

Citation: *R. v. Chambers*, 2013 YKTC 100

Date: 20130517
Docket: 11-00309
12-00409
12-00722
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: Her Honour Judge Ruddy

REGINA

v.

DAVID FREDERICK CHAMBERS

Appearances:

Eric Marcoux

Brooke Land-Murphy

Counsel for the Territorial Crown

Appearing as agent for defence

REASONS FOR JUDGMENT

[1] RUDDY T.C.J. (Oral): This is the matter of judicial interim release as it relates to David Chambers. Mr. Chambers is before the Court for a number of different counts to which we are, at this point, awaiting my decision, which is on reserve.

[2] There are three counts to which he has entered pleas of guilty. I am not, for the purposes of this decision, going to go through the facts of those. I think everyone here is well aware of what they are, as they are part of the fuller sentencing hearing. I will say that I am cognizant of them and have taken them into account.

[3] Now, it is worth noting that Mr. Chambers had been on release and had been

going through the Community Wellness Court process. He had approximately seven months of doing exceptionally well, and was moved, at that point, from the ARC to live with his sister. Mr. Chambers continued to do, I think “satisfactorily” is the word that the Bail Supervisor used, for a couple of months, and then things started to break down. Mr. Chambers fell off the radar, but resurfaced a few months later with the third offence, which is an uttering threats charge that is before the Court.

[4] Mr. Chambers has consented to remain in custody since last September, with the intention of this matter going to sentencing hearing. It got dramatically more complex at the sentencing hearing for a couple of reasons. Firstly, the parties are significantly far apart. I have a position from Crown of three to four years, and a position from defence of time served. You do not get much farther apart in a sentencing hearing than what counsel are in this particular one, for very detailed reasons, which have been articulated in the sentencing hearing and it is not necessary for me to go through them for the purposes of this matter today.

[5] However, Mr. Chambers’ sentencing was further complicated by an application that has been made by Mr. Chambers through his counsel to address the issue of the calculation of remand credit and the application of s. 719(3.1). It is something, it is fair to say, that is not entirely settled in law at the moment, and involved a fair amount of work from all counsel involved, and now requires a fair amount of work from me to sift through all of the materials and to render a decision. It is an important issue, and one that requires appropriate attention. As I said, I had hoped to have that done by today, but it simply, physically, was not possible. I had indicated, because of that, that it may be worth revisiting bail.

[6] Mr. Chambers had been before me a couple of weeks ago, seeking his release because the decision was on reserve. The discomfort I expressed about release on that particular day was that the plan essentially was to put him back in the same position he had been in when things started to break down. I had indicated that if we were going to seriously look at release, I required something a little more firm in detail than that, that would include more certainty on employment in particular, and a greater deal of supervision, because I did not want Mr. Chambers to experience the same thing he did last time, which is to get out of jail where he is structured, supervised and is doing well, and into a situation where he does not have that same amount of structure and supervision, and things start to break down again, because the last thing I want to see while I am trying to finish this decision is further charges. That is something I am required to consider when we are talking about release. The grounds I am required to consider are whether or not he is likely to show up for court. He has one or two fail to appears in the past, but he has significant connections to the community in this Territory. I do not see that as an overwhelming concern.

[7] The bigger concern, as expressed by Crown in the last hearing, is whether or not there are what we call "secondary ground concerns", a likelihood of Mr. Chambers reoffending should he be released. It was because of these grounds that I was particularly concerned about releasing him on the plan that was proposed last time, because, as I said, it was not appreciably different than what he had been on.

[8] Now, what I have before me today is, in my view, significantly more structured. There is a firm letter on employment that would have Mr. Chambers, at times, in May, June and July, in dry camp situations, where he would be working for the Champagne

Aishihik First Nation. When not there, he would be residing with his aunt and uncle. What is particularly important for me is that his aunt is at home virtually all of the time because of her current circumstances. This offers significantly more supervision than his sister was in a position to provide, as result of her obligations. So that gives me significantly more comfort.

[9] I am satisfied that what is being offered now, in addition to the cash bail and the sureties, which, Mr. Chambers, you need to be aware, are basically put forward on the understanding that you are going to comply. You have to recognize that your family members may experience significant financial loss if you do not comply. So they are going to be counting on you to follow through, and they are going to be watching to make sure you follow through. In any event, I am satisfied that this plan gets us significantly closer.

[10] Now, the concern the Crown has raised relates to their position on disposition because they take the position that a federal sentence is appropriate, they see little utility for him to be released, pending the outcome of my decision if he is going back to jail.

[11] I have not, I will tell you, finalized what my decision should be. There are a number of factors I am still looking at, but I am satisfied, at least at this point, that there is a real risk that Mr. Chambers might end up serving more time in custody, pending the outcome of my decision, than he would if I were able to rule today. Now, I am not saying that for certain, but I am concerned about that risk, because the delay is occasioned by the time that I need to finish this decision. So because of that, I am

satisfied that it is appropriate, Mr. Chambers, to release you today. It is incredibly important that you follow each and every one of the conditions I am going to place you on.

[12] THE ACCUSED: [Indiscernible - away from microphone] responsible for anything.

[13] THE COURT: Okay. You owe a big debt to your family.

[14] THE ACCUSED: Sure.

[15] THE COURT: Their willingness to come forward and take you in. Your sister is still hanging in there, and she is still looking out for you.

[16] The other thing I will say I like about this plan is, not just that there is more adequate supervision in the home, but I like the fact that the home is not right downtown. So we take you away from some of that temptation. I meant to say that earlier, as well.

[17] So what it comes down to is I am satisfied that this is plan that I can release you on, pending the decision. You will find out then whether or not you need to do additional time or not, and you need to know that that is a possibility because I have not reached that conclusion yet, but I also do not want a situation where you may end up serving more time because of the time I need.

[18] I am going to release you on a recognizance. It will be in the amount of \$1,000 with deposit. Two sureties, those being Bev Rissanen and Melven Rissanen, that will

be sureties in the amount of \$500, no deposit. The terms and conditions will be, Mr. Chambers, that you:

1. Keep the peace and be of good behaviour;
2. Report to a Bail Supervisor immediately upon your release and thereafter, when and in the manner directed by the Bail Supervisor;

I do think that it is important, again, that we have the structure that we need, so I am going to make it a house arrest situation. I do not want you to be at risk of reoffending. So at all times you are to:

3. Remain within your place of residence, except when you are in the direct company of your sister, Shadelle Chambers, or such other person as may be approved by your Bail Supervisor, or except for the purposes of employment, including travel directly to and directly from your employment, or except with the prior written permission of your Bail 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;
4. You will be required to make reasonable efforts to find and maintain suitable employment and provide your Bail Supervisor with all necessary details concerning your efforts;
5. You are to have no contact, directly or indirectly, or communication in any way with Bonnie Chambers, Freida Brown or Allan Faulds, and you are not to attend at, or within, 100 metres of the place of employment or

residence of Bonnie Chambers, Freida Brown or Allan Faulds;

6. You are to reside at 3 Simmons Place in the Pilot Mountain subdivision with your aunt and uncle, and not to change that residence without the prior written permission of your Bail Supervisor;

When you are heading out to the camps for employment, you make sure they know what you are doing, where you are going to be, and that you have permission to be in another place.

7. You are not to have in your possession any firearm, ammunition or explosive substances;
8. You are to take such assessment, counselling and programming as directed by your Bail Supervisor;

You know it is really important that you maintain your meds, because that is part of how we got here, right? And your family knows how important that is too, so they are going to be watching.

9. You are to 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;

That does not include your medications, those are okay.

[19] One thing I would like to add, with his consent, is testing. Are you prepared to let them test you to make sure you are clean?

[20] THE ACCUSED: Yeah, I'm prepared for that.

[21] THE COURT: All right.

10. You are to provide a sample of your breath or urine for the purposes of analysis upon demand by your Bail Supervisor or by a Peace Officer who has reason to believe that you may have failed to comply with this Condition;

[22] Is there anything I missed?

[DISCUSSION RE ADDITIONAL NAMES ON NO CONTACT CONDITION]

[23] MR. MARCOUX: And also, in order to assist him with the abstain condition, perhaps a “not attend at any bar, taverns or off-sales” would be a good idea.

[24] THE COURT: Thank you. I think that is appropriate as well. So you are:

11. Not to attend any bar, tavern, off-sales or other commercial premises whose primary purpose is the sale of alcohol.

[25] I am going to add to the not attend clause, in terms of the place of employment and residence, we will add Mr. Faulds and Ms. Brown to that condition as well. So you stay away from the three of them, where they live, work, and otherwise are; you focus on your own stuff, you pay attention to what your aunt tells you, you follow her rules, you follow your conditions, you take your medications, you get the counselling they tell

you to get, you follow through on your employment, stay clean, stay out of trouble, and then you will come back before me and I will let you know what the outcome is of all of the materials I am wading through.

RUDDY T.C.J.