

Citation: *R. v. Becker*, 2010 YKTC 9

Date: 20100127
Docket: 09-00362
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Judge Luther

REGINA

v.

ROBERT WILLIAM BECKER

Appearances:
Bonnie Macdonald
Gordon Coffin

Counsel for the Crown
Counsel for the Defence

REASONS FOR JUDGMENT

[1] LUTHER T.C.J. (Oral)(Via teleconference): The Court has heard the submissions made by the Crown and defence. I have reviewed the two pre-sentence reports, the victim statement, and the decisions from the Yukon Territorial Court by Chief Judges Ruddy and Lilles, as he then was. I am familiar with the decisions from Newfoundland, and also quite familiar with the Alberta case of *R. v. Brown, Highway and Umpherville*, [1992] A.J. No. 432, from the early 1990s. I have already reviewed the facts of this case when I gave my decision back in December when I was present in the Court.

[2] Based on the submissions made by counsel today, I have this to say. While all relationship assaults are serious, the ones here from August the 5th and August the 6th

are less serious than what we saw in *R. v. Glada*, 2003 YKTC 11, *R. v. Huebschwerlen*, 2008 YKTC 16, and *R. v. Brown, Highway and Umpherville*, *supra*.

[3] I think the Crown and defence have both seen that the aggravating factors include the fact that she was assaulted before by this offender. I would also like to say that I feel that another aggravating factor is the emotional and verbal abuse that was heaped on the victim throughout the weekend.

[4] In terms of the mitigating factors here, we do have a positive attitude shown by the offender, particularly as it relates to alcohol and being totally through with alcohol. If he seriously were to fathom what has gone on in his life in the last year and a half or so, he can see quite clearly the effect that alcohol consumption has had on his life and the lives of those that he loves.

[5] He has performed quite well while on treatment and probation and bail, except, of course, for this terrible weekend back in August. The Court notes that he is working and has every ability to continue work and a desire to support himself.

[6] Interestingly enough, not only does the victim desperately want him back, but that seems to be the main theme through the victim impact statement, especially if we take a look at her emotional injuries, item number 2:

The biggest impact has been his lack of presence in the home, assisting with child raising, household chores and maintenance.

[7] She also, in terms of comments under part 4 of the victim statement, feels that alcohol relegated to the past.

[8] In terms of the aspect of the conditional sentence order that is being sought by the defence, and opposed by the Crown, the Court is not concerned whatsoever with the aspect of safety to the public from any potential acts of violence by this offender. I am concerned, of course, about safety to the victim, but I do believe that this can be effectively assured through his, and indeed her, sobriety. That being said, I feel that the ends of justice can best be served in this case by the following orders as to sentence.

[9] With regard to the assault charge from August 5th, the Court is going to impose a conditional sentence order of three months. There will be a victim surcharge of \$100, and I will give one year to pay that.

[10] Furthermore, there will be a DNA order on the basis of secondary designated offence. I am not persuaded with the argument advanced by the defence that this is not necessary. If this order goes off the rails, and it is possible; hopefully it will not, but if it does or if there are any other relationships involved in the future, I think it is important that this DNA be in the data bank.

[11] There is no need, though, for a firearms order.

[12] With regards to the conditions on the conditional sentence order, they will largely be as contained on page 6 of the pre-sentence report with some exceptions:

1. Keep the peace and be of good behaviour and appear before the Court when required to do so by the Court.

I am going to be back there for the week of March 15th and I want to follow this case through with a very hands-on approach.

I direct that you appear before the Court on March 15th at 3:30 p.m.;

2. Remain within the Yukon Territory unless you have the written permission from the Conditional Sentence Supervisor or the Court;
3. Notify the Supervisor in advance of any change of name or address, and promptly notify the Supervisor of any change of employment or occupation;

[13] Is the Supervisor or the author of the pre-sentence report in court now?

[14] MR. COFFIN: No.

[15] THE COURT: No? Okay.

4. Report to the Supervisor within 24 hours, and thereafter when required by the Supervisor and in the manner directed by the Supervisor;
5. Reside at the Riverview Hotel or such other place as approved by the Supervisor, and not change that residence without the written permission of the Supervisor --

This will be for the first one month, and will serve as a transition period.

-- and thereafter at the residence of Pamela Mullin, if approved by the Supervisor;

The way I see this working is that the offender performs in a stellar manner for this period of a month, in terms of his work, his sobriety and all the other conditions, and I then foresee the supervisor giving permission for him to return to the residence of Pamela Mullin.

6. Abide by a curfew by remaining within your place of residence between the hours of 6:00 p.m. and 6:00 a.m. daily except with the prior written

permission of the Supervisor. You must present yourself at the door or answer the telephone during reasonable hours for curfew checks. Failure to do so will be a presumptive breach of this condition;

7. 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. Provide a sample of your breath or urine for the purposes of analysis upon demand by a peace officer who has reason to believe that you may have failed to comply with this condition;
8. Not attend any bar, tavern, off-sales or other commercial premises whose primary purpose is the sale of alcohol;
9. Take such alcohol and/or drug assessment, counselling or programming as directed by the Supervisor, attend and complete a residential treatment program as directed by the Supervisor;
10. Report to the Family Violence Prevention Unit to be assessed, and attend and complete the Spousal Abuse Program, as directed by the Supervisor;
11. Have no contact directly or indirectly with Pamela Mullin if either party has been using or is under the influence of alcohol, or has alcohol in his or her possession.

[16] With regard to the assault charge from August 6th, the Court is going to impose a conditional sentence order of six months. It will run consecutively to the order that we have just gone through. There will be a \$100 victim surcharge and one year to pay.

The conditions will largely be the same:

1. Keep the peace and be of good behaviour and appear before the Court when required to do so by the Court. I direct that you appear before the Court on March 15th at 3:30 p.m.;
2. Remain within the Yukon Territory, unless you have the written permission from the Conditional Sentence Supervisor or the Court;
3. Notify the Supervisor in advance of any change of name or address, and promptly notify the Supervisor of any change of employment or occupation;
4. Report to a Supervisor when required by the Supervisor and in the manner directed by the Supervisor;
5. Reside as directed by the Supervisor, and not change that residence without the prior written permission of the Supervisor;
6. Abide by a curfew by remaining within your residence between the hours of 8:00 p.m. and 6:00 a.m. daily except with the prior written permission of the Supervisor. You must present yourself at the door or answer the telephone during reasonable hours for curfew checks. Failure to do so will be a presumptive breach of this condition;
7. 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. Provide a sample of your breath or urine for the purposes of analysis upon demand by a peace officer who has reason to believe that you may have failed to comply with this condition;

8. Not attend any bar, tavern, off-sales or other commercial premises whose primary purpose is the sale of alcohol;
9. Take such alcohol and/or drug assessment, counselling or programming as directed by the Supervisor, attend and complete a residential treatment program as directed by your Supervisor;
10. Report to the Family Violence Prevention Unit to be assessed, and attend and complete the Spousal Abuse Program, as directed by the Supervisor;
11. Have no contact directly or indirectly with Pamela Mullin if either party has been using or is under the influence of alcohol; or has alcohol in his or her possession.

[17] With regard to the breach of probation from August the 5th, there will be a fine imposed in that case of \$400, plus a victim surcharge of \$100. Again, one year to pay.

[18] With regard to the breach of probation from August the 6th, a fine of \$400, plus a \$100 victim surcharge, with one year to pay.

[19] I would note that this sentence encompasses a number of tools that we have as a sentencing court. These include a financial penalty, quite a severe restriction on his liberties, and a considerable degree of accountability. The sentence has been crafted in such a way that if the offender follows through on his commitments, that he can have a fulfilling year in 2010. If he fails to, he will surely end up serving the vast amount of the conditional sentence order in the confines of a prison.

[20] I believe I have addressed all the aspects of this case. Is there anything that the Crown or defence needs some clarification upon? Madam Crown?

[21] MS. MACDONALD: I don't believe so, Your Honour. I'm just quickly reviewing the conditions as laid out. No, Your Honour.

[22] THE COURT: Nothing further, Mr. Coffin?

[23] MR. COFFIN: No, nothing, Your Honour. Thank you.

[24] THE COURT: Mr. Coffin, is he able to stay at the ARC tonight?

[25] THE ACCUSED: I'll find that out as soon as I get over to the probation -- probation office.

[26] MR. COFFIN: That's uncertain. He'll check that out when he goes to meet with the Supervisor after leaving here.

[27] THE COURT: Okay. Yes, if at all possible, I would like him to see the Supervisor, and while I said within 24 hours, I think it would be more practical if he were able to see the Supervisor actually within a couple of hours so that they could go through this in some detail and straighten away the aspects of his residence and so on.

[28] Now, are both counsel available on the date that I selected for him to appear before the Court?

[29] MS. MACDONALD: Your Honour, I anticipate that I'm going to be out of the country on March 15th, but I can certainly apprise someone else at my office and have them attend. This is for a check-up, so.

[30] THE COURT: Sure. Mr. Coffin, how about yourself?

[31] MR. COFFIN: Yes, I will be.

[32] THE COURT: Okay. Madam Clerk, you can mention that to the trial coordinator as well, okay?

[33] THE CLERK: I will do, Your Honour.

LUTHER T.C.J.