

Citation: *R. v. Eriksen*, 2009 YKTC 35

Date: 20090406
Docket: 08-00068
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Judge Cozens

REGINA

v.

JOHN ABRAHAM ERIKSEN

Appearances:
Jennifer Grandy
André Roothman

Counsel for Crown
Counsel for Defence

REASONS FOR SENTENCING

[1] COZENS T.C.J. (Oral): John Eriksen has entered a guilty plea to one charge under s. 266 of the *Criminal Code*. Circumstances of what took place, with some modifications, were originally set out in an agreed statement of facts filed in the matter of Ms. Profeit, who was co-accused. This was filed July 3, 2008. It sets out some general circumstances which are applicable in this case, which have been elaborated on somewhat by Mr. Roothman and clarified from those facts that were in this agreed statement of facts.

[2] Briefly, Mr. Eriksen and Ms. Tanana Profeit were common-law spouses. On April 29, 2008, Ms. Profeit was involved in the drug trafficking trade in the Yukon Territory and one of the individuals she had been involved with was Mr. Jay Taylor, who is the

complainant. Mr. Taylor owed Ms. Profeit some money and she was upset about this. She made an arrangement to meet Mr. Taylor at the Tags Food and Gas store in Whitehorse. Mr. Eriksen was with Ms. Profeit when she met Mr. Taylor. He was in the vehicle with Ms. Profeit, Richard Linklater, Ricky Linklater rather, and Mr. Taylor, as they drove out to Long Lake, which was a place where Mr. Eriksen had been before with Ms. Profeit and Mr. Taylor when Ms. Profeit and Mr. Taylor were using drugs.

[3] This was effectively a collection of the unpaid monies, during which Mr. Linklater, who was trying to make an impression on Ms. Profeit due to her involvement in the drug trade, began to get violent with Mr. Taylor, striking him and kicking him. Mr. Eriksen, who had not threatened any violence prior to arriving at Long Lake, in fact got caught up in the circumstances, took a swing at Mr. Taylor in an attempt to punch him as well, although he denies ever kicking Mr. Taylor or ever using a weapon.

[4] As a result of the assault, and I am including Mr. Linklater's more significant role in it, as it appears, Mr. Taylor received a large welt on the side of his head, bruises, scratches to his face and injury to one leg, for which he was treated by emergency medical services. The investigation continued. A *Feeney* warrant and a search warrant were obtained, and Mr. Linklater, Mr. Eriksen and Ms. Profeit were arrested at the Westmark with a quantity of drugs, air spray, phones and various trafficking paraphernalia.

[5] This matter has come to this court somewhat later for this guilty plea. Mr. Linklater resolved his matter quite early in the process by entering guilty pleas to two of these offences and was sentenced to a sentence of 15 months in jail. Mr. Linklater had

a criminal record with approximately 50 entries on it.

[6] This matter was set for a week long Supreme Court judge trial. It was a complicated matter which would have required considerable resources to be expended. I accept as mitigating the guilty plea in this case. Given the allegation of facts and even, in fact, what the Crown was advised of in the agreed statement of facts by Ms. Profeit initially, and the subsequent later retention of Mr. Roothman, I could see why it would have taken a little while to get to where we are here, but that said, it is a guilty plea; it has resolved some matters that might have been difficult for the Crown to prove. This was a complex case, and I will give credit for this as compared to had it been entered on the day of trial with witnesses lined up at the door and much more work and resources expended.

[7] There is joint submission for time served. Mr. Eriksen has been in custody for 11 months. He was sentenced in November of 2008 to five months in custody for some other unrelated offences for which three months of this 11 months credit was given. Crown is basically suggesting that the sentence, the 11 months, nonetheless, could still be used in full credit for that, given at one and a half to one.

[8] Mr. Roothman is basically in agreement that a sentence of time served would be appropriate.

[9] Mr. Eriksen is 34 years of age. He has a criminal record with approximately 57 entries on it, several of which are for offences of violence. In 1996 there was an assault; in 1997 there was an aggravated assault for which he did custody. In 2003 there was an assault with a weapon, and three other assault charges in 2004 which

were 60 days and 30 days on each, which, given his prior record, likely placed them as not being in the most serious of circumstances. The Crown has pointed out that his record is considerably aggravating. There is also one other 267(a) entry in 2007 for which he received five months jail. It is a very aggravating record, and in some regards, despite his perhaps more limited role as far as involvement here, he certainly was part of the whole process and the whole set of events in which Mr. Taylor was likely quite intimidated and likely -- it would have been a fearful process for him.

[10] I have no problem with the joint submission and I find that it is a reasonable resolution in the circumstances, and I say this giving full measure to the fact that offences of violence that arise out of drug activity, drug trafficking and other related circumstances, are very serious and the overriding principles of general deterrence and denunciation must be met. There is no doubt that this kind of activity wreaks great havoc and causes lots of harm in communities, as we are all too aware of from some of the events where the gangs in some of the southern jurisdictions end up in warfares with each other, that end up spilling over and causing harm to innocent people in the communities. That problem to that extent has not been prevalent in the Yukon but there is no question that there are a lot of innocent victims of the drug trade and drug activity in the Yukon and such activity must be deterred at all times and the sentences that are imposed by the Court should reflect that.

[11] The sentence will be time served. It will be reflected as 16 months. There will not be a probation order to follow.

[12] As I stated during submissions, Mr. Eriksen has the capacity to make the choices

that will keep him away from the law or he has the capacity to make the choices that will directly involve the law, and frankly, in these circumstances, I believe that the resources of the probation office would be better used elsewhere. That is not to say or to be taken from I have said that rehabilitation is not important in Mr. Eriksen's case. He is a young man, has, with his somewhat drifting in and out of employment and educational activities, still nonetheless shown that he has the capacity to become a useful and contributing member of society. He has the abilities and he has the intelligence to do that. Really, it is a question of choice for him. He will make those choices himself, one way or the other. As he said, he wants a clean break. Well, this is a clean break. Now, what Mr. Eriksen chooses to do with it is up to him, and if he makes the wrong choices we will see him again.

[13] There will not be a DNA order. I am advised that, as a result of the conviction, either in 2008 or in 2007, the one in 2007 being the primary designated offence of 267(a), that a DNA sample was taken. This was confirmed by the constable who was in court today and who was present and actually took the sample at the time. That sample has been sent to the data bank.

[14] Mr. Eriksen indicates he is on a firearms prohibition. I note that there is nothing on the criminal record that indicates that, but in these circumstances I am not going to impose a firearms prohibition, not because these circumstances are not serious; they are extremely serious circumstances, but I am not satisfied of enough of a connection in these circumstances to the firearms prohibition to think that it will necessarily meet an objective. That is not to say it would not, I am just not going to make the order.

[15] The remaining charges?

[16] MS. GRANDY: They can be marked as withdrawn, please.

[17] THE COURT: Victim fine surcharge, any submissions?

[18] MR. ROTHMAN: Ask that that be waived given the fact that my client's been in custody for a significant amount of time and not had any source of income.

[19] THE COURT: Any issue, Ms. Grandy? It will be waived.

COZENS T.C.J.