

Citation: *R. v. Smith*, 2009 YKTC 103

Date: 20090821
Docket: 09-00207
09-00323
Registry: Whitehorse

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

REGINA

v.

RICK SMITH

Appearances:
Peter Chisholm
Elaine Cairns

Counsel for Crown
Counsel for Defence

REASONS FOR SENTENCING

[1] FAULKNER T.C.J. (Oral): Rick Smith was convicted after trial on charges of assault with a weapon and forcible entry. He, in addition, offered a guilty plea which I accept, to a charge of breach of probation; the breach in question being breach of a no contact order, the specifics of which were he was to have no contact with his estranged common-in-law wife, Laurie Patterson, when he was under the influence of alcohol or other drugs. The assault and forcible entry were also perpetrated on Ms. Patterson and involved an entry into her home. They were, I accept, very upsetting and frightening incidents from the point of view of the victim, who encountered a drunken Mr. Smith on

the doorstep of her home late at night. She has reason to be concerned about Mr. Smith because one of his prior convictions involves an assault on her.

[2] Mr. Smith has a substantial and quite persistent criminal record, and it includes a number of entries which are related to the present circumstances. Given the circumstances of the offence and the track record of this offender, clearly a custodial sentence is warranted for the safety and protection of the public, if for no other reason.

[3] The Crown has submitted that a sentence in the range of a year is fit and I agree. As I say, Mr. Smith has a substantial and related record. The circumstances are serious and troubling. Mr. Smith has previously been violent towards this woman and, indeed, was on a probation order not to have contact with her at the time in question. Now, of course, Mr. Smith has been in custody for a substantial amount of time amounting now, grossed up at the usual rate, to something in the order of three and a half months.

[4] With respect to the charge of assault with a weapon, Mr. Smith, you are sentenced to a period of imprisonment of eight months in addition to time served, which I calculate at three and a half months. On the charge of forcible entry, four months concurrent. On the charge of breach, since I have considered it aggravating with respect to the commission of the principal offences; three months concurrent.

[5] Following your release from imprisonment you will be subject to a probation order for a period of 18 months. The terms will be that you will:

1. Keep the peace and be of good behaviour;

2. Report to the court as and when required;
3. Report within two working days to an Adult Probation officer and thereafter when and in the manner directed;
4. Advise the Probation Officer in advance of any change of name or address;
5. Promptly notify the Probation Officer of any change of occupation or employment;
6. Have no contact, directly or indirectly, by any means whatsoever, with Laurie Patterson, except with the permission of your Probation Officer in consultation with Victim Services;
7. Take such alcohol assessment, treatment and counselling as the probation officer directs, including, if directed, attendance for residential treatment.

[6] The Crown having proceeded summarily, the surcharges in each case are \$50, for a total of \$150.

[7] In addition, I have considered the making of a discretionary firearms prohibition order under s.110 of the *Criminal Code*, and in my view it is in the interest of justice that such an order be made, prohibiting you from having in your possession any firearm, crossbow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited weapon or explosive substance for a period of 10 years following your release from imprisonment. You will surrender forthwith to the RCM Police at Whitehorse any such items now in your possession.

[8] Are you seeking time to pay the surcharges?

[9] MS. CAIRNS: Well, he would need some time to pay. He has no income right now and he is going to be in jail for eight months.

[10] THE COURT: Okay.

[11] MS. CAIRNS: So it would have to be some time after his release from custody; he has no ability prior to that. I would request that it be waived but you have already made the order.

[12] THE COURT: Payable forthwith. He may serve the time in default.

[13] MR. CHISHOLM: With respect to the second 733.1 matter I will direct a stay of proceedings.

[14] THE COURT: Stay of proceedings.

[15] MR. CHISHOLM: Your Honour, in terms of the warrant of committal, I am wondering if there can be a no contact order imposed vis-à-vis Laurie Patterson.

[16] THE COURT: I thought I did.

[17] MR. CHISHOLM: I thought that that was done with respect to the probation order so I may have missed it if was --

[18] THE COURT: Oh, you are asking with respect with the time in custody.

[19] MR. CHISHOLM: Yes.

[20] THE COURT: Yes, that order should go as well.

[21] MR. CHISHOLM: Thank you.

FAULKNER T.C.J.