

Citation: *R. v. McLeod*, 2008 YKTC 72

Date: 20080926
Docket: 08-11008
08-11013
08-11013A
Registry: Dawson City
Heard: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: Her Honour Chief Judge Ruddy

REGINA

v.

BENJAMIN JOSEPH MCLEOD

Appearances:
Noel Sinclair
Emily Hill

Counsel for Crown
Counsel for Defence

REASONS FOR SENTENCING

[1] RUDDY C.J.T.C. (Oral): Benjamin McLeod is before me in relation to four counts to which he has entered pleas of guilty. They include an assault, causing a disturbance, uttering threats to cause bodily harm and breaching the terms of his release.

[2] The first two counts arise on the 27th of June, which involved Mr. McLeod in a highly intoxicated state, approaching a woman at the River Quest and shoving her from behind, swearing at her, and telling her to get out of his way. It appears that there was nothing to provoke the attack. When a volunteer from River Quest stepped in to intervene, that individual was struck as well, and Mr. McLeod continued to strike him

until the individual pushed him off the bank. Mr. McLeod returned even angrier; was ultimately removed with the assistance of a couple of locals in the Dawson City area. He was subsequently located by police and noted to be in an extremely intoxicated state. Not surprisingly, he has no recollection of the events.

[3] Shortly thereafter, on the 17th of July, Mr. McLeod was asked to leave the Dawson City Community Support Centre as a result of his state of intoxication and verbally abusive language. He re-entered the Centre and was told to leave again, at which point, he shoved one of the workers. They continued to try to remove him. He threatened them physically with his fist and threatened to cause bodily harm to each of them until he was ultimately removed again. He was extremely intoxicated at the time and has no recollection of the events.

[4] He was released on process with the condition requiring him to abstain absolutely from the possession or consumption of alcohol. Within three days, he was observed both intoxicated and in possession of a bottle of wine in breach of his release conditions.

[5] He comes before the Court with an extremely lengthy and related record. There are numerous counts with respect to his breaching conditions and numerous offences that are largely alcohol related, including offences of violence. He is currently 50 years of age, a member of the Tr'ondek Hwech'in First Nation. He is a survivor of the residential school system, and it is clear from his record, and from his comments to Court today, that he struggles with his addiction to alcohol. As he stated, he knows that he drinks too much. He does not want to but he does so anyway. He noted the

struggles within his family and watching others die as a result of their abuse of alcohol. He expressed frustration for the lack of help, but does note that he is deeply sorry for his actions.

[6] As noted by his counsel, it appears from his record that there is a pattern of behaviour of his acting out violently when drinking, and causing disturbances, but it does not appear to escalate beyond the type of offences that are before me today. There have been sentences in the past which attempted to assist Mr. McLeod from a rehabilitative standpoint. Those have proven to be unsuccessful. He has had some minor successes, particularly, immediately following some treatment in B.C., where he was able to maintain sobriety for a number of months. He hopes, ultimately, to return to that area as he feels that he did better there, and he recognizes the difficulties that he is creating in the Dawson area as a result of his addiction problems.

[7] He has spent some time in custody on remand, which I would credit at three and a half months. Crown is suggesting a global sentence of nine months less that time spent in remand. Defence is suggesting six months. Both counsel are agreed, as am I, that the dominant sentencing principle, at this point in time, is, sadly, simply to separate Mr. McLeod from the Dawson City community and from society, to give that community a period of respite, and also to provide Mr. McLeod with a period of enforced sobriety. As sad as that seems, that appears to be the best that we can do at this point in time, for Mr. McLeod and for the community.

[8] The only question for me is what is a reasonable length of time to remove him from the community. The sentences are going to be as follows. I am actually going to

work backwards. With respect to the 145, I am going to credit him with 45 days of the time that he spent in remand, so the sentence will be one day deemed served by his attendance in court today, and I would ask the record reflect that he is being credited for 45 days.

[9] Similarly, for the uttering threats count, there will be a sentence of one day deemed served by his attendance in court today, and I would ask that his record reflect that he is being credited for 30 days spent in custody.

[10] With respect to the 175, again, there will be a sentence of one day deemed served by his attendance in court today, and I would ask that the record reflect that he is being credited the remaining 30 days of the time spent in remand, which leaves perhaps the most serious of the offences before me, that being the assault.

[11] I am satisfied that an additional period of four months with respect to the assault is appropriate, for a global sentence of seven and a half months, which, in my view, is the appropriate length of time both to remove Mr. McLeod from the community and to provide him with that period of enforced sobriety.

[12] Ms. Hill, any comments on the firearms prohibition or the DNA order?

(Submissions by Ms. Hill)

[13] THE COURT: Okay, thank you. Having heard those submissions, as noted, the DNA test is a fairly low one, given the objects of that particular legislation. So I am satisfied that that order should go. There will be an order that Mr. McLeod

provide such samples of blood as are necessary for DNA testing and banking, if that has not already been provided, and it may well have been in the past.

[14] I do accept, Ms. Hill, your comments that on the land appears to be the only place that he does do well. However, as he himself says, even though he does not want to drink, he does so anyway. I have concerns in such circumstances with his having access to firearms. So I am not prepared to make the exception in this particular case and there will be an order that he be prohibited from possessing any firearms, ammunition or explosives for a period of five years.

[15] The victim fine surcharges are waived in the circumstances. Mr. McLeod, good luck to you. It is my hope that you are able to make your way back to B.C. and that you do better this time.

[16] MR. SINCLAIR: Stay of proceedings on the outstanding matters.

[17] THE COURT: Thank you.

RUDDY C.J.T.C.