

Citation: *R. v. Currie*, 2008 YKTC 23

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Docket: T.C. 07-00305
07-00305A
07-00305D
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Judge Barnett

REGINA

v.

TERRY JOHN CURRIE

Appearances:
Eric Marcoux
Jamie Van Wart

Counsel for Crown
Counsel for Defence

REASONS FOR SENTENCING

[1] BARNETT T.C.J. (Oral): Terry John Currie, an aboriginal man, is a member of the Selkirk First Nation. The Selkirk First Nation is based in Pelly Crossing. Mr. Currie and his mother make their home, I am told, in the city of Whitehorse in Kwanlin Dun, and have done so, apparently returning to the Yukon, as I understand it, about 10 years ago.

[2] Mr. Currie will be celebrating, if I can use that word, his 20th birthday later this month in prison. He is a young man and I am told that he has not previously found himself in a situation which created a criminal record. Today he is in court to be sentenced for a very serious assault.

[3] Back on the 16th of July, 2007, he and Robert Stone were fighting. I am told, and I accept, there had been some drinking. Today, nobody can recall just exactly what the fight was about. Mr. Stone, I am told, is somewhat older than Mr. Currie; he is 31. He, like Mr. Currie, makes his home in the Kwanlin Dun community. Apparently, Mr. Stone had the upper hand in the fight, but Mr. Currie's mother saw this, and she intervened very forcefully. She was wearing steel-toed boots, and when she intervened, Mr. Stone was quickly down and the boots were being put to him.

[4] Mr. Currie, in addition to simply beating on Mr. Stone, got a rock and threw that rock at Mr. Stone. He was going to throw another rock at Mr. Stone when some individual, I do not know that person's name, but he saw the matter - I presume it was a man - that the matter was seriously getting out of hand, and he intervened somehow and brought this assault to an end.

[5] Mr. Stone was very badly hurt. He was medivaced to Vancouver. He was in the hospital there, I am told, for about five days. Reading from his victim impact statement, he says that his injuries were these, and I am quoting:

Shattered jaw, one lost tooth and damage to all lower teeth, head injury, was medivaced to Vancouver for shattered jaw in July (16th) and subsequent trip to Vancouver Nov. 7-13 for jaw infection. In the future all lower teeth with have to be repaired and/or removed.

[6] Crown counsel told me that the surgery he had in Vancouver involved repairing a jaw that was broken in two places with a metal plate. I have not read a medical report, but this does not sound like any sort of trivial injury, and nobody suggests it was, but it sounds like the sort of injury which, as he says, will continue to trouble him, not just a

few stitches that get repaired and leave a little scar behind. This is much more serious business.

[7] Violence is far too often a factor in matters heard by judges in the Yukon, but the violence is typically not this sort of violence, not this scale of violence. This is a serious matter and nobody says otherwise. Mr. Currie found himself in custody after this incident off and on, as I am given to understand, but on the 28th of November, he was released from custody. He had not been in custody continuously, but he had been in custody for a total, counsel tell me, of 80 days. He was released on the 28th of November.

[8] He was released on an undertaking that required him to reside at a place here in Whitehorse called the ARC, which is a residence for men who are needing a supervised residential situation for one reason or another. I do not believe that all of the persons there are there because of court orders, but certainly a good number of people are. He was required to reside there and comply with a curfew. On the 6th of December there was a curfew check. He was supposed to be there, in the ARC, by nine o'clock at night. He was not there at 10 o'clock that night.

[9] Counsel made a joint submission. The joint submission is that there should be a sentence of 10 months to be followed by two years probation with conditions, and that he should be given credit for four months, leaving six months to be served for the assault. That is a sensible joint submission.

[10] I do have some difficulty, however, with the position that there should be a concurrent sentence for the breach of undertaking, and I have difficulty for two reasons,

essentially. One reason is that I know he did not wind up on that undertaking on a casual basis. He was in custody on the 28th of November for whatever reason, and an undertaking that requires a person to live at the ARC is not made lightly by any judge or by any JP here in Whitehorse. I know that from my own experience. Less than 10 days later, he is flaunting the undertaking. It is not a matter for a concurrent sentence, I do not believe.

[11] My other reason is, when I read the victim impact statement, I see that Mr. Stone has some concerns for his personal safety, well-founded concerns, I believe. If I were to deal with Mr. Currie's breach of a court order, a promise given to a JP or a judge, why would I think, in the circumstances here, be giving him, and other persons also, the wrong impression: that it is no big deal, it is not going to result in any more time, it will just get wrapped up. He is going to be on probation. He needs to know, and I am going to speak bluntly here, he needs to know that if he screws up on probation, the judge is going to see that he screwed up on an undertaking and it cost him some time. He needs to know that the probation order is a serious business and breaching it would have real consequences.

[12] So while I agree that a sentence of 10 months for the assault, and taking into account the fact that he has served -- he has been in custody, remand time, there will be an additional six months for the assault. I agree with that part of counsel's submissions.

[13] As far as the breach is concerned, I cannot accept the notion that it should be a concurrent sentence. It will be an additional consecutive month. That takes into

account, Mr. Currie, what Mr. Van Wart persuasively said, and which I know anyhow, that you have an aboriginal background. You are a young man. The judge should not be throwing the book at you in the sense of imposing the harshest sentence he can think of, which would take you down to a place in British Columbia where you would really find out what being in custody is all about. This is a sensible submission.

[14] There will be a term of probation for two years. Mr. Currie, every probation order has statutory terms in it, including the terms that you:

1. Keep the peace and be of good behaviour;
2. Report forthwith in person to a probation officer in Whitehorse when the probation order comes into force upon your release, and thereafter, in the manner and at the time he or she requires;

There will be a condition, which I am told is acceptable, that you:

3. Never to possess alcohol in any form or to consume alcohol in any form or to enter a premises where the main commodity for sale is alcohol in any form;
4. Attend, as is directed by the supervising probation officer, for counselling, specifically substance abuse counselling and anger management counselling, but also any other counselling that she or he thinks is reasonably required;

5. Never to have any contact with Robert Stone, with Lou-Anne Clement, and also counsel are agreed that another person should be included, and her name is Doreen Scurvey.

[15] Finally, when I read the victim impact statement, which says that Mr. Stone and his partner, Lou-Anne Clement, are very fearful for their safety on a continuing basis.

He says:

I wasn't looking for any trouble. Now I can't visit people because I fear people jumping me. I worry about mine and Lou-Anne's safety after court too. I don't know what is going to happen.

I am persuaded that there should be another condition in this order, and this is one that no judge should make casually, and I do not make casually, but it will read this way:

6. You must never be within the Kwanlin Dun community until you have appeared before a judge in open court and he or she has amended this probation order to allow your presence within the Kwanlin Dun community.

[16] I expect that that application will be made, that a judge will have the benefit of some input, perhaps from elders in the community. I am certain that the judge will have the benefit of some input from the supervising probation officer. I expect that a judge will be persuaded that there should be some variation to this condition, but today, and for some time in the future, that condition is appropriate.

[17] Before Mr. Currie makes an application for the amendment of the probation order, and as I say, I expect the application will be made, he needs to get started with a

program of doing something to make good and sure that nothing like this happens again.

[18] Counsel are agreed that a DNA order is required and I make that order. Mr. Van Wart, you were also agreed, as I understand it, that a firearms prohibition order is required here, a 10 year order. Does he require that I read the terms of the order out? Or does he understand that the order will essentially say that for a 10 year period he must not be in possession of any firearm, ammunition or explosive, that it is an order that he will be given to read and to sign. In those circumstances, he may not require that I read it all out.

[19] MR. VAN WART: That's fine. I waive any reading of the order at this time.

[20] THE COURT: There is no victim surcharge. The probation applies to both matters, to the breach and to the assault. I do not think I have left any loose ends.

[21] MR. MARCOUX: Has the Court considered whether a condition within the probation order that not to possess any weapon? Because the s. 109 prohibition order specifically targets firearms, and a condition of not having any weapons is a bit wider than a firearms prohibition. But I leave that to your discretion.

[22] THE COURT: I do not think that would make the probation order more effective.

[23] MR. MARCOUX: Okay. Then I will ask the Clerk to enter a stay of proceedings on Count 2 and also enter a stay of proceeding on the one count Information, of Information number 07-00305C.

[24] THE COURT: That was the second breach charge?

[25] MR. MARCOUX: That's right.

[26] THE COURT: Okay. Thank you, Mr. Van Wart, Mr. Marcoux.

BARNETT T.C.J.