

Citation: *R. v. Charlie*, 2008 YKTC 9

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T.C. 07-00299A
T.C. 07-00329A
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Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before: His Honour Chief Judge Faulkner

REGINA

v.

FRANKLIN CHARLIE JR.

Appearances:
Jennifer Grandy
James Van Wart

Counsel for Crown
Counsel for Defence

REASONS FOR SENTENCING

[1] FAULKNER C.J.T.C. (Oral): In this case, Franklin Charlie has entered guilty pleas to a somewhat astounding catalogue of offences, some 14 in number. The offences are as follows: a charge of mischief. In that case, Mr. Charlie actually entered a residence, having smashed a window in the residence. He was highly intoxicated at

the time. He was initially charged with breaking and entering but the offered plea of mischief was accepted.

[2] The second charge is a charge of breach of probation, which, in fact, arises from the same time, the breach being the breach of a condition that forbade him to consume alcohol. He was highly intoxicated at the time of the entry into the house.

[3] The next charge is the charge of possession of stolen property, that being a snowmobile.

[4] The fourth charge is a charge of breaking and entering a dwelling house and committing mischief. He forced his way into a residence by forcing the door. In addition, some windows in a truck were smashed.

[5] The next offence is an additional charge of breaking and entering a dwelling house. In that case, he entered by smashing a kitchen window where he got into the house. He stole some change and some tobacco. It should be added that the resident of the house, who discovered Mr. Charlie in her house, was an Elder who had been in bed. Her attempt to call the police to gain assistance was thwarted because the telephone wires had been pulled out.

[6] The next charge is a charge of breach of undertaking. The breach in question was a breach of a curfew while he was residing at the Adult Resource Centre.

[7] The next charge is a charge of dangerous driving. In that particular case, Mr. Charlie was roaring around on a quad through a large gathering of people at Coffee Lake, near Ross River. I am told there were some 500 people there, including

numerous children. Mr. Charlie was speeding recklessly through the crowd. He was intoxicated and weaving wildly. He was pursued by the police and ultimately arrested and taken to the detachment, which then gives rise to a charge of mischief, the mischief in question being Mr. Charlie's damaging of the Datamaster machine while he was in the course of exercising his right to talk to counsel. The damage to the machine rendered it inoperative and, as a result, there was no means of him providing breath samples.

[8] The ninth charge is a charge of breach of undertaking. The specific undertaking was that he went AWOL after his curfew, again at the ARC. This followed a test of Mr. Charlie's urine, which proved that he had been consuming cocaine, also in breach of his undertaking.

[9] The next charge is a charge of dangerous driving. In this case, Mr. Charlie was driving a pickup truck, which he drove recklessly and at high speeds through and near the village of Ross River. The pursuit of him was, in fact, abandoned because of the extreme danger that was being caused in this urban area.

[10] The next charge is a charge of failing to stop for a police officer, contrary to s. 249.1(1) of the *Code*. That arose during the course of the dangerous driving incident I have just described. There was an attempt to stop Mr. Charlie and he ignored the police attempts to stop him. In fact, he barely missed running into the police officer's vehicle.

[11] The next charge is a charge of possession of stolen property. That arises because the truck that Mr. Charlie was driving during this dangerous driving incident was a stolen truck.

[12] The next charge is a charge of breach of undertaking, because at that point in time, he was supposed to be at the ARC in Whitehorse and not roaring around Ross River in a stolen vehicle.

[13] The final charge is a charge of failing to attend court. Mr. Charlie had entered guilty pleas to some of the offences I have just described, and the matter was set for sentencing in Ross River. Mr. Charlie failed to appear. It should be added that this string of offences proceeds over a period of now going on close to two years, during which time Mr. Charlie has been in and out of custody, and there have been some attempts, which ultimately proved unsuccessful, to deal with him in the community. In the course of that period of time he has spent, at various times, a total of some five and a half months in custody.

[14] Counsel have jointly submitted that I should impose a global sentence of two years plus a day. I have decided to accede to the joint submissions of counsel. There are a number of reasons for that. Firstly, although Mr. Charlie is a young man; he is only 23 and has not had a penitentiary sentence before, the number of offences and the seriousness of some of them is such that he does present, in my view, a clear danger to the community, and there really is not much choice at this point in time but to incarcerate him for the safety and protection of the public.

[15] There is also the fact, as Mr. Charlie himself noted, that he may well have better access to programming and treatment in the federal system than what is available to him at WCC. That is important because there is strong evidence before the Court that Mr. Charlie's criminality is the result of a combination of prenatal exposure to alcohol combined with his own addiction problems. So he clearly is in need of programming and structure if he is going to get his life into some degree of control.

[16] Given the large number of offences and given the fact that I intend to impose a global sentence, I am not going to attempt to finely delineate the sentence with respect to any particular offence but rather impose a sentence which will effectively impose the sentence jointly sought by counsel.

[17] In the result, with respect to the charge of breaking and entering a dwelling house and committing theft therein, Mr. Charlie, you are sentenced to a period of imprisonment of two years plus a day in addition to time served, which I calculate at eight months. With respect to the charge of breaking and entering and committing mischief, 18 months. With respect to the charge of mischief involving the window in the dwelling house, six months. The charge of breach of probation by consuming alcohol, 30 days. The charge of possession of stolen property, being the snowmobile, three months. The first charge of breach of undertaking by breaching your curfew at the ARC, 30 days. The charge of dangerous driving at the Coffee Lake gathering, six months. The charge of mischief by damaging the Datamaster machine, three months. The charge of breach of undertaking by being out after curfew, after the drug test, 30 days. The charge of dangerous driving, being the pickup truck in the Ross River area, four months. The charge of failing to stop for a peace officer, two months. The charge

of possession of stolen property, being the truck, three months. The final charge of breach of undertaking, 30 days. The charge of failing to attend court is 30 days.

[18] In my view, having regard to the nature of some of the offences and the degree of danger to public safety indicated by many of Mr. Charlie's activities, it is appropriate that there be a DNA order. I hereby order that Mr. Charlie provide samples of bodily substances for the purpose of DNA analysis and banking. Additionally, with respect to the dangerous driving charges, you are prohibited from operating a motor vehicle anywhere in Canada for a period of two years following your release from imprisonment. Surcharges are waived.

FAULKNER C.J.T.C.