

Citation: *R. v. Sidney*, 2013 YKTC 61

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Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: Her Honour Judge Ruddy

REGINA

v.

SEAN BERNARD SIDNEY

Appearances:
John Phelps
Gordon Coffin

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCING

[1] RUDDY T.C.J. (Oral): Sean Sidney is before me for sentencing with respect to four counts to which he has entered pleas of guilty; two for breaches of the terms of his release conditions, one for being in possession of stolen property and the most serious for a break and enter.

[2] The first in time is the possession of stolen property which relates to a mask that was stolen from the Indian Craft Shop. It was later found in Mr. Sidney's possession when he tried to sell it.

[3] The next more serious offence, being the break and enter, involved Mr. Sidney contacting a close friend of his and brother-in-law, who appears to have a similar history of struggling with addictions as Mr. Sidney, but who is also paralyzed and as a result has a prescription for morphine. Mr. Sidney contacted him asking him to share that prescription. Mr. Johnson refused and told him to stay away from his home. Mr. Sidney told him he was coming anyway. He did attend at Mr. Johnson's residence and forced his way into the home by kicking in a patio door. Mr. Sidney then stole some of Mr. Johnson's prescription medication and left.

[4] The two breaches include one for failing to abstain from the possession of alcohol as Mr. Sidney was observed leaving a local off-sales establishment with some alcohol in his possession, although it was my recollection that he had indicated it was for someone else. He does certainly admit to being in possession, but not to consumption. The other breach was in relation to a condition that Mr. Sidney not be in Carcross. He was arrested in Carcross on December 7th.

[5] Additional facts have been provided that relate to a couple of other breaches for failing to reside as directed and abide by a curfew. Those are offences to which pleas have not been entered and they are offered simply as aggravating factors. That is a summary of the facts that have been admitted to. They are set out in more detail in Exhibit 1, The Agreed Statement of Facts.

[6] Mr. Sidney comes before the court with a prior criminal record. It is an extremely lengthy record. He has had a troubled history which has resulted in significant involvement in the criminal justice system. Of particular note for the

purposes of this decision, Mr. Sidney has five prior convictions for break and enters, eight for other property-related offences, 23 for process offences, and there are numerous offences of violence on his record. To his credit, there is a gap between 2004 and 2010 where he appears not to have been convicted of any offences.

[7] Also to his credit, Mr. Sidney entered into the Community Wellness Court program in July of 2012. I will say, for the purposes of this decision, Mr. Sidney, I would have been one of those that was not too sure how you were going to do. You have been in front of me a number of times in Carcross; I was familiar with your history. I certainly agreed with everyone else that it was appropriate to give you a chance, but I had real questions about your ability to be successful. For the period of time you were in Wellness Court, Mr. Sidney, you did surprise me. You did impress me with what you were able to do in light of everything that I know about your history. So whatever happens, I do not want you to lose sight of what you were able to accomplish in Wellness Court. It was an important first step for you in trying to get a handle on your addiction issues.

[8] In any event, Mr. Sidney did come into the Wellness Court program and did very well between July of 2011 and May of 2012. Mr. Sidney had done well over that period of 10 months. Unfortunately, it appears, largely due to the death of a close friend, Mr. Sidney began to struggle. He ultimately relapsed and he went AWOL.

[9] While in the program, Mr. Sidney did successfully complete a number of different programs. He was able to maintain his reporting as required. He completed the Substance Abuse Management Primer and also the Substance Abuse Management

program and thirdly, successfully completed the residential treatment program offered through AS. In addition to addiction programming, he met regularly with psychologist Nicole Bringsli in an effort to assist Mr. Sidney in regulating his behaviour and to getting him fully stabilised with a view to his participating in more programming and treatment.

[10] Mr. Sidney expressed an interest in Wellness Court and has continued to express an interest in accessing the residential treatment program offered by Tsow-Tun Le Lum in British Columbia which includes a significant trauma component and would, in my view, be an extremely good fit for Mr. Sidney as he continues to attempt to deal with his addiction.

[11] Mr. Sidney did do very well in Wellness Court, much better than had been expected by many, including myself, for which he should be proud. I am also advised that Mr. Sidney, even when AWOL, did make ongoing efforts to try and manage his addiction. He did connect himself with the Insite Injection Site program which I gather has another program called Onsite, a stabilisation, detoxification type of program. They have provided a letter confirming his involvement in that program. Mr. Sidney has certainly seemed to have found it very beneficial to him. He has also been connected since 2008 to Blood Ties. They have sent two letters, both of which speak very highly of his involvement in their program and actually speak to the fact that they are considering him as a peer facilitator for some of their programs because of the insight that he has gained with respect to his own issues.

[12] I also have before me the benefit of a *Gladue* Report which gives me a great deal of insight into Mr. Sidney's background and circumstances and how it is that we

arrive at where we are today. I am not going to include that information in the decision itself because it is very personal in nature, and it is unnecessary, in my view, to detail all of it for the purposes of the decision. Suffice it to say, Mr. Sidney has had an extremely difficult and troubled background, much of which can be linked back through his mother and grandmother to the residential school system. He has struggled from an early age to deal with the impacts of his upbringing leading to the significant addiction issues that have plagued him throughout his adult life. Mr. Sidney, nonetheless, appears to be committed to continuing the efforts that he started in Wellness Court to try to get a handle on his addiction.

[13] I accept, for the purposes of this decision, that Mr. Sidney is particularly remorseful for his behaviour in relation to Mr. Johnson, someone that he considered to be a very close friend. The fact that he would have taken advantage of Mr. Johnson in the way that he did, because of his addiction, is something that Mr. Sidney finds very troubling, and it is my hope that it is something he will remember in the future in terms of it influencing his ongoing motivation to get the help that he needs.

[14] There are a lot of positives in relation to Mr. Sidney's efforts in Wellness Court and his ongoing intention and motivation to address his underlying addiction issues.

[15] The question for me today is what is the appropriate sentence. Mr. Sidney has spent a number of periods in custody since the first offence in August of 2010. Those have been calculated for me and counsel are jointly agreed, as am I, that Mr. Sidney is entitled to credit for 16 months spent in pre-trial custody.

[16] Crown counsel is suggesting a sentence of 60 days credit for the possession of stolen property; concurrent 30 days sentences on each of the breaches and the most serious offence before me, that being the break and enter, warrants a 20-month sentence to be reduced by the remaining 14 months in pre-trial custody, which would leave a remaining sentence of six months still to be served. They are also suggesting an 18-month probationary term.

[17] Counsel for Mr. Sidney agrees that the Court could consider that to be a fit sentence, however, it was made clear to me that Mr. Sidney wanted to address me directly as he does have some concerns in relation to the sentence that is being suggested by the Crown. In particular, he has some opportunities in the fall which he thinks would be valuable for him that he does not want to miss. These include the potential peer facilitation with the Blood Ties program.

[18] Mr. Sidney has also indicated he has a friend in Carcross he could reside with and a relative that would provide him with employment should he be released today.

[19] Again, Mr. Sidney has reiterated his goal to complete the program at Tsow-Tun Le Lum and would like to do that as soon as possible. It seems to me his primary concern is what happens should he be sentenced to further jail that would have him released at some point in the winter with no place to go.

[20] In considering all of the information before me there are a number of things which I have to balance. I have to consider the circumstances of the offences. I have to consider Mr. Sidney's circumstances. I have to consider the principles of sentencing as set out in the *Criminal Code* including recognition of Mr. Sidney's Aboriginal heritage,

the family experience in the residential school system and the impact that that has had on his family and on him. I am also required to consider other principles such as denunciation and deterrence, as well sentences for like offences with like offenders.

[21] I have to say, in light in Mr. Sidney's background, had he not done what he did in Wellness Court, had he not engaged in the programming and participated as well as he did for the 10 months he was involved in the program it is likely that he would have been looking at a sentence in the range of three-and-a-half to four years in custody because of his background and because of the aggravating circumstances which, I am certain by the remorse he has expressed today, that he recognizes in relation to the break and enter offence. The element of home invasion which makes it particularly egregious.

[22] When I consider the sentence that Mr. Sidney would otherwise have received, in my view, I am satisfied that the sentence that is being suggested by the Crown fully takes into account all of the efforts that he has made. It gives him full credit and, in fact, enhanced credit for time spent in pre-trial custody, to which entitlement is a live question these days. It also, in my view, gives Mr. Sidney full credit for the efforts that he has made, both within the Wellness program and after. It is certainly well below the range that one would expect for this type of offence with Mr. Sidney's record and, Mr. Sidney, it is well below that because of what you did do.

[23] By saying that, what I want you to understand, is this is significantly less than what you would otherwise have received. So I do not want you to leave here thinking that it was a waste of your time to do Wellness Court, because it was not. It was not as

it relates to the sentence, because you are looking at a 20-month sentence, most of which you have already served, as opposed to a three-and-a-half or four year sentence, but I also believe strongly that it was a benefit to you, Mr. Sidney. Because of the work you did, you have made a really good start on tackling what is a very longstanding difficult issue for you.

[24] I think you were able to make that start in Wellness Court, Mr. Sidney, and even when you were no longer connected there was part of you that recognized you needed to be connected somewhere. You were able to connect yourself to the Insite Injection program and to Blood Ties. You recognized you needed support. I think it is hard for you to reach out for that support, it is hard for you to accept it, and I am hoping that your experience in Wellness Court has at least allowed you to find that a little bit easier as you continue to try and get a handle on your addiction.

[25] I understand, Mr. Sidney, your concerns about the winter. There is some counseling and programming offered through WCC. I know KDFN has a counselor, Evann Lacosse, that comes in to WCC. I would certainly recommend you enquire as to whether or not you could meet with her. That may well be a good starting point in terms of working with someone to plan for your release because you do want to do some planning. A Probation Officer should also come up and see you before you transition into probation and you can do some planning with them as well. But, at the end of the day, I am satisfied that what is being suggested is entirely appropriate considering all of those factors I have to consider and balancing all of those things that need to be balanced, including all of the efforts that you have put in, Mr. Sidney. You are right, you would be much better off had you fully completed Wellness Court, but you are still

significantly better off now than you would have been had you not done the ten months you did do.

[26] The sentences are going to break down as follows. I am going to start with the most serious and work my way down. On the s. 348 I am satisfied a sentence of 20 months is appropriate, but I am going to credit Mr. Sidney for 14 months in pre-trial custody, leaving a remaining sentence to be served of six months. The s. 354 will be a sentence of one day deemed served by his attendance in court today and I would ask the record reflect that he is being credited for two months in pre-trial custody. For the remaining two offences, the s. 145 charges, there will be sentences of 30 days on each of those to be served concurrently. So it does not add additional time onto the end of the sentence; they are just served at the same time as you are serving everything else.

[27] I am going to attach to the s. 348 a probationary term of 18 months, and I want you to understand, Mr. Sidney, my goal in doing that is not for it to feel punitive, it is to connect you to resources. There are some services that you just cannot access if you are not on an order and I want you to have the benefit of as many services as you can possibly access.

[28] We are going to have somewhat limited terms. They will be focused on rehabilitation. They will be as follows:

1. Keep the peace and be of good behaviour;
2. Appear before the Court when required to do so by the Court;

3. Notify your Probation Officer in advance of any change of name or address and promptly notify the Probation Officer of any change of employment or occupation;
4. Report to a Probation Officer immediately upon your release from custody and thereafter when and in the manner directed by the Probation Officer;

[29] I am not going to include the abstain; I do not want to set you up. But I am going to include that you:

5. Take such alcohol and drug assessment counseling and programming as directed by your Probation Officer;
6. That you take such other assessment, counseling, and programming as directed by your Probation Officer;
7. That you provide your Probation Officer with consents to release information with regard to your participation in any programming, counseling, employment, or educational activities you have been directed to do pursuant to this order;

[30] I primarily want it to be about programming. I am going to include, though, that Mr. Sidney:

8. Reside as approved by your Probation Officer and not change that residence without the prior written permission of his Probation Officer;

I think where he is living is going to have a huge influence on his ability to be successful.

[31] The only other thing I am going to add, and this is for Mr. Johnson, I am not going to put a no-contact provision on because he does not seem to want that, but he does not want you around if you are under the influence. I am going to include a condition that you:

9. Have no contact directly or indirectly, or communication in any way with Dwayne Johnson if you are under the influence of alcohol or non-prescribed drugs;

[32] It does not sound like Mr. Johnson wants to sever ties. Mr. Johnson wants you to get help, Mr. Sidney, and he does not want you to be around him if you are using. You know Mr. Johnson is struggling not to use either, Mr. Sidney, so you are right, you could support each other, you could help each other through that, but you cannot help him if you are under the influence.

[33] MR. PHELPS: Your Honour, no issue with the terms that you have placed on and I understand your decision with respect to the abstaining clause. I wonder if there should not be the clause, though, to not attend bars, taverns, and off-sales.

[34] THE COURT: I think that is probably a good idea. You do not want to be exposed to where alcohol is, Mr. Sidney, because that does not help you either. I will add:

10. That you not attend any bar, tavern, off sales, or other commercial premises whose primary purpose is the sale of alcohol;

[35] By not putting an abstain condition on, I do not want you to get the message that I am telling you you should be out there using. But I recognize that you have a really, serious deeply entrenched problem that is going to take you some time and hard work to work through, including dealing with some very, very difficult underlying issues. I am just concerned that if I put the abstain clause on that I am going to set you up, Mr. Sidney, and send you back to jail, and I do not want to do that because I want you focused on getting the help that you need.

[36] THE ACCUSED: Okay.

[37] THE COURT: That leaves the s. 109?

[38] MR. COFFIN: I would just rise to comment on that issue. As I understand s. 109, it requires either the use of a weapon or the use of violence.

[DISCUSSION RE SECTION 109]

[39] THE COURT: All right. Here is what I am going to do because I do have a real question as to whether or not the circumstances fit the definition of the section. I have no hesitation that I can certainly do so on a discretionary basis and, as I indicated, I can also do so as part of a probationary term, but I think I would require more to be satisfied that it actually is mandatory. As the Crown has quite fairly pointed out, actual violence, threatened or used against Mr. Johnson certainly was not necessary in this situation to get him to acquiesce because of his circumstances of being in a wheelchair, but I do have a question about whether this amounts to threatened violence against a person. That is not to suggest in any way, shape, or form

that I do not appreciate this would have been a very distressing circumstance for Mr. Johnson.

[40] So here is what I am going to do. I am also satisfied that Mr. Sidney should not be using firearms if he is actively struggling with his addiction. For the purposes of this decision, making it very clear that because this issue has not been fully argued, and therefore ought not to be considered as setting a precedent, but in this particular case, I am going to conclude that it is not mandatory, but from a discretionary perspective it would be valuable. What I am going to do is include a condition of the Probation Order that for that period of time while you are struggling to get a handle on the addiction, Mr. Sidney, that you:

11. Not be in possession of any firearms, weapons, ammunition, or explosive substances.

[41] I do appreciate, considering the *Gladue* Report and your comments about really needing to be connected to your cultural heritage, that there is probably some long-term value to you in getting involved in traditional activities that may well involve hunting and things of that nature. I do think that is going to be important, but I also think you should not be dealing with firearms if you are still struggling with drugs and alcohol.

[42] That is the way I am going to handle it for the purposes of today.

[43] MR. PHELPS: Just with respect to the outstanding offences, a stay of proceedings, please?

[44] THE COURT: All right. Thank you. Did I wave the Victim Fine Surcharge?

[45] MR. COFFIN: No, I would ask that the --

[46] THE COURT: I thought if I did not say it, so I will say it now. Victim Fine Surcharges are waived in light of his custodial status.

[47] I just want to end today by expressing my thanks to counsel. I know this has been a difficult matter to work through and I very much appreciate the efforts of both counsel in bringing this matter to what I believe is an appropriate and reasonable conclusion. I want to extend my thanks to Ms. O'Brien as well for the very well-written and helpful *Gladue* Report, and to Mr. Sidney for participating in that as well because it was very valuable for me, and I hope it was for him as well.

[48] The last thing I want to say is to you, Mr. Sidney. I just want to repeat that you should not lose sight of what you were able to accomplish over the 10 months that things were going well in Wellness Court. You have it in you to beat this. You have it in you to live the life that you want to live. You have it in you to be the person you want to be. Do not forget that. You know what you need to do. You know where you need to go and you know you can do it, so good luck.

RUDDY T.C.J.