

Citation: *R. v. Cromarty*, 2010 YKTC 113

Date: 20101012
Docket: 10-00205A
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Judge Faulkner

REGINA

v.

SAMUEL WALLACE CROMARTY

Appearances:
Terri Nguyen
David Christie

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCING

[1] FAULKNER T.C.J. (Oral): Robbery or conspiracy to commit robbery are both very serious offences and either are punishable by imprisonment for life. It goes without saying that sentences for robbery or conspiracy to commit robbery must be designed primarily to denounce and deter such egregious conduct.

[2] In this case, there are a number of aggravating circumstances. The first, of course, is that the robbery was planned in advance by the conspirators. It is further aggravated by the degree of violence offered to the victim. There is also the fact that a firearm was used. I note that Mr. Cromarty disclaims knowledge of Baglee's intent to use a firearm, but parties to offences of this kind must always be aware that matters can

escalate beyond what is planned, and they bear the risks if they do.

[3] Nonetheless, it is agreed that, as the agreed statements of facts make clear, Mr. Cromarty was not aware that a firearm would be used, and it is further conceded by the Crown that he was not aware of the degree of violence that was to be offered to the young man who was robbed. It is perhaps fortunate, to say the least, for Mr. Cromarty that he is entering his plea of guilty under these agreed facts since, if he was convicted as a full participant, he would not be entitled to a conditional sentence and would be facing a minimum period of imprisonment of four years.

[4] In the circumstances as outlined to the Court, I am asked to accede to a joint submission that Mr. Cromarty receive a conditional sentence in the range of eight to 12 months, to be followed by two years probation. In support of this contention, counsel point to a number of factors. Firstly, and perhaps surprisingly, given the offence of which he now stands convicted, Mr. Cromarty has no prior criminal record whatsoever. Secondly, he has a supportive family and is steadily employed, and the offence may be considered to have been out of character for him. Next, it is indicated that after the police commenced their investigations, Mr. Cromarty very swiftly confessed and has been fully cooperative thereafter. He also entered an early guilty plea.

[5] I think it has to be said that even for a conspiracy to commit robbery, as opposed to robbery itself, the imposition of a conditional sentence would be a most unusual and exceptional disposition. As the appellate courts have said, a conditional sentence (subject to the strictures of s. 742.1) is not foreclosed for any particular category of offence. As well, appellate courts have made it clear that a conditional sentence may

involve a degree of denunciation and deterrence despite the fact that an actual jail sentence is not imposed. Of course, if the offence were robbery, a conditional sentence could not be imposed. It is only by virtue of the fact that the accused has pled guilty to conspiracy that a conditional sentence can be considered.

[6] The Crown and defence were agreed on that point. I think it must be said, however, that given the fine distinction between conspiracy and robbery, and given that a conditional sentence would not be available for robbery, that a conditional sentence would be all the rarer. That having been said, I have, after some consideration, come to the conclusion that the sentence contended for is not so demonstrably unfit as to impel me to depart from it or require me to depart from it.

[7] Mr. Cromarty, you are sentenced to a period of imprisonment of one year, and that sentence will be served conditionally, subject to the following terms:

1. You will keep the peace and be of good behaviour;
2. You will appear before the Court when required to do so;
3. You will notify your Conditional Sentence Supervisor in advance of any change of name or address, and promptly notify him of any change of occupation or employment;
4. You will remain within the Yukon Territory unless you obtain prior written permission from your Conditional Sentence Supervisor to go outside of the Yukon;
5. You will report within two working days to a Conditional Sentence Supervisor and thereafter as, when, and in the manner directed by the

Conditional Sentence Supervisor;

6. You will reside at such residence as your Conditional Sentence Supervisor will direct and approve, and you will not change that residence without the prior written permission of the Conditional Sentence Supervisor;
7. Except in the case of an emergency, you must remain within your place of residence at all times, except with the prior written permission of your Conditional Sentence Supervisor, which may be extended to you for the purpose of education or employment or otherwise as the Conditional Sentence Supervisor thinks fit. You must present yourself at the door or answer the telephone in response to curfew checks by the appropriate authorities, and your failure to do so will be a presumptive breach of the order;
8. You will abstain absolutely from the possession and consumption of alcohol or controlled drugs and substances, except in accordance with the prescription given to you by a qualified medical practitioner;
9. You will not attend at any place where alcohol is sold, except a restaurant which might be incidentally licensed for the sale of alcohol with meals;
10. You will take any assessment, counselling and programming as directed by the Conditional Sentence Supervisor;
11. You will have no contact directly or indirectly or communicate in any way with Jonathan Baglee, Mercedes Shelley, or Cody Lorenzo, except with the prior written permission of the conditional sentence supervisor in consultation with Victim Services;

12. You will not attend at or within 50 metres of the residences of the named persons;
13. You will participate in such educational and life skills programming as directed by the Conditional Sentence Supervisor;
14. You will make reasonable efforts to find and maintain suitable employment and provide your Conditional Sentence Supervisor with all necessary details concerning your efforts in that regard;
15. You will provide your Conditional Sentence Supervisor with consents for release of information in regard to your participation in any programming, counselling, employment, or educational activities you have been directed to pursue under the terms of the conditional sentence order;
16. You are not to have in your possession any firearm, ammunition, explosive substance or weapon.

[8] Following the completion of your conditional sentence order, you are to be subject to a probation order for a period of two years. The terms will be:

1. That you keep the peace and be of good behaviour;
2. That you appear before the Court when required to do so;
3. That you notify the Probation Officer in advance of any change of name or address; promptly notify him of any change of occupation or employment;
4. That you report to a Probation Officer immediately on the completion of your conditional sentence, and thereafter as, when, and in the manner directed by the Probation Officer;

5. That you will reside as directed by the Probation Officer and not change your residence without the Probation Officer's prior written permission;
6. That you will take any assessment, counselling or programming as directed by the Probation Officer;
7. That you have no contact, directly or indirectly, or communicate in any way with Jonathan Baglee, Mercedes Shelley, or Cody Lorenzo, except with the prior written permission of your probation officer in consultation with victim services;
8. That you will not attend at or within 50 metres of the residence of the named persons;
9. That you will perform 150 hours of community service as directed by the Probation Officer, to be completed within six months after the order comes into force;
10. That you will participate in such educational or life skills programming as directed by the Probation Officer;
11. That you will make reasonable efforts to find and maintain employment and provide your Probation Officer all the necessary details concerning your efforts in that regard;
12. That you will provide your Probation Officer with consents to release of information in regard to your participation to any programming, counselling, employment, or educational activities that you have been directed to participate in pursuant to the probation order;

13. That you will not have in your possession any firearm or ammunition or explosive substance or weapon.

[9] I also need to add one further term to the conditional sentence order, that is that the sum of \$550 be paid into the Clerk of the Territorial Court in trust for Cody Lorenzo within four months after the order comes into force. The probation order will contain a similar term providing that that amount be paid within four months after the probation order comes into force, less any sum paid pursuant to the conditional sentence order.

[10] Crown having proceeded by indictment, the victim surcharge is \$100.

[11] Additionally, there will be an order that you provide samples of bodily substances for the purpose of DNA analysis and banking.

[12] Finally, there will be an order that you do not possess any firearm or ammunition, or other substances or items more compendiously described in s. 109 of the *Criminal Code*, for a period of ten years, and that you do not possess any prohibited firearms, restricted firearms, prohibited weapon, prohibited device or prohibited ammunition for the remainder of your life. You are to surrender to the RCM Police in Whitehorse within 24 hours any such items now in your possession.

[13] Anything further, counsel?

[14] MR. CHRISTIE: No. Thank you, Your Honour.

[15] MS. NGUYEN: Nothing from the Crown, sir, thank you.

[16] THE CLERK: Counts 1 to 3?

[17] MS. NGUYEN: Withdrawn, thank you.

[18] THE COURT: Mr. Cromarty, you escaped going to the federal penitentiary by about this much. If you are ever back before me again, I will make sure that your trip is not further delayed. You have been given a break; do not blow it.

[19] THE ACCUSED: Thank you, Your Honour.

FAULKNER T.C.J.