

Citation: *R. v. Greenland*, 2012 YKTC 30

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Docket: 11-00691
11-00691A
11-00694A:
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Judge Lilles

REGINA

v.

TRISTAN SHAYNE RICHARD GREENLAND

Appearances:
Joanna Phillips
Melissa Atkinson
Shauna Brown

Counsel for the Crown
Counsel for the Defence
Victim Services

REASONS FOR SENTENCING

[1] LILLES T.C.J. (Oral): I am dealing, then, with Tristan Shayne Richard Greenland. He is a 23-year-old young Aboriginal man who comes before the Court having pled guilty to a number of offences.

[2] The first of these is an assault on Delta Cardinal. That assault occurred on December 15, 2011. On that date, Delta Cardinal called 9-1-1, and that call was interrupted. When the authorities called back the call was directed to voicemail. This suggests that Shayne intervened with the call and disabled the receiver so that there could not be a call back. In any event, it was understood that she wanted the police. The police attended and it appears that Shayne was causing damage in the house and,

in assaulting Delta Cardinal, he choked her. He let her go just before she lost consciousness. Apparently both were intoxicated.

[3] With respect to this charge, there will be a period of three months incarceration.

[4] Two weeks later, on December 29, 2011, there was again a call to 9-1-1.

Shayne Greenland came into Delta Cardinal's house uninvited and upset. She tried to placate him by giving him some food. He threw the plate of food on her, grabbed a picture frame from the wall, hit her over the head with it and knocked her unconscious. When he was arrested, he was intoxicated. This constitutes the offence of assault with a weapon, contrary to s. 267(a) of the *Criminal Code*.

[5] At the time he was under certain conditions. Those conditions were imposed as a result of the December 15th assault two weeks earlier. One of those conditions was not to have any contact with Delta Cardinal. Obviously, he was in breach of that condition. Another condition was that he was not to attend her residence. Again, obviously, he was in breach of that condition. And he was to abstain absolutely from the possession and consumption of alcohol and controlled drugs and substances, and he was in breach of that condition.

[6] Counsel have agreed that the appropriate sentence to Count 2, the assault with a weapon, is 15 months custody consecutive to the three months previously ordered, for a total of 18 months custody. With respect to the breaches set out in Counts 4, 5, and 6, there will be a period of custody of 30 days on each, concurrent to each other and concurrent to the 15 month sentence imposed on Count 1.

[7] I will repeat again that the circumstances of Count 1, the assault charge, in my view, are very serious, because they involved choking, and choking is well established in the research literature as being a Lethality Risk Factor.

[8] Mr. Greenland has been in pre-trial custody for 80 days. Counsel are in agreement that he is entitled to a 1.5 factor to be applied, for a total of 120 days, that is to say, four months. That four months will be applied to the s. 267(a) charge to account for time served, so that the sentence on Count 2 will actually be 11 months custody. To summarize, then, he will have a total of 14 months outstanding to be served.

[9] In addition, with respect to Count 2, the s. 267(a) charge, he will be placed on probation for a period of 12 months. The terms of that probation include the statutory terms:

1. Report to a Probation Officer within two working days of his release from custody, and thereafter and in the manner directed by the Probation Officer;
2. Reside as approved by your Probation Officer and not change that residence without the prior written permission of your Probation Officer;
3. Abstain absolutely from the possession or consumption of alcohol and controlled drugs or substances, except in accordance with a prescription given to you by a medical practitioner;
4. Not attend any bar, tavern, off-sales or other commercial premises whose primary purpose is the sale of alcohol;
5. Take such alcohol and drug assessment, counselling, and programming as directed by your Probation Officer;

[10] Now, one of the things we did not talk about was the possibility of the DVTO in this case. I am going to put a term in that says:

6. Take such other assessment, counselling, and programming, including Domestic Violence Programming, as directed by your Probation Officer;
7. Have no contact directly or indirectly or communicate in any way with Delta Cardinal;
8. Not attend at Delta Cardinal's residence or place of employment, except with the prior written permission of your Probation Officer;
9. Make reasonable efforts to find and maintain suitable employment and provide your Probation Officer with all the necessary details concerning your efforts;

There will also be the standard release of information term:

10. Provide your Probation Officer with consents to release information with regard to your participation in any programming, counselling, employment or educational activities that you have been directed to do pursuant to this order.

[11] Mr. Greenland, you are a very young man. You now have some very serious convictions on your record. I do not need to tell you that if and when you get into any future difficulty with the law, the periods of incarceration will not get any shorter, so you need to think about that. It may very well be that alcohol is a trigger for you, but there are clearly some underlying issues that you need to address and usually professional help will be of assistance. Yes, did you wish to add something?

[12] SHAUNA BROWN: Shauna Brown, Victim Services. I would ask Your Honour to consider including a no contact on the Warrant of Committal because no contact for the Probation Order doesn't come into effect until --

[13] THE COURT: There will be a no contact order on the Warrant of Committal as well. Thank you.

[14] MS. ATKINSON: Has she had communication with the complainant?

[15] THE COURT: Sorry?

[16] MS. ATKINSON: Has she had communication with the complainant?

[17] SHAUNA BROWN: I haven't directly, but it's my understanding that it's a request that we're supposed to make now because of the --

[18] THE COURT: Based on what has happened --

[19] SHAUNA BROWN: -- gap between --

[20] THE COURT: -- here, I will make that order whether there is a --

[21] MS. ATKINSON: I would ask that there be an exception added to that, with consultation with Victim Services.

[22] THE COURT: Okay. The exception would be if the complainant wishes contact and in consultation with Victim Services.

[23] MS. ATKINSON: Yes.

[24] THE COURT: All right.

[25] MS. ATKINSON: And just similarly, with the probation order, I know you had mentioned the exception in relation to the no go to the residence; is that exception also attached to the no contact?

[26] THE COURT: Well, I am prepared to add to those no contacts as well, except with the prior written permission of the Probation Officer after consultation with Victim Services. I have not, obviously, received any information with respect to Delta and her current wishes. I just assumed, considering the seriousness of the assaults, that perhaps this relationship was over --

[27] MS. ATKINSON: Yes.

[28] THE COURT: -- but who am I to decide these things?

[29] MS. ATKINSON: No, and I just -- I just -- and that's the only reason why I asked that question, is normally when Victim Services comes, it's usually a direction --

[30] THE COURT: Yes.

[31] MS. ATKINSON: -- and some sort of consultation with them before that's boldly --

[32] THE COURT: Yes, I understand, I understand, and I am just explaining that I just sort of assumed, not because of the seriousness of the -- it is a standard term.

[33] SHAUNA BROWN: Yes. It's more to address the gap between the period

of incarceration and then all of a sudden, there's a no contact with the probation order. So in this way, he can be supported at that end, as well as her being supported on this end through consultation.

[34] MS. ATKINSON: And I'm just saying normally, when you make an application like that, you have some basis, either some communication from the complainant --

[35] THE COURT: Yes. Well, sometimes the offence speaks for itself and, in my mind, the offence was speaking very strongly to me. It seemed to be a very dangerous situation. Sometimes, even when the victim wants contact, the public interest may require that we deny it. We are getting close to it here.

[36] MS. PHILLIPS: Stay of proceedings on the remaining counts. And was the victim fine surcharge waived?

[37] MS. ATKINSON: I'd ask that be waived.

[38] MS. PHILLIPS: Thank you.

LILLES T.C.J.