

Citation: *R. v. Butler*, 2014 YKTC 54

Date: 20141017
Docket: 14-00325
11-00621C
13-00195C
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before His Honour Judge Cozens

REGINA

v.

RANDY WADE BUTLER

Appearances:
Jennifer Grandy
Gordon R. Coffin

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCING

[1] COZENS T.C.J. (Oral): Randy Butler has entered guilty pleas to having committed offences under s. 733.1(1) and s. 266 of the *Criminal Code*.

[2] Circumstances of the 733 charge are that while on probation, following a conditional sentence order on July 22, 2013, Mr. Butler was located intoxicated, contrary to the terms of his probation order that he abstain from the possession and consumption of alcohol -- or noted to have symptoms that indicated he had been consuming alcohol.

[3] He continued to be on conditions to keep the peace and be of good behaviour and abstention clauses. A number of other related matters that took place between then and the date of the assault, which was on August 21, 2014, have since been dealt with.

[4] On that day, he was at his mother's residence. He had been drinking. He had his two children there with him, his infant and his two-year-old. His girlfriend was there as well. As he was leaving, he grabbed the two-year-old by the arm. Mr. Butler's mother intervened and told him not to do that. They got into an argument. Mr. Butler spit at her, striking her in the face, and he hit her in her arm. He was subsequently removed from the residence and, in anger, he kicked the grille of his father's truck, damaging it.

[5] I note that Counts 2, 3, and 4 on which pleas have not been required indicate a mischief charge, a failure to keep the peace, a be of good behaviour on a Recognizance that he was on, and an offence to comply with abstention clauses on a Recognizance that he was on. These are aggravating features put in pursuant to s. 725.

[6] A victim impact statement has been filed by his mother. That is pretty much everything that needs to be said about the impact that something like this could have on a mother and on his brother as well.

[7] Mr. Butler is currently serving a 15-month sentence for another offence with two years probation. That sentence was imposed on September 9th. We are at the very start of that sentence. It is his first time serving any extended period of custody

that I can see from his record -- maybe brief periods of time while charges were being dealt with.

[8] The sentence that is being put forward is a joint submission that there be 30 days concurrent on the s. 733 and 30 days concurrent on the s. 266. While this is not a sentencing that is taking place at the same time as the last sentencing was, it was, in fact, set for trial and pleas were entered on the date of trial, although in sufficient time to allow the witnesses to be called, nonetheless, keeping in mind that using the principles behind totality, this young man is going to be serving a long period of time in custody with a significant probation order to follow, it is not necessary that he has any additional time added onto that sentence for these offences.

[9] As such, I consider the joint submission to be appropriate. The sentence will be 30 days concurrent on the s. 733; 30 days concurrent on the s. 266 to the time he is already serving on the other offences.

[10] The probation order that he will be on at the conclusion of the time in custody that he has will have two additional clauses added -- and that is on court file 13-00195C. The conditions will be as follows:

1. You are to have no contact, directly or indirectly, or communication in any way with Loretta Butler, also known as Tammy Butler, except with the prior written permission of your probation officer in consultation with Victim Services;

2. You are not to attend at the residence of Loretta Butler, also known as Tammy Butler, except with the prior written permission of your bail supervisor in consultation with Victim Services.

[11] I can waive the victim fine surcharge with respect to the offence in 2013. I cannot with respect to the S. 266; payable forthwith.

[12] Crown did not mention DNA or firearms. Crown is not seeking them in this case. There will not be a DNA order or a firearms order.

COZENS T.C.J.