

SUPREME COURT OF YUKON

Citation: *R. v. Kaswandik*, 2012 YKSC 54

Date: 20120621
Docket S.C. No.: 11-01504
Registry: Whitehorse

BETWEEN:

HER MAJESTY THE QUEEN

AND:

JOHN AUGUST KASWANDIK

Before: Mr. Justice G. Hawco

Appearances:
Keith Parkkari
Lynn MacDiarmid

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCING DELIVERED FROM THE BENCH

[1] HAWCO J. (Oral): Ms. MacDiarmid, you made a very good argument with respect to the discharge, and I am concerned about the unique impact that a conviction may have upon Mr. Kaswandik, but while I take that into consideration, I am very concerned as to the perception by the public if a discharge were to be given for spousal abuse. Spousal abuse is abhorrent; it is all too pervasive, not only in the society in this territory, from what the Crown has said, but throughout this country.

[2] It is fortunate that in this case Ms. M. was not seriously injured and, indeed to some extent, not physically injured. There is a psychological component to abuse as well that I think we saw on the stand here.

[3] The threat of death is simply unacceptable, whether it was said in the heat of the moment or not. This jury has found that Mr. Kaswandik uttered the threat, that he intended it to be taken seriously, that he intended it to be intimidating. It cannot be in the public interest to give a discharge in the face of that, in the face of the cancer that is spousal abuse.

[4] I am going to reject your submission in spite of your very able argument in his favour. I have to look to the sentencing principles set out in s. 718 and 718(2) of the *Criminal Code*. I have to look at denunciation and deterrence. A discharge would amount to neither. None of the principles in s. 718 would be followed except the interests of the accused, and the interests of the accused cannot be paramount to the interests of society. For that reason, I reject your submission.

[5] I accept your submission with respect to a conditional sentence in this particular case. I accept your submission that a sentence of under the maximum, which is two years less a day, is appropriate. I would sentence Mr. Kaswandik to one year conditional sentence, conditional upon the statutory terms referred to by Mr. Parkkari.

[6] MS. MACDIARMID: My Lord, I'm very, very -- apologize to interrupt. I understood my friend was asking for a 12 year -- or a probation term, not a conditional sentence. Is that --

[7] THE COURT: I am imposing a conditional sentence.

1. Remain within the Yukon Territory unless the Probation Officer says otherwise. If the Probation Officer says otherwise, then Mr. Kaswandik can come back to the Court. That would be unusual for the Court to make that exception but I do so. Mr. Kaswandik's passport should be returned to him. He should be allowed to leave the jurisdiction to visit his family in California;
2. Report to a Probation Officer within two working days and reside in a place as approved by that officer;

I do not see the benefit of curfew in this case. I am not going to impose a curfew. There is no need to even consider the abstention provisions that are often contained in such a sentence, nor the non-attendance at a bar or the programming. I will require Mr.

Kaswandik to:

3. Report to the Family Violence Prevention Unit to be assessed and to attend and complete the Spousal Abuse Program as directed;
4. Take such psychological assessment, counselling and programming as directed;
5. Have no contact directly or indirectly with Ms. M. except to the extent of being able to contact her through mail or e-mail with respect to setting out the access to their child;

[8] I cannot direct Ms. M., but it seems to me that it is in the best interests of the child, I do not particularly care about the best interests of either parent in this particular

case, to be quite frank; it is certainly in the best interests of the child to have contact with both parents. So whatever family members can do to accommodate that would be greatly appreciated by the Court. I do not expect Ms. M. to be thrilled, but for this brief portion I wear the hat of a family court judge, which I am in Calgary as well. My concern would be the interests of the child, not the parents. It is crucial that this child have contact with both.

[9] The remaining access provisions hopefully will stay in place. That is not my decision; that is the decision of another court, if it requires it. It would be highly unusual to have those varied, but I cannot speak for the Family Court here.

6. To not attend at Ms. M.'s residence or place of employment.

[10] There will be a firearms prohibition.

[11] This is not a DNA case, Mr. Parkkari. I am not going to order that. Is there anything else?

[12] THE CLERK: My Lord, how long is the firearms prohibition?

[13] THE COURT: Whatever, five years?

[14] MR. PARKKARI: Just for clarification, is the firearms prohibition in the conditional sentence order is a stand-alone firearms prohibitions pursuant to s. 109.

[15] THE COURT: Stand-alone firearms prohibition.

[16] MR. PARKKARI: Thank you. The only other thing the Court should consider is a victim fine surcharge. I take no position, given his limited income.

[17] THE COURT: I am not going to impose a victim fine surcharge in this particular case. Is there anything I have missed?

[18] MR. PARKKARI: I believe that covers it.

[19] THE COURT: You are looking concerned, Ms. MacDiarmid. Is there anything you think I have missed, without trying to re-plead your case?

[20] MS. MACDIARMID: No, I didn't -- I didn't make any submissions on the firearms prohibition.

[21] THE COURT: I do not care.

[22] MS. MACDIARMID: It was discretionary and it -- he doesn't have any firearms.

[23] THE COURT: Thanks. In any case, where there has been a threat such as this, it would be my standard. Thank you, and good luck to all.

HAWCO J.