

Citation: *R. v. Battaja*, 2010 YKTC 145

Date: 20101203
Docket: 10-00491
10-05830
Registry: Whitehorse

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

REGINA

v.

DUANE ROBERT BATTAJA

Appearances:
Jennifer Grandy
Christine Badcock
Emily Hill

Counsel for the Crown
Agent for the Territorial Crown
Counsel for the Defence

REASONS FOR SENTENCING

[1] RUDDY C.J.T.C. (Oral): Duane Battaja is before me for sentencing with respect to a single count of assault causing bodily harm.

[2] The assault occurred within the context of a spousal relationship, or rather the breakdown of one. It appears that Mr. Battaja and his former spouse, Maxine Benoit, had been in discussions about reconciling, and both pursuing counselling. He had taken steps to do so and then learned that she had decided not to and, in fact, would be leaving the relationship. It appears she was driving northbound in the McCrae area. Mr. Battaja passed her going southbound, turned his vehicle around, and followed her to Tags where she stopped to get gas. He approached her; there was a discussion

which became heated. He ultimately bit her in the lip causing a cut some two inches in length, requiring stitches. I should state that photographs have been filed. As the Crown has fairly pointed out, when one says a cut it does not sound particularly serious, but if one looks at the photos, particularly the side view, it is evident that the injury was significant in that the upper lip appears to be separated from the rest of the face a considerable amount. So it was not a surface cut; it appears to have been one that went quite deep and, quite obviously, required stitches to address it.

[3] Mr. Battaja was arrested some time later, on the 18th of October. He has been in remand for 47 days. He comes before the Court with a prior criminal record. There are related offences of particular concern to me. While there is not an extensive history of violence, there appears to be approximately three or four convictions of violence between 1978 and 2008, but of particular concern to me, two of those prior assault convictions are spousal in nature and one of those is on the very same complainant. Mr. Battaja has pled guilty to assaulting before me today.

[4] Crown is suggesting this matter is appropriately resolved by way of a sentence of six months, to be reduced by 47 days for credit for time spent in remand, to be followed by a probationary term. Defence is suggesting that 90 days less time served, followed by probation, is appropriate in this particular case.

[5] There are a number of important factors. On the mitigating side, Mr. Battaja has entered an early guilty plea. There is information before me suggesting that he has been prepared to accept responsibility from an early date. He is now 48 years of age, a member of the Na-cho Nyak Dun First Nation. He did attend residential school as a

teenager, has struggled with alcohol for the majority of his adult life, but, to his credit, has been sober for the past 18 months. He has a solid work record. He appears to be working at this point in time with his father and two sons in a drywalling and painting business. His counsel points out there has been some loss suffered as a result of already lost work because of his being taken into custody with respect to this offence. He shares a four-year-old daughter with Ms. Benoit, and I am satisfied that he has a commitment to address his underlying issues, including substance abuse, violence, and trauma, and that his motivation for doing so relates in particular to his daughter.

[6] On the aggravating side, however, we have an assault which is spousal in nature. Yes, sir.

[7] THE ACCUSED: I forgot to mention that I didn't hear anything, that before all this happened, I was scratched in the nose and I didn't have no picture of it.

[8] MS. HILL: If I could just have a moment. That's fine. There was some discussion with my friend about what facts would be admitted.

[9] THE ACCUSED: Okay. Sorry.

[10] THE COURT: Okay. Thank you. As I was saying, on the aggravating side, this offence is spousal in nature, which the Court takes extremely seriously. The reasons why we do so are made evident if one looks at Ms. Benoit's Victim Impact Statement, which makes it clear that there has been lasting physical and emotional harm to her as a result of Mr. Battaja's actions. I am also very mindful of the fact that this is an extremely serious offence and that the injury itself, as is evident to me

from the photograph, is a serious one.

[11] In determining what is appropriate, I note that Mr. Battaja's counsel, in her very able submissions, did refer to a 90-day sentence as a step up from his last sentence for assault in 2008, for which he received 60 days in jail. The difficulty I have, however, with that submission is we are dealing with a significantly more serious offence. Thirty days as a step up from a 60 day common assault sentence, when one is talking about a sentence for assault causing bodily harm with a significant injury, is not, in my view, particularly a step up in all of the circumstances. I am not satisfied on the circumstances before me that a 90-day sentence would adequately address the principles of denunciation and deterrence with respect to this particular case.

[12] In all of the circumstances, I am satisfied that a sentence of six months is appropriate, but that that ought to be reduced by the 47 days for time spent in custody which, if my math is correct, would leave a remaining sentence of 133 days still to be served.

[13] That term, in my view, should be followed by a period of probation of 12 months on the following terms and conditions. Mr. Battaja:

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 the 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 report to a Probation Officer immediately upon your release from

custody, and thereafter when and in the manner directed by the Probation Officer;

5. That you reside as directed by your Probation Officer and not change that residence without the prior written permission of your Probation Officer;
6. That you take such assessment, counselling, and programming as directed by your Probation Officer, including but not limited to the spousal abuse program;
7. That you have no contact directly or indirectly or communication in any way with Maxine Benoit, except with the prior written permission of your Probation Officer, in consultation with Victim Services and Family and Children Services and the Spousal Abuse Program;
8. That you not attend at the residence of Maxine Benoit, except with the prior written permission of your Probation Officer, again, in consultation with Victim Services, Spousal Abuse Program, and Family and Children Services.

[14] There will be, because it is a primary designated offence, an order requiring you to provide such samples of your blood as are necessary for DNA testing and banking.

[15] In the circumstances of this offence, I would decline to make the firearms prohibition. It is discretionary, and I am not satisfied on the information before me that it is warranted. I also note the comments of Mr. Battaja with respect to his use of firearms being for traditional hunting purposes.

[16] I would waive the victim fine surcharge, given his current custodial status.

[17] Mr. Battaja, I have heard a lot of information from your counsel about the things that you are doing. Those are good things. You have support in the letters that I have reviewed and people that are there for you. You need to keep working on what you have started if you have a hope of not coming back before the Court again. I truly hope that you do, for yourself and for your daughter.

[18] I am simply of the view that the offence itself here is just too serious. It does warrant, in my view, a significant jail term and it is for that reason that I have determined that the six months is appropriate. So you have 133 days left, after which point in time you will be on probation and hopefully able to access additional supports and services to help you with your journey.

[19] Okay. The remaining counts?

[20] MS. GRANDY: If that could be marked as withdrawn, please.

RUDDY C.J.T.C.