

Citation: *R. v. P.M.*, 2009 YKTC 61

Date: 20090525
Docket: 08-00241
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: Her Honour Chief Judge Ruddy

REGINA

v.

P.M.

Publication of information that could disclose the identity of the complainant, witness or justice system participant has been prohibited by court order pursuant to section 486.4 or 486.5 of the *Criminal Code*.

Appearances:
Ludovic Gouaillier
Elaine Cairns

Counsel for Crown
Counsel for Defence

REASONS FOR SENTENCING

[1] RUDDY C.J.T.C. (Oral): P.M. is before me having entered a plea of guilty to a single count of assault with a weapon.

[2] In terms of the facts, there is an agreed statement of facts which has been filed setting out that on the 8th day of July 2008 the RCMP were called to the scene of an incident wherein Ms. M. had stabbed her then common-law partner, I.T., in the neck area following a verbal altercation between the two of them.

[3] Mr. T., as a result of the serious assault, was taken to the hospital where he was treated for an approximately three centimetre wound to his right lower neck area.

Stitches were required. It appears he suffered from a moderate swelling described as a 5.2 centimetre hematoma, as the knife hit a muscle in the area of the neck. The medical reports indicate that there was significant pain to him initially and he appears to have remained in hospital. The agreed statement of facts says two days; his victim impact statement suggests three days. In any event, I am satisfied that there was some extensive treatment required in relation to the injury. I am satisfied that it was a serious injury and I am satisfied that it was an extremely serious assault, in all of the circumstances.

[4] What I have before me is a somewhat unique case in that on the one hand, I have an extremely serious offence, an offence which could well have been potentially fatal, and I do not think that the nature of the offence should be minimized in any way, shape or form.

[5] On the other hand, I have before me an accused for whom I am satisfied that the majority of the information before me suggests this type of behaviour is entirely out of character. I have been provided with and have had the benefit of a very thorough pre-sentence report, and attached to that, a treatment summary from the Family Violence Prevention Unit. They give me a great deal of information about Ms. M. It is not my intention to go through all of that; I am simply going to cover some of the highlights.

[6] It appears Ms. M. was born and raised in rural Thailand until the point in her life where she married A.M., a Yukoner who was in Thailand, it appears, visiting family. The two returned to the Yukon and resided first in Mayo and then moved to Whitehorse. The relationship ultimately ended, although it appears that it ended quite

amicably. The two maintain a very good relationship. They have two small children together who appear to be almost six and three that have been residing primarily with Mr. M. I should point out that the relationship is certainly amicable enough that Ms. M. is residing with him at this point in time although there are plans for her to get a separate apartment, and also that Mr. M. has taken the time to be here in Court today to support her. So it appears they have maintained a healthy relationship for the purposes of the children and remain supportive of each other.

[7] Following the separation with Mr. M. it appears that Ms. M. entered into a relationship with the complainant and victim with respect to this particular incident. This, again, is a very difficult area. I have a victim impact statement before me from the complainant which sets out a significant number of concerns that he has. It is clear that this was a significant incident to him, that caused him, not surprisingly, some significant medical and personal problems that he is continuing to struggle to deal with.

[8] He also, in his victim impact statement, indicates some significant concern that he has with the system and whether or not he feels that the system is taking this seriously enough and whether or not he feels that Ms. M. is taking this seriously enough. It is his view that she has received special treatment and that she is not remorseful for the incidents that are before the Court and he has significant concerns about them. He is certainly entitled to those opinions. I think it is not unusual for victims to have significant concerns about the way that things are handled. I am concerned that he feels that way but I must say, for the purposes of this decision, there is nothing that has been presented before me to suggest that Ms. M. has received special treatment in any way and, indeed, what appears to have driven the way that

she has been dealt with to date has been her own behaviour and her own response to this particular incident.

[9] While I accept that the complainant certainly does not feel that she has taken full responsibility, I am satisfied, based on the bulk of the information before me, that she has indeed has taken full responsibility and is extremely remorseful for the offence that brings her before the Court today.

[10] I would note in support of that finding that Ms. M. accepted responsibility at a very early opportunity in her first meeting with her bail supervisor. Indeed, she was clear and upfront with respect to what it was that she had done and the remorse that she felt as a result. She opted into the DVTO program at a very early point in time and her performance in that program has been exemplary. She has attended consistently for counselling and appears to have performed very well in that counselling. She herself, through her counsel, noted that she is extremely grateful to everyone that she has worked with and has found significant benefit to her as a result of the programming that she has had, and it is clear to me from the report that her intention, regardless of what I do today, is to continue that counselling. She has developed a very strong relationship with Ms. Lacosse, her counsellor, and it appears that she has made significant strides in both taking responsibility for her behaviour and also in taking positive steps to ensure that her behaviour is not repeated.

[11] Perhaps the most troubling area in this particular case is the context in which the offence arose. There is significant information in the pre-sentence report that outlines the relationship between Ms. M. and Mr. T. as one which was extremely dysfunctional,

extremely troubled, and there is a great deal of information before me to suggest that, through the course of the relationship, Ms. M. was subjected to physical, sexual, financial and verbal abuse, including threats. It is not my intention to go through the circumstances which have been alleged. It is a difficult area in that we are not talking about any information that has been provided to me as having been the subject of any criminal convictions, and I recognize that. I do not want any of my comments today to be seen or to be taken as findings of criminal liability. We are not in a situation here where I am hearing evidence from both parties and where I am in a position to make findings beyond a reasonable doubt.

[12] At the same time I am satisfied that there is sufficient information before me that I can accept, for the purposes of this disposition, that the relationship was an abusive one. I do that noting that there appears to be in the report some third party confirmation of the fact that the relationship had been an abusive one. There appears to be information both from Ms. M.'s employer and her ex-spouse, Mr. M., of what they observed, which is consistent with an abusive relationship. I have also been provided with photos of Ms. M. taken by the police approximately one month prior to the incident before me today which demonstrates significant and extensive bruising to Ms. M. as a result of an incident which she indicates she suffered at the hands of Mr. T.

[13] While it is a somewhat awkward situation to be in, particularly as Mr. T. is not here and in a position to say his piece on this particular topic, I am satisfied that there is enough before me that I can accept, for the purposes of this decision, that the relationship was an abusive one.

[14] I would add that that does not in any way, in my mind, excuse Ms. M.'s behaviour. I am, however, satisfied, based on the information from her bail supervisor and her counsellors, that she has not put that information forward to in any way excuse her behaviour and I accept it only as the context within which this particular incident occurred, which, in my mind, does change it from a situation where there had been no prior history of violence between either of the parties. So while it may go some distance to help understand her behaviour, it does not in any way excuse that behaviour and she is before the Court today to be sentenced appropriately as a result of that behaviour.

[15] That being said, I have before me a joint submission from counsel suggesting that a sentence of 15 to 18 months to be served conditionally within the community would be appropriate in all of the circumstances. In considering whether or not the joint submission is appropriate I have considered all of the information that has been put before me, including the victim impact statement, and I accept that the submission is probably one that Mr. T. would not particularly be in support of. I am, however, satisfied from a legal standpoint that it is the appropriate disposition, based on all of the information before me. I am also satisfied that the lower end of that range is appropriate, based on all that I have heard.

[16] Firstly, as part of that finding, I would note that Ms. M. comes before the Court with no prior criminal history and indeed I have a significant amount of information to suggest that she has no history of violence whatsoever. Mr. M. has been clear that in the 15 years that he has said he spent with her there was no violence of any kind. For that reason, I accept that her actions on this particular date were out of character.

[17] I have also considered her response to this particular incident in accepting responsibility at an early stage and in taking all of the appropriate steps to address her behaviour. She certainly should be credited for that. Again, I hope that Mr. T. can be made to understand that it is really her behaviour in engaging in the counselling, in participating actively and fully in the process, which has driven the way that the Court has responded, as opposed to some of the other factors that he thinks have driven the response that the Court is making to these particular circumstances.

[18] Mr. T. is quite right; in a normal case we would be talking about a significant period in actual jail. The only reason we are not, is the steps that Ms. M. has taken as a result of her behaviour, for which she is entitled to credit. So while I accept that he probably will not agree with or accept that, I am satisfied that from the Court's perspective it is the appropriate resolution when I consider all the relevant principles of sentencing, and again when I consider, not just the circumstances of the offence, which are extremely serious, but the circumstances of the offender as well, and I am required to consider both.

[19] That being said, I also have considered the fact that there are risk assessments, two risk assessments before me, that indicate that Ms. M. is an extremely low risk to reoffend and also that she has been, at least insofar as the law is concerned, compliant with her conditions for a significant period of time. There are allegations that have been flying back and forth before me today as to contact between the parties and who might and who might not have initiated that. I have some concerns; I tell you, Ms. M., I accept that there has been contact. I am not going to make a finding as to who contacted whom, but I have concerns about that. You need to understand that the

order I make today is going to include no contact and it is going to be closely supervised. You want to make sure that you are not in any way, shape or form initiating any contact with him.

[20] Beyond that, there are certainly no charges and certainly the reports I have of her performance on the order otherwise suggest that she has been compliant with the conditions. Accordingly, while the offence is such that it would almost always demand a lengthy period in actual custody, I am satisfied that the pre-conditions of a conditional sentence are met in this particular case.

[21] Accordingly, there will be a sentence as follows. Ms. M., I am going to sentence you to 15 months in jail but I am going to allow you to serve that conditionally within the community. Again, I am satisfied that the pre-conditions are met. It is under the two-year requirement. As well, the information before me suggests that there is no risk to the public should Ms. M. be allowed to serve her sentence conditionally within the community. I am also satisfied, based on her past performance, that the principles of sentencing are appropriately met in this somewhat exceptional case. I should state that I think this is a case that is very exceptional and I would not in any way want to suggest that this is an appropriate precedent for this type of offence. As I have stated, it is a very unique set of circumstances that are before me today. So the sentence, for that reason, is very specific to this case.

[22] There will be a sentence of 15 months. I do want to stress for Mr. T., and as well as for you, Ms. M., that this is a jail sentence. Your performance in DVTO has satisfied me that you can serve that within the community, that you will follow the conditions and

that you will not present a risk to the community. That is a significant benefit to you that you have earned as a result of your performance, but it is still a jail sentence, and it is a jail sentence because of the extremely serious nature of the offence. As I said, I think we are all very lucky here today, yourself included, that we are not here on a much more serious charge as a result of what happened.

[23] The conditions are going to be as follows. There will be the statutory terms. Those are terms I am required to include in every conditional sentence order. They are:

1. That you keep the peace and be of good behaviour;
2. That you appear before the Court when required to do so by the Court;
3. That you report to a supervisor immediately and thereafter when required by the supervisor and in the manner directed by the supervisor;

So you should speak to Mr. Steele before you go anywhere today.

4. That you remain within the Yukon Territory unless you have written permission from your supervisor and notify the supervisor in advance of any change of name or address and promptly notify the supervisor of any change of employment or occupation;
5. That you reside as approved by your supervisor and not change that residence without the prior written permission of your supervisor;

[24] For the purposes of conditional sentences the starting point tends to be a house arrest type of situation unless the circumstances are exceptional. I am satisfied again that we are dealing with a fairly unique and exceptional case here and as such, I am

satisfied that a curfew as opposed to a full house arrest is an appropriate response in this particular case. In reaching that conclusion, again, I have considered the behaviour of Ms. M. in terms of responding to this incident, her commitment to treatment and programming, and her compliance with conditions to date.

[25] I am satisfied that it is sufficient to meet the principles of sentencing to have her abide by a curfew by remaining within your place of residence or at 31 Moonstone. Does that create problems for you, Mr. Steele, I should ask, if I allow her to be in one place or the other? Because right now, she is at home, she is at Mr. M.'s home. What I am concerned about is once she's in an apartment I imagine there is still going to be a lot of back and forth as a result of the children and I am thinking it might be appropriate to allow her, if she is getting close to curfew, to remain there as well as being at home if she gets an apartment of her own.

[26] JONATHAN STEELE: It doesn't cause too much difficulty for our office if there's two addresses, essentially.

[27] THE COURT: Okay, good.

[28] JONATHAN STEELE: Where there could possibly be a bit of difficulty is should the RCMP conduct curfew checks, but I could possible make that -- put -- inform in a memo or something.

[29] THE COURT: I am thinking it makes most sense in these particular circumstances. So there is going to be an order:

6. That you abide by a curfew by remaining within your place of residence or 31 Moonstone between the hours of 10:00 p.m. and 7:00 a.m. daily except with the prior written permission of your supervisor. 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;

And they will be checking. It is probably worth your while to give a heads-up if you are going to be at 31 Moonstone. If you do get out and get your own apartment but you do find that you are going to stay the night there with the children, assuming that is okay with Mr. M., then it is probably a good idea to give a phone call and leave a message. But one place or the other, you have to be in by ten o'clock every night.

7. That you report to the Family Violence Prevention Unit to be assessed and attend and complete the spousal abuse program as directed by your supervisor;
8. That you take such other assessment, counselling and programming as directed by your supervisor;
9. That you have no contact, directly or indirectly, or communication in any way with I.T. except with the prior written permission of your conditional sentence supervisor in consultation with Victim Services and the Family Violence Prevention Unit;

I include that exception solely because if there is some move down the road for an apology, or something of that nature to be given, then that can be worked out with the

appropriate parties. So you are not to have contact with him unless you have permission in advance.

10. That you not attend at or within 50 metres of the known residence or place of employment of I.T.;
11. That you participate in such educational or life skills programming as directed by your supervisor;
12. That you make reasonable efforts to find and maintain suitable employment and provide your probation officer with all necessary details concerning your efforts;
13. That you 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;
14. That you not have in your possession any firearm, ammunition, explosive substance, knife or weapon.

[30] Those are the suggested conditions. Is there anything I have missed?

[31] In addition, because it is a primary designated offence, Ms. M., I am required by law to order that you provide such samples of your blood as are necessary for DNA testing and banking.

[32] Victim fine surcharge. Any submission?

[33] MS. CAIRNS: I would ask that it be waived. She is in a fairly low income job and she does have debts which, in her view, arise from the relationship. So it would be difficult for her.

[34] THE COURT: In this particular case, given the amount of the victim fine surcharge and the nature of the offence, I do think it is appropriate that she pay the \$50 but I am prepared to give her time to pay.

[35] MS. CAIRNS: Thirty days time to pay.

[36] THE COURT: Okay, a \$50 victim fine surcharge and one month time to pay. Anything further?

[37] MR. GOUAILLIER: I don't think so.

[38] MS. CAIRNS: Nothing, Your Honour.

[39] THE COURT: My thanks to Mr. Steele, Ms. Lacosse and Ms. Larkin for their assistance and the information that they have provided to the Court.

[40] One more thing I did want to make clear in the decision itself, although I did say it earlier, given the somewhat unique situation of this particular case where we are dealing, essentially, with allegations of other criminal offences which have not been proven, I simply want to confirm that I have made the order that should there be a written transcript produced of this decision that initials of both parties will be used such that we do not further complicate matters for Mr. T.

[41] MS. CAIRNS: Would that apply at all to -- if there is a newspaper report or would that simply be --

[42] THE COURT: I think it makes sense --

[43] MR. GOUAILLIER: You can -- I believe you have --

[44] THE COURT: -- I think it makes sense to make it a ban --

[45] MR. GOUAILLIER: A publication ban. I think you have the authority to --

[46] THE COURT: -- across the board because we do not want it to come up in another context, so, yes.

[47] MS. CAIRNS: That would be -- that would be agreeable.

[48] THE COURT: So there will be a ban on publication and the use of any information which would tend to disclose the identity of either party.

[49] MS. CAIRNS: Thank you.

[50] THE COURT: Anything further?

[51] MR. GOUAILLLIER: I think that's it.

[52] MS. CAIRNS: No, Your Honour.

RUDDY C.J.T.C.