

Citation: *R. v. Abou*, 2009 YKTC 42

Date: 20090417
Docket: 08-00665
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before: Her Honour Chief Judge Ruddy

REGINA

v.

MARCEL JAMES ABOU (SMAASLET)

Appearances:
Ludovic Gouaillier
David Christie

Counsel for Crown
Counsel for Defence

REASONS FOR SENTENCING

[1] RUDDY C.J.T.C. (Oral): Marcel Abou is before me in relation to three counts to which he has entered pleas of guilty. An assault with a weapon, a common assault and a probation breach all arising on the 6th day of January 2009.

[2] At that point it appears that Mr. Abou was in a significantly intoxicated state. He returned to the home of his former girlfriend, Roberta Russell. He repeatedly kicked at the door and rang the bell. He was ultimately let inside the home. He went upstairs, grabbed a knife and began wielding it at Ms. Russell and prevented her from leaving the upstairs room for a period of approximately six minutes.

[3] When he went out into the hallway he threw that knife into a laundry basket and

proceeded to push Arielle Devilliers to the floor. It is my understanding she is a young person.

[4] He then went to the kitchen and grabbed another knife, which he began waving at another young person by the name of Allen Yaklin.

[5] Ms. Russell attempted to intervene. Mr. Abou then put the knife to his own throat and made some threats as to what he would do to himself and to others. Ms. Russell's brother, Mark Russell, entered the home and there was a struggle for the knife and Mr. Russell was ultimately able to get the knife away from Mr. Abou. It appears in the course of that, however, Mr. Russell was assaulted, as well another young person, Chantel Yaklin, was assaulted, with Mr. Abou pushing and punching her in the face. He then fled the residence on foot.

[6] There is no doubting that the offences before me are extremely serious and could well warrant a significant period of time in custody. I have before me, however, a joint submission from counsel, which is really designed around some rehabilitative prospects for Mr. Abou and I will say at the outset I do not take any issue with what is being proposed. I think it is the most reasonable resolution on all of the circumstances before me.

[7] But for the purposes of this decision I will say that I have had the benefit of a detailed pre-sentence report setting out Mr. Abou's circumstances. It is not my intention, given our time constraints today, to go through that in detail, but I would like to highlight a number of things.

[8] Up until 2005 and Mr. Abou's return to the Whitehorse area, he appears to have not been in trouble with the law. Unfortunately, he appears to have managed to amass a certain number of offences in the short period of time since, including two prior assaults on Ms. Russell. I take into account the fact that it appears this was an extremely toxic relationship, that Mr. Abou has done well at times prior to 2005, has a fair amount of family support, particularly his grandparents, and has taken some steps, both while in custody and with his future plans, to try and address the issues that are bringing him before the Court.

[9] He has completed the Gathering Power training program with honours while in custody. He has also made arrangements to be admitted into a treatment program in B.C. which would hopefully address a lot of the issues that are bringing him before the Court. So the sentence is essentially designed for him to be released from custody in time for him to be admitted into the program.

[10] I am satisfied, given that Mr. Abou has had extended periods where he has not been in conflict with the law, that a rehabilitative focus is most appropriate in this particular case. I am also satisfied there does need to be a little bit more time in custody until that program is available to meet the principles of denunciation and deterrence, given the serious nature of the offences before me and his history of a similar type of behaviour.

[11] The matters are going to be resolved as follows: Mr. Abou has done some 104 days in remand. I am going to credit him for a period of six months for the time that he has already done in custody. That is slightly over the usual one and a half to one but I

am satisfied, based on the submissions of counsel, that that is appropriate in this particular case.

[12] With respect to the 267, that being the assault with a weapon offence, there will be a sentence of one day deemed served by his attendance in court today and I am going to ask that the record reflect he is being credited for that six months in custody.

[13] With respect to the 266, being mindful of the timeframe we have for the treatment program, the sentence for that is going to be 60 days.

[14] The abstain breach I consider to be serious because it is really what started all of this, Mr. Abou, so there is going to be an additional sentence of 45 days. Both of those terms are to be served consecutive to each other and to any other sentence being served.

[15] So that should amount to, based on the information before me, an additional 105 days from today's date.

[16] That is going to be followed by a period of probation. Counsel have given a range of 12 to 16 months. I am satisfied that it ought to be the higher end of that range for two reasons. Firstly, because I am satisfied because of the treatment program, that the jail sentence should be somewhat lower than I otherwise might have done, so I think your probation order should be a little bit longer to balance that out. The other reason that I am satisfied it needs to be a bit longer is because you have a lot of work that you need to do, and it is my hope that the probation order will give you some support and some direction to assist you in addressing those issues in the hopes that we do not see

you back again.

[17] So there will be a 16-month probation order on the following terms and conditions:

1. That you keep the peace and be of good behaviour;
2. That you appear before the court when required to do so by the court;
3. That you notify your probation officer in advance of any change of name or address and that you promptly notify the probation officer of any change of employment or occupation;
4. That you remain within the Yukon territory unless you have written permission from your probation officer;

That is just so that it is very clear as to where you are going to be when.

5. That you report to your probation officer immediately upon your release from custody and thereafter when and in the manner directed by the probation officer;
6. That you reside as approved by your probation officer and not change that residence without the prior written permission of your probation officer;

I am not going to include a specific residence but I will state for the record that at least the Court would like to suggest that Prince George, where you were with your grandparents at one point, seems to have been where you did the best, so I would ask that Probations consider that as more of a longer-term placement for you.

[18] I am going to require, because it gets you into significant trouble:

7. That you abstain absolutely from the possession or consumption of alcohol and controlled drugs or substances except in accordance with a prescription given to you by a qualified medical practitioner;

In an attempt to assist you with abstaining:

8. That you not attend any bar, tavern, off-sales or other commercial premises whose primary purpose is the sale of alcohol;
9. That you take such alcohol and drug assessment counselling or programming as directed by your probation officer;
10. That you take such other assessment counselling and programming as directed by your probation officer including, but not limited to, attending the Khutsedzi KE program commencing June 29, 2009;

I just want to make sure the date is included so that we are clear that that is the program you are going into, and not that you are going to decide you want to do it at a later time. You are being released specifically to get into that program.

11. That you have no contact, directly or indirectly, or communication in any way with Roberta Russell, Mark Russell, Allen Yaklin, Chantel Yaklin or Arielle Devilliers.

There is no need over this period of time for you to have contact with any of them?

[19] THE ACCUSED: No.

[20] THE COURT: Okay. I think it is probably in everyone's best interests that you go your separate ways at this point.

[21] THE COURT: I am going to waive the victim fine surcharges, given his custodial status.

[22] MR. GOUAILLIER: I forgot to mention that the s. 267(a) conviction triggers a -- it's a primary designated offence for --

[23] THE COURT: For both DNA and for firearms as well, is it not?

(Discussion re firearms order)

[24] THE COURT: So by virtue of the fact that it is mandatory, there will be a ten year firearms prohibition and I will leave it to counsel to bring the matter back for an application under 113 should that be necessary in all of the circumstances.

[25] There will be an order, which is also mandatory, that Mr. Abou provide such samples of his blood as are necessary for the purpose of DNA testing and banking.

[26] Both of those are orders that flow from the nature of the offences for which you have entered guilty pleas, Mr. Abou. Does that cover everything?

[27] MR. GOUAILLIER: Yes.

[28] THE COURT: Okay. So you have a bit more time in custody, and I would suggest you use that time wisely towards getting yourself ready for the program, but really you want to consider where you do best and where you have positive supports around you, and it is my hope that if you make some positive choices we will not see you again. So good luck.

[29] THE ACCUSED: Thank you.

[30] THE COURT: Thank you.

RUDDY C.J.T.C.