

Citation: *R. v. Lamarche*, 2010 YKTC 23

Date: 20100218
Docket: 09-00627
09-00671
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: Her Honour Chief Judge Ruddy

REGINA

v.

PHILLIPE ANDREW LAMARCHE

Appearances:
Kevin Komosky
Keith Parkkari

Counsel for Crown
Counsel for Defence

REASONS FOR SENTENCING

[1] RUDDY C.J.T.C. (Oral): Phillipe Lamarche is before me having entered a plea of guilty with respect to a single count of uttering threats, and, having been found guilty following trial, on a single count of obstructing justice by threatening a witness.

[2] The facts of the uttering threats arose on the 9th of November 2009. At that point in time, Mr. Lamarche was an inmate at Whitehorse Correctional Centre. There had been behaviour that involved his banging on the cell plexi-glass and yelling. He had been directed to stop but refused to do so. There was a team of officers that then went in to extract him. He was directed to return to his cell and close the door. He refused to do so. He did make a gesture towards a kettle of boiling water, but apparently stepped back and did not pursue the implication that he was considering

throwing it at the officers.

[3] He was then, I take it, taken to the ground by the corrections officers. During this scuffle, he indicated, "I'll get out in a couple of months. I'll get you guys on the streets. You don't know who you're dealing with." Those are the facts on the first offence to which he entered a plea of guilty some time ago. So it was an early plea with respect to that matter.

[4] The remaining matter, as I indicated, did proceed by way of a trial. In terms of the facts, those are set out in more detail in the trial decision, but suffice it to say, they involved Mr. Lamarche making a telephone call to the complainant, Mr. Garth Brown, during which he uttered a threat to kill Mr. Brown should Mr. Brown proceed with charges against Mr. Lamarche's friend, Mr. Pahtayken. He then followed it up by saying that he did not need to do it himself, he had others that could do it for him.

[5] Mr. Lamarche comes before the Court with an extensive criminal record of numerous pages, and at least according to the Crown, who has had the opportunity to count them, which I have not, there are some 83 convictions on that record. Mr. Lamarche has spent an extended period of his life in and out of custody.

[6] The majority of offences seem to be property related or process offences. There are a number of offences for failure to comply with court orders, for obstructing peace officers, offences of that nature. There is one serious offence of violence, aggravated assault and robbery, for which he received three years in the penitentiary.

[7] It is my understanding, through his counsel, that Mr. Lamarche is now 40 years

of age. I have been provided some background with respect to Mr. Lamarche, which perhaps makes it unsurprising that he is continually before the courts. He is of First Nation ancestry; he is a status Cree. It appears that he had an extremely difficult and unfortunate childhood, which involved, amongst other difficulties, his father killing his mother and being convicted of manslaughter when Mr. Lamarche was seven years of age. It was also characterized by significant alcohol abuse, as well as physical and sexual violence, to which he was subjected.

[8] It appears that following his father's sentence, he spent seven years in foster care, but was ultimately returned to his father's care. His father is described as an individual with gang ties who is heavily involved in criminal activity. It appears that Mr. Lamarche's brother, as well, followed in his father's footsteps. He too was convicted at one point for manslaughter. He ultimately died by way of a drug overdose while in custody. It does appear that Mr. Lamarche has two other siblings, who appear to be relatively stable and settled, one older brother who is a heavy equipment operator here in Whitehorse, and an older sister who is an assistant professor working on her doctorate at the University of Alberta.

[9] Mr. Lamarche, however, if one views his record, has not been successful in staying out of the courts and appears, as I have said, to have spent considerable time in custody as a result.

[10] Through his counsel, he has expressed an interest in addressing some of those issues that bring him before the Court. The indication is that he does not have a particular problem with drugs, although there is some history of having sold them with, I

take it, a commercial motive, as opposed to an addiction motive. He does, however, admit to having a significant alcohol problem, with periods of heavy drinking that he is not able to effectively control. He has expressed an interest in a residential treatment program to address his alcohol issues.

[11] I would note both of the offences before me did occur in custody, and there is no indication that alcohol was a factor. Having said that, it is clear from Mr. Lamarche's record that alcohol is a significant issue for him that he needs to address effectively at some point in his life, should he ever hope to break away from his pattern of offending behaviour.

[12] To his credit, he has been accessing some counselling while in Whitehorse Correctional Centre, including both one-to-one and group programming with Phil Gatensby, having completed the Gathering Power program on three occasions. He has also sought and received counselling from Nicole Comin, as well as from Kyle Keenan and Karen Goldsmith. There is an indication that that programming began the 6th of October, so it does pre-date the two offences before me. But it is ongoing and there is, perhaps, some hope that there will be some benefit to Mr. Lamarche and, ultimately, society, as a result of that counselling, as he is clearly a gentleman in significant need of external support and assistance in terms of managing his issues.

[13] He does have some additional support. Firstly, his girlfriend, Ms. Charlie, has been a regular in the courts, in terms of supporting him. She has been consistent and stalwart in her support of him, appears to have a recognition that he has significant issues to address, but also continues to express her willingness to provide him support

as he addresses those issues. I also have received letters from both Millie Sam and Mr. Gatensby, speaking to their support for Mr. Lamarche. So he does have some community support, as well.

[14] In addition to the circumstances of Mr. Lamarche, I have been provided a victim impact statement. It is a very brief victim impact statement from Mr. Brown, but it is one that, in my view, is important nonetheless when one considers the nature of the offences before me, particularly the obstruction. I want to read briefly from that victim impact statement, wherein Mr. Brown states:

I am scared beyond anything I've ever felt in my life. I can't even sleep without meds to help me. Even then I have bad dreams about being hurt.

[15] I am satisfied that the offence before me has had a significant impact on Mr. Brown. There was an indication at trial that he had received additional phone calls, with additional threats and additional efforts to dissuade him from testifying, from individuals that he could not name. So I accept defence counsel's submission that there may well have been others that called, but I also accept that Mr. Lamarche's activities in this particular case are a significant contributing factor to the difficulties that Mr. Brown is now suffering. That is something that I have taken into account in determining what the appropriate sentence is.

[16] There have been a number of cases filed before me. Having discussed those cases, counsel have provided me with positions that are somewhat disparate. Crown is suggesting a sentence of 18 months on the obstruction, plus two to three months on the uttering threats, to be followed by a year's probation, with a no-contact provision.

[17] Defence is suggesting a sentence in the range of eight to 12 months with respect to both matters, and suggesting that I follow that with a minimal probationary term, with not just the no-contact provisions but, as well, a treatment condition as it relates to Mr. Lamarche in his stated intention or desire to pursue additional alcohol programming.

[18] Both positions as stated are before credit for remand time is given. Crown's position with respect to credit for remand, his having done approximately three months, is that he is entitled to somewhere between four and five months credit. Defence has gone to some effort to break it down more in terms of some of the time spent in segregation, where there was no access to particular programming, and suggests that for part of the period, credit be two to one, and for the remainder one and a half to one, which would amount to five months credit. I am of the view that however I break it down, five months is appropriate.

[19] The bigger question for me is what is the appropriate sentence at the end of the day. As I indicated, there have been a number of cases filed. As is not surprising, when a number of cases are filed, none of them are directly on point, but they all provide some guidance in terms of both the considerations and also the sentencing range. There are some cases that are not particularly clear because the decisions themselves do not provide particularly thorough factual descriptions, and others that appear to be anomalies to some extent. My view in looking at these cases, there appears to be, and I find that there is a range of approximately nine months to 24 months. I should state, for the purposes of this decision, the cases filed relate primarily to the obstruction charge. The uttering threats is, obviously, less problematic from a sentencing standpoint. But with respect to the obstruction charge, the cases appear to

indicate a range of effectively nine to 24 months, and the question for me is where Mr. Lamarche falls within that particular range.

[20] I also would note that the cases speak about the seriousness of the offence of obstruction. As indicated, the range is one of nine to 24 months. The reason for that range is that obstruction, particularly obstruction of this nature, in threatening a witness to dissuade him from testifying, is viewed extremely seriously by the Court. The cases continually refer to it as being an attack on the administration of justice, something that strikes at the very heart of the administration of justice, and something which must be treated extremely seriously. I would note, along those lines, the quote out of the case of *R. v. Thuraisingam*, [1997] O.J. No. 5424, at para. 8, in which the Justice noted that:

In order to deter others who would be inclined to vindicate themselves by wiping out the witnesses or intimidating them, it is necessary that the Court indicate in a clear and unmistakable fashion that this crime strikes at the roots of justice. Without witnesses to testify, willing to come forward, the system of justice would not be able to perform its function as it is expected to do. We depend on witnesses to come to court, and witnesses depend on the court system and the system of justice to ensure that in doing so, they are not subjected to further risk.

It is for this reason that the dominant sentencing principles are very clearly denunciation and deterrence, with respect to the obstruction charge.

[21] In noting what I have accepted as the range, the lowest of the cases within that range is the case of *R. v. C.H.J.*, 2006 BCPC 278, in which a sentence of nine months was received in a case in which the accused persuaded his girlfriend not to testify. There is no indication of threats with respect to that case.

[22] I am satisfied that Mr. Lamarche, given his particular circumstances, and in particular his very lengthy record, including a lengthy history of failing to abide by court orders and failing to respect the administration of justice, that he does not fall within the lower end of the range.

[23] Based on all of the information before me, I am satisfied that the position as sought by the Crown is an appropriate one, with respect to the obstruction charge. I am satisfied that 18 months, given Mr. Lamarche's actions and his background, is appropriate in this particular case. Accordingly, there will be a sentence of 18 months with respect to the obstruction. However, I will credit five months for the time spent in pre-trial custody, which will leave a sentence of 13 months, and I would ask that the record reflect the credit that he has been given, that being the five months credit.

[24] With respect to the uttering threats that pre-dated the obstruction charge, it is concerning, but it is significantly less serious than the obstruction charge. I am satisfied that a consecutive sentence of two months is appropriate with respect to that matter, leaving a remaining 15 months to be served.

[25] I would ask that the warrant of committal be endorsed with a no-contact order, prohibiting Mr. Lamarche from having any contact, while in the facility, with Mr. Garth Brown.

[26] The custodial period will be followed by a probationary term. That term will be for a period of 12 months. There will be the statutory terms attached, that Mr. Lamarche:

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

3. Notify the Court in advance of any change of name or address and promptly notify the Court of any change of employment or occupation;

Those are statutory terms that I am required to include. The only other condition I am going to include in the probation order is, Mr. Lamarche, that:

4. You have no contact directly or indirectly or communication in any way with Garth Brown.

[27] There have been representations made with respect to rehabilitation, both steps taken, as well as the intention that Mr. Lamarche has, to pursue programming. In my view, this is not a sentence which has a rehabilitative focus to it. So I am not going to bind him to rehabilitative conditions in the probationary term. I have passed a sentence which, in my view, is intended to be deterrent and denunciatory in nature. It is my hope that Mr. Lamarche pursue programming, but the probation order, in my mind, is to allow Mr. Brown the comfort of not being subjected to any contact from Mr. Lamarche. If I were to have made the probation order rehabilitatively focused, I likely would have reduced the custodial term, but I do not believe that that is appropriate in this particular case, either given the nature of the offence, or given Mr. Lamarche's background.

[28] That being said, there are a number of mandatory orders which flow from the circumstances before me. There will be the mandatory firearms prohibition. It is my understanding, based on the information provided to me, that Mr. Lamarche has been the subject of a previous firearms prohibition. Accordingly, the mandatory prohibition with respect to this particular matter will be for life, subject to any application he may bring with respect to exceptions.

[29] There is also a request with respect to a DNA warrant. Any submissions on that, Mr. Parkkari? It was not addressed in your submissions.

[30] MR. PARKKARI: No.

[31] THE COURT: In this particular case I think it is appropriate, particularly in light of his history and the offences before me. I also am of the view that it would not be unduly intrusive for there to be such an order. So, notwithstanding that these are secondary designated offences, I would make the order that Mr. Lamarche provide such samples of his blood as are necessary for DNA testing and banking.

[32] I will waive the victim fine surcharges, given his custodial status. Anything remaining?

[33] MR. KOMOSKY: Are there any remaining counts with the Court?

[34] THE COURT: There might be a remaining count with respect to the information for the uttering threats in the facility. Yes, there is.

[35] MR. KOMOSKY: Yes, Crown would apply to withdraw that charge.

[36] THE COURT: Thank you. Count 2 withdrawn.

RUDDY C.J.T.C.