

Citation: *R. v. Greenland*, 2013 YKTC 111

Date: 20131213
Docket: 11-00694D
11-00694E
11-00694F
13-00514
13-00334A
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Chief Judge Cozens

REGINA

v.

TRISTAN SHAYNE RICHARD GREENLAND

Appearances:
Bonnie Macdonald
Melissa Atkinson

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCING

[1] COZENS C.J.T.C (Oral): Tristan Greenland has entered guilty pleas to having committed offences under s. 253(1)(a) of the *Criminal Code*, two offences under 733.1(1), one offence under s. 266, and one offence under s. 264.

[2] The oldest offence in time is the s. 253(1)(a). On July 21, 2013, RCMP responded to a complaint about a motor vehicle at about 3:18 a.m. that was all over the road. RCMP passed the vehicle, turned around and followed it. The vehicle pulled over. Mr. Greenland was the operator of the vehicle. He had some symptoms of

alcohol consumption, particularly smell, he failed the ASD, and he was brought to the detachment where he provided samples of 210 and 200 milligrams percentile.

[3] At that time, he was on a Probation Order that had a reporting clause. On July 16, 2013, he had been directed to report on July 23 to his Probation Officer; he did not do so, right through until August 15 continuously.

[4] Then, on October 13, 2013, he was in a relationship with Kara Vance and on that day he had been drinking at a friend's house and had been told to leave. Ms. Vance had gone somewhere else. She came home and Mr. Greenland had come through the window. He pushed her down and kicked her approximately ten times, and then made threats to her not to tell the police about it. She did not report this immediately, but over the course of the next week there were a number of contacts from Mr. Greenland to her that, I agree with the Crown, border on criminal harassment, including threats on October 18 to smash her window, that her TV would be stolen, and that someone would beat her up. That was part of a pattern of what was going on. So this constituted offences under ss. 266 and 264.1(1).

[5] While still on probation, on October 21, Mr. Greenland was located. There were warrants out for him, and pursuant to a complaint, he was said to be at the 98 Hotel. In fact, he left there and went to the Roadhouse and was located at the Roadhouse, contrary to the terms of his "Not attend at any bar or tavern" condition that he was bound by under his Probation Order.

[6] There is a joint submission before me that I consider appropriate. Mr. Greenland is a 24-year-old member of the Gwitchin First Nation from the Northwest Territories with

a Grade 9 education. I do not have much information about his background. I understand his father struggled with alcohol abuse, and alcohol has clearly been a part of Mr. Greenland's lifestyle. I think counsel summed up what is "an apathetic lifestyle" where he does not really, up until now, wake up every morning with an idea of what he is going to do that day. He just sort of drifts through the day, not working, drinking, and hoping for a change. He has taken steps to initiate some of his own alcohol treatment, and I accept that he would like to make a change in his life, which would be good, looking at his criminal history for such a young person.

[7] There are six prior offences of violence on his record, and he has done significant time on these offences, from 17 months, and 11 months (and, "credit for four months presentence custody," which I am not sure means 15 months or 11 months less four). He has clearly struggled with alcohol and with violence. These crimes here, what we are dealing with are statutorily aggravating factors. With respect to the impaired charge, we are dealing with the breach of trust relationship and his criminal record of assaults in relationship to the assault and uttering threats.

[8] So the joint submission, as I consider it, is appropriate. How it has been put forward is, with respect to the impaired, there will be a \$1,200 fine, plus a \$180 fine surcharge and a one-year driving prohibition prohibiting you from operating a motor vehicle on any street, road, highway or public place for a period of one year. Given the readings, \$1,200 recognizes your plea, but it certainly could have been higher; although I take into account that you are dealing with a number of other charges.

[9] With respect to the time to pay, given the time in custody that you will have, I am

going to give you 15 months time to pay.

[10] With respect to, out of order but the most serious offence, the assault, taking into account all the circumstances that were taking place at the time, there will be sentence of eight months custody. Now with respect to the eight months, you have been in pretrial custody for 54 days. The last week of that was clearly because the Court ran out of time last week to deal with your matter. Crown agrees that 1.5 to 1 credit in those circumstances should be appropriate.

[11] With respect to the remaining 47 days in custody, there has been a report filed from Whitehorse Correctional Centre; it is a mixed report, one that indicates you were involved in a fight for which you were disciplined, but for which it was recognized you were not the primary aggressor. You have 41 entries: eight are negative, 33 are neutral or positive. You have been warned about your loitering, which is a safety and security issue; you have been verbally abusive to staff, you did not lock up when a Code Yellow was called once; you refused to do your job duties; and you in fact did lose the job that you had as a result of refusing to do that. There are other positive entries, that, for the most part, you get along and socialize with your units and that you did volunteer to participate in Heritage and Cultural Essential Skills Program.

[12] I have broken down the remainder of the time in custody. Clearly, for the counselling portion, you have done what you were expected to do. You did a little less than I would have hoped for with respect to the employment, having voluntarily gone out and obtained employment, but then blowing it, basically, by not doing it three times. Behaviour was generally good, but not completely ideal.

[13] So I am going to reduce it somewhat. All and all, I am going to give you 70 -- each one of the extra days works out to about eight days and I am going to reduce a couple of days off two of the portions. I am going to give you what I calculate is 81 days, if I do 54 at 1.5; I am going to give you 76 days credit for time in custody.

[14] So I am going to look at the eight month sentence as a 240 day sentence, averaging 30 days a month. From the 240 days, I am going to reduce that by 76 days time served, leaving you 164 days. Everyone can double-check my math, but that will leave you 164 days to serve on that portion of your sentence. There are still 30 days consecutive to be served on each of the breaches, consecutive to the 240 days and consecutive to each other. That is going to add another 60 days. So that leaves 224 days to go. That seems to be correct math when I work it out a second time; 224 days time to go.

[15] There will be two years probation. We do not have anything unusual in the probation terms. No contact, I expect, with the permission exception, and counselling directed primarily for the rest.

[16] MS. MACDONALD: Yes. And with respect to the idea of weapons prohibition, I looked back at his criminal record and saw he is already on the 10 year mandatory prohibition, starting in 2010, so it seems to me unnecessary to impose anything else.

[17] THE COURT: He is probably on DNA for that as well.

[18] MS. MACDONALD: Yes. It is not shown on the criminal record.

[19] THE COURT: I will make that Order.

[20] MS. MACDONALD: Thank you.

[21] THE COURT: It is not intrusive. For two years after the completion of your sentence - and this will attach only to the 266 and 264 - you will:

1. Keep the peace and be of good behaviour; appear before the Court when required to do so by the Court;
2. Notify the Probation Officer in advance of any change of name or address and promptly notify the Probation Officer of any changes of employment or occupation;
3. Remain within the Yukon Territory unless you obtain written permission from your Probation Officer or the Court;
4. Report to a Probation Officer immediately upon your release from custody and thereafter when and in the manner directed by the Probation Officer;
5. Reside as approved by your Probation Officer and not change that residence without the prior permission of your Probation Officer.

I am not going to put you on an abstain clause. You need to figure that one out for yourself at this point in time. So I am not putting on a straight abstain, and I am not going to put you on a straight not attend. You are going to have a substantial period of custody to maintain sobriety. You are either going to do it, or you are not. If you are not, you are going to be back in front of this Court again.

6. You are to take such alcohol and drug assessment counselling or programming as directed by your Probation Officer. Given what I have

seen here about your application to get into the 28 day program, I am going to say that, having given the Court your consent, you are to attend and complete a residential treatment program as directed by your Probation Officer;

7. You are to take such other assessment, counseling and programming as directed by your Probation Officer;
8. You are to have no contact directly or indirectly, or communication in any way with Kara Vance except with the prior written permission of your Probation Officer. At no time are you to have contact with her if either of you are under the influence of alcohol;
9. You are not to attend at the residence of Kara Vance except with the prior written permission of your Probation Officer. At no time are you to attend at her residence if either of you is under the influence of alcohol;
10. You are to participate in such educational or life skills programming as directed by your Probation Officer;
11. You are to make reasonable efforts to find and maintain suitable employment and provide your Probation Officer with all necessary details concerning your efforts;
12. You are to 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 Probation Order.

[22] As you are already on a Firearms Prohibition, I am not going to make a s. 110 order or include that as part of this. I will make a DNA Order with respect to the s. 266 charge.

[23] MS. MACDONALD: Primary or secondary DNA?

[24] THE COURT: That is a secondary designated offence. There was something else I was thinking about but it is escaping me.

[25] MS. MACDONALD: The issues of Victim Fine Surcharge?

[26] THE COURT: Yes. That was not it; what was escaping me was I just wanted to let you know that the driving prohibition is in addition to any period of custody that he serves, correct? Now, is that in relation to the s. 266 charge? I guess Motor Vehicles will work that out, right? Because he is not being sentenced to custody on the actual impaired, so I am not certain how that will work out. He will need to speak --

[27] MS. MACDONALD: I believe it's an order the Court makes consecutive to a period of imprisonment.

[28] THE COURT: Yes. Well, that is how it reads, "One year in addition to any other period of custody that you are serving." So even though the custody you are serving is not on the impaired driving offence, on other offences, your one-year prohibition will start, as I understand it -- I am not making an order here, I am just saying, as I understand it, it starts, by law, after you finish your sentence on the s. 266 and the s. 264, but you will want to confirm that through counsel or through the --

I suggest through counsel, you confirm that. The Victim Fine Surcharge is --

[29] MS. MACDONALD: These all predate October 24th and so --

[30] THE COURT: You are not working, and I think that in the circumstances they can be waived. That is not any comment on the fact that I do not believe that there were victims of this crime. I just think, in the circumstances, they do not need or should not be imposed. Remaining counts?

[31] MS. MACDONALD: Anything to which a guilty plea was not entered the Crown enters a stay of proceedings.

[32] THE COURT: Stay of proceeding on those remaining counts.

[33] MS. ATKINSON: Can I confirm - I apologize, I may have missed it - the uttering threats on Count 2 --

[34] THE COURT: That is the concurrent sentence. I may not have said it. It is the concurrent sentence to the s. 266.

[35] MS. ATKINSON: So the exact same, just concurrent.

[36] THE COURT: Yes.

[37] MS. ATKINSON: Okay, thank you.

[38] THE COURT: Right, I think that covers it.