

Citation: *R. v. Gagnon*, 2010 YKTC 143

Date: 20101217  
Docket: 10-00164  
10-01515  
10-00354  
10-00670  
10-10016  
Registry: Whitehorse

**IN THE TERRITORIAL COURT OF YUKON**

Before: His Honour Judge Lilles

REGINA

v.

MICHAEL ALEXANDER GAGNON

Appearances:

Terri Nguyen  
Michael Gagnon

Counsel for the Crown  
Appearing on his own behalf

**REASONS FOR SENTENCING**

[1] LILLES T.C.J. (Oral): I am dealing with the matter of Michael Alexander Gagnon; he is a 47-year-old man who is before the Court having pled guilty to four counts involving fraudulent transactions.

[2] I will briefly summarize the circumstances of the charges. I am not going to speak at length with respect to the mitigating and aggravating circumstances. I will merely say that Madam Crown Counsel reviewed the applicable criteria set out in the decision of *R. v. Williams*, 2007 13949 (O.N.S.C.) (CanLII), a decision of Mr. Justice Hill. I agree that the criteria set out, beginning in para. 30 of his decision, have

application to the case at bar.

[3] I adopt the submissions of Madam Crown in their entirety, as far as they apply to aggravating factors relevant to the facts of this case.

[4] On May 2, 2009, Mr. Gagnon took advantage of Mr. Werner Schneeberger, a friend of his, in Watson Lake. He had heard that Werner needed a trailer and he told Werner that he had a trailer in Teslin that he would sell him for \$800. It would cost him another \$100 for transportation. Mr Schneeberger gave Mr. Gagnon \$900 in cash, but the trailer was not produced. Mr. Schneeberger contacted Mr. Gagnon on several occasions, and Mr. Gagnon gave him excuses for not producing the trailer. Finally, he gave specific instructions to Mr. Schneeberger where to find the trailer. Mr. Schneeberger, I assume, travelled to Teslin, but there was no trailer there. There were no monies recovered, and Mr. Schneeberger does not have a trailer. With respect to this charge, an appropriate disposition would be eight months custody.

[5] On August 12, 2009, Christine Semple and Fred Smith, two elders in the community of Liard, had ordered approximately \$10,000 of groceries for their grocery store. Mr. Gagnon, who again was a friend of this couple, offered to help them by bringing the groceries to them. They gave him \$9,728.26. He took the money, but did not bring the groceries. In addition, I understood that the grocery store lost \$800 worth of perishable groceries as they were waiting for the pick-up that never happened. With respect to this count, an appropriate disposition would be eight months incarceration, consecutive.

[6] In and around November 22, 2009, there were two additional transactions. Another friend of Mr. Gagnon's, a Raymond Laukkanen, a minister in Watson Lake, had given his credit card to Mr. Gagnon to make certain purchases on his behalf. Instead, Mr. Gagnon used the credit card to withdraw \$2,000 in cash and then spent \$200 on hotels and meals. An appropriate disposition for this charge would be eight months in custody, consecutive to the others.

[7] With that credit card in hand, Mr. Gagnon attended Sandor's clothing store here in Whitehorse. He purchased approximately \$1,100 worth of clothes for himself and for his family. An appropriate disposition with respect to this count would be seven months and one day in custody.

[8] Madam Clerk, with respect to these charges, with respect to the first count, the sentence will be reduced to six months by giving him credit for two months pre-trial custody.

[9] With respect to the second count, that sentence will be reduced to six months by giving him credit for two months pre-trial custody.

[10] With respect to the November 22nd count involving Mr. Laukkanen, the sentence will be reduced to six months, having given him credit for two months pre-trial custody.

[11] With respect to the Sandor's clothing store transaction, the sentence will be reduced to six months and one day, having given him credit for one month pre-trial custody.

[12] In the end result, his net sentence will be two years plus one day. He will have

been given credit for seven months pre-trial custody.

[13] I would like to make several additional comments. Madam Crown referred to Mr. Gagnon's criminal record. I do not think I have ever seen a record like his, so focused on fraudulent transactions. Madam Crown pointed out that there were some 38 related charges in his record that are relevant to today's sentencing. The first relevant one involving possession of stolen property, break and enter and theft goes back to 1982. Since then, there are numerous other related charges. Certainly this record is a significant factor in the sentence I have imposed today.

[14] The other comment I would make is in relation to Mr. Gagnon's skill as a con man. He admitted launches into a con almost instinctively without thinking. In fairness to him, I will repeat what he told me, and that is that when it comes to providing for his family, and if he does not have money, he resorts to conning other people from their money. He told me today that the monies involved in the transactions that are before the Court today were directed towards his family. I do not have detailed information with regard to that, apart from the Sandor's Clothing Store transaction, and it is very clear that most of the monies fraudulently used in that transaction were to benefit his wife and his children.

[15] I want to read from the victim impact statement filed by Sandor Elek, not with respect to the impact that it had on Sandor Elek, but to give some sense of Mr. Gagnon's conning abilities, and the threat that he represents to the community. Although just a couple of sentences, it illustrates how clever and smooth Mr. Gagnon can be. Mr. Elek stated:

In this case Mr. Gagnon came in and complimented me and my store as he stole from me. He said that he was being paid very well in the mines and that he always spent money in my store. He asked me for a deal because he was spending so much money and I agreed to no tax. I even helped him to his truck with the bags of goods. I feel conned and used and angry.

[16] Mr. Gagnon advised the Court that he would prefer a penitentiary sentence. He indicated that he has experienced violence in the Whitehorse Correctional Centre. We discussed the advantages of a penitentiary sentence that included the availability of programming and other opportunities to improve his skills or education. I am aware, and I take judicial notice of the fact that there are very few, if any, programs that would assist Mr. Gagnon in the Whitehorse Correctional Centre. There is no suggestion at all that he has an alcohol or a substance abuse problem. The few programs that are available in the Whitehorse Correctional Centre seem to be directed towards substance abuse.

[17] I also indicated that I would not accede to a penitentiary sentence if I thought that that sentence was outside the appropriate range for this case. I am satisfied that it is within the range, albeit in the upper range.

[18] Mr. Gagnon also indicated that he had some health issues that probably could not be dealt with here in Whitehorse. And that was another reason why he wanted to go into the penitentiary system, which would, in all likelihood, result in him ending up in the southern mainland of British Columbia.

[19] I agree with Madam Crown that three of these offences involved something very similar to a breach of trust, with the exception of the Sandor's Clothing Store, although

the credit card used came from his friend, Mr. Laukkanen. Mr. Werner Schneeberger is an elderly gentleman who is a Holocaust survivor, a friend of his. I mentioned that Semple and Smith, elders in their community, were also friends of his. It borders on a breach of trust because these transactions have taken advantage of friendship of older individuals in his community.

[20] I have taken into account in this sentence Madam Crown's representation that there are old, outstanding warrants in Alberta involving eight counts of obtaining property by crime. They involved, as Madam Crown recalled, eight \$100 transactions, totalling \$800. She indicated that she would use her best efforts to have those matters dealt with in a way that would not involve additional jail time for Mr. Gagnon. The sentence I have imposed today is based on the assumption that she would be successful in that initiative. This sentence takes into account those offences.

[21] In all of the circumstances, I am satisfied that restitution would be hopeless in this particular case, and I decline to order restitution. Madam Crown did not ask for it.

[22] I am also satisfied that victim fine surcharges should be waived, and I so direct.

[23] Are there any other applications, Madam Crown? Is this a discretionary DNA situation?

[24] MS. NGUYEN: If I might just have a moment. I have not dealt with DNA on a fraud case in the past, sir. I don't -- if I can just have a moment.

[25] THE COURT: What section is it, Madam Crown?

[26] MS. NGUYEN: The section I'm looking at right now is 487.04. That's what defines the primary --

[27] THE COURT: Section 487.04?

[28] MS. NGUYEN: Yes.

[29] THE COURT: It is likely to be discretionary.

[30] MS. NGUYEN: Yes, it may well be the -- actually, sir, it is discretionary pursuant to the definition of secondary designated offence, part (a). Do you have the 2011 version of *Martin's Criminal Code*?

[31] THE COURT: I do.

[32] MS. NGUYEN: I'm looking at page 897.

[33] THE COURT: I have it.

[34] MS. NGUYEN: The s. (a) says that a secondary designated offence means an offence under this *Act*, which would be the *Criminal Code*, that may be prosecuted by indictment, and of course --

[35] THE COURT: For which the maximum imprisonment is five years or more?

[36] MS. NGUYEN: Yes, and I believe that personation is -- if I could just have a moment -- personation is punishable by up to ten years when we've proceeded by indictment.

[37] THE COURT: Do you know what the DNA order is, sir, Mr. Gagnon?

[38] THE ACCUSED: Pardon me?

[39] THE COURT: Do you know what a DNA order is?

[40] THE ACCUSED: Yes, I do.

[41] THE COURT: Do you have any objection to my making it?

[42] THE ACCUSED: I don't know how to answer, whether or not I should say yes or no, because I don't have a lawyer here.

[43] THE COURT: Well, I am going to assume that you object to it.

[44] THE ACCUSED: I would object to it only because I don't have a lawyer to tell me any different and I know my lawyer would object to it wholeheartedly, so.

[45] THE COURT: I am assuming you are objecting to it.

[46] THE ACCUSED: I agree with you.

[47] THE COURT: What I would tell you is that the taking of a DNA sample involves taking a strand of hair or a pin-prick for a drop of blood. It is not really intrusive at all. It now substitutes largely for fingerprints in dealing with these kinds of matters. Normally, I would not consider making such an order for a fraudulent transaction, but there are four fraudulent transactions here, and there is a significant history of other fraudulent transactions. In weighing my discretion, I think it is

appropriate that the DNA order should go. I am not sure if the Clerk or Crown prepares that or. The Clerk?

[48] MS. NGUYEN: The Clerk prepares DNA.

[49] THE COURT: Madam Clerk will prepare it for my signature.

[50] MS. NGUYEN: Thank you, sir. Sir, the Crown has nothing further in this matter.

[51] THE COURT: Mr. Gagnon, good luck to you, sir.

[52] THE ACCUSED: Thank you.

[53] THE COURT: I hope your personal issues get sorted out. I am sorry that you are -- I am touched by the fact that you have a young family and you are clearly concerned about them. But you know, if you think about it, they would be better off having a dad who is not getting into trouble, so hopefully, when you come back, that will not happen anymore. Would you agree with that?

[54] THE ACCUSED: I do, Your Honour. Thank you.

[55] THE COURT: Good luck to you, sir.

[56] MS. NGUYEN: Thank you, sir. The remaining charges, sir, are then withdrawn.

[57] THE COURT: Thank you.

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LILLES T.C.J.