

Citation: *R. v. Smarch*, 2025 YKTC 20

Date: 20250422
Docket: 24-00532C
24-00532B
24-00264
23-00593
23-00593A
23-00593B
25-00114
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before Her Honour Judge Cairns

REX

v.

SIDNEY FRANCIS SMARCH

Appearances:
David A. King
Malcolm E.J. Campbell

Counsel for the Crown
Counsel for the Defence

This decision was delivered from the Bench in the form of Oral Reasons. The Reasons have since been edited without changing the substance.

REASONS FOR SENTENCE

[1] CAIRNS T.C.J. (Oral): Mr. Smarch is here for disposition, and he has entered pleas as follows. There are a number of Informations before the Court, so I will go through each of them separately but briefly.

[2] Starting with Information 23-00593, Mr. Smarch has entered a guilty plea to Count #2, which is an offence contrary to s. 129(a) of the *Criminal Code* (the “Code”),

namely, that he resisted arrest, and Count #3, an offence contrary to s. 320.13(1) of the *Code*, namely, operating a conveyance in a manner dangerous to the public.

[3] Very briefly, the facts are that these incidents arise from November 15, 2023. Mr. Smarch was pulled over for a routine traffic stop. At that time, the police thought they observed some items of concern and attempted to place Mr. Smarch under arrest. He then drove away with the driver side door of the vehicle open. The two officers present were close to the vehicle and had to jump out of the way to avoid being hit.

[4] With respect to Information 24-00264, Mr. Smarch has entered a plea of guilty to Count #4, an offence contrary to s. 320.17 of the *Code*, that being while operating a motor vehicle and being pursued by a police officer, he failed to stop as soon as reasonable in the circumstances.

[5] The facts are that on March 5, 2024, Mr. Smarch was observed by a police officer near the Whitehorse emergency shelter getting into the driver side of a vehicle. He reversed abruptly, causing the vehicle to spin out directly in front of the police vehicle. The officer then activated the emergency lights and siren to perform a traffic stop. Mr. Smarch accelerated, ran a stop sign, and fled the scene. He was later arrested.

[6] With respect to Information 25-00114, Mr. Smarch has entered pleas of guilty to Count #1, an offence contrary to s. 145(5)(a) of the *Code* as amended — and it was amended to read “between the 1st day of January 2025 and the 18th day of February in the year 2025” — that he breached a curfew which required him to be inside his

residence of Connective between 9:00 p.m. and 6:00 a.m. daily. There is also —
Count #3 is a resist arrest contrary to s. 129(a) of the *Code*.

[7] The facts of those offences are that Mr. Smarch was released on terms, including a curfew and a requirement that he reside at Connective. He was absent from Connective on or around January 1, 2025 until February 18, 2025, thus not complying with the curfew requirement that he be inside the residence between 9:00 p.m. and 6:00 a.m. Then on February 18, the police were at the lobby of a local hotel on unrelated business and observed what they viewed to be a suspicious male. Mr. Smarch was recognized by one of the officers present who was aware of warrants for his arrest. In attempting to arrest him, Mr. Smarch pulled away from the officers and ran away.

[8] With respect to Information 24-00532C, I will read out those counts as they were amended to ensure that we have those properly on the record. Mr. Smarch has entered a guilty plea to Count #4 as amended. That count is:

On or about the 29th of July in the year 2024 at or near the City of Whitehorse in the Yukon Territory did, possess a prohibited firearm to wit: a modified Remington Arms Company shotgun and a Ruger Mark II handgun together with readily [accessible] ammunition capable of being discharged from the said firearm and was not the holder of an authorization or licence under which he may possess the said firearm in that place, contrary to Section 95(1) of the Criminal Code.

[9] Mr. Smarch has also entered a plea of guilty to Count #5 of the same Information.

On or about the 29th day of July in the year 2024 at or near the City of Whitehorse in the Yukon Territory, did have in his possession a prohibited firearm and restricted firearms, to wit: a modified Remington Arms Company shotgun, a Tokarev 1942 handgun, and a Ruger Mark II handgun, while he was prohibited from doing so by reason of an order made pursuant to section 109 of the Criminal Code at Whitehorse on September 21, 2010, contrary to Section 117.01(1) of the Criminal Code.

[10] And he has also entered a plea to Count #12 of the same Information as amended:

On or about the 29th day of July in the year 2024 at or near the City of Whitehorse in the Yukon Territory, did possess firearms, to wit: a Ruger Mark II handgun, a Ruger American Rifle, a Winchester Rifle and a Remington Arms Shotgun, without being the holder of a licence under which he may possess them, contrary to section 91(1)(a) of the Criminal Code.

[11] The facts supporting those pleas are as follows. There was a complaint of illegal camping at McGundy Road, off the Alaska Highway, which led to the police investigation and surveillance. Mr. Smarch was observed during the surveillance. Ultimately, he was arrested, and a search of the travel trailer present resulted in the police finding a number of firearms. All of these offences, as indicated, arose on July 29, 2024.

[12] Count #4, which I have just read in, contrary to s. 95(1) of the *Code*, Mr. Smarch was in possession of prohibited firearms: a modified Remington Arms Company shotgun and a Ruger Mark II handgun, together with readily accessible ammunition capable of being discharged, and he was not authorized or licensed to possess those firearms.

[13] With respect to Count #5, s. 117.01(1) of the *Code*, Mr. Smarch was at the time prohibited by an order pursuant to s. 109 of the *Code* and had in his possession a Remington Arms Company shotgun, a Tokarev 1942 handgun, and a Ruger Mark II handgun.

[14] Count #12 as amended contrary to s. 91(1)(a) of the *Code*, he was in possession of firearms without a licence, namely, the Ruger Mark II handgun, a Ruger American rifle, a Winchester rifle, and a Remington Arms shotgun.

[DISCUSSIONS]

[15] By way of background for Mr. Smarch, he is a 38-year-old member of the Kwanlin Dün First Nation. I am advised that his grandparents attended residential school and that his mother was a victim of the “Sixties Scoop” and thus he has experienced intergenerational trauma throughout his life. He is currently in a common-law relationship and he has two children from a prior relationship, both living in Calgary with their grandmother.

[16] Mr. Smarch has a Grade 10 education, but he has continued his education by obtaining a number of trade certificates, and those have led to him having his own business and doing very well for a number of years.

[17] His criminal record has been filed. While it is somewhat lengthy, there is very notably a significant gap in his record. The most recent entry on that record is from 2012, so a lengthy time ago. I am advised by counsel that, during that period of time when he was not in conflict with the law, Mr. Smarch was running his own water delivery

business, and he had a period of time where he was also employed by the First Nation of Na-Cho Nyäk Dun. I am also advised that period of time ended when there was significant trauma for Mr. Smarch, his three brothers passing away in various tragic circumstances, as well as the death of a co-worker. These very significant tragedies threw Mr. Smarch off the positive path that he was on and he turned to drugs and was struggling with addiction. This has brought him before the Court today.

[18] There is a joint submission from both counsel in relation to how these matters should be disposed of.

[19] With respect to Information 23-00593, the proposal is for Count #2 to lead to a 90-day jail sentence and Count #3, 90 days concurrent — and also with respect to Count #3, a one-year driving prohibition to commence after the completion of the period of incarceration, and I am accepting the joint submission overall.

[20] With respect to Count #4 from 24-00264, a \$1,000 fine will be payable forthwith.

[21] With respect to Information 25-00114 that has the curfew breach and the resist arrest, Count #1, the proposal is for 30 days consecutive to the 90 days just imposed. Similarly Count #3, the resist arrest, 30 days concurrent to Count #1.

[22] With respect to 24-00532C, Count #4 is three years' incarceration consecutive to the two sentences of 90 days and 30 days just imposed. For Count #5, six months' jail concurrent to that three-year sentence, and Count #12, 12 months' jail concurrent to the three years.

[23] If I have calculated this correctly, that is a total custodial sentence before giving credit for time served of three years and 120 days, or, by my calculation, that would be four months. Mr. Smarch, I am advised, has spent 105 days of actual custody/pre-trial detention. He should be credited for that custody at 158 days, or five months and eight days.

[24] In my calculation — and, counsel, correct me if I erred doing the math — the sentence remaining would be 34 months and 22 days.

[25] Crown is seeking a s. 109 order.

[DISCUSSIONS]

[26] I will make under s. 109(2)(b) of the *Code*, the order for life and the other one for 10 years after Mr. Smarch's release from custody.

[27] Given that Mr. Smarch will be heading into custody, I will waive the victim surcharge.

[28] The remaining counts?

[29] MR. KING: Withdrawn, please.

[30] THE COURT: Withdrawn. Thank you, counsel.