

Citation: *R. v. Patrick*, 2012 YKTC 13

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Docket: 09-00394G
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09-00394I
10-00246
10-00247
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before: His Honour Judge Lilles

REGINA

v.

JOHN LLOYD PATRICK

Appearances:

Ludovic Gouaillier
Lynn MacDiarmid

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCING

[1] LILLES T.C.J. (Oral): I am dealing with the matter of John Lloyd Patrick. He has pled guilty to an offence contrary to s. 267(b) of the *Criminal Code*. The complainant in this case is Mr. William Kane. As I mentioned in my discussions with counsel, Mr. Kane is well known to this Court.

[2] He has also pled guilty to two charges involving, in one instance, failing to report to a Bail Supervisor, and in the other, failing to report to a Probation Officer.

[3] The circumstances of the predicate charge before the Court, that being the s. 267(b) charge, are not absolutely clear. There are some grey areas. What I do accept is that on May 13, 2010, Mr. Kane entered Mr. Patrick's house with the purpose of confronting Mr. Patrick. This confrontation had to do with retrieving a piece of artwork that Mr. Kane's girlfriend had given Mr. Patrick in lieu of rent that had not been paid by Mr. Kane. Mr. Kane and Mr. Patrick had met previously while Mr. Patrick was in custody, and Mr. Patrick allowed Mr. Kane and his girlfriend to stay in his house while Mr. Patrick was in custody. It turns out that that house was used as a party house; the rent was not paid. I understand that it was for that reason that Mr. Kane's girlfriend donated this piece of artwork to Mr. Patrick, and that brings us full circle to Mr. Kane attending to retrieve that artwork.

[4] There is some dispute as to what exactly happened in the house, but Mr. Patrick agrees, and I accept, that whatever the confrontation was, Mr. Patrick used excessive force in order to remove Mr. Kane from his house. According to Mr. Patrick, he punched Mr. Kane twice in the face. This resulted in Mr. Kane's jaw being broken, and the treatment for that was to have it wired shut for 11 weeks.

[5] Both counsel are in agreement that a period of custody is appropriate in this particular case. The Crown suggested in the six to eight month range. The issue for me is to decide whether or not the sentence should be served conditionally in the community. From the lengthy discussion I have had with defence counsel in this matter, it should be apparent that I have significant reservations about imposing a conditional sentence. My reservations are based on Mr. Patrick's criminal record. He has four previous assaults. He also has numerous breaches of court orders, primarily, failure to

report to either a Bail Supervisor or a Probation Officer. In this particular case, I have had the benefit of reviewing a dated predisposition report as well as a recent *Gladue* report.

[6] There is no doubt in my mind, based on the *Gladue* report, that Mr. Patrick is entitled to consideration of the mitigating factors set out in that report. As I mentioned earlier, Mr. Patrick lost his parents at a young age; his father first. I believe he was nine years old at the time. His mother had been taken to residential school. After her husband's death, his mother began drinking heavily. Parented by a single mother, he grew up in a very economically poor environment. He had a 20-year relationship with a woman who was involved fairly seriously in drug abuse. Thankfully, that relationship ended. He had a very disturbing experience in Whitehorse when his brother was murdered. His brother, apparently, died in his arms. There is some guilt associated with that death because he has been told that if he had arrived at the scene earlier, his brother might not have been killed. His own experience when he was in Dawson Creek involved alcohol and drug abuse. He abused alcohol quite seriously after his brother died.

[7] I have referred to his criminal record. It contains numerous property offences and some assaults but, more recently, a number of fail to comply with court orders, primarily reporting requirements.

[8] I have expressed my concerns with respect to making a conditional sentence of imprisonment order in this particular case. I have heard from defence counsel, and I have heard from Mr. Patrick himself. I am advised that he is now aware of Justice

Services in Kwanlin Dun, services that would provide him with transportation to assist in reporting. I understood from defence counsel's submissions that he does not have a telephone, nor does he have an automobile.

[9] I have been referred to several cases where, notwithstanding significant injuries, the Territorial Court imposed a conditional sentence of imprisonment. In *R. v. Shawn Lorne Bruce*, 2009 YKTC 135, the victim broke the accused's window. The accused went over to the victim's house to confront him. The victim received a prolong beating from the accused, some ten to 15 blows, resulting in a number of bones being broken in the victim's hand. He received an eight month conditional sentence.

[10] In the case of *R. v. James Joe Ward*, 2009 YKTC 67, the accused was intoxicated. The victim was assaulted over a period of time. The assaults included a beating and choking. He received a six month conditional sentence.

[11] Perhaps, the *R. v. Valentine Edward Porter* case, 2008 YKTC 103, is mostly on point, a decision of Judge Faulkner. It was a charge of assault causing bodily harm. The victim received a number of serious injuries, including a broken arm. Quoting from paragraph 4 of that decision:

Given the antecedents of the offender and given the seriousness of the injuries produced, I think I would be first inclined to a sentence closer to being measured in years [rather] than months. However, it has to be noted that the circumstances of this offence were somewhat singular. As I have already indicated, it has to be accepted that Mr. Porter found, at best a trespasser, at worst an intruder, in his house. I have found that he dealt with that intruder in a grossly excessive fashion but, nevertheless, those are the circumstances, so it was not a situation that Mr. Porter sought out, and he did find himself in somewhat provocative circumstances. Keeping that in mind, I think the sentence should be tempered substantially.

In that case, Mr. Porter was sentenced to a five month conditional sentence.

[12] I have already indicated my concerns with respect to imposing a conditional sentence of imprisonment in this particular case. I think a bare bones case can be made for a conditional sentence. While I have significant concerns about Mr. Patrick's ability to comply with rigorous terms, I did hear from him directly, and some of those concerns have evaporated as a result of hearing from him. I still think reporting will be risky for him; nevertheless, he has undertaken to report diligently.

[13] In the circumstances, my sentence will be as follows: With respect to the substantive offence, six months custody; with respect to each of the breach Informations, one month custody consecutive on each, for a total of eight months custody. I am directing that this sentence be served conditionally in the community on terms that I will set out in consultation with counsel. I want some guidance from counsel as to how to word the term to permit him to continue his work. I was persuaded that his continued employment was an essential factor in his rehabilitation.

[DISCUSSION]

[14] THE COURT: This will be a conditional sentence. The statutory terms will apply. Mr. Clerk, I think you can indicate what those are in the order:

1. You are to reside at 43 Hanna Crescent, and not change that residence without the prior written permission of your supervisor;
2. At all times, when not involved directly in employment, you are to remain within your place of residence. More specifically, with respect to employment, you are to remain within your residence between the hours

of 5:00 p.m. and 8:00 a.m. on working days. On days when you are not working, you are to remain within your residence between the hours of 2:00 p.m. and 12:00 noon.

3. The exceptions to this house arrest will be as follows: Where you have the prior written permission of your supervisor, such written permission is to be carried on your person. Also, except for attending meetings with Kwanlin Dun Community Justice or other counselling and programming activities as approved by your supervisor;
4. 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;
5. You are to abstain absolutely from the possession and 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 to provide a sample of your breath for the purpose of analysis upon demand by a Peace Officer who has reason to believe that you may have failed to comply with this condition;
7. You are not to attend any bar, tavern, off-sales or other commercial premises whose primary purpose is the sale of alcohol;
8. You are to take such alcohol counselling or programming as directed by your supervisor;
9. You are to take such other assessment counselling and programming as directed by your supervisor, including those programs available through

Kwanlin Dun Community Justice;

10. You are to have no in person contact with William Kane;
11. You are to make reasonable efforts to maintain and, if necessary, find suitable employment and provide your supervisor with all necessary details concerning your efforts;
12. You are to provide your supervisor with consents to release information with regard to your participation in any programming, counselling, or employment activities that you have been directed to do pursuant to this conditional sentence order;
13. You are not to have in your possession any firearms, ammunition or explosive substances;

Mr. Crown, anything else?

[15] MR. GOUAILLIER: No.

[16] THE COURT: That pretty well covers the bases?

[17] MR. GOUAILLIER: Yes.

[18] THE COURT: Defence? So, Mr. Patrick, you heard what I said before.

[19] THE ACCUSED: Yes, sir.

[20] THE COURT: Based on past experience, you are likely to spend more time in jail under this order than you would have had I sentenced you to actual jail

today. I am sincerely hoping that you will prove me wrong. I think there are people in Kwanlin Dun, your employers, for example, and some of the people who are sitting in the courtroom today who sincerely hope I am wrong. I hope I am wrong but, ultimately, it is up to you. All right? So, we do not want to hear any complaining --

[21] THE ACCUSED: No.

[22] THE COURT: -- if you end up in jail. It is all in your own hands.

This is pretty rigorous. Now, one of the things you should know, and I will repeat it, I am sure you have heard this, a conditional sentence is not like a probation order. As soon as there is even a minor slip, a supervisor does not have any discretion; you are arrested. One fail to report, you fail to report by half an hour, you are in jail. You will then be brought before the Court, and the Court will decide whether you should serve the remainder of your term in jail or some weeks of it or some portion of it. So it is not a probation order. "Boom, you are in jail." No undertaking, no probation, no conditions, no recognizance; you understand that?

[23] THE ACCUSED: Yes, sir.

[24] THE COURT: Now, you are working at the current time?

[25] THE ACCUSED: Yeah.

[26] THE COURT: Can you pay the victim fine surcharges?

[27] THE ACCUSED: Pardon me?

[28] THE COURT: Victim fine surcharge is \$50 on each offence, for a

total of \$150. You can pay that if you are given time?

[29] THE ACCUSED: I can pay some right now.

[30] THE COURT: Well, I am going to give you three months to pay it.

[31] THE ACCUSED: Okay.

[32] THE COURT: So you can pay it out of -- \$50 out of each paycheque, and pay in to the court.

[33] MR. GOUAILLIER: And speaking of probation, will there be a --

[34] THE COURT: I am not going to make a probation order in this particular case.

[35] MR. GOUAILLIER: And a DNA is mandatory here.

[36] THE COURT: Yes, thank you. I think both you and I will be well pleased if he can deal with this eight months, and in that eight month period, participate in some programming and counselling. That would be my expectation.

[37] MR. GOUAILLIER: Thank you. And just for the record, all sentences consecutive and conditional?

[38] THE COURT: Yes.

[39] MR. GOUAILLIER: Yes, thank you.

[40] THE CLERK: Your Honour, with respect to the statutory term of

reporting to his supervisor, he can do that within two work days?

[41] THE COURT: Two working days I think should be fine. I think you would be well advised to direct him to the supervisor today before he leaves.

[42] THE CLERK: Remaining counts?

[43] MR. GOUAILLIER: There will be a stay of proceedings.

LILLES T.C.J.