

Citation: *R. v. Brereton*, 2004 YKTC 42

Date: 20040513
Docket: T.C. No. 03-00253
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before: His Honour Judge Overend

Regina

v.

Michael Brereton

Appearances:

Kevin M. Drolet
J. Robert Dick

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCING

[1] OVEREND T.C.J. (Oral): The accused has entered a plea of guilty to the serious offence that:

On or about the 7th of June, 2003, at Whitehorse, in the Yukon Territory, he unlawfully committed an offence in that he did wound Ryan Milward, thereby committing an aggravated assault, contrary to s. 268 of the *Criminal Code*.

[2] The Crown has put before me the facts of the assault in written form as

Exhibit 1 and those facts are agreed to by counsel for the accused, Mr. Brereton. One fact that is not included in Exhibit 1 is that there are no long-term, lasting effects suffered by Mr. Milward from the assault. While not spoken directly by Crown counsel, I take it from that that there are no current, lasting effects from that assault and that Mr. Milward has recovered from this brutal assault by Mr. Brereton.

[3] Counsel have made a joint submission that Mr. Brereton should be imprisoned for a period of 21 months, that term of imprisonment to be served in the community subject to a Conditional Sentence Order.

[4] Put before me for consideration in determining whether or not that is an appropriate sentence here are decisions of Chief Judge Lilles and Judge Faulkner in this jurisdiction and a decision of the Supreme Court of British Columbia in *R. v. D.L.* The decisions in this jurisdiction to which I am referred are *R. v. D.B.M.* decided by the Honourable Chief Judge Lilles and *R. v. Porter*, 2003, YKTC 101, decided by the Honourable Judge Faulkner.

[5] While each case, of course, must be determined on its facts, some facts in each of these cases are sufficiently similar that those cases do have a bearing on my disposition. As parliament has said, similar offences involving similar offenders should result in similar dispositions. No offender is exactly like any other offender, nor is any offence exactly like any other offence. However, I am

satisfied that the cases put before me by counsel sufficiently circumscribe the offence and the offender in this case so that I am prepared to accept their submission with respect to the appropriate disposition.

[6] Mr. Brereton, would you stand, please?

[7] I am sentencing you to a term of imprisonment of 21 months on Count Number 1 in the Information and to a term of three months concurrent on Count Number 2 in the Information. You will serve that sentence in the community and be subject to a Conditional Sentence Order, terms of which are as follows:

- a) you are to keep the peace and be of good behaviour;
- b) you are to appear before the Court when required to do so by the Court;
- c) you are to report to your supervisor within two working days and thereafter when required by the supervisor and in the manner directed by the supervisor;
- d) you are to remain within the jurisdiction of the Court unless written permission to go outside the jurisdiction is obtained from the Court or the supervisor and;
- e) you are to notify the Court or the supervisor in advance of any change of name or address and properly notify the Court or the supervisor of any change in employment or occupation;

- f) you are to reside in a residence approved of by your conditional sentence supervisor and not change your residence without the prior written approval of your conditional sentence supervisor;
- g) you are to abide by a curfew, and during your curfew, you are to remain in your residence from the 13th of May of 2004 until the 12th of December 2004, inclusive, between the hours of 7:00 p.m. and 7:00 a.m., Monday through Friday of each week and continuously on Saturday and Sunday, from the 13th of December 2004 until the 12th of July 2005 inclusive, between the hours of 9:00 p.m. and 7:00 a.m. Monday through Friday each week and continuously on Saturday and Sunday, from the 13th of June 2005 until the 12th of February 2006 inclusive, between the hours of 11:00 p.m. and 7:00 a.m. each day, in each case, except with the prior written permission of the conditional sentence supervisor and except for the purpose of seeking immediate medical attention at a hospital or other medical clinic.

[8] MR. DICK: If I may, Your Honour, I just noticed that the second portion terminates the second curfew on July 12th, and I believe that the third one is, as written, as you read out, to commence on the 13th of June. I believe that the third one should be 13th of July.

[9] THE COURT: Yes, thank you. That seems to be appropriate.

[10] You agree with that, Mr. Drolet? That seems to make sense.

[11] MR. DROLET: Yes, it does.

[12] THE COURT: All right. So it is from the 13th of July 2005 until the 12th of February 2006.

- h) you are to carry a copy of this Conditional Sentence Order on your person at all times when outside your residence and produce upon demand of a peace officer;
- i) you are to carry a copy of the written permission of the conditional sentence supervisor on your person at all times when outside your residence during the hours of curfew and produce it upon demand of a peace officer;
- j) you are to abstain absolutely from the purchase, possession or consumption of alcohol or drugs other than those prescribed by a physician;
- k) you are to provide such samples of your breath or bodily fluids as may be readily demanded by a conditional sentence supervisor or a peace officer;
- l) you are not to attend any bar, tavern, off sales or other premises whose primary purpose is the sale of alcohol;

- m) you are to attend for assessment as directed by the conditional sentence supervisor in relation to your use of alcohol or other substances and, if so directed by the conditional sentence supervisor, upon the recommendation of such assessment, attend for treatment and counselling in relation to alcohol or substance abuse;
- n) you are to complete any program of counselling or treatment to the satisfaction of your conditional sentence supervisor;
- o) you are to have no contact or communication, directly or indirectly, by any means with Ryan Milward, Hayley Mitander, Scott Randall, Daryl Schultz, Brian Babala, Shane Biggs, Jesse Fox, Keith Fenton, John Vanderhide or Brian Wagg;
- p) you are to make reasonable efforts to maintain employment or pursue education and provide confirmation of such efforts to the satisfaction of the conditional sentence supervisor and in a manner so directed by the conditional sentence supervisor.

[13] Do you understand the terms of the Conditional Sentence Order?

[14] MR. BRERETON: Yes.

[15] THE COURT: I want you to understand, Sir, that this is a Conditional Sentence Order. If you breach any of the terms of this Conditional Sentence

Order, you may be returned to court and you may be required to spend the balance of the sentence in custody.

[16] There will be a mandatory 10-year firearm prohibition pursuant to s. 109 of the *Criminal Code*.

[17] You are required, pursuant to s. 487.051, to provide a DNA sample or samples. Those samples are to be provided within 24 hours.

[18] There are victim fine surcharges of \$200, \$100 on each count. Do you need more than 30 days?

[19] MR. BRERETON: No.

[20] THE COURT: Those victim fine surcharges are to be paid on or before the 12th of June 2004.

[21] Anything else, Mr. Drolet?

[22] MR. DROLET: Yes, Your Honour. If I may have just a moment?

[23] The conditional sentence supervisor has asked whether we could ease enforcement of the curfew by providing that the offender is required to answer his

telephone or present himself at the door of his residence whenever requested to do so by a peace officer or conditional sentence supervisor during the hours of curfew.

[24] THE COURT: That seems like a reasonable condition.

[25] Mr. Dick?

[26] MR. DICK: No objection on that.

[27] THE COURT: All right. There will be one further condition. Did you get that, Madam Clerk?

[28] THE CLERK: I have the standard wording as to ---

[29] THE COURT: Well, I don't want the standard wording. I want to make sure we get the wording in court here.

[30] So you are to present yourself at the door of your residence or on your telephone at the request of your conditional sentence supervisor to ensure compliance with your curfew.

[31] Mr. Dick, anything else?

[32] MR. DICK: Nothing else, Your Honour.

[33] THE COURT: Anything else, Mr. Drolet?

[34] MR. DROLET: Your Honour, the RCMP sometimes assist in the supervision of the curfew. So it is helpful that they ---

[35] THE COURT: That is a peace officer or a conditional sentence supervisor, yes.

[36] MR. DROLET: Thank you, Your Honour.

[37] I have prepared the draft form of order for forensic DNA sampling as well. If the form is acceptable to my friend, I can provide that to the Court right now.

[38] THE COURT: All right.

[39] MR. DROLET: Thank you, Your Honour.

[40] The form of order that we have prepared is based on the language of His Honour Chief Judge Stuart, as he then was, in the first such application that was made in the Territory, which I believe is the same language with the limiting conditions over and over again.

[41] THE COURT: Thank you.

[42] Madam Clerk, can you tell me when the conditional sentence order would be ready for signature?

[43] THE CLERK: Probably within a half hour or so.

[44] THE COURT: Mr. Brereton, the Conditional Sentence Order will be ready for your signature very shortly.

OVEREND T.C.J.