

Citation: *R. v. Chief*, 2016 YKTC 78

Date: 20160530
Docket: 14-00598A
14-00601
14-00601A
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before His Honour Judge Cozens

REGINA

v.

EVERETT MARK CHIEF

Appearances:
John W. Phelps
Lynn MacDiarmid

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCE

[1] COZENS T.C.J. (Oral): Everett Chief has entered guilty pleas to having committed two offences contrary to s. 266 of the *Criminal Code*.

[2] On October 22, 2014, Mr. Chief was in a relationship with Sarah MacIntosh. They had been drinking. They were at her home, both intoxicated, and he ended up dragging Ms. MacIntosh by her hair to the bedroom and punching her in the face. Her son, John Carlick, happened to come to the residence at that time. He observed

Mr. Chief on top of Ms. MacIntosh on the floor punching her. He was able to intervene and bring the fight to an end. She suffered bruising to her face, arms, and back. As a result of this assault, Mr. Chief was arrested and released.

[3] On December 20, 2014, he had been drinking earlier that evening with the boyfriend of his niece, Colin Perreault. Shortly after midnight, he asked for a cigarette, did not get it, and began choking Mr. Perreault. The struggle continued into Mr. Perreault's residence, which was down the hall, until Mr. Chief's niece was able to intervene to bring the incident to an end. He was released again on an undertaking to a peace officer that required him to abstain absolutely from possession and consumption of alcohol.

[4] On December 16, 2014, Mr. Chief was found, as a result of a complaint, significantly intoxicated.

[DISCUSSIONS RE TIME IN CUSTODY]

[5] Mr. Chief has about two months' pre-trial custody, at a minimum.

[6] Mr. Chief has an extensive criminal history going back to 1992, as a youth, starting with an assault causing bodily harm. He has since then had assault bodily harm convictions, assault with a weapon convictions, a sexual assault conviction, and other assaults, the most recent of which was a spousal assault in 2014 for which he received four months' jail. There was a gap in actual violent offences leading up to the uttering threats convictions since 2008, assault causing bodily harm, but there were intervening uttering threat charges since then.

[7] There has been no reoffending since his release in February 2015, in large part due to his commitment to maintain sobriety, and his involvement in Community Wellness Court. He spent about 13 months in the program through Community Wellness. He has completed the 28-day program, and the Substance Abuse Management Program. He has been involved in a psychological assessment process, pre-employment program at Challenge Disability Resource Group (“Challenge”). He was working at Challenge. Mr. Chief has attended the Men’s program on a drop-in basis, and he has completed a large part, but not all, of the Respectful Relationships’ programs that existed outside of the 28-day program. He is considered not to have fully completed the requirements of the Community Wellness Court but having read the summary, certainly, he has done well.

[8] Crown’s position originally was six months’ jail on the spousal assault, as it was a pretty violent spousal assault. Thank goodness her son was there. In light of the criminal history and the more recent spousal assault, plus four months’ custody on the subsequent assault, Crown, however, in recognition of where Mr. Chief is now compared to where Mr. Chief was before, is simply looking for a period of 45 days’ custody time served on the spousal assault and a period of probation on both — attached to that, of course, and then a period of a — suspended sentence — and a period of probation on the s. 266 charge involving Mr. Perreault. Crown is suggesting 18 months’ probation.

[9] Defence counsel is suggesting a shorter period of probation, noting that Mr. Chief feels that he has been under conditions long enough and does not believe that it is necessary.

[10] I read the Community Wellness summary prior to coming into court and it is clear that Mr. Chief has had a difficult and traumatic upbringing as a youth. He was both a witness to and a victim of abuse himself in the past. That was elaborated on in the psychological assessment from December 2010 that I read. Certainly, Mr. Chief has had to deal with things that would have been extremely difficult to deal with. *Gladue* factors certainly come into play and the consequences of the systemic discrimination of Aboriginal peoples, the cycle of abuse, violence, and alcoholism that flows from it, are quite present in his life. I am not going to go into any further detail on it. Mr. Chief struggles with some cognitive limitations. It is not clear what they are attributed to. He struggles with depression and perception of himself. From what I can see, Mr. Chief struggles with his own identity and his own value.

[11] What I see when I look at these reports and when listening to Mr. Chief in court today, is that he is someone who has come out of a very difficult background and is really doing quite well and is on his way to a productive life. Really, his ability to abstain from alcohol use is — I cannot underestimate the value of that. It shows a real motivation. When Mr. Chief is able to do that, I have no doubt that he can do well and continue to do well moving forward.

[12] It is clear to me, especially having read the psychological assessment, that in dealing with Mr. Chief and being involved with trying to get him to open up and talk about the things that are troubling him, it would clearly work better on a one-on-one basis, rather than in a group setting. That has been recognized by his Bail Supervisor

and the treatment team that have worked with him. I think that one-on-one counselling will be more beneficial to Mr. Chief because I can understand that some of the things that he has had to deal with are not easy to share in a group setting.

[13] I would certainly encourage one-on-one counselling going forward knowing it has already been recognized by his soon-to-be Probation Officer from Bail Supervisor, to work really well for Mr. Chief, and it will accommodate his work schedule and it will also accommodate any educational pursuits. I think that is the direction that we are going to go.

[14] I see that with one-on-one counselling moving forward, Mr. Chief will be able to do extremely well and it might actually help him with value issues, self-esteem issues, or sense of self-worth issues. I think that they can be overcome. That is not to say that there may not be, at some point in time, some assessment that is not one-on-one that is considered valuable. I, of course, am not making that decision. I am simply noting the value of it.

[15] Mr. Chief, while wanting this to be done with, looked at one of the considerations of the community work service hours that were allowed to be done in counselling. He did not want that. He feels he does not need that. I understand why that suggestion has been put forward. Certainly, it is quite appropriate, generally speaking, to encourage individuals to take part in the counselling. While recognizing the potential value of it, I think it is important in this case to listen to Mr. Chief on this point. I think

the benefit of listening to Mr. Chief and allowing him a little bit of control on the probation order will actually encourage him in completing it successfully without taking anything away from the counselling he is going to be required to do.

[16] It does seem, in the psychological assessment, Mr. Chief has a sense that he is not heard; he is not listened to. You have been heard today and your counsel has heard you and expressed your opinion. Your Bail Supervisor, soon to be your Probation Officer, clearly in what I can see, understands that you are your own unique person and need to be dealt with that way.

[17] The sentence will be as follows.

[18] With respect to the s. 266 charge involving Sarah MacIntosh, it will be 45 days' time served to be followed by a period of probation of 12 months.

[19] With respect to the other s. 266 charge, I am going to suspend the passing of sentence and I am going to place you on probation for a period of 12 months.

[20] The orders, of course, run concurrent to each other, Mr. Chief.

[21] The terms of the probation order will be as minimally required to encourage you to take part and finish the programming. You have identified relationships as an issue for you, the psychological assessment identifies this, and I think that counselling is going to be focused on relationship issues and it is going to be done in an environment that allows you to understand them better. If you complete the programming in the Respectful Relationships program and are doing well, there is every reason to believe this order can be terminated early. That is going to depend on how you are able to work

that out with your work schedule because I have no doubt that you will end up employed and you will be able to work with your employer and your employment.

[22] This order is not going to interfere with your employment prospects because I think that that is critical to you, that you be allowed to work, and I think that is understood by everyone here. I am encouraging you not to see any of this as an obstruction or barrier to your success but actually another tool to help you achieve success. In the industry you work in, you understand the benefit of tools. Sometimes they feel heavy in your tool pouch carrying them but, at the end of the day, they help you get the job done and you could not do without them. This is just another tool in a tool pouch.

[23] You are to:

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 of employment or occupation;
4. Have no contact directly or indirectly or communication in any way with Colin Perreault or Sarah MacIntosh except with the prior written permission of your Probation Officer and with the consent of Colin Perreault and/or Sarah MacIntosh;

5. Remain 25 metres away from any known place of residence, employment or education of Colin Perreault or Sarah MacIntosh, except with the prior written permission of your Probation Officer and with the consent of Colin Perreault and Sarah MacIntosh;
6. Report to a Probation Officer immediately, and thereafter, when and in the manner directed by your Probation Officer;
7. Reside as approved by your Probation Officer and not change that residence without the prior written permission of your Probation Officer;

[DISCUSSIONS]

8. Not possess or consume alcohol and to provide a sample of your breath or urine for the purpose of analysis upon demand by your Probation Officer who has reason to believe that you may have failed to comply with this condition;

[24] Given what Mr. Chief has been able to do so far, I do not think that is going to be a concern. I do not expect you are going to be required to be asked for it because I do not expect you are going to be consuming alcohol now, and there has to be a reason to believe that.

9. Not attend any premises whose primary purpose is the sale of alcohol, including any liquor store, off sales, bar, pub, tavern, lounge or nightclub;

10. Attend and actively participate in all assessment and counselling programs as directed by your Probation Officer, and complete them to the satisfaction of your Probation Officer, for the following issues:

alcohol abuse,

spousal violence,

anger management,

any other issues identified by your Probation Officer,

and provide consents to release information to your Probation Officer

regarding your participation in any program you have been directed to do pursuant to this condition;

[25] Because you are already on a firearms prohibition, I will put this term in to:

11. Not possess any firearm, ammunition, explosive substance or any weapon as defined by the *Criminal Code* except as required by your employment, except with the prior written permission of your Probation Officer, and except for the purpose of hunting; and

[26] That of course, may allow you to carry a bow, at this point in time, hunting but you are not allowed to carry a firearm because you have this other firearms prohibition, in fact, that has nothing to do with these proceedings. You have a different route to bring an application if you want to be allowed to hunt.

[27] Those are all the terms on the probation order.

[DISCUSSIONS]

12. Make reasonable efforts to find and maintain suitable employment and provide your Probation Officer with all necessary details concerning your efforts.

[28] There is \$400 of victim surcharges.

[29] You are not working right now. That is a lot. I do not want to burden you with the thought of that. I am going to give you two years time to pay.

[DISCUSSIONS]

[30] THE CLERK: Remaining counts?

[31] MR. PHELPS: Stay of proceedings, please.

COZENS T.C.J.