

Citation: *R. v. Smith*, 2026 YKTC 10

Date: 20260217
Docket: 24-00636
24-00847
24-00547
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before His Honour Judge Brooks

REX

v.

KODY HAIJO SMITH

Appearances:
David A. King
Kevin Drolet

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] BROOKS T.C.J. (Oral): Mr. Smith has pleaded guilty to the following offences on Information 24-00636.

Count #1: On or about the 13th day of May in the year 2024 at the City of Whitehorse in the Yukon Territory, did steal from Heather's Haven to wit: money while using violence or threats of violence contrary to Section 343(a) of the *Criminal Code*.

Count #4: On or about the 13th day of May in the year 2024 at the City of Whitehorse in the Yukon Territory, while operating a motor vehicle and being pursued by a peace officer, did fail without reasonable excuse to stop the motor

vehicle, as soon as reasonable in the circumstances, contrary to Section 320.17 of the *Criminal Code*.

[2] On Information 24-00847, Mr. Smith pleaded guilty to the lesser included offence of take auto without consent on an allegation that:

On November 24th, 2024 at Tagish, in the Yukon Territory did steal a motor vehicle, a 2008 Toyota Tundra, Yukon License Plate JLA 86, the property of Natasha Smith and did thereby commit theft contrary to Section 333.1 of the Criminal Code of Canada

[3] At the sentencing hearing, Crown counsel submitted that a total sentence of 36 months in custody for the three offences less time served ought to be imposed. The pre-sentence custody was 225 actual days in jail for which Mr. Smith ought to get 338 days' credit. Although the mathematics were not exact, Crown submitted that the final result for an appropriate sentence ought to be two years less a day in jail to be followed by three years of probation. The total was arrived at on the basis of 24 months for the robbery, 11 months consecutive for the flight from a peace officer, and one month consecutive for the take auto without consent.

[4] Ancillary orders were also sought: a DNA order, a driving prohibition, and a weapons prohibition.

[5] Additionally, a restitution order was sought for damage to a police cruiser in the amount of \$15,065.65.

[6] In light of the length of incarceration sought, the Crown position was that a conditional sentence order was neither available nor appropriate.

[7] The defence position was that a conditional sentence was available and appropriate in the circumstances with a probationary term to follow.

[8] Given the wide gulf between the opposing submissions, it was disappointing that the information given to the Court was as limited as it was. Nevertheless, the Court must fashion as best it can the appropriate sentence on the basis of what is available. I shall review, first, the circumstances of the offences before turning to the circumstances of the offender.

Circumstances of Offences

Information 24-00636

[9] The circumstances of the offences are set out in the Admissions of Fact filed with the Court as follows:

[1] At approximately 1300 hours (Yukon Time) on May 13, 2024, a white Ford 350 motor vehicle belonging to Cobalt Construction was stolen from the company compound on the Alaska Highway at Whitehorse, YT ["Stolen Truck"]. The theft was reported to police at 1308 hours and the vehicle was said to be travelling into the Porter Creek Subdivision. Police patrolled the area and were waved down by a concerned person who saw masked persons enter Heather's Haven Convenience Store at 29 Wann Road, Whitehorse, YT ["Convenience Store"].

[2] The Defendant ["Mr. Smith"] and a second person entered the Convenience Store. Mr. Smith and the other person wore dark blue hooded sweaters and their faces were masked. Both persons proceeded behind the check-out counter to the till, menacing the clerk and removing the cash drawer.

[3] Mr. Smith and the other man then fled the convenience store with the cash drawer and got into the Stolen Truck, in

which a third person was waiting outside the Convenience Store [collectively, the Suspects”].

[4] The Stolen Vehicle fled at a high rate of speed southbound on the Alaska Highway and evaded police through a dirt trail into the Takhini subdivision.

It is noted it is not admitted that Mr. Smith was driving at this time.

[5] Police regained visual contact with the Stolen Vehicle at the Barracks Apartment Building on Range Road, where one of the Suspects briefly left the Stolen Vehicle. Within minutes, the Stolen Vehicle was found by police travelling up Two Mile Hill and onto Hamilton Boulevard, but police again lost visual contact.

[6] Mr. Smith was driving the Stolen Vehicle when it turned eastbound onto Robert Service Way and was seen by police, who activated their emergency lights and attempted to pull-over the Stolen Vehicle, which did not stop. The Stolen Vehicle executed a U-turn westbound on Robert Service Way, where it was intercepted by a police Spike Strip, puncturing the front and rear passenger side tires.

[7] The Stolen Vehicle failed to stop and continued eastbound on Hamilton Boulevard, avoiding collision with another vehicle on the road. The Stolen Vehicle came to a stop and Mr. Smith and the Suspects attempted to enter the other vehicle but were unsuccessful. Mr. Smith and one of the Suspects returned to the Stolen Vehicle. The other Suspect fled on foot.

[8] Driven by Mr. Smith, the Stolen Vehicle continued along Hamilton Boulevard until police executed what is called a “pit manoeuvre”, whereby a police vehicle hit the side of the Stolen Truck, causing the Stolen Truck to turn sideways and spin out. The Stolen Truck came to a stop. Mr. Smith remained in the driver’s seat and was taken into custody by police, while the other Suspect in the Stolen Vehicle fled on foot.

...

[10] Some of the money from the robbery was recovered, I was told, from one of the other suspects.

[11] Videos were shown to the Court of, first, what happened in Heather's Haven, and second, the following of the stolen truck on Robert Service Way and its stopping on Hamilton Boulevard.

[12] The video of Heather's Haven showed the two males entering the store and going directly to the counter where there was a female clerk. There is no sound to the video, so there was no evidence of the words, if any, spoken by the males. One male carried a surveyor's level, which was left behind on the counter when they left. A male customer was standing nearby and watched the entire occurrence.

[13] Although I did not specifically time the interaction, the males were in and out of the store very quickly.

[14] The video taken while following the stolen truck showed the stolen truck after it had gone over the spike strip not going at an excessive speed and ultimately driving on the rims, causing smoke to emanate from the stolen truck's front end.

[15] The highway at this point was a divided highway. While the potential for danger was clear, there is nothing on the video which showed the stolen truck creating an immediate danger.

[16] The timing of the sequence of events was only as set out in the Admissions of Fact. So, for example, the amount of time from the truck being stolen to it showing up at Heather's Haven was not clear in the Admissions of Fact or in my notes. Also, it

would appear that the arrest was at approximately 2:20 p.m., which meant that Mr. Smith's portion of the driving approached 30 minutes.

Information 24-00847

[17] From the Admissions of Fact:

...

[9] On September 12, 2024, Mr. Smith was released from custody upon an order requiring that he reside with his mother, who acted as surety, and not operate a motor vehicle except for the purpose of employment. On November 24, 2024, Mr. Smith took his mother's motor vehicle without her consent and operated it for purposes other than employment. Mr. Smith's mother advised police of his breaches and he was cooperative with police when taken into custody without incident the following day.

Circumstances of Mr. Smith

[18] Mr. Smith was born on September 1, 1995, making him 28 years old at the time of the first offences and 30 years of age now. He is a member of the Carcross/Tagish First Nation. I was not told of this First Nation's size, makeup, or the supports available through the First Nation. I was told that Mr. Smith's grandfather went to residential school, although I do not know details of his experience or the experience of the community at large with residential schools or any other adverse settler contact.

[19] Mr. Smith's upbringing was traumatic as a result of dysfunction within the family and, at least in part, of his mother having suffered abuse and turning to the abuse of substances. She has since passed away.

[20] As a result of his mother's struggles, Mr. Smith, starting at approximately age 10, and several of his siblings were raised by his grandparents in a mobile home. This inadequate housing added to the difficulties this family faced. At the same time, Mr. Smith's relationship with his grandfather provided a connection to traditional ways.

[21] It was in his early 20s that Mr. Smith began abusing substances. I was told that on the day of the offences in May 2024, Mr. Smith was under the influence of substances. However, I was told little else of that day or that history. Steps Mr. Smith has taken to deal with his abuse of substances and what his struggles have been and their relation to his offending were not shared with the Court.

[22] Mr. Smith has a criminal record that does start at about the time, I am told, he started abusing substances. It is not a long record, but it is not insignificant. There are nine offences on four sentencing dates. His first two offences in 2017 were fail to attend court and fail to appear. He received jail for each offence. Indeed, Mr. Smith has received jail for every offence and has never been given probation. He has a flight while pursued offence in 2024 for which he received 30 days, which had been served by pre-trial custody; and fail to stop at the scene of an accident for which he received 45 days. His only violent offence is an assault for which he received 72 days from pre-sentence custody on February 3, 2023. This is his longest sentence.

[23] Mr. Smith has two children, aged nine and seven. The mother of the children died of an overdose in July. Mr. Smith found her. This is a very traumatic event for Mr. Smith.

[24] Mr. Smith is responsible for supporting his two children and other members of his family. He operates a small company with a cousin harvesting firewood. I am told that he showed considerable initiative to start this business. He also operates heavy equipment and has recently worked grading roads for logging and mining operations. I am told that his employer is supportive of him. He also hunts and traps for the elders in the community.

[25] Housing has been an issue for many years for Mr. Smith, but he has recently been provided with a suitable place to live. I understand this to be an important and very positive step forward for him and his family.

[26] No *Gladue* report has been prepared. The Court does not have from that source the benefit of the history of Mr. Smith's First Nation nor of its current resources.

[27] A Pre-Sentence Report was ordered on June 26, 2025. It was not prepared. In a memorandum dated September 25, 2025, a probation officer summarizes the efforts that were made to have that Report prepared. The officer spoke with Mr. Smith many times. They met once to start the process but very little of it was completed. Mr. Smith attended at a later date, but the officer was in a meeting and Mr. Smith left. In trying to rearrange the meeting, Mr. Smith expressed reluctance to be sharing negative things about his family. The officer offered that he did not have to answer questions that he was not comfortable answering. The next time they spoke, Mr. Smith stated again that he did not want to participate, as he did not want to involve his family.

[28] Mr. Smith's response to the probation officer is most unfortunate. It has deprived this Court of information which would be of considerable assistance. However, his

repeated contact with the probation officer signals that his response is not the typical lack of cooperation or irresponsibility. I infer that his concern to not involve his family in a process which could be difficult, even triggering, is genuine. I appreciate that he was given the option by the probation officer of not answering questions that he did not want to answer. That suggested middle course may have been a process to accomplish a satisfactory report. Mr. Smith did not think so.

[29] Although I do not think his choice is a wise one, it still ought to be shown some respect. I am not prepared to draw any adverse inference against him for his response.

[30] I am reinforced in that conclusion by Mr. Smith's statement to the Court at the close of submissions. He indicated that he had now established a pattern in his life, including with his work. He said that he was finally at peace. He spoke of his mother but then began to cry. I will return to what I take from Mr. Smith's statement when the issue of rehabilitation is discussed.

Analysis

[31] On the basis of those circumstances of the offences and the offender, it is necessary to analyze the principles of sentencing and their application to these facts.

[32] Lengthy submissions were made as to the availability of a conditional sentence. The Crown took the position that the range of sentence rendered a conditional sentence unavailable. The defence submitted, through a path that I found somewhat unconvincing, that I could arrive at a sentence that would permit a conditional sentence. In the event that I found that the appropriate sentence was such that it could be served

conditionally, the defence submitted that such a sentence was appropriate. Crown counsel replied that a sentence of a length permitting a conditional sentence to be served on conditions would nevertheless not be appropriate in these circumstances.

[33] I intend to approach the availability of a conditional sentence in this case somewhat differently from how it was presented by counsel. I do so by considering, first, what is the appropriate length of sentence in these circumstances? And second, would the service of that jail sentence on conditions be consistent with the fundamental principles of sentencing?

The Appropriate Length of Sentence

[34] Submissions were made by counsel as to the range of sentence for offences such as these. The focus of those submissions was on whether a penitentiary sentence was warranted. I intend to review that range of sentence and then, through the application of the principles of sentencing, determine where, if at all, Mr. Smith falls within that range.

[35] I appreciate that I am applying the principles of sentencing at this first stage to a greater extent than anticipated in *R. v. Proulx*, 2000 SCC 5. I do so given the emphasis on the appropriate length of sentence by counsel in their submissions.

[36] Counsel accepted that *R. v. Brogan*, 1999 BCCA 279 was the leading authority on the range of sentence for robbery. In that case, the range was set to two to nine years' incarceration, based on the following analysis:

[10] We have been given a number of cases where robbery with violence has been committed by young men such as Mr. Brogan. An analysis of the range produced by these cases is that the sentencing range is somewhere between 2 and 9 years. The age of the offender, his previous criminal experience, the level of violence, the number of offences, the level of premeditation, whether the perpetrator was disguised or not, the type of weapon used and how it was used, the possibility of rehabilitation, the requirement of deterrence in a particular community, are some of the factors which serve to distinguish one fact pattern from another. None of the cases drawn to our attention fits Mr. Brogan's situation exactly, none could.

[37] The Court goes on to state, however, that similar cases ought to be treated in a similar fashion. *Brogan* was not similar to this case; in *Brogan* there were two robberies, where he terrorized a cashier to the extent she thought her life was over. He received eight years.

[38] An authority closer on the facts is *R. v. Cardinal*, 2020 YKTC 38, a case originating also from Whitehorse. Mr. Cardinal was on a recognizance for a mischief allegation and two different probation orders at the time. He and another male committed a robbery. During the robbery, the other male swung a broom at the clerk in the store. Mr. Cardinal grabbed the money from the cash register.

[39] Mr. Cardinal had a lengthy and serious criminal record, which included crimes of violence, assaulting peace officers, assault with a weapon, and utter threats. A prior robbery conviction resulted in a 21-month sentence. He had a difficult background, as was set out in a detailed *Gladue* report, and expressed remorse. He pleaded guilty.

[40] After reviewing *Brogan*, Mr. Cardinal was sentenced to 20 months for the robbery, and shorter periods of jail for other offences, bearing in mind the principle of totality.

[41] It is clear that I must consider the factors referred to in *Brogan* as they apply here. At the same time, *Cardinal* makes it clear that the range of two to nine years is not to be applied mechanically, but with due regard to the totality of sentence and the circumstances. As a result, a sentence just outside the low end of the two-year range was imposed in *Cardinal* for the robbery.

[42] The question then becomes, how does the range of sentence apply in these particular circumstances? In light of *Brogan* and even taking into account the sentence just outside that range in *Cardinal* and the principle of totality, the Crown submitted that a two-year jail sentence was appropriate for the robbery. I intend to analyze that question by considering the factors enumerated in *Brogan* for the robbery offence, but also, more generally, the aggravating and mitigating factors that apply to fashioning an appropriate sentence.

[43] Mr. Smith is a relatively young man. His criminal record is not extensive and has resulted in short periods of incarceration. His pre-trial custody in this matter is his longest period of incarceration. As to premeditation of the robbery offence, it is impossible to assign much, if there was any, to Mr. Smith. There was nothing sophisticated about the offence that would have required premeditation. It was an offence of grabbing the cash drawer and leaving. If any premeditation can be assigned to the time of the day for the offence, where the truck was parked, who remained ready

to drive them all away, it is not possible to assign that premeditation to Mr. Smith. The taking of a surveyor's level from a construction company truck tends to suggest an absence of premeditation. All that can be certain is that it was a joint venture of very limited sophistication for which Mr. Smith is responsible, but without any ability to assign a heightened premeditation to him. Certainly, adding to the seriousness of the offence is the use of a facial covering by the offenders in the presence of the level.

[44] There is nothing in the Admissions of Fact nor obvious from the video which suggests that there was any brandishing of the level. At some point it was put down on the counter and ultimately left there. Nevertheless, I do not underestimate the menacing referred to and the seriousness of the offence of robbery as committed against small business owners and their staff.

[45] No victim impact statements were tendered so there were no specific harms caused by the offence. It goes without saying that even without such specific evidence, it must be inferred that the incident was frightening to the store clerk and must have at least some lasting impact on their well-being.

[46] As to mitigating factors, Mr. Smith has entered a plea of guilty. The Admissions of Fact were signed by him in April 2025, so his intention to admit guilt goes back at least that far. His upbringing has been very difficult and has clearly impacted him to his core. In those circumstances, a limited criminal record is a significant indication of his ability to carry himself in a pro-social way. Part of that may be as a result of a family network that supports him and in which he too derives the satisfaction and pride of providing his support.

[47] An additional mitigating factor is his rehabilitation. Mr. Smith is employed. He provides for his children and family members. He has a new residence. Most importantly is his statement to the Court about where he as a person is in his outlook on life. In *R. v. Preston*, [1990] 47 B.C.L.R. (2d) 279 (BC CA), Wood, J.A., speaking for a five-member court, stated the following about assessing rehabilitation in the circumstances of a person with a history of abusing substances.

39 There can be few tasks more difficult than that of assessing the sincerity of an offender's stated desire to rehabilitate. Those who offer the assertion are often masters of deception and manipulation. All available evidence, including personal observations of the individual in question, must be carefully sifted. Sometimes the opportunity to look the claimant in the eye will provide the decisive clue. ...

[48] The sincerity of Mr. Smith's statement to this Court leads me to give full weight to rehabilitation on the facts of this case.

[49] Finally, I intend to impose three years of probation to follow the custodial portion of these sentences. Probation is essential to solidify the path of rehabilitation of Mr. Smith. I do so recognizing that probation is a significant restriction of the liberty of Mr. Smith. There can also be significant consequences for any failure by him to stay on that path of rehabilitation. Probation in these particular circumstances should be considered as serving the fundamental principles of sentencing and as part of the totality of the sentence.

[50] Taking into account all of the circumstances and giving particular weight to these circumstances, not being as serious as those in *Cardinal*, I conclude that a penitentiary sentence is not required and a sentence of 18 months is appropriate for the robbery. As

to the flight from police, the Crown sought a sentence of 11 months. It did so on the basis of the prior similar offences in Mr. Smith's record and on the prolonged duration, in excess of one-half hour, of this offence. The difficulty with the submission of the prolonged duration of the flight is that it is only proven that Mr. Smith was the driver during the last portion of the driving. For most of that period of time, the stolen truck had had its tires punctured and was driving at a reduced speed on its rims on a divided highway.

[51] As to the prior offences, Mr. Smith received 30 days for his first offence of flight from a police officer and 45 days for failure to stop at the scene of an accident. It is an extreme jump from one and one-half months to 11 months in my respectful view. Furthermore, the totality of the sentences must be borne in mind. In all of the circumstances, I am satisfied that a sentence of four months is appropriate. As to the offence of taking a motor vehicle without consent, in light of his prior record for theft of a motor vehicle, the Crown's submission of one month incarceration is appropriate.

[52] All the sentences ought to be consecutive to each other. Therefore, the sentence is 23 months. That sentence is within the range for a conditional sentence.

Is a conditional sentence consistent with the fundamental principles of sentencing and would not endanger the safety of the community?

[53] While I have excluded a penitentiary sentence from the appropriate disposition in Mr. Smith's case, the second stage of the analysis as described in *Proulx* requires further analysis. The Crown quite properly and forcefully urged that deterrence and denunciation were of such significance that a conditional sentence was not appropriate.

[54] In considering that submission, I have kept in mind other principles of sentencing, such as those requiring care in imposing incarceration, s. 718.2(d) and (e) of the *Criminal Code*. *Proulx* makes clear that a conditional sentence can still provide a significant amount of denunciation. As well, deterrence can be emphasized by a conditional sentence that has punitive conditions. I would add to that insight that the ability to collapse a conditional sentence order on any breach of any condition by an offender so that it becomes a real jail sentence serves specific deterrence to that offender and general deterrence to any other offender. Mr. Smith simply has too much to lose not to follow a conditional sentence order.

[55] In further answer to the Crown's submission, the maximum allowable probation of three years, which I intend to impose, also serves to restrict Mr. Smith's liberty in a way that serves deterrence, both specific and general.

[56] Finally is a point much emphasized in submissions, the significance of pre-trial custody. Section 719(3) of the *Criminal Code* states:

In determining the sentence to be imposed on a person convicted of an offence, a court may take into account any time spent in custody by the person as a result of the offence but the court shall limit any credit for that time to a maximum of one day for each day spent in custody.

[57] Section 719(3.2) states:

The court shall give reasons for any credit granted and shall cause those reasons to be stated in the record.

[58] The *Criminal Code* makes clear that credit for pre-trial custody is not automatic. It is in the discretion of the sentencing judge. Having said that, the credit is usually

given out of fairness to the accused. That is not to say that such credit is always given. For example, it was not given in the trial court, a decision that was upheld in *R. v. M. (C.A.)*, [1996] 1 S.C.R. 500. While the exact reason for not giving the credit in the trial court was not clear, the seriousness of the offences certainly had to have been at the forefront.

[59] I do not intend to give Mr. Smith any credit for his pre-trial custody. The reasons for not granting any credit to Mr. Smith include the seriousness of the offences and the need to reinforce the general deterrence aspect of this sentence. All the reasoning relied on by the Crown to emphasize general deterrence supports this result. In addition, offenders need to understand that for serious offences, the risk exists that pre-trial custody credit is discretionary and may be denied.

[60] As to the endangerment of the safety of the community, I have taken into account his record, his prospect of compliance given his past behaviour, and most important, the seriousness of the offences which bring him before the Court now. Even taking into account these factors, it is my view, on balance, that the community safety is not endangered by Mr. Smith receiving a conditional sentence. Indeed, the long-term safety of the community is enhanced by building on the rehabilitation of Mr. Smith, which has already commenced. I come to this conclusion for the following reasons:

[61] First, it is necessary, after considering past behaviour referred to in the submissions, to appreciate the current situation. Mr. Smith is in new housing that is very important to his family and to himself. He has steady work. He has two children to

support. He is at a moment when his motivation to comply with the sentence order is at its highest.

[62] Second, the community that he is in and will be restricted to by a conditional sentence order is his Indigenous community, to which he has an attachment to his family and his labour. The risk that he would jeopardize the safety of that community must be limited.

[63] Finally, it is recognized that onerous conditions could serve to mitigate the risk to the community by a conditional sentence order. I intend to make use of onerous conditions.

[64] For all these reasons, I am satisfied that a conditional sentence order that totals 23 months, to be followed by three years of probation, is the appropriate sentence.

The Sentence

[65] On Information 24-00636, on Count 1, there shall be a sentence of 18 months. On Count 4, four months.

[66] On Information 24-00847, one month.

[67] All sentences are to be served consecutively, the one to the other. Those sentences can be served on a conditional sentence order on the following terms. There are 17 of them.

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

3. You shall report in person to a Sentence Supervisor within two business days of today's date, and thereafter when required by your Supervisor and in the manner directed by your Supervisor;
4. You are to remain within the Yukon unless you have written permission from your Supervisor or the court to leave the Yukon;
5. On first reporting to your Supervisor, provide them with your address where you reside and phone number;
6. You are to reside at a residence approved by your Supervisor. You are not to change your residence or your phone number without the prior written permission of your Supervisor;
7. For the entirety of this order, you are to remain within your residence or on the property of and immediately adjacent to that residence except:
 - (a) with the prior written permission of your Supervisor;
 - (b) when traveling directly to or directly from your employment or counselling or assessments, and while at your employment or counselling or assessments, you shall provide your Supervisor with all details of your employment or assessments or counselling if requested to do so.

8. You shall present yourself at the door of your residence when any Sentence Supervisor or Peace Officer attends there for the purpose of determining your compliance with the house arrest condition of this order;
9. You shall respond personally and immediately to the telephone when any Sentence Supervisor or Peace Officer makes a phone call to you to determine your compliance with the house arrest condition of this order;
10. You shall not possess or consume any alcohol or any illegal drugs except as prescribed for you by a licensed physician. You shall provide a sample of your breath or urine for the purpose of analysis upon demand by a Peace Officer who has reason to believe that you may have failed to comply with this condition;
11. You shall not attend any premises whose primary purpose is the sale of alcohol, including any liquor store, off-sales, bar, pub, tavern, lounge, or nightclub;
12. You shall attend, actively participate, and complete to the satisfaction of your Sentence Supervisor all assessments and counselling programs as directed by your Supervisor for the following issues; alcohol and substance abuse, trauma counselling, and any other issues identified by your Supervisor;

13. In the event that you become unemployed, you are to make reasonable efforts to find and maintain suitable employment and provide your Supervisor with all requested details concerning your efforts;
14. You are not to drive a motor vehicle other than a passenger motor vehicle except for the purposes of employment and in accordance with para. 7 of this order;
15. You are not to possess any firearm, ammunition, explosive substance, or any weapons as defined by the *Criminal Code* except when traveling directly to or from or while at any hunting or trapping. You are to provide such details of your hunting or trapping trips as requested by your Sentencing Supervisor;
16. You are to have no contact or communication directly or indirectly with Nathan Ouimet, Ian Anderson, Harjot Aulakh, Gabrielle Kirby, Anthony Chiu, Lianne Fordham; and
17. You are not to go to Cobalt Construction, 92340 Alaska Highway Whitehorse; Heather's Haven, 29 Wann Road, Whitehorse; Mark's Work Warehouse, 2 Chilkoot Way, Whitehorse.

[68] On the completion of the conditional sentence order, Mr. Smith shall be on probation for a period of three years. Terms of that probation are as follows.

1. You shall keep the peace and be of good behaviour;

2. You shall appear before the court when required to do so by the court;
3. You shall notify the court or your Probation Officer in advance of any changes of name or address and promptly notify the court or the probation officer of any change of employment or occupation;
4. Within 48 hours of the completion of your conditional sentence, you shall report to a probation officer. And after that, you shall report as in the manner as directed by the Probation Officer;
5. When first reporting to the Probation Officer, you shall inform them of your residential address and phone number;
6. You shall not change your address or phone number without first obtaining the written consent of the Probation Officer.

[69] Paragraphs 11, 12, 13, 15, 16, 17 from the conditional sentence order are also to be included in the probation order.

[70] The ancillary orders are as follows:

[71] Count 1 on Information 24-00847 is a primary designated offence, and accordingly, Mr. Smith is ordered to provide within 60 days of today's date at a time and at a place as directed by his Sentence Supervisor such sample as is requested of him by a Peace Officer for the purposes of DNA analysis.

[72] With respect to the issue of weapons prohibition that follows from the conviction on this count, there shall be a s. 109 prohibition order for life for the items referred to in

s. 109(3) of the *Criminal Code* and a 10-year prohibition for the items referred to in s. 109(2) of the *Criminal Code*. Both prohibitions shall have an exception that you may possess firearms and ammunition when sustenance hunting.

[73] On Count 4 of Information 24-00847 and pursuant to s. 320.24 of the *Criminal Code*, Mr. Smith is prohibited from operating a passenger motor vehicle for 10 years.

[74] Crown also sought a restitution order in the amount of \$15,065.65 for the damage to the police car caused by the PIT manoeuvre to stop the vehicle being driven by Mr. Smith. I declined to make that order. Restitution orders were designed for those situations where the damage, its causation, and assessment were readily available. They are practically speaking made in order to spare a claimant from having to engage in another proceeding which result is easily foretold. I do not find the decision to engage in this manoeuvre and the liabilities and damages that flow to be easily determined. In those circumstances, I will not make a restitution order.

[75] At the conclusion of my judgment, are there any questions or concerns from the counsel about the nature of this?

[76] THE CLERK: The outstanding counts, Your Honour?

[77] THE COURT: There is an outstanding count?

[78] MR. DROLET: Yes.

[79] THE CLERK: There's a number of them.

[80] MR. KING: So, on the Information ending in 636, the Crown has asked that the other charges in relation to Mr. Smith be marked as withdrawn, but I think he's jointly charged with Mr. Ouimet on that. So, everything in relation to Mr. Smith be marked withdrawn.

[81] MR. DROLET: And in relation to the victim fine surcharge, given Mr. Smith's considerable family obligations, I ask that it be waived.

[82] MR. KING: I don't have any submissions.

[83] THE COURT: Okay, those will be waived. Are there any other issues which arise?

[84] MR. KING: Yes, we need to deal with the rest of the Informations.

[85] So, Information ending in 847. There was a guilty plea to an included offence there. I think there might be a couple of other offences, so everything else needs to be withdrawn, please.

[86] THE CLERK: And then three other Informations.

[87] MR. KING: Sorry, I don't have the Information number for the Mark's Work Warehouse. That would be an older one, probably 2024.

[88] THE CLERK: That's court file 24-00547 from May 13, 2024.

[89] MR. KING: So, if that Information could be marked withdrawn.

[90] And then we'll have to deal with 847A and 847B which are Carcross Informations that I'm not sure if my friend wants them in court in the Justice of the Peace docket here or to the Carcross circuit.

[91] MR. DROLET: They can be adjourned to the fixed date docket on Thursday. The 19th, I believe it is?

[92] THE CLERK: Yes, the 19th.

[93] THE COURT: So adjourned.

[94] MR. KING: I'm sorry, to fix a date for...?

[95] MR. DROLET: The matters to be returned to the Carcross circuit for trial.

[96] MR. KING: Okay. Sorry, just, if it was fixing a date for trial, I don't think we'd be able to have everything together, by that date.

[97] THE COURT: But they are from Carcross, so they will return to Carcross.

BROOKS T.C.J.