

Citation: *R. v. Edwards*, 2013 YKTC 22

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Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: Her Honour Judge Ruddy

REGINA

v.

DEREK JOHNSON EDWARDS

Appearances:
Joanna Phillips
Malcolm Campbell

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCING

[1] RUDDY T.C.J. (Oral): Derek Edwards is before me for sentencing with respect to five counts to which he has entered pleas of guilty, including a robbery; driving while the concentration of alcohol in his blood exceeded the legal limit; driving while disqualified; and two breaches of the terms of his release order.

[2] The robbery occurred September 18, 2011. Mr. Edwards and another male accosted a third male on a trail. Both pulled knives and demanded that he empty his pockets. One of them held a knife to his throat. His iPhone was taken. Mr. Edwards

was ultimately arrested and searched, and the police found on his person both the iPhone and a knife.

[3] Mr. Edwards was released on a recognizance with a number of conditions, including curfew and reporting conditions. On January 19, 2012, he was in breach of his curfew, a condition which was noted pursuant to a curfew check. Again, on May 2, 2012, he was in breach of his curfew. On June 23, 2012, the police responded to a call from EMS with respect to an intoxicated male, which turned out to be Mr. Edwards in breach of both his curfew and abstain conditions. He was detained in custody for a period of time, but was ultimately released to participate in the Community Wellness Court process, where he appears to have done well for a period of months. Then on February 8th of this year, Mr. Edwards was observed by a police officer to be driving his mother's vehicle. Checks indicated that he was disqualified from driving at the time the traffic stop was initiated. Mr. Edwards was arrested for driving while disqualified. A strong odour of alcohol was noted, leading to a demand to provide a breath sample into an approved screening device, which registered a fail. Mr. Edwards ultimately provided breath samples of 160 and 150 milligrams percent.

[4] Mr. Edwards comes before the Court with a prior criminal record, which includes two convictions; one for driving while the concentration of alcohol in his blood exceeded the legal limit, and one for driving while disqualified.

[5] Mr. Edwards is a 33-year-old member of the Selkirk First Nation, single, no dependants, has a Grade 11 education with a number of trade certificates, and has worked in a variety of general labour and mining positions. Mr. Edwards has had a

significant problem with alcohol going back to his teens. My recollection is that it involved a fair amount of binge drinking. Both of his parents were apparently drinkers; both Residential School survivors. I would note that Mr. Edwards did have a period of time in Wellness Court, as I said, where he performed well. He was sober for approximately nine months; did participate in some counselling and programming, including the Kapown Treatment program in Alberta, although he did not successfully complete it. My understanding is that his time in Wellness Court was the first time he has taken any steps towards trying to address his alcohol issue. Mr. Edwards indicates, through his counsel, that his intention upon completion of his sentence with respect to these matters would be to continue his efforts to address the role that alcohol plays in his life. It is, actually, I would note, quite surprising, given the nature and degree of his alcohol problem, and the fact that it has been present for so long, that he has such a limited record; however, he appears to be making up for it with the number of charges that are before me today.

[6] There is a joint submission. The question for me with a joint submission is whether or not it is reasonable, appropriate, and falls within the range. In all of the circumstances, I am satisfied that what is being proposed does fall within the range, in particular, giving consideration to both Mr. Edwards' First Nation heritage and also to the period of time that he did spend in Wellness Court. Mr. Edwards, I know that you did not successfully complete the program, but you did make some efforts and I am satisfied that what is being proposed here fairly takes that into account. You, particularly for the robbery, could have been looking at a significantly higher sentence than what is being proposed today. But, as I said, I am satisfied the joint submission

appropriately takes into account all of the relevant circumstances that I would be required to consider in imposing sentence and I am prepared to adopt it.

[7] Accordingly, the sentences are going to be as follows: with respect to the robbery, the 344(b), I am satisfied six months is appropriate. I am going to credit the two months spent in pre-trial custody at one to one, as has been agreed, and the ultimate sentence for that will be a sentence of four months. There will be a sentence of four months consecutive on the 253(1)(b); two months concurrent on the 259, and 30 days concurrent on each of the two breach counts, to which he has entered pleas of guilty. As this is his second impaired driving related offence, there will be a driving prohibition of three years. The s. 344(b) conviction gives rise to mandatory orders. Accordingly, pursuant to s. 109 of the *Criminal Code*, Mr. Edwards, you will be prohibited from having in your possession any firearms, ammunition, or explosive substances for a period of 10 years. There are certain --

[8] THE ACCUSED: Hunting arms?

[9] THE COURT: There are certain steps that you can take to apply, should you choose to do so later, for exceptions for things like subsistence hunting. You will want to speak further to your counsel about what that involves and how you go about doing that, but I am required by law to make the order because of the s. 344(b) conviction.

[10] I am also required to make an order, because of the s. 344(b) conviction, that you provide such samples of your blood as are necessary for DNA testing and banking.

[11] I will, however, waive the Victim Fine Surcharge in light of Mr. Edwards' custodial status. Probation is not being suggested, but I would note, he was on conditions for quite some time; so, in effect, he has done his probation before as part of Wellness Court.

[12] Mr. Edwards, you are done. I want to wish you good luck. I do hope that you are able to follow up on the steps that you took in Wellness Court. You do not want to start going down this road any further.

[13] THE ACCUSED: No.

[14] THE COURT: Good luck to you.

[15] MS. PHILLIPS: Thank you, and a stay of proceedings on the remaining counts.

[16] THE COURT: Thank you. My thanks to counsel as well for their efforts in resolving this matter.

RUDDY T.C.J.