

Citation: *R. v. Germaine* 2007 YKTC 69

Date: 20070918
Docket: T.C. 06-00556
06-00209A
07-00034A
07-00035C
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: Her Honour Judge Ruddy

REGINA

v.

VERONICA GERMAINE

Appearances:
Michael Cozens
David Christie

Counsel for Crown
Counsel for Defence

REASONS FOR SENTENCING

[1] RUDDY T.C.J. (Oral): Veronica Germaine is before me now in relation to the remaining counts, which are all breach charges or failed to appear. As I mentioned in my earlier decision in relation to the not criminally responsible by reason of mental disorder, it is accepted by all counsel and Ms. Germaine that the same finding would not apply to these four counts as there is no evidence to suggest that at any of these times she was in a disassociative state.

[2] The four counts involved, firstly, her failing to appear on both the 26th of July and the 30th of August, her failing to report between the 8th and 15th of September 2006, as

required by her recognizance, her failure to abstain on November 25th, which, even though it relates to incidents of assault with a weapon for which she has been found not criminally responsible by reason of mental disorder, it is accepted that her decision to consume alcohol occurred before that time, at a time when she in possession of faculties and able to make a rational choice.

[3] The last of the four counts before me relates to her failing to appear on the 10th April 2007. It is my understanding that that was in relation to a court-ordered psychiatric assessment. She did not attend initially for that assessment or to meet with her bail supervisor. It is clear to me that subsequently she was more than cooperative and forthcoming with Dr. Lohrasbe in the preparation of the pre-sentence report.

[4] It is also important for me to note that she has spent some 303 days in pre-trial custody, which, quite frankly, when I read that, I figured that this was going to be fairly straightforward, I credit her for remand time, whatever the appropriate amount is on each of the four counts, and we walk away.

[5] What is curious about this particular one is the fact that the counsel for Ms. Germaine has made the pitch that I consider a discharge on these four counts. Ms. Germaine does come before the Court with a prior criminal record, although I would note that in terms of the offences which have been admitted there is only a conviction in 2006. There is a previous discharge in 2003.

[6] The concern in terms of Ms. Germaine's best interests, I take from the submissions of her counsel, are two-fold. Firstly, the concerns about her having a

record of breaches as she pursues some of her long-term plans, specifically, of becoming a conservation officer after having returned to school.

[7] Secondly, I take to be an argument that given all of the work that she has done while in custody in terms of pulling together a support team and accessing appropriate resources, there is some concern that convictions might be seen in her mind as counterproductive to the work that she has done. I probably have not phrased that particularly well, but what kind of message does that send her when she has put in the work that she has? For the record, that work includes her meeting frequently with Dr. Heredia. She is under his care and I believe taking medication that he has prescribed. She has also been dealing with Bill Stewart, a psychologist that has been retained to provide assistance to members of her First Nation, that being the Na-Cho Nyak Dun First Nation, including her. She has also met extensively with Leah White and is making arrangements to enter the Women, Anger and Violence program which I believe commences next week. She has met with Lynn Moylan-White and is at this point looking to attend alcohol and drug treatment in October. She has been meeting with Phil Gatensby, had contact with AA. She has had ongoing contact with her First Nation who have indicated their willingness to support her. She is also been actively involved in a civil suit that relates to her extremely traumatic and tragic background and history.

[8] In terms of the test for a discharge, I am fully satisfied that it would be in her best interest, that is not often the difficult hurdle in terms of the test. The question for me really is on the public interest branch of the test and whether it is in the public interest that I discharge her. I will say that normally the Court quite frankly frowns upon people

who fail to comply with court orders and the demands and expectations of the Court. We have here a pattern of behaviour that demonstrates that non-compliance.

[9] It would be rare to unusual for the Court to consider anything other than a custodial term on breaches. The question for me is; is this case different than your average case that I would look at from that perspective? It is not an easy question and it is something that I, quite frankly, am struggling with somewhat. I would first make the point that this is a completely unique situation and should not be taken to be a precedent in any way, shape or form, because it is very particular to the circumstances. But on balance I am satisfied that I need to view the behaviour before me as behaviour which flows from and stems from the mental disorders which Ms. Germaine is very valiantly struggling to come to terms with and to manage. She is doing all the right things right now to manage those disorders. She has sought all of the appropriate help.

[10] I should state for the record, the report of Dr. Lohrasbe makes it clear that -- in terms of the background, I do not want Ms. Germaine to think I am sounding harsh when I refer to those mental disorders. Quite frankly, when you look at the background and history, it is in some ways a wonder you are functioning as well as you are right now, and that is to your credit. I think the mental disorders as defined by Dr. Lohrasbe are things that clearly flow from your experiences and are totally understandable in that context. You should be proud of the steps that you have taken over the last few months to try and come to terms with everything that has happened and with the impact that it has had on you.

[11] But I am satisfied that it is appropriate for me to consider her behaviour in failing to comply with the expectations of the Court in light of her overall circumstances. That being the case, while it is highly unusual, I would be prepared to grant a discharge in relation to the four counts that are before me today.

[12] The question then in my mind is whether that discharge ought to be a conditional one or an absolute one. In the circumstances, given the amount of remand time that she has served, given the fact that there is going to be a disposition from the Review Board, I think we will require her to likely to continue a lot of the efforts that she has already made. Given that she has taken the initiative to make those efforts on her own already, in my mind it would be unfair to place her under the conditions of a probation order, which would put her at risk, potentially, for future charges.

[13] I might be more comfortable with a conditional discharge that would require her to do some programming, but I think that would be -- that does not make sense, in my mind, in all of the circumstances. So the discharge as it relates to the four counts before me will be absolute.

[14] Essentially, you are done with respect this Court. I do wish you the very best of luck with the work that you have ahead of you. You will need to follow up in appearing before the Review Board and they will make a disposition that relates to the other matters.

[15] I think you should be, by and large, and hopefully my disposition sends that message to you, that you should be very proud, justifiably proud, of the efforts that you have already made. You have a long road ahead of you and I know, and I think you

know, that it is going to be a long, hard road, but I think you have made a very good start. You should be proud of yourself and I wish you good luck.

[16] THE ACCUSED: Thank you.

[17] THE COURT: Okay. Victim fine surcharges, any submissions?

[18] MR. COZENS: I expect that they could likely be waived in this case.

[19] THE COURT: We will waive them. I am assuming that she is not working at this point in time, in any event, having just been released last week.

RUDDY T.C.J.