

Citation: *R. v. Scurvey*, 2013 YKTC 108

Date: 20131223
Docket: 13-00627
13-00627A
13-00648
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Chief Judge Cozens

REGINA

v.

JEREMY WILLIAM SCURVEY

Appearances:
Christiana Lavidas
Gordon Coffin

Counsel for the Crown
Counsel for the Defence

**REASONS FOR JUDGMENT
(JUDICIAL INTERIM RELEASE)**

[1] COZENS C.J.T.C. (Oral): Jeremy Scurvey is before the Court on a judicial interim release hearing in respect of three charges: on December 4, 2013, mischief not exceeding \$5000, contrary to s. 430(4); on December 6, 2013, mischief exceeding \$5000, contrary to s. 430(3); and failing to keep the peace and be of good behaviour on the terms of an undertaking to a justice or judge on December 9, 2013.

[2] Mr. Survey is 23 years of age. He has a criminal history, starting in 2009, with an assault charge for which he had a suspended sentence. He has a probation breach charge with six months' probation; a mischief charge, three days' time served; a probation breach charge, six months probation; in 2011, a mischief with a conditional

discharge attached; in 2012, seven breaches of probation orders, with the longest period in custody at ten days. In 2011 there was also, in addition to the mischief conditional discharge, a s. 129 and 145(5.1) attached to them. In 2013, he has two probation breaches for which he received seven days and one day time served.

[3] The circumstances of the charges currently before the Court are that on December 4th, the Crown alleges that Mr. Scurvey was at the Qwanlin Mall area and outside the liquor store with his skateboard, yelling and causing a disturbance. He was picked up by the RCMP and arrested under the *Liquor Act*. He became extremely upset in the police cruiser, spitting and kicking the doors and screaming and yelling, and causing \$1500 damage to the cruiser; he would not calm down. Mr. Scurvey was released on a promise to appear.

[4] On December 6th, the allegations are that Mr. Scurvey was at his mother's house at 408 Alexander Street at 5:21 p.m. He was observed shortly after leaving and located by the RCMP. Mr. Scurvey had caused significant damage with his skateboard, smashing the windows, and punching holes in the drywall on various floors of the house. There was blood located and there was an excess of \$5000 damage. He was subsequently released on an undertaking to a judge on December 7th. It had a keep the peace and be of good behaviour clause on it

[5] On December 9th, at approximately 2:15 a.m. at the Salvation Army, Mr. Scurvey became agitated in the common room while others were trying to sleep; he was disturbing their sleep. He grabbed a fire extinguisher, breaking part of the holding; he struck the wall with it. Mr. Scurvey was arrested and he has been in custody.

[6] A Bail Assessment Report was ordered on December 9 or 13, we are now hearing the matter before me; it has been put over previously on a couple of occasions.

[7] Mr. Scurvey has longstanding mental health issues. I have dealt with Mr. Scurvey in the past in relation to the reports out of a psychiatric assessment centre in Brockville, Ontario, where he was in 2011. While at Brockville he was stabilized with the assistance of medication and ultimately was found fit to stand trial and deal with his charges, which he did. Mr. Scurvey has been diagnosed with FASD, ADHD and alcohol addiction. He has bouts of anger, aggression, and psychotic behaviour. The recommendations have been that Mr. Scurvey live in a supported environment where his medication can be managed, in a safe home, with no availability to use alcohol or drugs.

[8] The big problem is Mr. Scurvey has no stable residence. The report indicates that since the time of his return he has not had a residence and utilizes the youth shelter when he is not drinking. Mr. Scurvey stays at detox on other occasions or tries to live at home with his mother, but that breaks down regularly. He is kicked out due to his drinking or aggressive behaviour. He sleeps in random hallways. He sleeps at the Salvation Army. His medication is taken sporadically, and it is quite apparent he requires some form of mediation or intercession by either a shelter worker or FASSY worker in order for Mr. Scurvey to take his medication.

[9] Mr. Scurvey has sporadic contact with the support system. He has not been required to maintain that contact. It appears his behaviour is deteriorating. Mr. Scurvey has been banned from the youth shelter, banned from his mother's residence, and

banned from the Salvation Army and detox, due to their not being equipped to manage persons with mental health issues such as he has. He was in a hotel room recently and did well for about a week, but received some money from social assistance, bought alcohol, drank it, and then damaged the hotel room.

[10] Mr. Scurvey does not have any solid plans relating to his charges or options for release. He indicated that when he spoke with his FASSY worker while in custody, he felt happy where he was at present. That said, Mr. Scurvey seeks his release on this reverse onus show cause today. It is clear that while he is in custody there is more room for intervention by his support team. There is an advantage to him staying in custody, as he can be checked out medically and can meet with a psychologist. Obviously, he will be able to take his medications as well.

[11] Mr. Scurvey has been accepted as a tenant in the Options for Independence apartments but not until February or March.

[12] The conclusion, at the end of the Bail Assessment Report is that:

At the present time there are no residency options for Mr. Scurvey. He is not able to provide options to satisfy bail conditions and it is highly unlikely he will be able to abide by conditions given his current mental health state.

[13] The ARC was not formally addressed when the Bail Assessment Report was ordered; however, I stood the matter down for contact to be made in order to ascertain whether a placement at the ARC might be something that would be an option for Mr. Scurvey. I have been informed by counsel that, as appears to have been the practice for a while, unless an individual is either in the Community Wellness Court or in

the Domestic Violence Treatment Option Court, the ARC is not taking them, and saving the beds for those individuals.

[14] Crown has quite fairly indicated, when asked, that their position on these charges is that they are likely going to be seeking diversion. Crown is opposed to Mr. Scurvey's release on the secondary grounds.

[15] This case is highly problematic. We have an individual who has been determined, after his return from Brockville, to be fit but fragile; and there is no question that he continues to be fragile. I accept that counsel, in dealing with Mr. Scurvey, is satisfied that he understands the process enough that fitness is not an issue at this time. So, I have a young First Nations individual with serious mental health issues for whom the only safe place to be is in jail, on charges that he would not be sentenced to jail for, in all likelihood, because the Crown is seeking his diversion; and even looking at his record and his circumstances, a Court would be hard-pressed to sentence an individual like Mr. Scurvey to any significant period of jail for these kinds of offences.

[16] I find it appalling that the only option for this young man, other than release, is to put him in jail. Would jail be the best for him right now? Quite likely. He will get a Christmas meal in jail. He will have a bed to sleep in in jail. He will have his medications and he will have his treatment. But jail is not where mentally ill individuals who commit these kinds of criminal offences are to be kept; and I find it appalling that there is not another place for individuals like this, and the jail becomes the safest place for them to be kept, for themselves and for the community. And I find it shocking that he has been out of jail this amount of time and living with these mental health issues the

way that he has. I am not laying the blame at the feet of anyone, because there is obviously a lot of work being done by various individuals with Mr. Scurvey, but there is clearly a problem here.

[17] While I recognize what the Crown is saying about secondary ground concerns, and a lack of a stable residence, I cannot, in good conscience, keep this young man in jail any longer than he has been in order to perform a social function that is better left with Health and Social Services and those other departments, and not with the criminal justice system.

[18] So, Mr. Scurvey will be released from custody. He will be released on an undertaking to a judge. The terms of the undertaking will require him:

1. To attend Territorial Court on Wednesday, the 8th day of January 2014 at 9:30 a.m. at Whitehorse, Yukon Territory and attend thereafter as required by the Court in order to be dealt with according to the Court;
2. To report to a Bail Supervisor immediately upon your release from custody and thereafter when and in the manner directed by the Bail Supervisor;
3. To reside as directed by your Bail Supervisor, in consultation with FASSY; to abide by the rules of that residence; and to not change that residence without the prior written permission of your Bail Supervisor, in consultation with FASSY;
4. To have no contact directly or indirectly or communication in any way with Dolly Scurvey, except with the prior written permission of your Bail Supervisor in consultation with FASSY;

5. Not to attend at 408 Alexander Street, Whitehorse, Yukon except with the prior written permission of your Bail Supervisor in consultation with FASSY;
6. You are not to be in public in possession of a skateboard.

There is absolutely nowhere to ride them in the winter. He does not need to be in a public area with a skateboard;

7. You are not to have in your possession any firearms, knife, or other weapon or ammunition or explosive substance.
8. You are to meet with your FASSY worker or other support workers identified to you in writing by your Bail Supervisor, as directed by your Bail Supervisor.

[18] I am not putting a keep the peace and be of good behaviour clause on deliberately. I am not putting an abstain clause on, as much as he needs to abstain. I do not believe it would be appropriate. That does not mean that he should drink.

COZENS C.J.T.C.