

Citation: *R. v. Charlie*, 2013 YKTC 29

Date: 20130320
Docket: 12-10139
12-10139A
Registry: Watson Lake
Heard Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Judge Lilles

REGINA

v.

JOSHUA JIMMY ZOUL CHARLIE

Appearances:
Terri Nguyen
David Christie

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCING

[1] LILLES T.C.J. (Oral): This is the matter of Joshua Jimmy Zoul Charlie. Mr. Charlie is a 21-year-old First Nations man who has pled guilty to three charges at the earliest opportunity. The most serious charge, of course, is the aggravated assault, an offence contrary to s. 268(2) of the *Criminal Code*. I am not going to review the circumstances and the submissions of counsel because this is a joint submission. I will note, however, that the victim, Nevada Vance, is a relative of the accused.

[2] Nevada Vance observed Mr. Charlie and others hitchhiking on the highway. He

pulled over his van and gave them a ride. There were five of them and they attacked Nevada Vance. This was not a one-on-one fight or a fight resulting from anger; this was a gang attack, ganging up on one individual. This is what we call a cowardly attack. All five ended up taking part in the assault. The assault continued over a significant period of time. The consequences of the assault would have been readily observable by you, Mr. Charlie, because there was blood all over the place. So unless you were blind, you would have seen the harm that you were doing to your uncle. It would have been apparent to you and the others, right from the beginning that your uncle was not in a position to resist. He was essentially helpless on the ground while the five of you beat on him and kicked him. The photographs indicate a swollen face, almost twice his normal face size, eyes swollen shut, with cuts and blood on his face. The bruises on his back and torso indicate that he was kicked there possibly 15-25 times.

[3] It is obvious that alcohol was a significant factor. The information that I have received was that all of the individuals who participated, including yourself, were quite intoxicated. After beating up Mr. Vance some of the group - I understand that you were not involved directly, but you were involved as a party - then launched their anger on the van and destroyed Mr. Vance's van.

[4] I am impressed with the letters that were filed. You did well in remand. It is a signal to me that you have a lot of potential and you can put this behind you. I have your letter of apology, but you need to communicate that apology in a culturally relevant way to him. I have the letters from your mom and your uncle, Kevin Stewart, as well. Both of them see a lot of good in you.

[5] I am satisfied, based on everything I have heard and talking to you today, that you really, truly are remorseful. I know you wish that this never happened, but it did, and now you have got to, as they say, “Man up to it”, “Deal with it”, and “Turn your life around.” You come to the Court today with a very limited criminal record. I am not even going to speak to it because it does not have any direct application to what happened here.

[6] In the circumstances, with respect to the breach charge on February 4th, an appropriate disposition would be 30 days in custody. I am imposing one day of jail deemed served today, a credit for 30 days custody served. With respect to the s. 430(4) charge, I am imposing one day in jail deemed served today, a credit for 30 days custody served. With respect to the aggravated assault, an appropriate sentence would be 10 months custody. I note that there are three days credit still available to you, so the sentence for that would be 10 months less three days.

[7] A three year probation term will apply to the s. 268(2) charge, which is the aggravated assault charge. We have reviewed the terms of the probation order already and Crown has been good enough to prepare a document which I have accepted and the Clerk will convert into a formal Order. I will reemphasize, as Madam Crown did and Mr. Christie did, that the purpose of this Order is rehabilitation to support you and to help you, but it will only support you and help you if you want to be helped. So that will be up to you. Consistent with that, Crown counsel has indicated that if everything goes well, at some point into that Probation Order she will consent to an application to have the Order terminated early, okay?

[8] THE ACCUSED: Okay.

[7] THE COURT: Madam Crown has pointed out that this charge requires, as of law, a DNA order and a firearms order. The length of the firearms order; is that a ten year order?

[8] MS. NGUYEN: Ten.

[9] THE COURT: Those orders will go as requested in their normal form, Madam Clerk. Victim Fine Surcharges will be waived. There are still a couple of outstanding matters that Madam Crown will speak to.

[10] MS. NGUYEN: Withdrawn.

LILLES T.C.J