

Citation: *R. v. Charlie*, 2008 YKTC 17

Date: 20080307
Docket: 07-00140
07-00139
07-00699
07-00139A
Registry: Whitehorse
Heard in: Carmacks

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Judge Lilles

R e g i n a

v.

Wilfred Dickie Charlie

Appearances:
Noel Sinclair
Keith Parkkari

Counsel for Crown
Counsel for Defence

REASONS FOR SENTENCING

[1] Mr. Charlie is a 48 year old aboriginal man who has entered guilty pleas to a number of serious charges. These charges are set out below, along with the relevant statement of facts which had been agreed to by counsel and filed with the court.

Charges – Court File 07-00139

[2] On or about the 14th day of April, 2007, at or near Carmacks, Yukon Territory, did unlawfully commit an offence in that: he did commit an assault on David Alex Tom, contrary to s. 266 of the *Criminal Code*.

[3] On or about the 14th day of April, 2007, at or near Carmacks, Yukon Territory, did unlawfully commit an offence in that: he did resist Corporal Brian Pilatzke, a Peace Officer,

member of the Royal Canadian Mounted Police engaged in the execution of his duty, under the *Criminal Code of Canada* by fleeing from Police, contrary to s. 129(a) of the *Criminal Code*.

[4] Facts:

1. On April 14, 2007 at approximately 17:00 hours, Wilfred Charlie entered the residence of David Tom in Carmacks, Yukon Territory and, without warning, punched Mr. Tom several times in the head.
2. The RCMP responded to a complaint regarding this incident and located an intoxicated Mr. Tom outside the residence holding his head. Mr. Tom advised the RCMP that he didn't want Mr. Charlie charged but that he just wanted them to take Mr. Charlie away.
3. Mr. Charlie, who was intoxicated, was located inside the residence on the couch. There were several other individuals present who were highly intoxicated and passed out. Andrea Stastny was one of the individuals present in the residence. Mr. Charlie was brought to the residence of Evelyn Skookum who agreed to have him remain there.
4. Shortly after being left at Ms. Skookum's residence, Mr. Charlie returned to the residence of David Tom and began to punch him in the head and face possibly up to 20 times, also grabbing him around the neck with one hand. Mr. Charlie was angry and wanted to know why Mr. Tom had phoned the police on him.
5. The RCMP were contacted again and when they arrived at Mr. Tom's residence, Mr. Charlie was still there. Despite being directed by Cpl. Pilatzke to stop, he fled into the bush. A foot pursuit began, involving both Cpl. Pilatzke and Cst. McPhee in which visual contact was made with Mr. Charlie on several occasions and further communication directing him to stop. Mr. Charlie did not stop however, and was not arrested until May 30, 2007.

6. As a result of these assaults, Mr. Tom was noted to have swelling under his left eye and an approximately eight cm long red mark on the right side of his neck.
7. Mr. Tom and Mr. Charlie are cousins.

Charges: Court File 07–00140

[5] On or about the 30th day of May, 2007, at or near Carmacks, Yukon Territory, did unlawfully commit an offence in that: he did, in committing an assault on Andrea Stastny, cause bodily harm, contrary to s. 267(b) of the *Criminal Code*.

[6] On or about the 30th day of May, 2007, at or near Carmacks, Yukon Territory, did unlawfully commit an offence in that: he did, in committing an assault on David Alex Tom, cause bodily harm, contrary to s. 267(b) of the *Criminal Code*.

[7] Facts:

1. On May 30, 2007, David Tom, Delores Landstrom and Andrea Stastny were drinking liquor in Mr. Tom's residence. All of these individuals were highly intoxicated. Ms. Landstrom is the common-law partner of Mr. Tom and Ms. Stastny was in an intimate relationship with Mr. Charlie.
2. Mr. Charlie entered unannounced through the front door of the residence and kicked and punched Mr. Tom repeatedly. Mr. Tom lost consciousness as a result of the assault.
3. Mr. Charlie then began to punch and kick Ms. Stastny repeatedly. Mr. Charlie was wearing cowboy boots at the time.
4. Ms. Landstrom attempted to intervene and was struck in the face once by Mr. Charlie.
5. Mr. Charlie fled the residence and was located by Cst. Tannahill lying on the ground on the riverbank. Cst. Tannahill told Mr. Charlie he was under arrest for assault. Mr. Charlie then began to run away and a foot pursuit began.

Cst. McPhee joined the foot pursuit and after a short period of time, Mr. Charlie was caught and arrested.

6. Both Mr. Tom and Ms. Stastny were medivaced to Whitehorse General Hospital for treatment.
7. As a result of the assault against Mr. Tom, he was rendered unconscious, incurred bruises and swelling to the area around his left eye, a scraped right elbow, marks and bruising to his left shoulder, contusion to the left chest wall, one cracked and one broken rib. He was discharged on the same date he was treated at Whitehorse General Hospital.
8. As a result of the assault against Ms. Stastny, she received an approximately 12 cm long and two cm wide laceration to her forehead, several small cuts to her face and scraping and bruising to her lower left arm and right wrist. During a one-hour long medical procedure, she received four Chromic sutures and multiple, 5–0 Prolene sutures to close the head wound. The sutures were to be removed June 5, 2007. She was discharged on the same date she was treated at Whitehorse General Hospital.

Charges: Court File 07–00699 and 07–00139A

[8] On or about the 5th day of February, 2008, at or near Carmacks, Yukon Territory, did unlawfully commit an offence in that: he did commit forcible entry on the real property of Alex Charlie at 114 Goulter Drive, Carmacks, Yukon Territory, contrary to s. 72(1) of the *Criminal Code*.

[9] On or about the 5th day of February, 2008, at or near Carmacks, Yukon Territory, did unlawfully commit an offence in that: he did commit an assault on Andrea Stastny, contrary to s. 266 of the *Criminal Code*.

[10] On or about the 5th day of February, 2008, at or near Carmacks, Yukon Territory, did unlawfully commit an offence in that: he did, being at large on his Recognizance, given to or entered into before a Justice or Judge, and being bound to comply with a condition of that Recognizance directed by the said Justice or Judge, fail without lawful excuse to

comply with that condition, to wit: Abstain from the consumption of alcohol, contrary to s. 145(3) of the *Criminal Code*.

[11] Facts:

1. As of February 5, 2008, Mr. Charlie was on a Recognizance dated November 14, 2007 that required him to have no-contact, directly or indirectly, with Andrea Stastny. Notwithstanding this condition, Mr. Charlie and Ms. Stastny were having contact, with Ms. Stastny being complicit in the contact.
2. On February 5, 2008, at approximately 06:45 hours, Ms. Stastny was driving Mr. Charlie's vehicle in Carmacks. She had a passenger in the vehicle, Karen Anderson. Both Ms. Stastny and Ms. Anderson were intoxicated. Ms. Stastny drove the vehicle into a ditch outside the residence of Alex Charlie.
3. Ms. Stastny telephoned Mr. Charlie from the residence of Joe Bellmore to inform him of her having driven his vehicle into the ditch.
4. A short time later Mr. Charlie went to Mr. Alex Charlie's residence. Mr. Charlie kicked open the front door of the residence, tearing the hinges off the doorframe, and entered into the residence, looking for Ms. Stastny. Alex Charlie informed him that Ms. Stastny was next door at Mr. Bellmore's residence.
5. Mr. Charlie then went to Mr. Bellmore's residence and began to pound at the door. Mr. Bellmore opened the door and Mr. Charlie ran into the residence, looking for Ms. Stastny. She, along with Ms. Anderson, ran into a back bedroom. Ms. Anderson and Ms. Stastny attempted to hide in the closet.
6. Mr. Charlie went into the back bedroom demanding the car keys from Ms. Stastny. He was kicking her as she lay curled on the floor of the closet.
7. Mr. Bellmore intervened and told Mr. Charlie to leave, which he did after obtaining the car keys from her. Ms. Stastny incurred no injuries as a result of this assault.

8. At approximately 07:00 hours, Ms. Stastny contacted the RCMP in Carmacks and advised them that Mr. Charlie was at the residence of Douglas Billy. Ms. Stastny, who was crying, expressed fear for her safety to the member.
9. At approximately 17:15 hours, RCMP attended at Mr. Billy's residence. When Mr. Billy answered the door, Mr. Charlie was observed sitting on the couch in the living room drinking a beer.
10. Cst. Tannahill's attempts to speak to Mr. Charlie were not responded to. Mr. Billy was also not compliant with Cst. Tannahill's indications that he was going to arrest Mr. Charlie.
11. When Mr. Charlie stood up and went into a back bedroom, Constables Tannahill and Stelter immediately entered the residence as a result of their concern about the possibility of weapons or escape. They were able to use some limited physical force to arrest and handcuff Mr. Charlie in the back bedroom.
12. Noted to be on the bed in this bedroom were a large sword and what turned out to be an unloaded .303 rifle. Both weapons belonged to Mr. Billy. Also observed in this room were several other swords and firearms. Mr. Charlie did not have any of these weapons in his possession in the back bedroom at the time that the RCMP members entered it and arrested him. The RCMP used force to arrest Mr. Charlie when Cst. Tannahill observed what he believed to be Mr. Charlie reaching towards the rifle.
13. Mr. Billy advised the RCMP that Mr. Charlie and his brother Lennie had attended his residence at approximately 16:30 hours. At that time Mr. Billy had shown the rifle to both of them as he intended to trade it to Lennie Charlie for a load of firewood. Mr. Billy had then placed the rifle on the bed in the back bedroom.
14. As of February 5, 2008, Mr. Charlie was on a Recognizance dated November 14, 2007 that required him to abstain absolutely from the

possession or consumption of alcohol. Mr. Charlie had been drinking and was under the influence of liquor at the time of his arrest.

[12] These serious charges are aggravated by Mr. Charlie's related and lengthy criminal record. Between 1982 and 2002 he has 21 recorded convictions, including three for assault causing bodily harm, three major sexual assaults, three simple assaults, eight administration of justice and three drinking and driving convictions. He was sentenced to a penitentiary term in 1988 for the sexual assault convictions.

[13] It is an aggravating factor that Andrea Stastny is Mr. Charlie's girlfriend. Two of the charges before the court involve assaults on her. Moreover, the assault causing bodily harm that was inflicted on May 30, 2007 was in the upper end of the range, requiring a medivac to Whitehorse and numerous stitches.

[14] On April 14, 2007 he assaulted his cousin, David Tom. The circumstances are aggravating that the police attended but Mr. Tom did not want charges to be laid, so the police removed Mr. Charlie to the residence of a relative. Mr. Charlie returned and laid a serious beating on Mr. Tom.

[15] Alcohol was a factor in these offences, but I do not view that as a mitigating factor. Mr. Charlie has had long standing problems with alcohol, he was fully aware of his propensity for violence when drinking but has not taken any significant steps to take treatment in order to stop drinking.

[16] Counsel identified a number of mitigating factors. It is a mitigating factor that he entered timely guilty pleas to the matters before the court.

[17] Mr. Charlie told his probation officer that his family situation when growing up was normal and that he was not abused in residential school. His sister advised the court that he was abused in residential school and experienced violence at home. Mr. Nieman, a counsellor and therapist who has worked with Mr. Charlie, expressed the opinion that Mr. Charlie's minimization of these experiences was a classic survival technique. Although somewhat mitigating, this unique aboriginal experience has been shared by many others in the Yukon. The justice system and society expect individuals like Mr. Charlie, now

48 years of age, to have sought professional help to overcome these difficult life experiences. He cannot continue to re-offend in a violent manner and rely on his aboriginal experience to excuse his conduct.

[18] A number of friends and relatives attended court in support of Mr. Charlie, submitted letters of support and also addressed the court directly. They advised that he is a good person when he is not drinking. He is skilled in living off the land and often provides traditional meat and fish for the elders.

[19] The letters filed with the court indicate that around the time of the serious May 30, 2007 charges, a young relative was killed in an ATV accident and the entire extended family, including Mr. Charlie, was grieving. This loss may have been a contributing factor in some of the offences before the court.

[20] Mr. Charlie's curriculum vitae was attached to his pre-sentence report. He has several certificates from Camosun College and the British Columbia Institute of Technology. He also has worked in building houses and in the mining industry. He has the intelligence and skills to be a valuable, self-sustaining member of his community.

[21] Mr. Andy Nieman is a counsellor and therapist who has extensive experience working with Yukon First Nations people. He states in his letter:

Mr. Charlie is a classic individual who comes from a violent abusive home, who was then placed in a residential school system which resulted in a deeper trauma-based experience. It is the affects of these traumatic experiences that he finds he struggles with and must come to terms with.

[22] Mr. Nieman also testified on behalf of Mr. Charlie. His evidence was very helpful in explaining Mr. Charlie's background and how it affects his current behaviour. He made some additional points which I found relevant in deciding the sentence to be imposed.

1. Mr. Charlie is intelligent and was highly engaged in his counseling sessions. This suggests that it is possible for Mr. Charlie to benefit from future therapy.

2. He does well when things are going well for him. But when he encounters a crisis, his past trauma takes over and he goes into a “fight” mode. He tends to deal with conflict by resorting to violence.
3. As Mr. Charlie is 48 years old, it will require a significant effort to make the required changes. He will need to be in a very structured environment if he is to be successful. Mr. Nieman believes two to three years of intense therapy will be required.
4. Mr. Charlie cannot be a social drinker. He must stay away from alcohol.
5. Mr. Charlie will be a high risk in any future relationship with women.
6. Although there are insufficient resources in Carmacks, he believes there are professional resources in Whitehorse that can help Mr. Charlie.

The Law

[23] The purpose and principles of sentencing are set out in ss. 718, 718.1 and 718.2 of the *Criminal Code*. Mr. Charlie is not a youthful offender and has amassed an unenviable criminal record which includes crimes of violence and offences against women. Three of the charges before the court today are for assaults, two against his girlfriend. One of the assaults was an assault causing bodily harm, which I consider to be in the upper end of the range for that charge. As a result, I find that denunciation and deterrence are relevant purposes of sentencing in this case. I also find that rehabilitation is an important purpose, as Mr. Charlie will, in any event, be returning to his home community of Carmacks. That rehabilitative process will require intensive supervised programming and therapy designed to address his issues. Two of the charges, as I have mentioned previously, involve assaults on his girlfriend, which I consider to be an aggravating factor.

[24] Mr. Charlie is an aboriginal offender. I am satisfied by the representations made by his family members and by Mr. Nieman that his unique experiences as a native in a dominant white culture, including his residential school experience, have contributed to his current situation. As a result, I am prepared to place considerable importance on future rehabilitation, provided I can do so without unduly endangering the safety of the public.

[25] Counsel placed before me a number of sentencing cases involving violence. I note that those submitted by the Crown were for aggravated assault, and Mr. Charlie has been convicted on the lesser offence of assault causing bodily harm. On the other hand, I am not dealing with one charge. Rather, Mr. Charlie is to be sentenced for seven charges, three of which involve assaultive behaviour and which occurred on three separate dates. The sentence I impose should also reflect his criminal record, which includes numerous crimes of violence.

[26] In reviewing the cases submitted by counsel, I note wide variations in the ages of offenders, their criminal records, the number of offences before the court and the aggravating and mitigating circumstances. At best, the sentences imposed in these cases are useful in determining an approximate range of sentence; the reasons given identify principles which can be applied in determining the sentence in this and other cases.

[27] I place considerable weight on the availability of specialized programming that can assist Mr. Charlie in his rehabilitation.

Decision

[28] In my opinion, an appropriate range of sentence, taking into account the totality principle, would be two to three years of imprisonment. The availability of treatment programs to address Mr. Charlie's issues in the Whitehorse Correctional Centre (if the sentence is two years less a day) and the federal penitentiary system (if the sentence is two years or more) will be important, as I have identified rehabilitation and healing as an important sentencing factor. In addition, Mr. Nieman advised that there are professional resources available in the Whitehorse community to assist Mr. Charlie.

[29] Counsel for Mr. Charlie made a brief submission for a lengthy conditional sentence to be followed by several years of probation. A conditional sentence is not appropriate in the circumstances of this case because of his numerous convictions for disobeying court orders, his propensity to resort to violence in dealing with personal crisis and the necessity of close supervision while undergoing treatment. I am not satisfied that a conditional sentence would not endanger the safety of the community.

[30] I am also satisfied that a sentence served in the Whitehorse Correctional Centre would be inappropriate, primarily because of the dearth of programming to address Mr. Charlie's needs. Moreover, as the average stay at the Whitehorse Correctional Centre is quite short, there are few, if any, programs suitable for individuals who require treatment for a lengthy period of time.

[31] I am satisfied that the programs available in the federal system are superior to those at the Whitehorse Correctional Centre and are more likely to address Mr. Charlie's needs.

[32] Mr. Shayne King, a Yukon Probation Officer and contract federal parole officer gave evidence as to the availability of programs in the federal system. His knowledge of the details of these programs was limited, but he was able to provide an overview of a number of programs that address violence and substance abuse. In addition, he identified two aboriginal programs, one of which, "In Search of Your Warrior", appeared capable of addressing some of Mr. Charlie's needs. I would add that it may have been more helpful to have someone from the federal system provide this information by way of conference telephone or by conference video.

[33] As Domestic Violence programming is available in Whitehorse and can be accessed by individuals on parole or probation, federal programs dealing with domestic violence are not as high priority as are other programs that address Mr. Charlie's issues.

[34] Overall, I am satisfied that the programs available in the penitentiary system are superior to those available in the Whitehorse Correctional Centre.

[35] In my opinion, a lengthy period of supervision and programming when Mr. Charlie returns to the Yukon would also be very helpful. As indicated earlier, there are resources in Whitehorse that can assist Mr. Charlie in the transition from the penitentiary to the community. This court has heard experts testify on numerous occasions how treatment in a closed facility can be lost if not reinforced in the community. A sentence of two years to be served in a penitentiary to be followed by three years probation would provide a longer period of supervision, than a three year penitentiary term. It would protect the public and

also encourage rehabilitation. It would also allow Mr. Charlie to reconnect with his family and support people in the Yukon.

[36] With respect to Court File 07–00140, and the charges of aggravated assault and assault causing bodily harm, I sentence Mr. Charlie to two years in custody on each charge, concurrent to each other, to be served in a penitentiary to be followed by three years probation on the following conditions:

1. Keep the peace and be of good behaviour, and appear before the court when required to do so by the court. 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.
2. Remain within the Yukon Territory unless you obtain written permission from your probation officer or the court.
3. Report to a probation officer within two working days after completing your custodial sentence and thereafter, when and in the manner directed by the probation officer.
4. Reside as directed by your probation officer; abide by the rules of the residence; and not change that residence without the prior written permission of your probation officer.
5. Abide by a curfew by remaining within your place of residence between the hours of 9:00 p.m. and 6:00 a.m. daily, except with the prior written permission of your probation officer. 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 condition. Provided you have the support of your probation officer, you may apply to the court to change or eliminate this curfew.

6. Abstain absolutely from the possession or consumption of alcohol and controlled drugs or substances except in accordance with a prescription given to you by a qualified medical practitioner.
7. Not attend any bar, tavern, off-sales or other commercial premises whose primary purpose is the sale of alcohol.
8. Take such alcohol and drug assessment, counseling or programming as directed by your probation officer and attend and complete a residential treatment program as directed by your probation officer.
9. Report to the Family Violence Prevention Unit to be assessed and attend and complete the Spousal Abuse Program, as directed by your probation officer.
10. Take such psychological assessment, counseling and programming as directed by your probation officer.
11. Take such other assessment, counseling and programming as directed by your probation officer.
12. Have no in-person contact with Andrea Stastny, except with the prior written permission of your probation officer, in consultation with Victim Services. No contact should be allowed unless both parties have demonstrated an extended period of sobriety and the completion of alcohol and drug treatment programming.
13. Make reasonable efforts to find and maintain suitable employment and provide your probation officer with all necessary details concerning your efforts.
14. Provide your probation officer with consents to release information with regard to your participation in any programming, counseling, employment or educational activities that you have been directed to do pursuant to this probation order.

15. I recommend a review in Carmacks after 12 months to evaluate the progress made by Mr. Charlie while in custody, and to begin planning for his return to the Yukon.

[37] With respect to the convictions in relation to Court Files 07-00139A, I sentence Mr. Charlie to 30 days. In relation to court file 07-00139, I sentence Mr. Charlie to six months incarceration, concurrent to each other and concurrent to the other sentences imposed in this judgment. They will be followed by three years probation on the same conditions as set out above.

[38] With respect to Court File 07-00699, and the convictions contrary to s. 72(1) and s. 266 of the *Criminal Code*, I sentence Mr. Charlie to six months on each count, concurrent to each other and concurrent to the other sentences imposed in this judgment, followed by three years probation on the same conditions as set out above.

[39] I am also imposing a 10 year firearms prohibition pursuant to s. 109(2) of the *Criminal Code* on each charge before the Court. I am also granting the Crown's application for a DNA order.

[40] In the circumstances, the victim fine surcharges are waived.

Lilles T.C.J.