

Citation: *R. v. Elias*, 2010 YKTC 17

Date: 20100212
Docket: 09-11046
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before: Her Honour Chief Judge Ruddy

REGINA

v.

VICTORIA ANNE ELIAS

Appearances:
Jennifer Grandy
Nils Clarke

Counsel for Crown
Counsel for Defence

REASONS FOR SENTENCING

[1] RUDDY C.J.T.C. (Oral): Victoria Elias is before me for sentencing with respect to an assault with a weapon and a breach of the abstain condition of her release order.

[2] It appears that on November 5, 2009, Ms. Elias was in bail court and was released on an undertaking with a number of conditions, including one that she abstain absolutely from the possession or consumption of alcohol.

[3] The more serious of the two charges, the assault with a weapon, is actually a series of incidents over approximately three days. Following her release from custody in November, and I understand she was released November 11, 2009, Ms. Elias made her way to Dawson City, where her common-law spouse was then residing. By all

accounts, both are individuals who are struggling with addiction issues. Upon her arrival, it appears that Ms. Elias indicated to Mr. Kolhauser, her common-law spouse, that she wanted to get some alcohol. He indicated that he did not want to. She went drinking on her own and then returned to his residence and continued drinking through the 12th of November.

[4] He, during the course of that day, received a telephone call on his cell phone. He passed the cell phone to Ms. Elias to speak to the caller. That led to an argument, in which Ms. Elias accused him of cheating. She ultimately threw the cell phone at Mr. Kolhauser, resulting in a black eye.

[5] It would be fair to say that Ms. Elias wanted to continue drinking further on November 14th. I understand from her counsel she does not have much recollection of any of this series of events, so I am assuming she was probably still intoxicated on the 14th. There was a further argument between the two as to whether or not they ought to be drinking. During the course of the argument, Ms. Elias clawed at Mr. Kolhauser's face, cutting his nose and cheek. She then left to go to the bar. He gave in and went with her to buy alcohol in an effort to get her to return home. They both then began drinking, ultimately returning to the residence where the police were called as a result of the noise that they were creating.

[6] When the police arrived, both were intoxicated. Both were arrested because both were on conditions to abstain.

[7] They were both released on the morning of the 15th. They returned to Mr. Kolhauser's residence and began drinking again. They began to argue again, and

again, the issue of the argument was alcohol. Ms. Elias picked up a lamp and held it like a bat. Mr. Kolhauser attempted to get it away from her but she ultimately struck him on the left side of the head, knocking him to the ground. It appears that he may have lost consciousness, but it also appears that Ms. Elias believed that he was faking and poured hot tea on his chest, resulting in second degree burns. He was able to make it to the bedroom and lock the door. She kicked in the door and went after him with a fire extinguisher. He is not entirely clear as to what happened, but he did end up with an injury to his finger following the altercation with the fire extinguisher. Ms. Elias left the residence and was ultimately arrested at the bar attempting to purchase yet more alcohol.

[8] There is a criminal record that has been put before me with respect to Ms. Elias. It is an extremely lengthy record. She is now only 29 years of age but over the past 15 years has amassed some 49 convictions, ten of those for violence, a number of process-related offences and, indeed, she was on probation at the time of this offence with respect to another violent offence.

[9] In terms of aggravating factors, Crown quite fairly points out that the record itself is extremely aggravating. The fact that these offences were spousal in nature is extremely aggravating. The fact that the one count covers multiple incidents over several days is aggravating. The injuries received are aggravating, although I would note that I think we are quite fortunate to be here today without looking at more serious, long-term or permanent problems. It appears that Mr. Kolhauser has recovered fairly well from most of the injuries that he sustained. As well, I do find it aggravating that Ms. Elias was on a recognizance to abstain and also subject to a probation order.

[10] There are mitigating factors as well. Of those, I consider the fact that there is a guilty plea entered, and I am assured by both counsel that this has resulted in saving the Court considerable time in what would have been a difficult and protracted trial. It has also saved Mr. Kolhauser from having to testify. It is my understanding there may have been some conflicting statements from him such that the experience of cross-examination may have been a somewhat difficult experience for him.

[11] Nonetheless, it is clear from the information received from Crown that Mr. Kolhauser's particular concern is that Ms. Elias get help for the issues that she is facing, most noticeable of which is her substance abuse. Although it is also, in my view, important to note that while there is not a definite diagnosis in front of me, there are a number of indicators to suggest quite strongly that Ms. Elias suffers from some significant cognitive impairments and would likely, and ideally, require a supported independent living type of arrangement. That is not something that, it appears, was available in November and clearly it was not a positive experience for either Ms. Elias or Mr. Kolhauser, for the two of them to be together in Dawson in November of 2009.

[12] Other positives include the fact that Ms. Elias appears to have some degree of insight into her issues and has used her time in custody positively. She has been in custody approximately three months. She has, over that period of time, been seeing an elder from Kwanlin Dun. She has been doing one-to-one counselling with Kate Hart for domestic abuse issues, one-to-one counselling with Martha White with respect to substance abuse, attending AA meetings, attending school doing a math and a computer course, and also meeting with Michael Knutson from Many Rivers for additional counselling. So she appears to be taking some positive steps. She also

appears to have explored some possibility of returning to her home community to reside with an aunt and uncle in Aklavik. I gather she is originally from Tuktoyaktuk and is considering the possibility of more intensive in-patient treatment down the road, which she feels might be easier to access from a resource perspective if she is in her home community.

[13] Ms. Elias also addressed the Court and I am satisfied that she is remorseful for her actions and that she does have a desire to live a sober lifestyle. What is at issue, quite frankly, is her ability to manage that. It is clear to me that she needs significant supports to be able to reach that long-term goal.

[14] In any event, counsel are not unduly far apart, recognizing the seriousness of the offences before me. It is agreed that it is necessary that there be an additional jail term with respect to these matters. Crown is suggesting a sentence of 12 months less four and a half months credit for time served, at one and a half to one for the three months spent in remand. Defence is asking that I consider somewhat shorter than that, which would amount, essentially, to a global sentence of ten months less credit for the time served in light of Ms. Elias' particular circumstances, including her cognitive impairments and the efforts that she has made to address her issues.

[15] In my view, there are a number of very, very serious and aggravating features with respect to this case. I am mindful of the guilty plea. I am mindful of Ms. Elias' personal circumstances and her limitations. However, I am of the view that the sentence range as presented by Crown is one which is at the lower end of the range and, in my view, takes into account some of those difficulties already. What I am going

to do is this; I am going to round up credit somewhat for the remand time to five months, just for the ease of the math, and to reflect to some extent, as well, her circumstances.

[16] So there is going to be a sentence of one day deemed served by her attendance in court today with respect to the breach charge, and I would ask that the record reflect she is being credited for one month in pre-trial custody.

[17] The sentence on the assault with a weapon is going to be one of seven months, and I would also ask that the record reflect that that is in addition to credit for the remaining four months in custody. So there will be an additional seven months to do, consecutive to any other term being served.

[18] It is not suggested that there be a probation order as there is an existing order in place, the one that Ms. Elias was subject to when these offences occurred. It is in place until the summer of 2011, but there is a suggestion that it would make sense to amend that existing order on consent, with conditions that would reflect the concerns arising out of this case, and I think that is probably appropriate. I would have some concerns, as I mentioned earlier, about there being more than one order and Ms. Elias' ability to follow different orders that may have different conditions.

[19] The amendments I am going to make to the probation order are as follows: I am going to amend Condition 7 to read:

7. You will go to such places or speak to such people that your Probation Officer tells you to, to help with any other problems, including taking the Spousal Abuse Program;
8. You are to have no contact in any way with Keven Kolhauser;

9. You are not to attend at Keven Kolhauser's residence or his place of employment.

[20] There will be another condition saying -- sorry, I am just wondering about the wording. Are we comfortable with the wording of abstain or do you want it worded more --

[21] MR. CLARKE: Something more understandable might be appropriate, yes.

[22] THE COURT: Okay. You cannot drink any alcohol. Do you understand that?

[23] THE ACCUSED: Mm-hmm.

[24] THE COURT: Are you comfortable with that phrasing? If I just say she cannot drink any alcohol, she cannot drink alcohol.

[25] MS. GRANDY: And maybe just that she's not to have it in her possession, not to have it in her hands or however you want to --

[26] THE COURT: Okay. So you cannot have alcohol in your possession and you cannot drink alcohol at all.

[27] Those are the additions to the probation order. I will just state, for the purposes of the decision, that it is generally agreed that there is not a concern about extending that probation order to include these charges. It is simply a matter of wanting the

existing probation order that is going to be in place to reflect the circumstances arising out of these offences.

[28] I will waive the victim fine surcharges, given her financial circumstances.

[29] MS. GRANDY: If the remaining counts can be marked as withdrawn, please.

[30] THE COURT: Thank you.

RUDDY C.J.T.C.