

Citation: *R. v. Charlie*, 2012 YKTC 16

Date: 20120123
Docket: 10-00785A
10-00785B
10-00785C
10-00843
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Judge Faulkner

REGINA

v.

BYRON SHANE CHARLIE

Appearances:

Jennifer Grandy
Malcolm Campbell

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCING

[1] FAULKNER T.C.J. (Oral): Byron Charlie is before the Court to be sentenced with respect to two matters. The first is a charge of assault causing bodily harm for which he was convicted after trial. The second is a breach of undertaking, which involved Mr. Charlie consuming alcohol on two separate occasions in defiance of a release condition which forbade him to consume alcohol.

[OUTBURST FROM ACCUSED]

[2] Sir, I am going to have to ask you to keep quiet or else you will have to leave the

room.

[3] I will deal firstly with the breach charges. This man has a very lengthy criminal record, and the number of breaches on it are almost beyond counting, but counsel are agreed, and I see no reason to think otherwise, that the 27 days that Mr. Charlie has spent in custody are a sufficient sentence with respect to that matter. So with respect to that matter, one day in addition to time served of 27 days. The surcharge is waived.

[4] That leaves the assault. The assault was a serious one in that it involved an attack on a man who had tried to intervene to prevent Mr. Charlie from beating up his girlfriend, resulting in some serious head injuries that required sutures to close. About the best that can be said for Mr. Charlie in that regard, although he has a very significant criminal record, is that there is only one prior related entry.

[5] Having regard to the deplorable performance of the accused whilst on release, certainly a community-based disposition is not likely to succeed, nor, in my view, is it likely that a period of probation would be any more likely to work. So that resolves matters down to simply determining a fit period for which to separate Mr. Charlie from the public for its safety and protection.

[6] Having regard to the relative lack of related record, and having regard to the serious nature of this particular offence, in my view, a fit sentence is one of ten months.

[7] I will waive the surcharge with respect to that matter as well.

[8] There will also be an order whereby the offender will provide samples of bodily substances for the purpose of DNA analysis and banking.

[9] In my view, this is a fit case in which to make a firearms prohibition under s. 110 of the *Criminal Code*. The offender is prohibited from having in his possession any firearms, ammunition, explosive substances or any of the other items described in s. 110 for a period of ten years following his release from imprisonment.

[10] MR. CAMPBELL: Sorry, for how long?

[11] THE COURT: Ten years.

[12] MR. CAMPBELL: Just in -- for the clarity of the record, Your Honour, I don't believe there was any evidence that he was actually in the process or about to beat up his girlfriend. They were simply arguing. That's my notes of the evidence, but, in any event, that doesn't change the result of the stitches to the head.

[13] THE COURT: No.

[14] MS. GRANDY: Your Honour, I would withdraw the 785B Information.

[15] THE COURT: Very well.

FAULKNER T.C.J.