

Citation: *R. v. Porter*, 2017 YKTC 13

Date: 20170327
Docket: 16-00314A
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before His Honour Judge Lilles

REGINA

v.

VALENTINE EDWARD PORTER

Appearances:
Amy Porteous
Vincent Larochelle

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCE

Facts

[1] In the early morning of July 31, 2016, Constable Dupuis was on patrol and observed what appeared to be a fight outside the Salvation Army Shelter in Whitehorse. This incident involved the accused, Mr. Porter and Mr. Everett Chief. The Court was advised that Mr. Porter verbally threatened to kill Mr. Chief and Mr. Chief responded “go ahead”. Mr. Porter pulled out a folding pocket knife with a blade that was approximately 10 cm long and stabbed Mr. Chief several times, twice on the side of his body and at least once in Mr. Chief’s upper arm. Constable Dupuis arrived to find Mr. Chief on top of Mr. Porter who was on the ground. Although Mr. Chief was initially arrested, officers attended later and arrested Mr. Porter. Mr. Porter was on probation at the time of this

incident and one of the terms of that order was not to consume or possess alcohol. Mr. Porter showed signs of intoxication and also had two cans of beer and one bottle of cider in his back pack.

[2] The police took Mr. Chief to the hospital. The two stab wounds on the left side of his torso were two centimetres wide but had not penetrated deeply nor were any internal organs affected. He also presented with a jagged cut, four to six cm long on his upper arm. He was treated and released.

[3] As a result of this incident, Mr. Porter was charged with and pleaded guilty to the following charges:

1. aggravated assault contrary to s. 268 of the *Criminal Code*;
2. utter a threat to cause death, contrary to s. 264(1)(a) of the *Criminal Code*; and
3. breach of probation, contrary to s. 733.1(1) of the *Criminal Code*.

[4] The *Gladue* Report filed by Mr. Mark Stevens provides a very helpful overview of Mr. Porter's family and life circumstances.

[5] Debbie Porter, Mr. Porter's mother, was present in the court room and spoke on behalf of her son at the end of the sentencing hearing. It is evident that she is very concerned about her son and would be a strong support person for him should he commit himself to sobriety. Mr. Porter's father was both physically and verbally abusive of both Debbie Porter and Valentine Porter when he was growing up. As a result of the abuse, neglect and alcohol, Family and Children's Services were involved at an early age and Mr. Porter was in and out of different foster homes and group homes. He

ended up in Sandy Harriet's foster home at age nine and stayed there until he was 15. Ms. Harriet estimated that Mr. Porter had been in as many as 40 different placements by the time he was placed with her.

[6] By his own admission, Mr. Porter has been living on the streets pretty much since age 15 or 16. He is now 36 years old.

[7] When Mr. Porter moved back to Watson Lake to reconnect with his mother and her family, he started a relationship with A.M. and they had a son together. Mr. Porter did not have the skills to be a parent and his relationship with A.M. became abusive and they split up. He started drinking more at this juncture.

[8] The rest of his life reflects poor choices that he was making, resulting in a string of convictions for assault, assault causing bodily harm, theft and breaches of court orders. He has 20 convictions on his record beginning in 2003.

[9] Mr. Porter has spent 240 days in pre-trial custody for which he will be entitled to a total of 360 days' credit. While in the correctional centre, he has participated in almost every program or opportunity available to him. It is evident that when Mr. Porter is sober and has some structure in his life, he can do very well. When back on the street, if he starts drinking again, the public will be at risk.

[10] Some of Mr. Porter's future plans, while laudatory, are unrealistic. For example, he wants to spend time with his 15-year-old son as a parent. But, he barely knows his son nor does his son know him very well. There is no indication that he has upgraded his parenting skills. More importantly, his unresolved addiction issues suggest that he

would be a very poor role model for his son. A more realistic and constructive plan would be to first aggressively seek out treatment and commit to sobriety. Mr. Porter's mother, Debbie, also suggests that he needs to address some of the trauma he has experienced in his life.

[11] Mr. Porter's criminal record is both significant and relevant. His first conviction in 2004 when he was 23 years old was for an assault. Subsequently, he has had three more assault convictions, contrary to s. 266, two convictions for assault causing bodily harm, contrary to s. 267(b) and two convictions for assault with a weapon contrary to s. 267(a). His latest conviction in July 2015 was for assault with a weapon for which he received a custodial sentence of eight months and two years' probation.

[12] Counsel have brought to my attention a number of cases which I have considered.

[13] In *R. v. D.B.M.*, 2002 YKTC 81, I stated, at para 19:

A review of the case law and sentencing principles establishes a wide range of sentences for the offence of aggravated assault. These authorities were reviewed at length in *R. v. D.L.*, [2002] B.C.J. No. 1987. I am satisfied that the range of sentence for aggravated assault generally is between 6 months and 6 years imprisonment. Sentences in the lower range tend to be imposed in situations lacking aggravating factors: for example, two adults, not in a position of trust, engaging in a consensual fight, which escalates and results in injuries to the victim. At the higher end of the range, the victim is usually attacked by a weapon, the injuries are life-threatening or result in permanent injury, and other aggravating factors are present such as a position of trust and the presence of children.

[14] In a later Yukon case, *R. v. Dick*, 2008 YKTC 6, Judge Faulkner opined that the range of incarceration for a conviction for aggravated assault is approximately 16

months to six years, depending on the circumstances of the case. In this case, Mr. Dick went to the victim's home armed with a baseball bat and a knife, and assaulted the victim with a knife, causing several wounds. The most serious wound penetrated the victim's lung. Judge Faulkner imposed a sentence of 16 months' incarceration for the aggravated assault, noting that it was a result of a fight that escalated out of hand. Mr. Dick also had a related lengthy criminal record.

[15] *R. v. Blanchard*, 2007 YKTC 62 is not dissimilar to the case at bar. Mr. Blanchard was drinking in his home with a friend, got into an argument, picked up a knife and stabbed his friend several times. The Court stated, at para. 5:

In sentencing, the Court must sentence in such a way that there is a deterrence which penetrates into the minds of persons who get into arguments, but an even stronger message must be sent because those minds are often fuzzy because of alcohol. Somehow, even persons who have been drinking, and drinking to that extent that appears to be the case here, have to have some knowledge that comes to their mind, that should they pick up that knife and carry on with that aggression, that the Court will respond, and it will not be dissuaded with respect to a response that has, at its core, the deterrence of other persons who would visit violence upon others.

[16] In the result, the Court imposed a sentence of nine months' custody followed by one year of probation with terms.

[17] Mr. Porter is an Aboriginal person, although it does not appear that he has close connections to his Aboriginal community, customs or culture. I was not made aware of any alternatives to incarceration that may exist within his Aboriginal community or with his extended family. No alternative restorative approaches were proposed, although Mr. Porter clearly recognized his need for counselling and he has a current intention to

pursue that option. At the same time, I am very much aware of the unique systemic and background factors in the Yukon, including the role of residential schools that would have impacted Mr. Porter's mother and grandparents and thus him. These factors provide context for considering Mr. Porter's background. Mr. Porter's experience in the child welfare system including his numerous placements in different homes and resulting instability are a direct result of the Yukon's recent history of colonialism. (*R. v. Gladue*, [1999] 1 S.C.R. 688, and *R. v. Ipeelee*, 2012 SCC 13) I am aware of the cases that suggest, in general terms, that the more serious and violent the offence, the less difference there may be between sentences imposed on Aboriginal and non-Aboriginal offenders (*R. v. Jacko*, 2010 ONCA 452).

Sentence

[18] With respect to the charge of aggravated assault, contrary to s. 268 of the *Criminal Code*, Mr. Porter is sentenced to 15 months' imprisonment. I have granted him a total of 360 days, or 12 months' credit for time served as pre-trial custody, calculated by using a factor of 1.5 for the 240 days of actual pre-trial custody. He will have three more months to serve on the s. 268 charge.

[19] With respect to the uttering threat charge, the appropriate sentence is two months' incarceration. But as the threat is inextricably connected to the s. 268 charge in both time and place, this sentence will be served concurrently.

[20] With respect to the breach of probation charge, s. 733.1(1), I sentence Mr. Porter to one month custody, consecutive. Mr. Porter's total sentence is 16 months.

[21] The sentence left for Mr. Porter to serve in custody is four months.

[22] As the Crown has elected to proceed by indictment on all three charges, there will be a victim surcharge of \$200 on each count, for a total of \$600, payable forthwith.

[23] Pursuant to s. 487.051 of the *Criminal Code*, I hereby direct that a DNA sample is hereby authorized to be taken. Pursuant to s. 109 of the *Criminal Code*, I hereby make a 10-year firearm prohibition order.

[24] When his custodial sentence is served, Mr. Porter will be subject to a 12-month probation order. It will contain the same terms imposed upon his conviction in 2015-07-03.

LILLES T.C.J.