

Citation: *R. v. Sidney*, 2026 YKTC 33

Date: 20260720
Docket: 25-00601A
25-00601BP
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before His Honour Judge Brooks

REX

v.

SEAN BERNARD SIDNEY

Appearances:
Andreas Kuntz
Mark Chandler

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. Sidney was convicted by me after trial of two offences, the first, that on August 15, 2025, he committed aggravated assault on Curtis Burns, and Count two, on the same date, same place, that he had in his possession a machete for a purpose dangerous to the public or for the purpose of committing an offence. As I say, he was convicted by me after trial of those two offences, and we are here today for the purpose of sentencing. I do not intend to repeat what I said at the time of convicting Mr. Sidney, but only to emphasize those facts which are of particular importance to what is the appropriate and proportional sentence.

[2] In my reasons for convicting Mr. Sidney, I placed great reliance on the video which was part of the proceedings. That video showed Mr. Sidney entering the shelter and having one of the employees there assist him in going to a locker so that he could retrieve something. The video showed, to my observation, that Mr. Sidney obtained the machete and that he did so in a way so as to hide from others that he was in fact getting that machete and leaving the premises with it. His state of mind at that time was clear that he had a weapon and he did not want others to know that he did have that weapon.

[3] Very, very shortly thereafter, Mr. Sidney walked out of the shelter and walked to an area just a few metres away from the entrance where Mr. Burns was seated, it looked to be on a curb, with others around him. Mr. Sidney approached from behind, withdrew the machete from underneath his coat, and swung it vigorously at Mr. Burns' head. He struck Mr. Burns' head, and ultimately Mr. Burns required 30 staples to his head in order to close a gaping wound. Mr. Sidney quickly left the area and in doing so got rid of the machete, and I infer and find that he removed a coat that he had on at the time. All of this indicates to me very purposeful behaviour on the part of Mr. Sidney.

[4] I know from the victim impact statement, with which no issue was taken, that Mr. Burns and Mr. Sidney were known to each other, but very little else about what might have precipitated what happened that day.

[5] Those aspects of the facts are, in my view, very important to what is the appropriate sentence to be handed down today.

[6] I turn next to the victim impact statement. I believe it was accurately characterized by the defence in saying that there was some indication of numbness, but

the most significant impact was the psychological impact, and that has been clearly significant. Mr. Burns expresses that quite clearly. He states that it caused him to leave the jurisdiction, certainly for a period of time, and has made him, what I would refer to as hypervigilant, with regard to all his activities. This is something that still follows him now, and it is reasonable to infer that it will follow him for a considerable period of time. That is very important for the Court to take into account, that a citizen has been impacted in that way by a premeditated attack with a weapon by someone else.

[7] Those are the circumstances of the offences as they relate to the sentencing here today.

[8] I turn now to Mr. Sidney, the offender. He is 54 years of age. He has a criminal record which has been entered as an exhibit, which contains, although I confess I have not counted them, over 100 entries according to the Crown. Approximately 15 of those offences are for one form of assault or another. In 1999, he had an aggravated assault. His last violent offence was in 2021. It is a very long record, though the defence is correct in pointing out that that record should not be given disproportionate weight. It should not, because the last serious assault was over 26 years ago. The frequency of the violent offences has indeed gone down, and in the last 10 years, what we have seen are administrative offences, failures to appear and the like, and thefts. The record is becoming much less violent.

[9] I have as well a *Gladue* report, which is very important and very helpful to me in understanding some parts of this. One thing that stands out to me, and is deeply troubling, is that there may well be a diagnosis of fetal alcohol spectrum disorder

("FASD") as it relates to Mr. Sidney, and yet that has never been specifically diagnosed in light of his repeated interaction with the justice system. I am at a loss at how that comes to be. In any event, I say as clearly as I can that for the sentence that I impose, it is absolutely critically important that every effort be made to determine whether there is in fact an FASD diagnosis for Mr. Sidney. His offending, his rehabilitation, the necessity of supports, cannot be put into place in his future without the effort being made to determine whether that diagnosis applies or not. I truly hope for everyone's sake that that effort is made.

[10] After that digression, I return to the *Gladue* report. It is one that is, in some sense, difficult to read because the events that Mr. Sidney witnessed and has had to deal with are extraordinarily difficult. It is described that he suffers from complex trauma, and that is a phrase of clinical significance. To a lay reader such as myself, it seems to understate the difficulties Mr. Sidney has faced, and they faced him from a very early age. He is an individual who, he says, can get by but cannot read or write. He has been in the foster care system or, alternatively, homeless since his early teens. That is very significant and it does, and must, impact his moral blameworthiness as it relates to these offences.

[11] I do recognize what Mr. Kuntz has fairly pointed out that as the offences become more violent, those factors outlined in the *Gladue* report may be less significant. I have taken that into account.

[12] I do wish to emphasize something, though, that appears in the *Gladue* report and is one factor I must take into account. That is the existence and possibility of

rehabilitation for Mr. Sidney. He as an individual, as referred to on page 14 of the *Gladue* report, has had some success with sobriety. It did not last, but then the struggle for sobriety is one that is ongoing and is daily. I think it is fair to say that failures to maintain sobriety occur frequently for individuals.

[13] The aggravating and mitigating factors in this case are important to bear in mind. There was a weapon used. It was used on a defenceless person. There was some premeditation, which I have already referred to, and which to my mind has some significance. I say that not least because there were several points at which Mr. Sidney did get that machete, but he could have turned around and walked away. He did not. He instead went into a public space and seriously assaulted another human being, leaving them with an impact they will probably have for the better part of their life. Those are all very significant aggravating factors. The record itself is also an aggravating factor.

[14] There are mitigating factors contained in the *Gladue* report, and the success that he has had in rehabilitation in the past is something that must be kept in mind.

[15] So, with all these things said, I turn to what prior cases tell me to do and what assistance they provide.

[16] I wish to deal with something at the outset. That is the range, and that is the range which is agreed as between counsel is 16 months to six years. That is a very broad range, but one thing I wish to emphasize is that those sentences in that range begin with jail.

[17] There is always a concern involved with an Indigenous person to start a conversation with jail. There is always a concern of our history in which we have overincarcerated Indigenous people. When I say “we,” I say it in a way that perhaps deflects the responsibility which is that of judges. It is judges who have done that.

[18] The reason why jail has been chosen — and it must be chosen in this case — should not be glossed over. We simply cannot live together if individuals pick up weapons and use them indiscriminately against other people. Surely our law has to, if it is to do anything, it is to do something to stop that as best we can from happening in the first place, or ever again. Our law will never be successful in that. We will never stop violent offences. We have to, if we are to have any dignity ourselves, to speak out as loudly and as clearly as we can that individuals have to feel safe on their streets. They have to be safe where they sit, where they stand, where they walk. Our law will do what it can to make sure that happens. In some cases, that requires that individuals be incarcerated, not least to keep our streets safe, to send out the message we want our streets safe, and to make it clear that this kind of behaviour is contrary to the values we all hold. It is for that reason that deterrence and denunciation are the primary factors in sentencing in a case such as this. That is why we, and particularly me, start with the responsibility of sentencing within the range that I have just suggested.

[19] Where in this range ought this case to fall? I am very grateful for counsel for having put before me cases which show that range. They give me some sense of the circumstances in which different sentences have been imposed. I have tried to emphasize what factor I consider to be significant. This is not a case as seen in

R. v. Porter, 2017 YKTC 13, which is the escalation of a fight. This is a very different kind of situation. I have tried to explain that when I summarized these offences.

[20] The Crown submits that the appropriate disposition in this case ought to be four years for Count one and three months concurrent for the s. 88 offence. The defence submits that the appropriate disposition is 26 and a half months which, when dead time is taken into account, results in a sentence of two years plus one day. They also agree with the concurrent three months for the s. 88 offence.

[21] It is my view and when taking into account all the factors that I have summarized that the appropriate disposition in this case for Count one would have been one of 36 months. I reduce that by the two and a half months he has got by way of pre-trial credit, so that that sentence is 33 and a half months. With regard to Count two, a sentence of three months, which is concurrent with Count one. I hope that he, Mr. Sidney, gets the supports that he ought to have during that period of incarceration.

[22] There shall be ancillary orders:

- Count one requires a mandatory order that during his time in custody a sample of his DNA be taken, and the order remains in effect until such time as that DNA sample is taken.
- With regard to firearms, he is hereby banned for the rest of his life for the possession of those items as referred to in s. 109 and 110 of the *Criminal Code*.

- With regard to s. 743.21, during his time in incarceration, he is not to have any contact, nor communication directly, or indirectly, with Curtis Burns.

[23] The victim surcharges are waived.

[DISCUSSION]

[24] MR. CHANDLER: I think the only bit of housekeeping is I understand my friend will be withdrawing the breach charges.

[25] MR. KUNTZ: That is correct.

[26] THE COURT: Thank you.

BROOKS T.C.J.