

Citation: *R. v. Morgan*, 2016 YKTC 79

Date: 20160627  
Docket: 14-11018  
14-11018A  
14-11018B  
14-11018C  
15-11008  
15-11008A  
Registry: Dawson City  
Heard: Whitehorse

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

REGINA

v.

KANE STEELY GRAY MORGAN

Appearances:  
Jennifer Grandy  
Nils F.N. Clarke

Counsel for the Crown  
Counsel for the Defence

**REASONS FOR SENTENCE**

[1] CHISHOLM T.C.J. (Oral): Mr. Kane Morgan has pleaded guilty to five *Criminal Code* offences, namely, two common assaults and three breaches of court process. The Crown, with the consent of Mr. Morgan, has also read in facts pertaining to other charges as an aggravating factor.

[2] I will set out the facts, in brief, with respect to the matters before the Court.

[3] The first assault occurred on July 11, 2014. It was an assault that occurred at an establishment named Diamond Tooth Gerties in Dawson City. Towards midnight, on July 11, Mr. Morgan attacked an individual, Mr. Paul Young, whom he called, “the woman beater”. The attack was serious and ultimately others intervened to prevent further damage to the victim. It was clear that Mr. Morgan was intoxicated at the time of this assault. He was released the following day on conditions, including that he not possess or consume alcohol.

[4] On May 13, 2015, he committed another assault, in Dawson City, on a Mr. Randy Audette. The two were known to each other and were attending a house party. Mr. Morgan indicated that he wished to speak to Mr. Audette outside. He began ranting about the fact that Mr. Audette was disrespectful to certain people. He then sucker punched him and struck him a total of five to six times in the face. Contrary to the condition of his release, that he not drink alcohol, he was under the influence of alcohol which led to one of the breach charges before me.

[5] On March 26, 2016, again, contrary to a term of release, Mr. Morgan was in the Diamond Tooth Gerties establishment consuming alcohol. When arrested that evening, he was noted to be intoxicated.

[6] Finally, on June 18, 2016, he again contravened a condition of his release, namely, that he was in attendance in Dawson City in a manner which contravened a release condition which allowed for his attendance in Dawson City but only with certain individuals.

[7] The Crown's position is that a global sentence of four to six months is warranted in this situation; whereas Mr. Morgan submits, through his counsel, that a conditional sentence order is an appropriate resolution of the matter. Alternatively, he suggests a blended sentence — in other words, some jail followed by a conditional sentence — or finally, an intermittent sentence.

[8] I have reviewed a lengthy Pre-Sentence Report that was prepared late last fall.

[9] I should point out that Mr. Morgan is 25 years of age. He is a longtime resident of Dawson City, and he is gainfully employed in the mining industry.

[10] The mitigating factors here, in my view, are that he has entered guilty pleas to the offences in question. Also, he has indicated his remorse in court for what he has done, and I accept that remorse as being genuine. Although there was some confusion with respect to a youth record, the Crown concedes that, for the purpose of this hearing, it cannot prove a prior criminal record with respect to Mr. Morgan.

[11] Looking at the aggravating factors, they include the fact that the two assaults were what we might refer to as “vigilantism”. Additionally, Mr. Morgan expressed his sentiments in the Pre-Sentence Report, or to the author of the Pre-Sentence Report, that seemed to indicate that what he had done, although in the form of vigilantism, was understandable. I should note, parenthetically, that he backed away from such views at the sentencing hearing itself. Also, the assaults were unprovoked targeted attacks, and there were injuries that resulted, especially to Mr. Young — and those injuries were not insignificant.

[12] It is clear that, based on all of the factors that I must consider, a jail sentence for at least some of the offences is warranted. The question I must resolve, as previously alluded to, is whether such a sentence may be served in the community.

[13] Pursuant to s. 742.1 of the *Criminal Code*, some of the criteria that I must consider include whether the safety of the community would be endangered by his serving a conditional sentence. I must be satisfied that the community would not; and, secondly, whether or not a conditional sentence would be consistent with the fundamental principles of sentencing as set out in ss. 718 to 718.2. There is no question that a properly constituted conditional sentence may appropriately deal with the principles of denunciation and deterrence, as well, of course, with the principle of rehabilitation.

[14] One of the difficulties that I have with the proposal before me is that, in my view, it lacks structure. It would see Mr. Morgan many miles outside of Dawson City working in the mining industry; however, from what I could glean, close supervision would be difficult. Although certain proposals were made at the sentencing hearing to add some rigidity to such a sentence, I nevertheless find it would neither be practical nor realistic.

[15] The second issue is that Mr. Morgan has shown, through his behaviour on bail, that he has difficulty, at times, conforming to the rules imposed by the Court. To his credit, as indicated by his counsel, he has, at times, apparently done well. However, at other various moments in time, his behaviour has deteriorated and led to breaches of his conditions.

[16] In my view, a conditional sentence order would not accord with the fundamental principles of sentencing in this case.

[17] That being said, the sentence that I have crafted takes into account, of course, the circumstances of the offences and of Mr. Morgan. In addition to the mitigating factors that I have already mentioned, I am mindful of the fact that Mr. Morgan is still a young adult; that he has supports in Dawson City; that he has recently started to see a counsellor; and that he is a good worker. I am hopeful, at least, that from what he said in court to me on Friday, that he may finally be beginning to develop some insight into his behaviour and how destructive his behaviour can be.

[18] The sentence today will hold him accountable. It will deal with the principles of denunciation and deterrence, but also focus on his rehabilitation. I also should point out that I have taken into account the principle of totality in arriving at what I believe to be an appropriate response to what he has done. With respect to some of the offences, I have also considered sanctions that are reasonable in the circumstances other than incarceration.

[19] As a result, I impose the following sentence.

[20] For the assault on Mr. Paul Young, there will be a sentence of one day deemed served, taking into account 18 days of pre-sentence custody.

[21] With respect to the assault on Randy Audette, there will be a sentence of 45 days in custody, plus a one-year probation order, the terms of which I will return to.

[22] With respect to the abstain charge from the same date as the assault on Mr. Audette, there will be a \$250 fine.

[23] With respect to curfew breach from March 26, 2016, there will be a \$500 fine.

[24] With the final breach for being in Dawson City contrary to his conditions from June 18, 2016, there will be 15 days' custody to be served consecutive to the other custodial term that I have imposed, for a total of 60 days of custody to be served.

[25] Based on the submissions that were made, I will allow that sentence to be served intermittently, with one day being served by his presence in court today; the other 59 days will commence on November 4, 2016, at or before 6:00 p.m. He is to attend at the Whitehorse Correctional Centre, 25 College Road, in Whitehorse, on that date, as I say, prior to 6:00 p.m., and he will serve the remainder of his sentence in full.

[26] Between now and then, he will be subject therefore to a probation order. The conditions will be that he:

1. Keep the peace and be of good behaviour;
2. Appear before the court when required to do so by the court;
3. Notify his Probation Officer, in advance, of any change of name or address, and, promptly, of any change of employment or occupation;
4. Remain within the Yukon unless he has the prior written permission of the Court; and

5. Not consume alcohol during the 48-hour period immediately preceding the time that he is to report to the Whitehorse Correctional Centre.

[27] For the one-year probation order that attaches to the second assault, the conditions will be as follows, the statutory conditions, that he:

1. Keep the peace and be of good behaviour;
2. Appear before the court when required to do so by the court;
3. Notify his 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 Paul Young or Randy Audette;
5. Not attend any known place of residence, employment, or education of those two individuals;
6. Reside as directed by his Probation Officer and not change that residence without the prior written permission of his Probation Officer;
7. Report to a Probation Officer immediately upon his release from custody and thereafter, when and in the manner directed by the Probation Officer;
8. Not be outside of his residence if he has consumed alcohol;
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. Make reasonable efforts to find and maintain suitable employment and provide his Probation Officer with all necessary details concerning those efforts: and

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

- alcohol abuse,
- anger management,
- psychological issues,
- any other issues identified by his Probation Officer,

and provide consents to release information to his Probation Officer regarding his participation in any program he has been directed to do pursuant to this condition.

[28] There are victim surcharges that I am imposing:

- for each of the assaults: \$100;
- for the abstention breach: \$37.50 (15% of the \$250 fine);
- for the curfew breach: \$75 (15% of the \$500 fine); and
- for the final breach: \$100.



[29] The total is \$750 in fines and \$412.50 in surcharges.

[30] I will allow him, unless I hear an application to the contrary, six months' time to pay.

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CHISHOLM T.C.J.