

Citation: *R. v. Lane*, 2013 YKTC 2

Date: 20121206

Docket: 11-10069

11-10074

12-10049

12-10439

12-10440

12-10129

Registry: Watson Lake

Heard: Watson Lake

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Judge Faulkner

REGINA

v.

TIMOTHY ALLAN LANE

Appearances:

Terri Nguyen

Gordon Coffin

Counsel for the Crown

Counsel for the Defence

REASONS FOR SENTENCING

[1] FAULKNER T.C.J. (Oral): Timothy Allen Lane has entered pleas of guilty to five *Criminal Code* offences and two infractions of the *Yukon Motor Vehicles Act*, R.S.Y. 2002, c. 153.

[2] The series of incidents leading to the criminal and highway traffic charges began on August 9, 2011, when Mr. Lane assaulted his then girlfriend, Wendy Nolan. During the course of an argument which was occurring out on the street, the accused pushed

Ms. Nolan several times. The altercation was witnessed by a passerby. Mr. Lane, who was intoxicated at the time, was arrested, charged with assault, and has now entered a guilty plea to that assault.

[3] A short time later, on August 27, 2011, Mr. Lane again encountered Ms. Nolan. Although he was, by this time, on no contact order, he confronted Ms. Nolan, grabbed her by the throat, and forced her to the ground, where he beat her with his shoe. The undertaking, which forbade him to have contact with Ms. Nolan, also provided that he was not to possess or consume alcohol; however, he was again under the influence of liquor. Mr. Lane was charged with and has entered pleas of guilty to charges of assault with a weapon and breaching his undertaking by consuming alcohol; these charges both arising from the August 27 incident.

[4] On May 18, 2012, Mr. Lane was bound by a recognizance that provided, *inter alia*, that he have no contact with Ms. Nolan. Despite this, on that date, Mr. Lane and Ms. Nolan were found together.

[5] Finally, on October 6, 2012, Mr. Lane was seen operating a motorcycle with no license plate and no taillight. When the police attempted to make a traffic stop, Mr. Lane fled at high speed with the police in pursuit. This pursuit continued through the streets of Watson Lake, with Mr. Lane blasting through stop signs and driving on and off the roadway. Eventually, the pursuit was abandoned and Mr. Lane was located at home, where he was arrested. It is to be noted that at that time he was belligerent, obscene, and abusive, and this continued throughout his arrest, his transport to the police detachment, and for hours after he had been lodged in cells. This final

performance resulted in charges of dangerous driving and the motor vehicle charge of operating the motorcycle without a taillight. It also developed that Mr. Lane only had a Learner's Permit and should not have been operating the motorcycle. He has now entered guilty pleas to the charge of dangerous driving and contraventions of ss. 178(e) and 31(a) of the *Motor Vehicles Act*.

[6] Mr. Lane is now 20 years of age. Somewhat surprisingly, given the above mentioned recitation of his misdeeds, he has no prior criminal record. All of the *Criminal Code* matters are of some gravity. The first assault was of some significance because although it only involved pushing, the victim was a woman with whom he was in a relationship. Far more grave was the second assault. Not only was the nature of the assault much more serious, but it appears to have been largely motivated by Mr. Lane's desire to revenge himself on Ms. Nolan for his having been charged with the first assault. Then and later, he demonstrated a cavalier disregard of his release orders. Finally, in October of this year, he found himself involved in a dangerous high speed chase through the streets of this town.

[7] With considerable justification, the Crown seeks a global custodial sentence of up to a year notwithstanding the lack of a prior record. The Crown says, and I agree, that a custodial sentence of some magnitude is warranted both having regard to the need to specifically deter Mr. Lane and for the purposes of general deterrence.

[8] With respect to the quantum of sentence to be imposed, there are really only two matters worthy of noting which could mitigate from the quantum of sentence to be imposed. The first is the fact that, subsequent to the charges of assaulting Ms. Nolan,

Mr. Lane entered guilty pleas and embarked on the DVTO process. He subsequently took and completed the Respectful Relationships Program, and the report from his counsellor, Ms. Hart, is extremely positive. Consequently, in my view, Mr. Lane is entitled to some consideration of his efforts in this regard in fixing the sentence with respect to the two assaults.

[9] The second matter which must be considered is that during the course of these events, Mr. Lane has been incarcerated at various times, most recently from his arrest following the motorcycle incident, for a total now of five months and 20 days. Mr. Coffin provided an institutional report which was generally favourable, but conceded that having regard to the terms of the *Truth in Sentencing Act*, S.C. 2009. c. 29, Mr. Lane was not entitled to credit beyond one to one.

[10] Having regard to the considerations just enumerated, I propose to deal with the offences as follows. On the charge of common assault, I sentence Mr. Lane to a period of imprisonment of one day. On the charge of assault with a weapon, one day in addition to five months time served. On each of the two breach charges, one day in addition to time served of ten days on each count. On the charge of dangerous driving, three months consecutive, and Mr. Lane is prohibited from operating a motor vehicle on any street, highway, or other public place in Canada for a period of one year.

[11] Following his release from imprisonment, Mr. Lane will be subject to a probation order for a period of one year. In addition to the statutory terms, the order will be conditioned that he:

1. Report to a probation officer forthwith upon his release from

- imprisonment;
2. Have no contact, directly or indirectly by any means whatsoever with Wendy Nolan;
 3. Not attend at her residence or place of employment;
 4. Not possess or consume alcohol or controlled drugs or substances, except in accordance with a prescription from a qualified medical practitioner;
 5. Not attend at any place where alcohol is sold, except a restaurant which might be incidentally licensed for the sale of alcohol with meals;
 6. Take such assessment and counselling as the probation officer will direct;

[12] The surcharge will be \$50 on the charge of assault, \$100 on the charge of charge of assault with a weapon, and \$50 on the charge of dangerous driving. I will waive the surcharges on the process offences. With respect to the motor vehicle matters, on the no taillight charge, \$50 plus a \$7 surcharge; and for the charge of operating a vehicle not authorized by the license held, \$125 and an \$18 surcharge.

[13] Now, counsel, I note that with respect to the charge of assault with a weapon, the Crown proceeded by indictment. Are there any submissions whether, in those circumstances, the conviction would attract any ancillary orders?

[14] MS. NGUYEN: Well, there should be a firearms prohibition order and a DNA order in all of the circumstances, sir.

[15] THE CROWN: Mr. Coffin?

[16] MR. COFFIN: Unless those orders are mandatory, it would be my submission, in these circumstances, they are not warranted. There is certainly nothing on any of the incidents suggesting that firearms were involved or that a DNA order would assist in --

[17] THE CROWN: Madam Clerk, can I see the *Code*?

[18] MS. NGUYEN: It does appear to mandatory under s. 109 for the firearms prohibition, sir.

[19] MR. COFFIN: It appears to be a primary offence.

[20] THE COURT: That was what I thought. There will also be an order whereby you will provide samples of bodily substances for the purposes of DNA analysis and banking. Finally, there will be an order whereby you will be prohibited from having in your possession any firearms, ammunition, explosive substance or any of the other items more compendiously described in s. 109 of the *Criminal Code* for a period of ten years following your release from imprisonment. You may not have any prohibited firearm, restricted firearm, prohibited weapon, prohibited device or prohibited ammunition in your possession for the remainder of your life.

[21] MS. NGUYEN: Sir, time to pay the fines and the surcharges?

[22] MR. COFFIN: I would suggest, in the circumstances, perhaps six months time to pay?

[23] MS. NGUYEN: No objection.

[24] THE COURT: Six months time to pay. Remaining counts?

[25] MS. NGUYEN: All withdrawn, sir.

[26] THE COURT: Any objection?

[27] MR. COFFIN: No.

[28] THE COURT: Withdrawn at the request of the Crown.

FAULKNER T.C.J.