

Citation: *R. v. Cardinal*, 2020 YKTC 38

Date: 20201029

Docket: 19-00637

19-00637A

19-00701

19-00744

19-00796

19-00797

19-00798

19-00806

Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before His Honour Chief Judge Chisholm

REGINA

v.

COREY ROBERT CARDINAL

Appearances:

Amy Porteous

Mark Chandler

Counsel for the Crown

Counsel for the Defence

REASONS FOR SENTENCE

[1] CHISHOLM C.J.T.C. (Oral): Mr. Corey Cardinal has pleaded guilty to a number of *Criminal Code* offences:

- one count of robbery, contrary to s. 344;
- one count of mischief, contrary to s. 430(4);
- one count of failing to attend court, contrary to s. 145(5)(b); and

- two counts of failing to abide by a condition of a probation order, contrary to s. 733.1(1).

[2] The facts of these offences are set out chronologically in an Agreed Statement of Facts, which reads as follows:

Court File No. 19-00744, s. 430(4)

1. On November 24, 2019, Corey Cardinal was arrested on an outstanding warrant. The RCMP transported him to the Arrest and Processing Unit at the Whitehorse Correction Centre in Whitehorse, Yukon. During his time in the APU cells, the following day, he climbed onto a toilet, ripped the smoke detector off the ceiling and threw it to the floor. He then flooded the floor using the water from the toilet.
2. WCC staff called the police, who attended, arrested Mr. Cardinal for mischief, and released him on a promise to appear for December 4th, 2019 on the underlying warrant file.
3. Staff from WCC and the Yukon Government were able to turn off the water to the cell, clean the floor, and reconnect the wiring in the smoke detector.

File No.: 19-00637A s. 145(5)(b)

4. Mr. Cardinal did not appear in the Territorial Court in Whitehorse on December 4, 2019 as his Promise to Appear compelled him to do. A warrant was issued for his arrest, and was executed on December 13th, 2019. He was released on a recognizance a few days later.
5. Mr. Cardinal admits that he had no reasonable excuse for failing to attend court on December 4th.

Court File No. 19-00798: ss. 344(1)(b), 733.1(1) x2

6. At 12:30 p.m. on January 18, 2020, the RCMP received a call about a potential robbery in progress at the Heather's Haven convenience store in northern Whitehorse, Yukon. Police attended and found employees Karandeep and Jaspreet Singh alone in the store. They confirmed that the store had indeed been robbed. Through their statements and the surveillance video, the police learned that Timothy McKay and Mr. Cardinal were responsible and had attended the store together. Mr. McKay grabbed a broom and started waving it at Karandeep while demanding money. Karandeep opened the cash

- register, at which point Mr. Cardinal went behind the counter and emptied it. Either McKay or Cardinal then told Karandeeep to give them two cartons of cigarettes. He handed them to Mr. McKay. Mr. McKay and Mr. Cardinal fled the store together, leaving the broom behind.
7. Later that afternoon, a truck driver en route to Inuvik, NWT came across an overturned car in the ditch north of Pelly Crossing, Yukon. Two men who were nearby flagged him down and explained that they had been driving to Inuvik in the car but had gone off the road after encountering a moose. He offered to take them to Inuvik, and texted his son mentioning that he had picked up two hitchhikers. Between Eagle Plains and Inuvik, he received a text from his son attaching a media photograph of of [sic] McKay and Cardinal, asking if the hitchhikers he had picked up were the men wanted for armed robbery in Whitehorse. He recognized his passengers in the photo and called the police shortly after dropping Cardinal off in Inuvik.
 8. The RCMP located Cardinal late on the morning of January 21st, 2020, at a residential address in Inuvik. He was uncooperative upon arrest, but apprehended, and subsequently transported to the Whitehorse Correctional Centre. He has been in custody since that date.
 9. At all relevant times, Mr. Cardinal was bound by probation orders made by Justice K. Ruddy of the Territorial Court of Yukon on July 24, 2019 in Whitehorse and by Justice L. A. Charbonneau of the Supreme Court of the Northwest Territories on May 1, 2017 in Yellowknife. Both orders required him to keep the peace and be of good behaviour.

[3] Regarding the robbery charge, counsel also agreed to the fact that Mr. Cardinal left the store first while Mr. McKay was still collecting cigarettes from the store clerk.

[4] Counsel are agreed that Mr. Cardinal has been in custody on remand for the equivalent of just over 14 months. The Crown seeks a global sentence of 29 months' incarceration, reduced by the pre-sentence custody, plus a probationary period, and mandatory ancillary orders.

[5] The defence submits that the appropriate sentence is 14 months in jail (effectively time served), plus a two-year probation order.

Analysis

[6] The principles of sentencing have been codified in ss. 718 to 718.2 of the *Code*.

Section 718.1 provides that:

A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

[7] In this regard, the British Columbia Court of Appeal in *R. v. Swaby*, 2018 BCCA 416, para. 69, stated:

...The sentence should be proportionate to the circumstances of the offence, including its gravity, and the circumstances of the offender.

[8] Section 718.2 speaks to some of the principles of sentencing. Section 718.2(e) is of importance in the matter before me and reads as follows:

(e) all available sanctions, other than imprisonment, that are reasonable in the circumstances and consistent with the harm done to victims or to the community should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders.

Circumstances of Mr. Cardinal

[9] A comprehensive *Gladue* Report has been filed with the Court. Mr. Cardinal is 33 years of age, originally from the Northwest Territories (“NWT”), and is of Inuvialuit/Dene and Cree descent. As a child, he was abused both verbally and physically. As a result of his tumultuous home life, and his behavioural issues, at an early age he was removed from his home and spent much of his childhood in care facilities in the NWT, Alberta and Saskatchewan. He described to the author of the

Gladue Report feeling “abandoned by his family, especially his mother and abused by the system”.

[10] Members of Mr. Cardinal’s immediate family attended residential school, including his mother’s attendance at the notorious Grollier Hall in Inuvik, NWT. His mother indicated to the *Gladue* writer that she was raised with abuse and believed yelling and hitting was a normal part of parenting.

[11] Mr. Cardinal came into contact with the criminal justice system at an early age and was convicted of a number of offences, including offences of violence, as a youth. His adult record is lengthy and serious and includes a robbery conviction in 2008 for which he received a 21-month jail sentence. His record also comprises convictions for break and enters, uttering threats, assaulting peace officers, and a conviction for an assault with a weapon. Recently, in 2018, a court sentenced him to 42 months’ incarceration for having discharged a firearm in a reckless manner.

[12] Mr. Cardinal had very little schooling growing up, but he has made efforts to upgrade his education. Despite the fact that he has expressed his dissatisfaction with certain programming at the Whitehorse Correctional Centre, I understand that he has nonetheless availed himself of some of the programming that is available.

[13] Mr. Cardinal has not only taken responsibility by entering early guilty pleas, he has also expressed his remorse for his behavior. He clearly wishes to make positive changes in his life, and he is fortunate to have the support of his sister who lives in Whitehorse.

Case Law

[14] Counsel have referred to a number of cases regarding the robbery charge. The Crown relies on the following decisions:

- *R. v. Beattie*, 2015 BCCA 335;
- *R. v. Davidson*, 2009 BCCA 485;
- *R. v. Hansen*, 2012 BCCA 142;
- *R. v. Harvey*, 2018 YKTC 32; and
- *R. v. Louie*, 2019 BCSC 368.

[15] The defence has directed me to the following decisions:

- *R. v. Dhindsa*, 2018 BCPC 33;
- *R. v. Douglas*, 2012 MBQB 197; and
- *R. v. Felix*, 2016 SKPC 45.

[16] I also consider the decision in *R. v. Firth*, 2012 YKTC 116, where an Aboriginal offender with a troubled background and a significant record was sentenced to 18 months' jail for robbery, plus an additional 18 months consecutive for other offences.

[17] I am also aware of the decision in *R. v. Alexander*, 2016 YKTC 38, where the Court imposed a 42-month sentence for robbery of a convenience store. The offender,

who had two previous robbery convictions, also suffered a traumatic childhood, leading the Court to take into consideration the *Gladue* factors that were present.

[18] The decision in *R. v. Brogan*, 1999 BCCA 278, which counsel also mentioned, provides that the range of sentencing for robbery convictions with violence, involving young men, is typically between two and nine years of incarceration. The relevant factors to be considered in determining an appropriate sentence include: the age of the offender, the criminal record, the level of violence, the number of offences, the level of premeditation, use of a disguise, type of weapon and its manner of use, prospects of rehabilitation, and the need for deterrence in a particular community.

[19] In the matter before me, the defence points to the fact that many of the aggravating factors normally present in robberies are absent, namely, the absence of a gun or a knife, the absence of a disguise, a lower end level of violence, and a lack of premeditation.

[20] I appreciate that this robbery falls towards the lower end of seriousness for offences of this nature, and that Mr. Cardinal was under the influence of alcohol and drugs at the time of the offence.

[21] At the same time, Mr. Cardinal's accomplice threatened violence to the clerk by employing a broom, thus allowing Mr. Cardinal access to the cash register. Although Mr. Cardinal may not have been aware that his accomplice was going to act in this manner, it was nonetheless a joint venture.

[22] I also am cognizant of the seriousness of Mr. Cardinal's criminal record which, as indicated, includes a number of offences of violence. As a result, the sentence for the robbery offence before me must express denunciation and deterrence.

[23] At the same time, I must not neglect the principle of rehabilitation in this matter. Mr. Cardinal endured an unenviable childhood, which has impacted his life to date. He is remorseful and wants to move forward in a positive manner, and he appears capable of doing so, if he applies himself and makes efforts to improve the way he sometimes interacts with others.

[24] Having considered all of the mitigating and aggravating factors, I am of the view that an appropriate sentence for the robbery charge is 20 months in jail. I impose a sentence of 30 days' jail concurrent for each charge of breach of probation. Being mindful of the principle of totality, I impose a 30-day consecutive jail sentence for the mischief charge and 30 days concurrent for his failure to attend court. I apply 14 months' pre-sentence custody to this sentence, leaving seven months of jail to be served.

[25] Mr. Cardinal requires structure upon his release from custody. As a result, I place him on a probation period of 18 months, once he is released from custody, on the following conditions:

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

3. Notify the Probation Officer, in advance, of any change of name or address, and, promptly, of any change in 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;
5. Reside as directed by your Probation Officer and not change that residence without the prior written permission of your Probation Officer;
6. Do not attend the business premises known as Heather's Haven in Whitehorse, YT; and
7. Have no contact directly or indirectly or communication in any way with Timothy McKay.

[26] I make a mandatory s. 109 order. Mr. Cardinal will be prohibited from having in his possession any firearms, ammunition, explosive substances, or any weapons as defined by the *Criminal Code*, for a period of 10 years.

[27] On the robbery charge, I make a DNA order pursuant to s. 487.051, as this is a primary designated offence.

[28] Based on Mr. Cardinal's personal circumstances, the victim surcharges are waived.

CHISHOLM C.J.T.C.