

Citation: *R. v. Harper*, 2020 YKTC 12

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18-00687A
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18-00687C
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before His Honour Judge Cozens

REGINA

v.

JAKE MOSES HARPER

Appearances:
Leo Lane
Luke Faught

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCE

[1] COZENS T.C.J. (Oral): Jake Harper has entered guilty pleas to a number of offences.

[2] Firstly, he has entered a guilty plea to a 348(1)(a) offence. Between January 19 and 20, 2019, during the night, he was unlawfully in a dwelling house situated at 32 Ninro Road, Carmacks. He was intoxicated at the time. Mr. Harper was in the company of a Billy Joe Thrasher. Nothing was taken or damaged. He and

Mr. Thrasher left the residence and they were located subsequently in another residence.

[3] On April 28, 2019, Mr. Harper and his partner at the time, Dawn Joe, were in Haines Junction. He assaulted her by grabbing her by the neck, and he uttered a threat to her to blow her head off. They were drinking at the time. He was bound by a condition not to drink. The offences that he has pleaded guilty to are ss. 266 and 264.1(1)(a). He was released on a recognizance.

[4] On May 9, 2019, Mr. Harper called Ms. Joe six times by telephone, asking her to drop the charges and to come stay with him. This was while he was bound by a condition not to have any contact with her, thus committing the s. 145(3) offence.

[5] On August 9, 2019, and still bound by a recognizance to have no contact with Ms. Joe, Mr. Harper and Ms. Joe were together at the Whitehorse General Hospital. There was a dispute between them at that time. Again, Mr. Harper was intoxicated contrary to the term of the recognizance. The breach that he has pleaded guilty to is the breach of the no-contact term, thus the s. 145(3) offence.

[6] On November 14, 2019, in Haines Junction, Mr. Harper and Ms. Joe had been drinking together. He was at her residence contrary to the term of the recognizance that he was on that he not attend at her residence. He struck her a few times, apologized, and then struck her again. He was jealous over a friend of hers. He pushed her down. When he pushed her down, she struck her head on the corner of a metal toolbox, which is how she says she received the significant laceration to her forehead.

[7] There is no medical evidence, but it is clear to me from looking at the laceration; that would have required a number of sutures to fix. I appreciate this injury was caused when Mr. Harper pushed Ms. Joe down, as compared to him perhaps taking a weapon and striking her in the forehead and causing the injury. That is a bit of a distinguishing factor, but this is a significant injury in the context of a domestic relationship with someone he was not to be having contact with at the time, because of being released as a result of a charge of violence and uttering threats against her. This is the s. 267(b) he has pleaded guilty to and a s. 145(3).

[8] On December 4, 2019, in Haines Junction, Mr. Harper was not supposed to be in Haines Junction unless he was there for court, by the terms of his recognizance. He was in Haines Junction and the RCMP responded to a complaint from his mother, actually, who I expect was concerned about the situation.

[9] When the RCMP found Mr. Harper in Haines Junction, he had therefore committed the s. 145(3) offence. He was also bound by an undertaking to a peace officer that was running parallel to the recognizance that required him not to have any contact or communication with Ms. Joe. He was in her residence with her at the time, thus committing a s.145(5.1) offence.

[10] On November 21, 2019, Mr. Harper failed to attend court pursuant to a promise to appear, thus committing a s. 145(2)(a) offence. As I understand it, because he, on December 4, 2019, had some apparent injuries that required medical attention; bruising to the torso, swollen face, and a cut on his head, he was likely not taken into custody, and the officer's discretion was exercised to release him on a promise to appear.

[11] Crown counsel is seeking a sentence of 24 months plus credit for three months time in custody, plus two years' probation.

[12] Defence counsel is suggesting that a custodial disposition of 9 to 12 months less credit for the three months would be appropriate in the circumstances.

[13] Mr. Harper is 33 years of age. He has a criminal history that is not particularly lengthy:

- convictions in 2012 for a theft and a breach, for which he received 14 days' jail on the breach;
- convictions in 2013 for two breaches of probation and uttering threats, which resulted in 15 days of jail either time served or with a consecutive 15 days and concurrent, a s.145, and two s. 733 convictions, which were time served of 30 and then 15 and 15 days; and
- in 2016, a cause disturbance and a fail to comply, for which he received 22 days of custody.

[14] Mr. Harper has not done much time in custody.

[15] He is a member of the Selkirk First Nation. He was raised in Whitehorse and did not return to Pelly Crossing until about 2006.

[16] There is a *Gladue* Report and a Pre-Sentence Report provided to me. These were quite informative. I will not go through these Reports in detail. There is a lot of personal information in there. Both of his parents attended residential school. His

father attended at the Choooutla Residential School, which is quite infamous for being one of the worst residential schools in Canada for its stories of abuse, neglect, starvation, and poor living conditions. His mother attended Yukon Hall, which was a place where individuals from out of town would live while they attended public school. It was a bit of a different situation, and she was able to leave that.

[17] Mr. Harper was raised in a pretty good home with support from his parents. When they were not drinking, he spent a lot of time with positive events; camping, hiking, and picnics. He says that he had a loving and supportive home. His parents separated when he was older and they struggled more with drinking. His father currently struggles with health problems. His mother has been struggling with health problems and her drinking has significantly changed, but alcohol became more of a factor in his parents' lives. He had a lot of support from grandparents but his grandparents are now deceased.

[18] Mr. Harper has a somewhat sporadic employment history. He has worked for the First Nation in the summers and he has done some work here and there. He certainly has the potential to do work.

[19] The biggest issue, of course, is that Mr. Harper struggles with alcohol. He started smoking marijuana at the age of nine. There seems to be some conflicting evidence with respect to drinking, but he started at a young age and drinking has become a very significant factor in his life. When Mr. Harper is not drinking, he seems to do well. When he is drinking — one report says 12; one says 16 when he started — when he is drinking, Mr. Harper drinks to excess and he makes bad choices, as he

admits. He acknowledges that drinking has caused him to have some significant health issues.

[20] Mr. Harper is noted as displaying some insight into the difficulty alcohol has caused in his life.

[21] There is no question that the most serious of these offences occurred in the context of a somewhat volatile and dysfunctional relationship with Ms. Joe. That appears to have had some violence flowing both ways to some extent. This relationship did not start badly, but alcohol became involved in the relationship, from what I understand, and both parties were drinking at times. That certainly resulted in Mr. Harper committing violence within the relationship — and not insignificant violence.

[22] At one point, Mr. Harper said he does not want to be on probation. I see that he has a lot of breach charges/convictions. At another point, he says he is prepared to take treatment. Certainly a probation order that encourages treatment and deals with the no-contact conditions that are being sought, in my opinion, is necessary in this case.

[23] With respect to the victim of the s. 349 offence, no victim impact statement was filed despite the opportunity to do so having been provided. Ms. Joe was also provided the opportunity to file a victim impact statement. She did not. She did express, however, her desire to have no contact with Mr. Harper, and not have him attend her residence. She hopes that he will get the counselling that he needs.

[24] Under the criminogenic risk assessment, Mr. Harper is noted as having a moderate criminal history risk, but a high level of criminogenic need and that an intensive or high-level of supervision would be appropriate.

[25] There is a particularized Risk Assessment Report prepared by Mr. Dempsey with respect to spousal abuse risk assessment, the SARA 5.3. That Report notes that Mr. Harper is in a situation where he has a high number of risk factors that contribute to his likelihood of being assaulted in his relationship and that he certainly needs treatment specifically targeting risk factors, which are the substance abuse issues and dealing with violence in a domestic relationship. It also notes that he is a young man with a capacity to lead a pro-social life, which includes sobriety meetings, meaningful employment, and/or education. Certainly, rehabilitation is a significant factor in Mr. Harper's case.

[26] I agree that Mr. Harper knows what his primary problem is, which is substance abuse. He has some insight into that. What he needs to do is act on his insight and make a choice to stay away from making bad decisions related to alcohol, particularly when he is in a relationship. If Mr. Harper does that, he can stay away from jail; if he does not, he will not. It is pretty much that simple.

[27] A custodial disposition is warranted. I am dealing with guilty pleas. That is a mitigating factor. The *Gladue* information is, of course, a factor I need to take into account when considering all options other than custody, which includes, of course, the length of any custodial disposition. Where rehabilitation is a potential factor, certainly I

can emphasize that factor more in deciding what the alternatives to a lengthy period of custody are.

[28] Mr. Harper's homelessness over the years has been a significant factor, although I understand that his mother is prepared to have him come and live at her home and help him. As she says, the home is more sober than it has been in the past because of her past issues. I think a lot of the homelessness of Mr. Harper has been homelessness partly by choice, by choosing to drink and live that kind of lifestyle. If Mr. Harper chooses not to, and works on the employment opportunities that he is likely going to have, based on the history that he has, then he likely could find himself in a situation where homelessness is not something he needs to have. When one does not have a stable residence, rehabilitation is very difficult, to say the least.

[29] Taking all these factors into account, totality, the sentence that will be imposed will be a sentence of 15 months less three months' credit, which will be a total of 12 months:

- The s. 349 charge will be one month.
- The ss. 266 and 264 charges will be three months consecutive, but concurrent to each other.
- For the s. 145(3) charge that arises on 18-00687A, it will be one month consecutive.
- For the s. 145(3) charge that arises on 18-00687B, it will be one month consecutive.

- For the s. 267(b) charge, the aggravating aspects of that are the significant injury, and that it occurred in a domestic relationship. Further, Mr. Harper was at large on a recognizance requiring him not to have contact with the same victim that he had pleaded guilty to assaulting earlier, and to not have contact with her. The sentence will be eight months consecutive.
- With respect to the s. 145(3) charge, no-contact breach, that will be one month consecutive.
- With respect to the three charges on 18-00687C, the s. 145(3), s. 145(5.1), and the s. 145(2)(a), that will be one month on each concurrent to each other and concurrent to the remaining sentences.
- With respect to the s. 349 charge, that will be one month time served.
- With respect to the s. 266 and s. 264 charges, two months of that will count as time served. There will be one month remaining.

[30] The total amount of disposition remaining is 12 months.

[31] The period of probation will be 15 months. On that probation order, you will be required to:

1. Keep the peace and be of good behaviour;
2. Appear before the court when required to do so by the court;

3. Notify your Probation Officer in advance of any change of name or address and promptly of any change in employment or occupation.

[DISCUSSIONS]

4. Have no contact, directly or indirectly, or communication in any way with Dawn Joe;

[DISCUSSIONS]

[32] On the custodial disposition, to be clear, there will be no contact with Ms. Joe on the period of time that Mr. Harper is in custody as well.

5. Not go to any known place of residence, employment, or education of Dawn Joe;
6. Not attend in the community of Haines Junction except with the prior written permission of your Probation Officer;

[33] If, for some reason, Ms. Joe moves out of Haines Junction that can certainly be a clause that is struck. I appreciate that Mr. Harper has support in that community. I do not want to stop him from going to that community, but I simply want it to be communicated with his Probation Officer so that a safe way of him being in that community can be put into place. When I say "safe", I mean safe for him as well. I have concerns about this relationship and how it seems to have led to him being involved in further offences than perhaps he would have been. This is not blaming Ms. Joe in any way; it is just that the relationship is problematic.

7. Report to your Probation Officer immediately upon your release from custody, and thereafter, when and in the manner directed by your Probation Officer;
8. Reside as approved by your Probation Officer and not change that residence without the prior written permission of your Probation Officer;
9. Attend and actively participate in all assessment and counselling programs as directed by your Probation Officer and complete them to the satisfaction of your Probation Officer for the following issues:
 - substance abuse,
 - alcohol abuse,
 - spousal violence, and
 - any other issues identified by your Probation Officer,and provide consents to release information to your Probation Officer regarding your participation in any programming you have been directed to do pursuant to this condition;
10. Make reasonable efforts to find and maintain suitable employment and provide your Probation Officer with all necessary details concerning your efforts; and

[DISCUSSIONS]

[34] There will be a DNA order on the s. 267(b) charge, a primary designated offence.

[35] Under the s. 110, I will make a three-year firearms prohibition order, but I will make an exception to that order that you will be allowed to possess a firearm for the purposes directly related to your participation in sustenance hunting.

11. Take possession of a firearm immediately before your actual participation in sustenance hunting, possess it while you are involved in sustenance hunting, and relinquish possession of that firearm to a person with the proper licensing immediately upon the conclusion of your participation in sustenance hunting.

[DISCUSSIONS]

[36] That will attach to both the s. 266 and the s. 267(b) offences. It is discretionary on both of those. The DNA will only be on the s. 267(b).

[37] Remaining counts?

[38] MR. LANE: Stay of proceedings, please.

[39] THE COURT: Stay of proceedings on the remaining counts.

[40] Probation will only attach to the assault, the threats, and the s. 267(b). I do not believe it is necessary to attach it to the s. 349 and the s. 145 offences.

[41] Mr. Harper, I hope you make good use of your time. As I said and as Mr. Dempsey said in his Report, you have the potential to move away from this. You are young; right? Compared to me, you are really young but you have a lot of time to

do something valuable with your life and you have support in your family. I hope you are able to take advantage of it.

COZENS T.C.J.