

Citation: *R. v. Morgan*, 2019 YKTC 62

Date: 20191206
Docket: 18-11022
18-11022A
Registry: Dawson City
Heard: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before His Honour Chief Judge Chisholm

REGINA

v.

KANE STEELY GRAY MORGAN

Appearances:
Leo Lane
Luke Faught

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCE

[1] CHISHOLM C.J.T.C. (Oral): Mr. Kane Morgan has entered a guilty plea today to an offence contrary to s. 145(3) of the *Criminal Code* for failing to abide by a condition of his undertaking to not be outside of his residence between the hours of 10:00 p.m. and 6:00 a.m., unless it is for employment. This occurred between December 2 and December 5, 2018.

[2] In August 2019, I released written reasons with respect to the offence of assault with a weapon that Mr. Morgan committed on September 23, 2018, in Dawson City. I will briefly touch upon the facts.

[3] Mr. Morgan was in a local bar in Dawson City. I found that he was standing near a seated woman and acting aggressively towards her. Another individual, Mr. Clayton Johnny, entered the bar. He saw what was occurring. He felt that the woman looked scared. As a result, he positioned himself between Mr. Morgan and the woman while asking Mr. Morgan why he was giving the woman a hard time. As Mr. Johnny looked towards the door, Mr. Morgan struck him with a glass.

[4] Mr. Johnny ultimately received medical attention, which entailed stitches to his face. He suffered a cut just under his left eye socket and another on his left cheek. Mr. Johnny has not filed a victim impact statement even though he has been, as I understand it, given the opportunity to do so.

[5] Mr. Morgan comes before the Court with a relatively limited criminal history; however, it is related. There are two assault convictions on his record, plus three failures to comply with court process. All of these convictions were registered on June 27, 2016, in Dawson City.

[6] I have the benefit of two Pre-Sentence Reports; one from 2015, which is a redacted report, and another report that was prepared this year by Jason Watters, who has participated in the sentencing hearing by phone today. It was completed on June 14, 2019, for court on June 25, 2019.

[7] Mr. Watters, in brief, is supportive of Mr. Morgan, based on the progress that he has made since this offence occurred — that being the substantive offence on September 23, 2018.

[8] The principles of sentencing, which I am not going to refer to extensively but which I have taken them into account, include the principles of denunciation, deterrence, and rehabilitation. I obviously wish to craft a sentence in this case that gives a sense of responsibility to Mr. Morgan in terms of the harm that he has done in committing the substantive offence.

[9] In my view, Mr. Morgan, the Crown is being exceptionally fair to you in this case. This is a very serious matter and I think that you appreciate that. The Crown could easily have taken the position that they were opposed to the conditional sentence order that you are seeking, so I think that you are lucky that they are taking that position because, quite frankly, it arguably makes my job a lot easier, and it is a sign, I think, that the Crown has viewed the progress that you have made, especially from December of last year to now.

[10] I have taken into account, of course, the criminal history that I have mentioned but also what I will describe as your troubled, chaotic, and unstable upbringing, including the verbal and physical abuse that you were subjected to in your family setting.

[11] It is clear that the substance abuse issue that you have is long-standing. In the past few years, you have had some success, and there is great credit that has to be given to your partner in this regard. You have had some success in being sober and, as I understand it, since December of last year, you have been sober and you have been attending Alcoholics Anonymous. I think it is important, as I have said today during the discussion, that you continue down this road. Work is important but the other things

that are important are your relationships, that you will have to continually work on, as well as counselling and treatment.

[12] I should point out that Mr. Morgan has a very positive and long-standing work history. He works in and around the Dawson City area. His work is detailed in the reports that I have read. As we discussed today, his work includes attending to more remote areas outside of the city of Dawson. As I understand it, although there is ongoing work right now, it is to a lesser extent than at other times of the year.

[13] All that to say, I find that an appropriate sentence, with respect to the assault with a weapon, is one of 12 months' incarceration to be served conditionally in the community, followed by one year of probation.

[14] With respect to the curfew breach, there will be a 30-day conditional sentence to be served concurrently with the same terms as the conditional sentence for the s. 267(a) assault with a weapon offence.

[15] The conditions on the conditional sentences will be as follows, that Mr. Morgan:

1. Keep the peace and be of good behaviour;
2. Appear before the court when required to do so by the court;
3. Report to your Supervisor within two working days and thereafter, when required by your Supervisor and in the manner directed by your Supervisor;

4. Remain in the Yukon unless you have the prior written permission of your Supervisor or the Court;
5. Notify your Supervisor, in advance, of any change of name or address, and, promptly, of any change of employment or occupation;
6. Have no contact directly or indirectly or communication in any way with Clayton Johnny;

[16] A note, Madam Clerk, that the name was not properly set out in the undertaking that you had given to me, so just make sure that that same error is not made.

7. Reside at 2 Eureka Drive, in the Dredge Pond Subdivision, Dawson City, at least one week per month as determined in advance with his Supervisor;
8. During that period of time, remain inside your residence or on your property — so effectively a house arrest — except with the prior written permission of your Supervisor and except for two hours twice a week to obtain the necessities of life. You must answer the door or the telephone to ensure that you are in compliance with this condition. Failure to do so during reasonable hours will be a presumptive breach of this condition;
9. There will be an abstention clause that you not possess or consume alcohol and/or illegal drugs or substances that have not been prescribed for you by a medical doctor;

10. Importantly, there will be a condition that you attend and actively participate in all assessment and counselling programs, including residential treatment, as directed by your Supervisor and shall complete those to the satisfaction of your Supervisor for the following issues: substance abuse; alcohol abuse; anger management; and any other issues identified by your Supervisor, and you are to provide consent to release information to your Supervisor regarding your participation in any program that you have been directed to do pursuant to this condition; and
11. There will be a condition that when you are working in the field that you carry a satellite phone and that you provide the number of that satellite phone to both your conditional sentence Supervisor and to the RCMP.

[17] Additionally, there will be a probation order of one year, which will attach solely to the s. 267(a) charge, and the conditions will be straightforward. There will be the statutory conditions which are:

1. Keep the peace and be of good behaviour;
2. Appear before the court when required to do so;
3. Notify his Probation Officer, in advance, of any change of name or address, and, promptly, of any change in employment or occupation;
4. Additionally, as I mentioned, there will be a no-contact order with Clayton Johnny;

5. Mr. Morgan will report to a Probation Officer immediately upon completion of his conditional sentence and thereafter, when and in the manner directed by the Probation Officer;
6. There will be the abstention clause; and
7. Finally, there will be the programming and counselling clause.

[18] Additionally, there will be a DNA order, again, attaching to the s. 267(a) charge. Mr. Morgan will provide a sample of his bodily substances to the RCMP for DNA analysis and recording.

[19] There will be a s. 110 firearms prohibition for a period of three years.

[DISCUSSIONS]

[20] I will ask the Crown to deal with the other matters before the Court, counts 2 and 3.

[21] MR. LANE: Counts 2 and 3 are stayed, please, Your Honour.

[22] THE COURT: Yes.

[23] MR. LANE: With regard to the conditions, I'll ask Your Honour to consider not writing the two-hour exemption into the order. But since we have Mr. Watters on the phone, perhaps Your Honour could just instruct him when he gives his permissions for the house arrest, he could just write the two-hour exemption in twice a week for whatever —

[24] THE COURT: And that it be structured?

[25] MR. LANE: Right. My concern is that if it just says you can be out for two hours twice a week in the order itself it could lead to problems, I think, with enforcement — assuming Mr. Watters is still on the line.

[26] MR. WATERS: Yes, I'm still here.

[27] THE COURT: Mr. Faught, any issue with that, that it be structured?

[28] MR. FAUGHT: No, sir.

[29] THE COURT: All right. The two hours, which is not part of our standard conditions, but it is a term that I generally include, will read that the conditional sentence Supervisor shall allow Mr. Morgan, when he is under house arrest, two hours twice a week to obtain the necessities of life, times of which will be determined in advance between Mr. Morgan and his Supervisor.

CHISHOLM C.J.T.C.