

Citation: *R. v. Butler*, 2024 YKTC 1

Date: 20240108  
Docket: 22-00049A  
Registry: Whitehorse

**IN THE TERRITORIAL COURT OF YUKON**  
Before His Honour Judge De Filippis

REX

v.

RANDY WADE BUTLER AND  
RILEY AXEL EDWARD BUTLER

Appearances:  
Peterson Ndlovu and  
Jennifer Crews  
Aya Tubinshlak

Counsel for the Crown  
Counsel for Riley Butler

**REASONS FOR SENTENCE**

[1] I found Riley Butler guilty of assault by choking. At the same trial, I found his brother, Randy Butler, guilty of assault. I previously sentenced Randy Butler to nine months in custody, followed by probation for three years on terms that included he is not to contact the victims.

[2] The defence argued that the appropriate sentence for Riley Butler is a Conditional Sentence Order (“CSO”) for a period of 12 months followed by a period of probation for one year. The Crown submitted that the offender’s criminal record means

a CSO is not appropriate, and that the offender should be sentenced to a period of custody in the range of 16 to 18 months, followed by probation.

[3] These reasons explain why I sentence Riley Butler to an 18-month CSO.

[4] The facts of the offences are set out in my decision, reported at *R. v. Butler*, 2023 YKTC 36. It will suffice for these reasons to state the following: Members of an extended family sat down for Christmas dinner at the home of Tammy Butler, the mother of the two offenders and mother-in-law to Jeffrey Wolsynuk. Riley and Randy Butler were drunk. Randy Butler's inappropriate conduct towards Leandra Wolsynuk upset her father, Jeffrey Wolsynuk. The latter went to look for his grandchild so his family could leave. Words were exchanged between Jeffrey Wolsynuk and Randy Butler. As Jeffrey Wolsynuk arrived at the stairs leading to the basement, Riley Butler pushed him up against a wall. At the same time, Randy Butler grabbed Jeffrey Wolsynuk's hair and punched him in the forehead. Randy Butler and Jeffrey Wolsynuk fell to the ground, entangling Tammy Butler in the process. As Randy Butler continued to punch Jeffrey Wolsynuk, Riley Butler came from behind and choked him, causing him to have trouble breathing. This altercation ended after much pleading from other family members present. Among the injuries to Jeffrey Wolsynuk was a cut above his eye, requiring eight stitches. This injury was caused by Randy Butler.

### **The Victims**

[5] I received impact statements from the following victims: Jeffrey Wolsynuk, his spouse, Tanya Butler, and daughters, Leandra Butler and Zahara Wolsynuk. His spouse and daughters witnessed the assaults. These victims describe the physical and

emotional harm suffered because of the offences. The focus of the statements provided by the victims is with respect to Randy Butler who is described as unpredictable and feared.

### **The Offender's Background**

[6] This is not the first time that Riley Butler has been before the Court. On December 11, 2020, he was sentenced to 12 months in custody for nine offences: Driving with a blood alcohol level over the legal limit, flight from police, failure to comply with three court orders, assault, assault causing bodily harm, and two counts of assault by choking.

[7] In addition to the submissions of counsel, I have the benefit of a psychological report and letters of support. The offender is 24 years old and employed as a supervisor with Northern Cascade, which contracts directly with a gold mine to operate and maintain equipment. A letter from a senior official at the company confirms that the offender is a valued member of the organization.

[8] Riley Butler has eight siblings. His father passed away after suffering from alcoholism for many years. The offender assumed primary responsibility for looking after his mother, Tammy Butler. His mother emphasized her dependence on the offender. Riley Butler's sisters, Tiarra Clark and Twila Lougheed, confirm that he has supported his mother financially and emotionally, including while she was treated for cancer. The letters of support also claim that Riley Butler is working hard to better himself.

[9] The offender suffers from alcoholism. As stated in the psychological report, Riley Butler recognizes that he has a familial predisposition to alcoholism and was abusing alcohol quite heavily at the time of the offence.

[10] Defence counsel pointed out that it has been almost two years since Riley Butler was arrested for the present offences. He has not reoffended or breached any conditions of his undertaking. He has been of good behaviour and managed to successfully maintain his employment and continue supporting both himself and his mother. In addition, he has engaged in rehabilitative measures by way of counselling. It is argued that imposing a jail sentence would be counterproductive as it would disrupt his employment and positive efforts to change.

[11] Dr. Jim Browning, author of the psychological report, opined that the offender appears serious about managing his alcohol consumption more effectively and avoiding physical altercations that could result in further trouble with the law. Dr. Browning believes the offender would be able to abide by the terms of a CSO and emphasized that being able to continue working and support his mother would be a positive motivator for him and would increase the chances that he would be successful in managing alcohol and anger effectively.

[12] Mr. Butler has, to date, suffered collateral consequences. He advises that he has suffered both mentally and emotionally because of the process of arrest, trial, and conviction. He stated the toll that this has had, not only on him, but also on his mother, has been significant. He incurred expenses in privately retaining counsel and a psychologist.

[13] Defence counsel noted more collateral consequences if the offender is sent to jail. His employment would be jeopardized impairing his ability to support his mother in the long term. In any event, he would be unable to do so while incarcerated.

### **The Legal Principles**

[14] In imposing sentence, I am guided by Part XXIII of the *Criminal Code*. The following provisions are particularly important:

718. The fundamental purpose of sentencing is to protect society and to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:

- (a) to denounce unlawful conduct and the harm done to victims or to the community that is caused by unlawful conduct;
- (b) to deter the offender and other persons from committing offences;
- (c) to separate offenders from society, where necessary;
- (d) to assist in rehabilitating offenders;
- (e) to provide reparations for harm done to victims or to the community; and
- (f) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims or to the community.

...

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

[15] Proportionality means that the severity of a sentence will depend on the seriousness of the offence as well as the moral blameworthiness of the offender (*R. v. Lacasse*, 2015 SCC 64). Personal circumstances are relevant in determining

proportionality in light of the seriousness of the offence, but they do not alter the seriousness of the offence (*R. v. Schofield*, 2019 BCCA 3).

[16] Section 742.1 of the *Code* lists four criteria that a court must consider before deciding to impose a CSO:

- (1) there must not be a minimum sentence of jail;
- (2) the court must impose a term of imprisonment of less than two years;
- (3) the safety of the community would not be endangered by the offender serving the sentence in the community; and
- (4) a conditional sentence would be consistent with the fundamental purpose and principles of sentencing set out in ss. 718 to 718.2.

[17] The first two criteria are met in this case. It is agreed that a reformatory term is appropriate and there is no minimum penalty in the present case. Riley Butler has led a pro-social life since the present offence, has engaged in counselling, is gainfully employed, and supports his mother, with whom he lives. These personal circumstances mean community safety should not be endangered by the imposition of a CSO. The more difficult question is whether such a disposition meets the fourth criterion set out in the legislation.

[18] Denunciation and deterrence can be reflected through a conditional sentence, even in the most serious offences. The Court of Appeal for Ontario made this clear in *R. v. Kutsukake* (2006), 216 O.A.C. 317, a case involving criminal negligence causing

death. The Court of Appeal considered the leading case of *R. v. Proulx*, 2000 SCC 5, and stated as follows:

15. ...The Supreme Court of Canada held, at para. 114, that even in the presence of aggravating factors which might indicate the need for denunciation and deterrence, "a conditional sentence may provide sufficient denunciation and deterrence, even in cases in which restorative objectives are of diminished importance". Writing for the court, Lamer C.J.C. added at para. 100:

A conditional sentence can achieve both punitive and restorative objectives. To the extent that both punitive and restorative objectives can be achieved in a given case, a conditional sentence is likely a better sanction than incarceration. Where the need for punishment is particularly pressing, and there is little opportunity to achieve any restorative objectives, incarceration will likely be the more attractive sanction. However, even where restorative objectives cannot be readily satisfied, a conditional sentence will be preferable to incarceration in cases where a conditional sentence can achieve the objectives of denunciation and deterrence as effectively as incarceration. This follows from the principle of restraint in s. 718.2(d) and (e), which militates in favour of alternatives to incarceration where appropriate in the circumstances.

## Conclusion

[19] The doctrine of proportionality requires a consideration of the seriousness of the offence and the moral blameworthiness of the offender. The seriousness of the present offence is obvious. Riley Butler choked Jeffrey Wolsynuk in the presence of his spouse and daughter. His actions, along with those of his brother, have caused great suffering to the victims. The offender's moral blameworthiness is high. He has a criminal record, including crimes of violence. However, Riley Butler has shown he can lead a good and productive life and appears committed to dealing with the underlying issues of alcoholism and anger. His mother depends on him financially and emotionally. The

offender's ability to provide this support will assist in his own rehabilitation.

Nevertheless, the sentence to be imposed must denounce his misconduct and act as a deterrent.

[20] I find that a CSO can meet principles of denunciation and deterrence in this case. House arrest is not jail. It is, however, a significant restriction on liberty. Moreover, unlike jail, there is no remission.

[21] I am not troubled by the fact that Riley Butler was previously jailed for offences that included assault by choking. The evidence before me is that the offender now has the insight and commitment needed to lead a productive life. His mother needs him, and this fact is significant for both of them.

[22] Nor am I am not troubled by the fact that Randy Butler was handed a jail sentence. There is no issue with respect to parity as the two brothers are not similarly situated. Randy Butler instigated the events that led to the altercation in question by his vulgar conduct toward Leandra Butler and assault on her boyfriend. He was already in custody at the time of sentencing. He has not faced the same collateral consequences. Most important, Randy Butler has not demonstrated the same insight and commitment.

[23] Riley Butler will be subject to a CSO for a period of 18 months; the first 12 months under house arrest and the balance under a curfew. The specific conditions of the order are:

1. You must keep the peace and be of good behaviour;
2. You must appear before the court when required to do so;



3. You must report in person to a Supervisor within two working days and, thereafter, when required by the Supervisor and in the manner directed by the Supervisor;
4. You must remain within the Yukon unless you have written permission from your Supervisor to leave;
5. You must attend and actively participate in all assessments, counselling, and rehabilitative programs as directed by the Supervisor, including substance abuse;
6. You must agree to the release of any medical or other information necessary to monitor compliance with this order;
7. You must not consume alcohol unless you are inside of your residence;
8. You must notify the Supervisor, in advance, of any change of name or address, and, promptly, of any change of employment or occupation;
9. You must have no contact directly or indirectly, or communication in any way, with Jeffry Wolsynuk, Leandra Blanchard, Zahara Wolsynuk, Jayden Sidney, Tanya Butler, Max Wolsynuk, Jemma Wolsynuk, and Baelean Wolsynuk;
10. You must not go to any known residence, school, or workplace of Jeffry Wolsynuk, Leandra Blanchard, Zahara Wolsynuk, Jayden

Sidney, Tanya Butler, Max Wolsynuk, Jemma Wolsynuk, and Baelean Wolsynuk;

11. You must reside at [redacted] Whitehorse, YT and not change that residence without the prior written permission of your Supervisor;
12. For the first 12 months of this order, you must obey house arrest by being inside your residence, or on the property, at [redacted], 24 hours a day, every day, except as follows:
  - i) Medical emergencies for you or your mother;
  - ii) To go directly, to and from, and be at, religious observance, employment, and education;
  - iii) To go directly, to and from, and be at, medical, dental, or legal appointments, and at assessment, counselling, or rehabilitative programs;
  - iv) For personal shopping for a four-hour period per week;
  - vi) For any other purpose that may be approved of by the Supervisor.
13. Except for medical emergencies, you must provide the Supervisor with the dates and times of all other exceptions to house arrest;

14. For the final six months of this order, you must obey a curfew of 10:00 p.m. to 5:00 a.m., except for medical emergencies involving him or his mother or for purposes of employment;
15. If you are required to be away from your residence overnight during your house arrest while working for Northern Cascade, you must provide your Supervisor with your work schedule and direct supervisor's contact information. You must report by telephone during this period every three days or as otherwise directed by your Supervisor. You must provide your employer with a copy of this Order;
16. You must answer the door or the telephone for house arrest and curfew checks; and
17. You must carry your conditional sentence order on your person whenever outside the home.

[24] I impose the following ancillary orders: You will provide a sample of your DNA within two weeks of this decision. You are bound by a weapons prohibition for 10 years (s. 109). You will pay the victim surcharge in the amount of \$100, or one day in jail in default of payment. The surcharge must be paid within six months.

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DE FILIPPIS T.C.J.