

Citation: *R. v. Denny*, 2009 YKTC 106

Date: 20090925
Docket: 09-00210
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Judge Overend

REGINA

v.

RAYMOND MOSE DENNY

Appearances:
Kevin Komosky
Gordon Coffin

Counsel for Crown
Counsel for Defence

REASONS FOR SENTENCING

[1] OVEREND T.C.J. (Oral): Mr. Denny is before the Court having entered a plea of guilty to the offence of assault with a weapon. The Crown has put before me the circumstances and those circumstances are not in dispute. I adopt them as the facts before the Court, and it is not necessary to repeat them in detail, simply to say that, obviously and clearly, because of Mr. Denny's substance abuse on that occasion, he completely lost control of himself and, as a result, inflicted these injuries on Ms. Ollie.

[2] Now, she suffered no fractures from the injuries, and the scalp wounds are clearly shown in the photograph. It is perhaps fortunate that he was as intoxicated as he was, as this could have turned out much more severely than it has. Scalp wounds are notoriously wounds for which there are profuse amounts of blood.

[3] Mr. Denny is 39 years of age, has been in the Yukon for approximately a year, and has had employment during that period of time. He is clearly a man who, despite his age, is continuing to try to improve himself, as he took a trades program from the Thompson Rivers University in 2007. He has been in a relationship with Ms. Ollie, the victim in this case and, if I understand counsel correctly, both wish to resume that relationship. It is very clear from Ms. Ollie's letters, which have been filed as part of Exhibit 3, that she wants to resume that relationship and indicates that when Mr. Denny is sober he is a good person.

[4] Mr. Denny, regrettably, comes before the Court with a history of violence, and I do not know but quite reasonably suspect that alcohol was involved in many, if not all, of these previous assaults. For one of those assaults he received a term of imprisonment of five years. That clearly was or must necessarily have been a significant assault, as it was charged as, and the guilt was found on, the offence of aggravated assault, which is, obviously, more severe than some of the other common assaults.

[5] Having said all of that, the last assault was in 2001 and the others range over a period of some six years prior to that time and leading up to 2001. Since 2001, Mr. Denny has not had other convictions of any kind. One might have read into that that he had either dealt with his substance abuse or had matured significantly over that period of time. I suspect that perhaps he has matured somewhat, but he is still subject to the demons of alcohol abuse.

[6] Having said all of that, it is important to emphasize that domestic violence is a curse in the community, not just in this community but in any community, and the Court

is required to address that, to let persons know who might be inclined to drink and lose control of themselves and commit violent offences, that drinking is not an excuse, that there must be a consequence for that kind of an offence.

[7] Mr. Denny has spent three and a half months in custody since this assault and, in fact, basically since the day that he assaulted he has been in custody. While in custody he has participated in what is called a transformational training program called Gathering Power and has received from Phillip Gatensby - who does not describe his relationship to that program but I assume he is either a director or a leader of that program - Mr. Gatensby has said that Mr. Denny has demonstrated many good things and that he has participated well in the program and wants to avoid ever returning to jail. He thought that had he taken that program earlier he might not now be in jail.

[8] Mr. Denny has, through his counsel, expressed an interest in taking programming and treatment for substance abuse; that he would, had he not been in custody, perhaps have been able to participate in the DVTO programming, the Domestic Violence Treatment Option; that he was qualified to participate in that but was not able to access it because of being in custody.

[9] He has spent three and a half months in jail. It is generally agreed that in the Yukon Territory you get time and a half credit for the time spent on remand, basically because of the lack of programming on remand. In this case I am satisfied that had programming been available to Mr. Denny while in remand, he would have participated in that programming.

[10] Mr. Denny, would you stand, please?

[11] Mr. Denny, I am taking into consideration that you have spent that three and a half months in custody. I have taken into consideration that you are interested in getting away from this lifestyle. I have taken into consideration that you have been absent from criminal convictions for almost nine years. These are good things, but I cannot overlook the fact that you have a previous record; I cannot overlook that this was a domestic violence matter.

[12] I am sentencing you to a term of imprisonment of three months, having given you credit for the three and a half months that you have already spent in custody.

[13] In addition, I am placing you on probation for a period of 18 months. The terms of probation are as follows:

1. You are to keep the peace and be of good behaviour.
2. You are to report forthwith upon your release from custody to a Probation Officer in --

Now, he will be released in Whitehorse, I take it?

[14] MR. COFFIN: Yes.

[15] MR. KOMOSKY: Yes.

[16] THE COURT:

2. -- a Probation Officer in Whitehorse, be under the supervision and direction of a Probation Officer, and report thereafter at the times and in the manner directed by the Probation Officer.

Arrangements will be made, if you return to Ross River, to meet the Probation Officer in Ross River. You understand that?

[17] THE ACCUSED: Mm-hmm.

[18] THE COURT: All right.

3. You will abstain absolutely from the consumption of alcohol or drugs, other than those prescribed by a physician.
4. You will take such assessment, counselling, programming and, with your consent, treatment as directed of you by your Probation Officer, and complete any program to the satisfaction of your Probation Officer.
5. You will have no contact with --

Now, I do not want to make this difficult. I want to make it protect Ms. Ollie, but I do not want to -- yes?

[19] MR. KOMOSKY: The usual language has been: no contact except as authorized in writing by your Probation Officer in consultation with RCMP and Victim Services.

[20] THE COURT: All right. Any comment on that?

[21] MR. COFFIN: No, although I don't -- my friend suggests in consultation with the RCMP. I'm not sure if that's necessary. It's generally Victim Services and the family violence assessment unit.

[22] THE COURT: Victim Services, that is fine.

[23] MR. COFFIN: Yes.

[24] THE COURT: All right. And I want to make it clear, Mr. Denny, that this is an 18-month probation order. I am going to say that applies for the whole 18 months. If during the 18 months you have demonstrated that you are freed from alcohol, you may want to talk to your Probation Officer about coming back and shortening the length of that prohibition, all right? So:

5. You are prohibited from having any contact, directly or indirectly, with Ms. Ollie except with the written permission of your Probation Officer in consultation with Victim Services.
6. You will reside in a residence approved of by your Probation Officer and not change your residence without the prior written approval of your Probation Officer.

[25] There is a firearms prohibition. That is a secondary offence, is it? I believe it is.

[26] MR. KOMOSKY: For firearms, yes. It's s. 110. It's not mandatory.

[27] THE COURT: Yes, but there will be a firearms prohibition for a period of three years. There will be a DNA order.

[28] THE ACCUSED: Do I -- excuse me, Your Honour.

[29] THE COURT: Yes.

[30] THE ACCUSED: But do I ever get a chance to speak for myself?

[31] THE COURT: I am sorry. Absolutely.

[32] THE ACCUSED: Do I have the chance to say anything about myself?

[33] THE COURT: Yes, Mr. Denny, yes.

[34] THE ACCUSED: Would I be able to say -- apologize to my wife.

[35] THE COURT: To Ms. Ollie, yes, absolutely.

[36] THE ACCUSED: I'm really sorry, baby, and, you know, and I really miss you like crazy, and I want to do something about this. I wish I can see you soon, so.

[37] THE COURT: Anything else, Mr. Denny?

[38] THE ACCUSED: Yeah. I was hoping that that no contact can be removed. It feels like I'm being sentenced twice. I don't know how legal that is. To me that's how it feels, that I'm being double jeopardied here.

[39] THE COURT: Well, I can tell you that there is no doubt that it is legal, and my obligation, among other things, is to ensure that this does not happen again. You know, until you have taken some alcohol counselling and shown that you have control of your substance abuse, clearly that is going to remain in place. As I have indicated to you, when you have demonstrated that you are taking your substance abuse seriously and are dealing with it, you can talk to the Probation Officer and perhaps he may say, "Okay, it is time to come back to court." You can come back to court any time you want, but he may say it is time to come back to court and I will support you in having that period of time reduced.

[40] THE ACCUSED: From my understanding, is it's going to be, like, 18 months I can't contact her after I'm done my sentence. So that's 21 months.

[41] THE COURT: You cannot contact her without the permission of your Probation Officer. The Probation Officer may, within a very short period -- I do not know; I cannot speak for him, but he is the person who is going to be monitoring your progress on probation, and he may say, "Listen, Mr. Denny, you are not taking this probation order seriously; there is not going to be any contact with Ms. Ollie until you take it seriously." He may say, "I can see you are making good progress on this; I am going to let you have daytime contact," or "contact for an hour in a public place." He may do a number of things; do you understand? But it is up to you to demonstrate that you are not a danger to her or anybody else.

[42] THE ACCUSED: You know this, everything that's happened here since I've been in custody, I haven't really, barely, had time to talk with my lawyer about everything that's been happening. I've been going to AA meetings up there and I've been seeing a counsellor from DVTO program for three or four sessions, and then the last couple of weeks I've been in court and I wasn't able to see counselling, but I had a positive report from [indiscernible].

[43] THE COURT: Well, I am pleased to hear that, and all of those things will be taken into consideration by your Probation Officer, do you understand? So this 18 months is not fixed in stone in terms of either, whether you can see her fairly soon or whether it is going to be a long period of time, nor is the 18 months fixed in stone. You may be able to get that relaxed by your demonstrating that you are doing something

about this substance abuse. But the 18 months, I think, is important for you to access all the programming that is necessary to deal with getting beyond what you have done here. Do you understand? So this is a benefit to you, this probation order.

[44] Now, I appreciate there are limits on it. It is intended to benefit you by providing programming. It is intended to ensure that you will not get into further difficulty in a domestic situation. Now, you have control of your life, in the sense that you will have input into how long this probation order is going to last and how many of the terms are going to stay there. Do you understand? All right.

[45] Have I covered everything now?

[46] MR. COFFIN: Yes. I would seek to have the surcharge waived, given that he has been in custody and will continue.

[47] THE COURT: Yes. Yes, I am waiving the surcharge. Anything else, Mr. Komosky?

[48] MR. KOMOKSY: Just that I had suggested that for the period of custody there also be in place a no contact.

[49] THE COURT: How do I do that? The probation order does not come into play until after the -- yes?

[50] MR. KOMOSKY: That's right. The probation order only comes into effect upon his release from custody.

[51] THE COURT: That is right.

[52] MR. KOMOSKY: I've been -- there is, and has been within the last couple years, a provision to allow for a no-contact order on the warrant of committal.

[53] THE COURT: Oh, I see. All right. Thank you. Just let me have a look at that.

[54] MR. KOMOSKY: And I thank Madam Clerk, because I've been frantically flipping trying to find that section.

[55] THE CLERK: Question from yesterday, Your Honour.

[56] THE COURT: I have got it. No, thank you. Section 743.21. Thank you. I am not going to prohibit him from having contact while he is in custody. Mr. Denny has demonstrated, both in court and out of court, that he is serious about these matters. He is in custody. Ms. Ollie is not at risk while he is in custody, so he can have communication with her; whatever is allowed through the WCC.

[57] Anything else?

[58] THE CLERK: Count 2?

[59] MR. KOMOSKY: That could be withdrawn.

[60] THE CLERK: Thank you.

OVEREND T.C.J.