

Citation: *R. v. Hale*, 2010 YKTC 70

Date: 20100625
Docket: 09-00725A
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: Her Honour Chief Judge Ruddy

REGINA

v.

GEOFFREY LAWRENCE HALE

Appearances:
Ludovic Gouaillier
Gordon Coffin

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCING

[1] RUDDY C.J.T.C. (Oral): Geoffrey Hale is before me for sentencing on a single count of assault with a weapon which arises in something of a domestic context. Mr. Hale and Ms. Amanda Ledgerwood have been in a relationship off and on for several years. Ms. Ledgerwood has three children and Mr. Hale, I understand, has stood in the place of a father to those three children. However, in December of this past year, Ms. Ledgerwood indicated that she wished them to take a break from the relationship.

[2] On the particular evening in question, Mr. Hale, having dropped off the children with Ms. Ledgerwood's mother, happened to be passing her residence, noted an unknown vehicle there, and there were some indicators to him that someone was present with her in the residence. He became angry, broke into the residence,

damaging a window and a door. He entered into the bedroom, where he found the complainant, Mr. Sands, and asked that he leave the residence. Mr. Hale then, unfortunately, went to the kitchen, grabbed a knife and returned to the bedroom. It is my understanding through the pre-sentence report that this was a small steak knife. However, he confronted Mr. Sands. There was a struggle during which there was apparently an attempt to stab Mr. Sands, who was, fortunately, able to block the use of the knife. Mr. Hale then head-butted him twice in the nose area, resulting in swelling and bleeding. No other injuries were reported and, in particular, the knife itself was not actually used in terms of cutting anyone. Ms. Ledgerwood contacted the police and Mr. Hale left the residence.

[3] He comes before the Court with a prior criminal record. It is a record which is, in its entirety, related to Mr. Hale's significant history of drug addiction. It includes a number of drug-related offences and breaches, reflecting his difficulty in complying with conditions at times when he is actively using. This is, as the Crown pointed out, an offence which is serious enough that it could quite rightly attract a penitentiary term.

[4] Mr. Hale, you need to understand that the potential for serious injury or worse, in this case, was pretty high. I know from the Pre-Sentence Report that you are aware of that and that you are concerned about what you have done and the impact that it has had on others. You have entered a guilty plea, which is indicative to me of remorse, as well.

[5] I do have a joint submission before me from counsel suggesting that this matter be resolved by way of an 18 month conditional sentence followed by a two year

probationary term. As I said, this is the type of offence for which one might otherwise be looking at a penitentiary term. In this case, obviously, counsel, as am I, are agreed that there are somewhat exceptional circumstances.

[6] I have a great deal of information before me in the form of a very thorough and complete Pre-Sentence Report, as well as detailed letters from a number of individuals, including Mr. Hale's employer, Ms. Ledgerwood, his mother and his step-father, all of which speak quite frankly about Mr. Hale's history, background and his current circumstances. Of particular note to me, Mr. Hale, while having had a relatively stable early upbringing, appears to have developed significant problems with drugs in his teens, following the divorce of his parents.

[7] Both he and Ms. Ledgerwood have a history of struggling with drugs and coming into conflict with the law as a result. However, this is one of those cases in which they both appear to be doing extremely well right now in managing their addictions. Mr. Hale spent some time in custody a couple of years ago with respect to a drug-related offence, but since shortly after his release he has maintained sobriety. He has been clean, and Ms. Ledgerwood has as well, over two years, and it might even be more than that, I think, three years now, of being clean and sober. Both of them have made significant strides, but it is clear to me from the reports that doing so has not been without some struggles and glitches along the way as they continue to work through their issues individually and, to some extent, at least before this incident, together as well.

[8] In considering what is being suggested here, one of the things that I think is

crucial is that there has been a significant reduction in Mr. Hale's risk level as a result of the fact that he has stayed clean. I think his ability to maintain his sobriety is crucial to his not coming into conflict with the law in the future. I tend to agree with his mother's comment that his ability to do so may well drop dramatically in a custodial situation, where he is with a number of individuals who struggle with similar addictions, and it is not unheard of that various substances do get smuggled into such facilities. So when I am balancing off the issues that need to be addressed here, in terms of denunciation and deterrence, as well as rehabilitation, I am satisfied that adopting the joint submission in allowing Mr. Hale to serve his custodial term within the community is the best balance of all of those principles.

[9] Case law is clear that a conditional sentence can meet the principles of denunciation and deterrence and, as I have said, in terms of Mr. Hale's rehabilitation, placement in the community with the support that he has from his family is pretty crucial to his continuing efforts to address his addiction issues.

[10] That being said, I would adopt the joint submission of counsel. Mr. Hale, there will be a sentence of 18 months with respect to the single count that you have entered a plea to. You will, however, be entitled to serve that conditionally within the community. The terms and conditions of the conditional sentence will be as follows:

1. That you keep the peace and be of good behaviour;
2. Appear before the Court when required to do so by the Court;

3. That you report to a Supervisor within two working days and thereafter when required by the Supervisor and in the manner directed by the Supervisor;
4. That you remain within the Yukon Territory unless you have written permission from your Supervisor and notify your Supervisor in advance of any change of name, address and promptly notify your Supervisor of any change of employment or occupation;
5. You are to reside as directed by your Supervisor; abide by the rules of the residence and not change your residence without the prior written permission of your Supervisor;

[11] There does need to be a restrictive house arrest component, in my view, and I do note that I have also considered the fact that you have been on house arrest for a number of months in passing sentence. That is one of the other factors that I think weighs in favour of granting you a conditional sentence, but I am going to include the same condition that you have been on as part of your conditional sentence order, which will require you to:

6. Abide by a curfew by remaining within your place of residence at all times except for the purposes of employment or except with the prior written permission of your Conditional Sentence Supervisor, such permission to be carried on your person. You must present yourself at the door or answer the telephone during reasonable hours for curfew checks; failure to do so will be a presumptive breach of this condition;

You know from the past few months that they will be checking.

7. You are also to abstain absolutely from the possession or consumption of alcohol and controlled drugs or substances except in accordance with a prescription given to you by a qualified medical practitioner. You are to provide a sample of your breath or urine for the purposes of analysis upon demand by a peace officer who has reason to believe that you may have failed to comply with this condition;

[12] Mr. Coffin, any issues with providing a sample if there are reasonable grounds?

[13] MR. COFFIN: No.

[14] THE COURT: I recognize that you were not under the influence with respect to this offence but it is clear to me your risk factors go way up if you are. So I am satisfied you do need to continue to abstain.

8. You are not to attend any bar, tavern, liquor store, off-sales or other commercial premises whose primary purpose is the sale of alcohol;
9. You are to take such alcohol and/or drug assessment, counselling or programming as directed by your Supervisor. Attend and complete a residential treatment program if so directed by your Supervisor;
10. You are to report to Offender Services to be assessed, and attend and complete any recommended programming as directed by your Supervisor;
11. Take such other assessment, counselling and programming as directed by your Supervisor;
12. You are to have no contact directly or indirectly or communication in any

way with Amanda Ledgerwood, except with the prior written permission of your Supervisor in consultation with Victim Services and Family and Children Services;

That is not so that you cannot have contact, it is so that contact can be monitored. I just want the Supervisor to have a handle on how things are going in terms of when and how you should have contact. So I am not putting that there to suggest that you do not have any contact, just so that it be monitored and somebody is keeping an eye on things.

13. You are to have no contact directly or communication in any way with Patrick Sands;

Having had the discussion with respect to restitution, I am going to decline to make the order because that appears to have been resolved through other means.

14. You are to participate in such educational or life skills programming as directed by your Supervisor;
15. Make reasonable efforts to find and maintain suitable employment and provide your Supervisor with all necessary details concerning your efforts;
16. You are to provide your Supervisor with consents to release information with regard to your participation in any programming, counselling, employment or educational activities that you have been directed to do pursuant to this conditional sentence order.

[15] I have a question with respect to the last suggested condition, that being, essentially, the weapons condition. Would this not be a mandatory offence for the purposes of s. 109?

[16] THE ACCUSED: I've already got a ten year.

[17] THE COURT: There is already one?

[18] THE ACCUSED: Yeah.

[19] MR. GOUAILLIER: And I think you're right, Your --

[20] THE COURT: In which case, you may be looking at a lifetime ban.

[21] MR. COFFIN: Yeah, that's fine.

[22] THE COURT: Okay. I think pursuant to s. 109, that is a requirement for this offence, and because you have a prior, it is going to be a lifetime ban. So in addition to the conditional sentence, there will be a lifetime prohibition pursuant to s. 109 that you not have in your possession any firearms, ammunition or explosive substances.

[23] Any concerns on the conditional sentence conditions?

[24] MR. GOUAILLIER: Yes, I have one thing, and, again, it's not something I've discussed with Ms. Ledgerwood. On this monitored contact, I wonder if there's a requirement - it's in the interim release conditions - for monitored access to her residence. There is a not attend. So whether there's any need for a not attend unless

you have permission from the -- and I don't know, perhaps that's something Ms. Ledgerwood may --

[25] THE COURT: In this case, I think I am satisfied, based on the information in the report, that so long as the Supervisor is clued into what is going on and how both of them are doing, in allowing them to have contact, I think that is sufficient in these circumstances. Mr. Coffin, any concerns about the conditional sentence conditions?

[26] MR. COFFIN: No.

[27] THE COURT: Okay. So the conditional sentence is to be followed by a probationary term of two years which will be on the following terms and conditions:

1. That you keep the peace and be of good behaviour;
2. Appear before the Court when required to do so by the Court;
3. Notify your Probation Officer in advance of any change of name or address and promptly notify the Probation Officer of any change of employment or occupation;
4. Report to a Probation Officer immediately upon completion of your conditional sentence and thereafter when and in the manner directed by the Probation Officer;
5. I am going to require that you abstain absolutely again, because of the risk factors, from the possession or consumption of alcohol and controlled drugs or substances except in accordance with a prescription given to you by a qualified medical practitioner;
6. You are not to attend any bar, tavern, off-sales or other commercial

- premises whose primary purpose is the sale of alcohol;
7. You are to take such alcohol and drug assessment, counselling or programming as directed by your Probation Officer;
 8. You are to report to Offender Services to be assessed, and attend and complete any recommended programming as directed by your Supervisor;
 9. Take such other assessment, counselling and programming as directed by your Supervisor;

I am not going to include the no contact with Ms. Ledgerwood, with respect to the probationary term. I expect by the time you get to that, any other issues will have been long resolved. However, I will include it with respect to Mr. Sands.

10. Have no contact directly or indirectly or communication in any way with Patrick Sands;
11. Participate in such educational or life skills programming as directed by your Supervisor;
12. Make reasonable efforts to find and maintain suitable employment and provide your Supervisor with all necessary details concerning your efforts;
13. Provide your Supervisor with consents to release information with regard to your participation in any programming, counselling, employment or educational activities you have been directed to do pursuant to this probation order.

[28] So it is primarily just the programming on your probationary term, to continue what it is that you have already started working on. You are working right now, though?

[29] THE ACCUSED: Yeah.

[30] THE COURT: Okay. There is going to be a victim fine surcharge, then. I believe with the summary election it would be \$50.

[31] MR. GOUAILLIER: Yes.

[32] THE COURT: How long does he need to pay that?

[33] THE ACCUSED: Two weeks?

[34] MR. COFFIN: Two weeks.

[35] THE COURT: Okay. Two weeks time to pay.

[36] MR. GOUAILLIER: And this is also a primary designated offence.

[37] THE COURT: For DNA?

[38] MR. GOUAILLIER: For DNA.

[39] THE COURT: Okay. Then I will make the order. Mr. Coffin, any submissions?

[40] MR. COFFIN: No.

[41] THE COURT: Then I will make the order that you provide such samples of your blood as are necessary for DNA testing and banking.

[42] The remaining counts?

[43] MR. GOUAILLIER: It would be a stay of proceedings, Your Honour.

[44] THE COURT: Okay.

RUDDY C.J.T.C.