita's report, that referred not only to the findings in his most recent report, but also findings in his earlier report.

[6] It is very clear that in July of 2005, there were serious questions as to Titus's ability to understand the role of the various players in this Court, as well as the role of the Court. The information provided by Dr. Tomita is clear, that Titus's condition has deteriorated since that time and so whatever observations were made in July of last year, Titus's condition would be less, in the way of capacity, than reported at that time.

[7] I mentioned Dr. Heredia's report. His report makes it very clear that Titus's cognitive abilities, or should I say disabilities, are such as to preclude him from functioning on his own for any extended period of time. Dr. Heredia's report supports what I have heard from defence counsel, that Titus is not capable of providing her with instructions, instructions that continue from day to day, partly because he does not understand why he is here in court, and partly because he has no recollection of the index events. But most importantly, because his short-term memory is completely gone and he cannot remember being here last week and he will not remember tomorrow being here today with counsel. He is unlikely, therefore, to remember what the discussion was today, tomorrow or the next week.

[8] I am satisfied in the circumstances that Titus is not fit to stand trial. In the circumstances, I think there is agreement from counsel that I should not make a disposition today, but rather that I should refer the matter to the Review Board for a disposition.

[9] That reference to the Review Board should contain, Madam Clerk, an endorsement as follows, that this Court has a strong view that Titus does not belong in the criminal justice system, but is properly, and should be properly dealt with, by Health

and Social Services. That is where his support should come from, that in the current situation he does not belong in a correctional institution, that continued detention in the Whitehorse Correctional Centre or similar correctional institution would appear to me to be detrimental to him.

[10] The Board, however, is well qualified to make its own evaluations and I am confident that their evaluations will be similar to those made here today.

[11] So is there anything else that I need to address, counsel?

[12] MR. GOUAILLIER: No.

[13] THE COURT: So Titus, as your counsel has probably told you, what we want you to do is go to the Yukon Adult Residential Centre. We don't want you to stay in WCC, in the Whitehorse Correctional Centre any more. Do you understand that?

[14] THE ACCUSED: Yes, I do.

[15] THE COURT: That is what you want to do?

[16] THE ACCUSED: Yes.

[17] THE COURT: Yes, you want to get out of there, right?

[18] THE ACCUSED: Yes.

[19] THE COURT: Yes, but you should know that while you are at the Yukon Adult Residential Centre, you will be supervised there.

[20] THE ACCUSED: Mm-hmm.

[21] THE COURT: You are not going to be allowed to go downtown to the bars. You are not going to be allowed to go downtown, meet your friends and start drinking, right? Do you understand that? It is not going to happen.

[22] THE ACCUSED: Okay.

[23] THE COURT: Good, all right. I guess if that is all in relation to the disposition, I want to say a number of people have been coming to court with Titus on a regular basis. You have all leaned over backwards to support Titus in finding and doing the right thing in this particular case. I know Andrew has done a lot of work in this particular case, along with Jon, to set up the alternative placement. I just want you to know that I recognize that. Other people in the correctional facility or in the correctional system have all pulled, in my view, in the right direction and supported Titus and this court in trying to find a more appropriate place for him.

[24] This is a matter of human rights. It is the right thing to do and hopefully we will be able to follow through on this and make sure that, not only for Titus, but for other individuals in Titus' position, appropriate dispositions or arrangements can be made.

[25] I want to suggest that this matter come back for a review in four weeks time. If the Board has not, at that point, either conducted a hearing or made a disposition, if they have started the process.

[26] MS. MACDIARMID: I was just -- the Board has to convene within a period of time, and I wasn't sure what that period of time was. I'm pretty sure it's mandatory.

[27] THE COURT: I am not sure what it is either. There is one period that is a longer period, if I make a disposition. Then there is a shorter period --

[28] MS. MACDIARMID: I'm just not sure what the jurisdiction is to actually return it here, at this point.

[29] THE COURT: Well, I think that I can, in my bail order, always attach a condition for review, but I do not want to do the review if the Board has already started its process. That is my point. So what I am saying is I think I can make this order as it is, review the bail in four weeks' time, if the Board has not held a hearing by that time. I think that is all we need to say. I just do not want to lose sight of this or lose track of it. I do not want it to slip between the cracks. It is a relatively short period of time. I am not sure it is as short as 30 days, but it will not be much longer than that.

[30] MR. GOUAILLIER: Sixty days, I think. I can never find what I am looking for when I look for it and -- it's 60 days, I think.

[31] THE COURT: There are only about 90 subsections to that section; I do not know why you are having difficulty finding the one you are looking for.

[32] MR. GOUAILLIER: I'm sorry, have we set a date or just --

[33] THE COURT: No, I just directed that it come back, because there may have been a hearing at that point, that the Board may have started. My experience with the Board is that they move pretty quickly up here, so I am hoping they will. Unless there is something else.

[34] THE CLERK: Your Honour, if I could just review the conditions, to make sure that I have them. That Mr. Charlie is to report to a bail supervisor.

[35] THE COURT: Yes. First of all, he is to be released in the care and custody of a bail supervisor and reside at the Yukon Adult Residential Centre. I do not want the Correctional Centre to inadvertently release him on his own.

[36] THE CLERK: Yes, and to remain at the YARC unless you have the permission of your bail supervisor or in the direct company of a person authorized by the bail supervisor.

[37] THE COURT: Yes.

[38] THE CLERK: Meet with your physician as directed and participate in such matters --

[39] THE COURT: There should also be an abide by the rules of the YARC inserted in there.

[40] THE CLERK: Thank you, yes. Participate in such medical assessment as recommended by your physician; disclose to your bail supervisor any medication recommended by your physician. Failure to take your medication recommended by your physician may result in your residency at the YARC terminated and your return to WCC, and then the --

[41] THE COURT: Abstain, there should be an abstain clause, and I think there should be a general keep the peace and be of good behaviour term, as well.

[42] THE CLERK: Yes.

[43] THE COURT: I think that provides a -- I think the important term is the reside term and having that facility available.

[44] THE CLERK: And may Mr. Charlie come back tomorrow to sign this paper, or do you --

[45] THE COURT: Can we make that arrangement tomorrow?

[46] MR. HYDE: I can make that arrangement.

[47] THE COURT: Thank you.

[48] THE CLERK: He could be released to Mr. Hyde now and then he can return tomorrow.

[49] THE COURT: Okay, are you prepared to do that?

[50] MR. HYDE: Yes.

[51] THE COURT: Okay. Certainly, if it is necessary to record that, that he can be released to Mr. Hyde now, without going back to WCC, that would be appropriate.

[52] THE CLERK: Thank you, Your Honour, that completes matters.

[53] THE COURT: Again, thanks to everyone

