

Citation: *R. v. Bowe*, 2005 YKTC 64

Date: 20050923
Docket: T.C. 05-00214
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Judge Ayotte

REGINA

v.

HARLEY MATTHEW BOWE

Appearances:
Michael Cozens
Harley Bowe

Counsel for Crown
Appearing on his own behalf

REASONS FOR SENTENCING

[1] AYOTTE T.C.J. (Oral): I take a number of things into account here in imposing sentence; of course, the nature of the offence, and you should understand that this is an offence which carries with it, as a maximum penalty, life imprisonment. So it is one of the most serious offences found in the *Criminal Code*. Nonetheless, like every offence, there are different facts and there is a continuum, and where on that continuum this offence falls is important in determining what the appropriate sentence should be.

[2] Your criminal record is relevant, but again, I will make it clear to you that the criminal record is not to be used to sentence you again for all of these offences. You have already been sentenced for these and served your sentences. But it does assist

the Court in determining what sort of a sentence, how long it should be. It is not an aggravating offence factor but it does indicate the character of the defendant. I think it is fair to say that looking at your record, I can conclude quite readily that you have been a regular customer of the courts for quite a long time now and that needs to be taken into account.

[3] I take into account that this was not resolved by guilty plea and I want you to understand what that means. When a person pleads guilty to an offence, the Court determines what the appropriate sentence should be and then reduces the sentence because of the guilty plea. When you do not plead guilty and have a trial, as you did in this case, it is not that you are punished for the trial at all; it is simply the fact that the Court looks at what the appropriate sentence should be and there is no reduction for the guilty plea. That is the situation that you are in.

[4] I am satisfied here, having looked at the cases and considering the evidence, this sort of robbery is quite different from the cases that Mr. Cozens had provided to me. I do not say that to suggest that he has tried to mislead me at all; it is simply that there are not too many robberies in this particular kind of situation. This is what I told you at the trial is a constructive robbery. In other words, I found as a fact that the use of the violence was not intended to facilitate the later theft, but the law makes it a robbery nonetheless because violence was close enough and closely involved here. So I take that into account. I consider the facts of this case less serious than a conviction for a full robbery under s. 344(a). In saying that I simply mean that the sentences imposed when the facts fit s-s. (a) would ordinarily be a little higher than they would in circumstances like this.

[5] It is aggravating here that this robbery took place in a private home, where you gained admittance and then violated the home. I take into account there is no physical injury alleged or even shown in the facts as I heard them during the trial. I take into account that though you did use the knife in a way that I found, at least -- well, one, your victim clearly was not very intimidated since she walked away in any event, but also you let her walk away in the sense that you did not try to use the knife to try to inflict harm on her when you could have easily done that. So I do take that into account. Then you left the knife behind in the kitchen before you went into the bedroom and accomplished the theft. So I take all of those things into account.

[6] I take into account the time you have spent in custody and I am satisfied here that I should give you a two-for-one credit for the 14 days in cells and a one-and-a-half-to-one credit for the days spent in the general population, as well as the four days in cells that were the result of your own activity. That adds up, in effect, then, to 37 and 28 days total, which is slightly over two months credit; it is 65 days.

[7] Looking at all of this, I am satisfied that the appropriate range of sentence would be in the upper limit of Territorial time, and the upper limit here would be, in my view, approximately 23 months imprisonment. I reduce that by two months and, accordingly, I sentence you to 21 months of imprisonment.

[8] As well, there is a requirement here that I make a weapons prohibition order. You are not to have any firearm, ammunition, explosive substance or other prohibited weapon in your possession for a period of 10 years from the date of your release.

Some of the other weapons, the special restricted weapons, is for life from the date of your release. These are categories of weapons now that Parliament has outlawed.

[9] As well, there will be an order that you provide a DNA sample to the Federal DNA Databank.

[10] Finally, what is your position, Mr. Cozens, on the surcharge?

[11] MR. COZENS: That should be waived under the circumstances.

[12] THE COURT: I am satisfied here that considering the time that is going to be spent and other circumstances, that a victim fine surcharge is inappropriate and accordingly there will be no victim fine surcharge. So that is 21 months, sir.

AYOTTE T.C.J.