Citation: *R. v. Hartling*, 2016 YKTC 36

Date: 20160617
Docket: 15-00278
Registry: Whitehorse

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

REGINA

v.

RAYMOND JOHN HARTLING

Appearances:
Paul Battin — Counsel for the Crown
Norah Mooney — Counsel for the Defence

REASONS FOR SENTENCE

[1] RUDDY C.J.T.C. (Oral): Raymond Hartling is before me for sentencing in relation to a single count of assault causing bodily harm. Mr. Hartling was originally charged with aggravated assault. The matter went to trial. He was convicted after trial of the offence of assault causing bodily harm.

[2] The facts are that Mr. Hartling assaulted the victim, Mr. James, with a hammer. There was clear evidence that there had been a breaking of the skin. There was no information before me, however, with respect to the size of the laceration and no indication that stitches were required to deal with it. There was also indication of some bruising in the arm area. Mr. James indicated that he missed approximately three weeks of work and experienced headaches for three weeks as well.

[3] The circumstances are outlined in greater detail in the trial decision dated May 20, 2016. It is not necessary, in my view, to outline them in extensive detail for the purposes of this sentencing decision.

[4] Counsel are before me with very different positions on the appropriate sentence in this particular case. Crown is suggesting a sentence of 14 months in custody to be followed by two and one half years on probation. Defence is suggesting six months in custody with a six to 12 month probation order would be more appropriate.

[5] A number of cases have been filed, all for assault causing bodily harm, with relevant cases establishing a range of as low as six months to as high as 18 months. Not surprisingly, there are a number of differences in the cases, in terms of the factual circumstances and the circumstances of the offenders. None of them are directly on point. That makes it very difficult to place it within the range. It is not a situation in which we can say: This case is almost identical, that would seem to be the appropriate sentence. I do still need to look at Mr. Hartling's circumstances in determining where he falls into that very broad range that has been provided to me.

[6] It is not my intention to deal at length with all of those cases. As noted, there are a number of differences. Several of them required medical intervention that I do not have in this particular case. By that, I mean stitches; a number of them required stitches. There is a broken ankle in one. Some of the injuries in a number of the cases seem to be objectively more serious than, at least, the information I received about the injuries in this particular case.

[7] On the other hand, a lot of the cases were resolved by way of a guilty plea and there would have been a certain discount as a result of that admission of responsibility. In this case, we have a finding of guilt post-trial. Again, there is a broad range of backgrounds, in terms of criminal history, in the cases before me, some of which include significant histories of physical violence that clearly influenced the outcome.

[8] I must consider the appropriate principles of sentencing, including denunciation and deterrence. Rehabilitation has been referred to as well, although questions have been raised by Mr. Hartling, himself, as well as by the Crown, with respect to his longer-term prospects of being able to maintain sobriety.

[9] I have been provided information about Mr. Hartling's background and circumstances. He is 45 years of age, born and raised in Nova Scotia in what has been described to me as an extremely difficult childhood. He was the youngest eight children. Both of his parents were significant alcoholics and would binge drink, leaving him and his next oldest brother in the care of older siblings who would discharge their duties by locking them in a room.

[10] Mr. Hartling first tried alcohol at the age of eight. At that point in time, he was taken into care and separated from his next oldest brother, to whom he appears to have been quite close. He began acting out, became difficult to control, and, as a result, was transferred around multiple foster homes.

[11] By the age of 13, Mr. Hartling was getting into trouble with the law and was sent for a year to a boys school in Nova Scotia, where there appeared to have been an abusive environment. He was subjected to physical abuse while in the school and that

led to him beginning to self-medicate with alcohol when released. His father had sobered up by that point and he and his brother were returned to him.

[12] At 18, Mr. Hartling moved to Ontario and worked with his uncle until being convicted of impaired driving, which effectively terminated his employment and began what has evolved into a relatively lengthy criminal record between 1991 and 2016.

[13] There was much discussion about the record, particularly on the Crown's part and what it is that I should do with the criminal record that is before me. Mr. Hartling has an extensive history of offences that clearly involve alcohol, including impaired driving. There are offences for mischief, thefts, and difficulty in complying with court orders. There is one prior offence of violence in 1994, which was an assault with intent to resist arrest. There have been no offences of actual violence on his record since that time.

[14] The Crown has asked that I consider the fact that he has been convicted on six occasions over a number of years for committing the offence of uttering threats and that I should view those as previous offences of violence. The Crown appears to be suggesting, if I understood their submissions, that in some ways uttering a threat to cause injury or otherwise hurt someone should be seen equally as serious, if not more serious, than actual assaultive behaviour, because it leaves the recipient left hanging as to whether or not they are going to be the victim of assaultive behaviour.

[15] I have difficulty viewing it in that manner. Threats certainly fall into the category of offences against the person. There is certainly an element of violence in the threat to use force and violence, but I have difficulty viewing them in the same way, in terms of

the level of seriousness, as I would actual violence. If Mr. Hartling had prior offences of assault or assault causing beyond the one in 1994, I would view those more seriously than I would offences for uttering threats. The threats certainly do tell me that Mr. Hartling has difficulty controlling his temper, particularly verbally. I am advised by his counsel, however, and I know from experience, that at least some of those uttering threats occurred in the context of his being extremely intoxicated while in the custody of the police.

[16] That is somewhat different than someone who is very coldly and calculatingly uttering a threat to someone to try and influence their behaviour and who has an intention of following through on it. When we have somebody who is extremely intoxicated and mouthing off, it is not to say it is not serious, it is not to say it is not a criminal offence, but I simply cannot view it in the same way that I would view offences of actual violence. I also note that while he has uttering threat convictions over a period of time, he does not appear to have acted on any of them.

[17] So for my purposes, I take note of the uttering threats, but it would appear that Mr. Hartling has a relatively limited record of actually acting out in a violent manner prior to this particular offence. I also note that there is a gap in his record between 2009 and his most recent couple of convictions in 2016, where he appears to have been functioning and doing quite well, at least in terms of staying out of trouble.

[18] I have information before me, both through Mr. Hartling's counsel and also through family members, specifically his ex-spouse and his daughter, to suggest, particularly when he is sober, that he is a hard-working and generous individual. He

has an extensive history of being involved in hunting and sharing the spoils with those in the community and those in need. He appears to be very well respected for his capabilities. He also seems to have a significant affinity for hunting and fishing — activities which are going to be negatively affected by any sentence that I impose here today. He also appears to have a strong work ethic and a decent work history.

[19] According to his ex-spouse, he has always been a good provider, in terms of ensuring that the family had what they needed. She has gone on to indicate that she has an interest in supporting him and assisting him upon his release in trying to get back on track. There is a suggestion before me that perhaps his move from Carmacks, where he had been, to Carcross was not the most positive for him, in terms of both his use of substances, particularly alcohol, and in managing his behaviour.

[20] The question, then, is: Where do I place him in this very broad range that is before me; and also, what do I do with the notion of probation?

[21] It has been suggested that, from a rehabilitative perspective, probation would have some utility. Although at the same time, I understand Mr. Hartling to be expressing some questions about the degree to which court ordered treatment would be of benefit to him. The fact that he continues to struggle with abusing substances leads him to have some concerns about his ability to maintain sobriety over the long term if placed on an abstain condition.

[22] No one is suggesting that a long-term probation order is necessary for public safety. I took the submissions to suggest that probation could assist Mr. Hartling in addressing rehabilitation. I have some questions and concerns about using up scarce

resources for the purposes of supporting rehabilitation unless there is a clear indication of a strong desire to pursue rehabilitation. That does not seem to be the case here. I think Mr. Hartling recognizes he needs to make some changes but there is some question about the degree to which he is really interested in pursuing that at this point in time. Therefore, I do have some questions about the utility of a long-term probation order and whether that is going to make a difference.

[23] It is notable that Mr. Hartling, who has been in custody, primarily, on unrelated matters, has been, by all accounts, using his time in custody in a productive and useful manner by attending the gym and by participating in fine art courses, including beading and other fine artwork for which I understand he has recently won a contest. He is also connected with Andy Nieman and has completed the Violence Prevention Program, all of which is to his credit and I think should be factored in when determining what the appropriate outcome should be.

[24] When I consider all of the appropriate factors, including the cases that have been put before me, the circumstances of this particular offence, Mr. Hartling's personal circumstances, and the letters of support regarding his behaviour while in custody, I am satisfied that the appropriate sentence is as follows. I am of the view that a sentence in custody of 10 months is sufficient to meet the principles of denunciation and deterrence.

[25] In concluding that 10 months is appropriate, I am factoring in the 13 days he has done in pre-trial custody. It is not my intention to reduce the sentence further by that couple of weeks. That is something I have already considered in reaching that figure as the appropriate sentence in the first place.

[26] I would impose not a lengthy probation order but a short probation order to follow. I think there is some utility in that to help him in managing the transition back to the community and hopefully get him pointed in the right direction, but I am not certain a lengthy probation order is an appropriate use of resources in all of the circumstances. So the 10 months in custody is going to be followed by six months on probation.

[27] Mr. Hartling, the terms and conditions of the probation order are going include the statutory terms that I am required to include by law. You are 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 of employment or occupation;

4. Have no contact directly or indirectly or communication in any way with Alvin James;

[28] That order is going to be in place as well while you are in custody, so you cannot be phoning him while in custody.

5. Report to your Probation Officer immediately upon your release from custody, and thereafter, when and in the manner directed by your Probation Officer;

6. Reside as approved by your Probation Officer, abide by the rules of the residence, and not change that residence without the prior written permission of your Probation Officer;

[29] I am including that in the hopes that we can find a sober placement for you that will give you the best chance of transitioning back into the community.

[30] Abstention, I understand, is an issue. It would not be my intention to try and set you up, Mr. Hartling, in the circumstances, so what I am going to do is make the condition that you are:

7. Not to be under the influence of alcohol outside of your residence;

This gives you a safe place to drink. If you are going to slip, you have a place where you can slip. Though, I do think your goal should be sobriety.

8. Not attend any premises whose primary purpose is the sale of alcohol, including any liquor store, off sales, bar, pub, tavern, lounge or nightclub;

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:

alcohol abuse,
anger management,

> and provide consents to release information to your Probation Officer regarding your participation in any program you have been directed to do pursuant to this condition.

[31] Those would be my primary concerns on the probation order, unless somebody had something else.

[32] There are a number of ancillary orders I am required by law to include.

[33] There will be a mandatory firearms prohibition pursuant to s. 109 of the *Criminal Code.*

[34] I am also required to make an order, Mr. Hartling, that you provide such samples of your blood as are necessary for DNA testing and banking. I understood from earlier comments that might have already been done. If it has been done, they simply will not take it again, but I am still required to make the order.

[35] There is also the question of a victim surcharge, which in this case would be $200 with the indictable election. I would impose a victim surcharge of $200 payable forthwith on the understanding that he will serve the default time concurrently with his custodial sentence on the 267 offence.

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RUDDY C.J.T.C.