

Citation: *R. v. James*, 2017 YKTC 12

Date: 20170327
Docket: 16-00636A
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before His Honour Judge Lilles

REGINA

v.

GARRICK DANIEL JAMES

Appearances:
Amy Porteous
Lynn MacDiarmid

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCE

[1] Mr. James is a 29-year-old First Nations man without a criminal record. He has now entered guilty pleas to the following offences.

[2] On April 15, 2016, Mr. James assaulted Mr. Perreault-Wipp, who was the former boyfriend of Mr. James' current girlfriend, Petrina Hall, by punching him in the head several times. The next day it became apparent that Mr. Perreault-Wipp needed further medical attention and Mr. Perrault-Wipp was driven from Carcross into Whitehorse. Mr. Perrault-Wipp received a chipped tooth, two black eyes and a fractured facial bone. Mr. James pleaded guilty to a charge contrary to s. 267(b) of the *Criminal Code*, assault causing bodily harm.

[3] The Court was also asked to consider, as an aggravating factor, that when Mr. Perrault-Wipp was on his way to Whitehorse, Mr. James was able to access the vehicle and punched Mr. Perrault-Wipp twice.

[4] Mr. James was arrested on April 17 and released on conditions.

[5] On May 20, 2016, the RCMP received a call about an assault in progress. The witness observed a man push a woman against a wall of a building on 4th Ave. The witness overheard the man utter words that he construed as a threat to the woman, who was then pushed to the ground. The RCMP were able to identify the individuals as Mr. James and Ms. Hall from photos that the witness had taken. Mr. James pleaded guilty to a charge of assault against Ms. Hall, contrary to s. 266 of the *Criminal Code*.

[6] Mr. James was arrested on May 20 and released on conditions, one of which was not to possess or consume alcohol.

[7] On July 30, 2016, Mr. James was observed leaving Montana Services in Carcross carrying and drinking from a bottle. Later, the RCMP found him lying on the side of the road in an intoxicated condition. He was charged with breaching his undertaking, an offence contrary to s. 145(5.1) of the *Criminal Code*.

[8] He was released on a promise to appear.

[9] On August 6, 2016, a number of people were partying at the Malcolm James residence. The accused, Mr. James, and Ms. Hall were present and both were intoxicated. Mr. James and Ms. Hall argued, and Mr. James shoved her in a manner

that constituted a low level assault. Mr. James pleaded guilty to a charge of assault, contrary to s. 266 of the *Criminal Code*.

[10] Mr. James was evicted from the residence and returned and pounded on the door with a hammer, damaging it. Mr. James pleaded guilty to a charge of mischief, contrary to s. 430(4) of the *Criminal Code*. It seems that the residents of the house did not appreciate what Mr. James did to the door, came out and rendered some informal justice by beating him up.

[11] Mr. James was, at the time, bound by an undertaking that precluded him from having contact with Ms. Hall, except with the permission of the Bail Supervisor. He did not have such permission. Mr. James pleaded guilty to breaching his undertaking, an offence contrary to s. 145(5.1) of the *Criminal Code*.

[12] Mr. James was again arrested, and released on conditions, one of which was that he was to live out of town at Skookie's Cultural Camp.

[13] On December 10, 2016, the RCMP attended a residence in Whitehorse for another reason, but found Mr. James there in an intoxicated condition. Petrina Hall was also present in the residence.

[14] Mr. James pleaded guilty to the charge of leaving Skookie's Cultural Camp without permission or without the company of a person authorized by the Court or by his Bail Supervisor, contrary to s. 145(3) of the *Criminal Code*.

[15] He also pleaded guilty to another charge contrary to s. 145(3) because he was again in contact with Petrina Hall, which was forbidden by his recognizance.

[16] After a bail hearing, Mr. James was released on conditions.

[17] On January 7, 2017, the police were called to the residence of Ernest Richard, Mr. James' father. Mr. James was present, intoxicated, yelling and fighting with his father. During this altercation, Mr. James sucker-punched his father. Mr. James pleaded guilty to a charge of assault, contrary to s. 266 of the *Criminal Code*.

[18] Leslie Cawley, a neighbour, had come over to the Richard residence to check on Petrina Hall before the accused arrived. After the altercation with his father, Ms. Cawley and Mr. James' mother tried to physically restrain Mr. James. During the struggle, Mr. James punched Ms. Cawley on the right side of her face with a closed fist. Mr. James pleaded guilty to an assault against Leslie Cawley, an offence contrary to s. 266 of the *Criminal Code*.

[19] Mr. James was in the Richard residence with Petrina Hall when the aforementioned altercations occurred, contrary to the provisions of his recognizance. He pleaded guilty to an offence contrary to s. 145(3) of the *Criminal Code*.

Personal Circumstances

[20] As mentioned earlier, Mr. James does not have a criminal record, and therefore the convictions he is facing today are considered as first offences.

[21] Both of Mr. James' parents are First Nations citizens and Mr. James is a Carcross Tagish First Nation citizen, although he himself is not closely connected to his ancestry.

[22] When he was young, Mr. James was exposed to some violence and alcohol abuse, as the first 15 years of his life were somewhat unstable and his parents were not always living together. However, both parents have been sober for the past 15 years.

[23] Mr. James has limited education, having quit school in Grade 11. Like so many other clients of the justice system, he now regrets not completing high school.

[24] He describes himself as easy going, but is sufficiently self-aware to recognize that he can get violent and aggressive when under the influence of alcohol.

[25] While Mr. James describes himself as a hardworking and punctual employee, his employment in the past has been intermittent, the longest period being six months.

[26] Although 29 years of age, Mr. James' relationship with Petrina Hall is his first serious relationship. They have been together for 16 months and she is the victim of two of the assault charges before the Court.

[27] Mr. James mistakenly believes that his relationship with Ms. Hall is a healthy one. Perhaps it is when they are both sober but, as the charges he is facing clearly demonstrate, it is an unhealthy one when they are both drinking. If Mr. James intends to continue the relationship, he must not drink and commit to sobriety.

[28] Mr. James currently has no reliable sources of income, no bank accounts and no assets.

[29] Mr. James has had a serious alcohol problem for the last several years, consuming alcohol most days and sometimes binge drinking for several days to the

point of blacking out. Mr. James understates his problem with alcohol and does not acknowledge that alcohol is a significant contributing factor to his offending behaviour. In fact, Mr. James has been evaluated in his Pre-Sentence Report as having a severe level of problems related to alcohol abuse.

[30] The Carcross Tagish First Nation counsellor, Mr. James' mother and several of his family members formed the opinion that alcohol became a problem for Mr. James about the same time that he began his relationship with Ms. Hall. Mr. Cairns, the author of the Pre-Sentence Report, notes a direct correlation between Mr. James' relationship with Petrina Hall, his criminal behaviour, and his substance abuse.

Community Resources

[31] The author of the Pre-Sentence Report canvassed several community based resources that would be available to Mr. James. The following extracts are taken from the Pre-Sentence Report.

Angela Jobin, ADS Worker

On January 30, 2017 the writer spoke to Alcohol and Drug Services Community Addictions Worker, Angela Jobin. Ms. Jobin advised that Mr. James initiated contact with her on December 15, 2016. He completed an intake with Alcohol and Drug Services on December 18, 2016. Mr. James attended an in-person counselling appointment with Ms. Jobin on January 4, 2017. Since that time he has participated in telephone counselling sessions with Ms. Jobin on four separate occasions. Ms. Jobin advised that Mr. James appears open to working with ADS, learning about himself and gaining new insight. Ms. Jobin stated that Mr. James is actively engaged during their meetings and she is willing to offer continued services.

Jane Grey, Counsellor

Jane Grey is [a] Counsellor employed by Carcross Tagish First Nation. She provides substance abuse counselling, relationship counselling and crisis management. Ms. Grey also provides referral for clients to other agencies if appropriate.

Ms. Grey began working with Mr. James when he was participating in the Log Cabin project. It is the writer's understanding that Ms. Grey was co-facilitating the Skills for Life portion of the program. Following completion of the program Mr. James and Ms. Grey continued to have informal check-ins. In September 2016 Mr. James began to meet with Ms. Grey regularly. Ms. Grey advised that since that time she and Mr. James have met or spoken on the telephone on approximately seven occasions. There have also been other informal contacts that Ms. Grey has not noted. Ms. Grey is of the opinion that Mr. James' use of alcohol became a problem for him at approximately the same time he began a relationship with Ms. Hall.

Ms. Grey stated that Mr. James is starting to examine his behaviour as it relates to his girlfriend and to his family. He has conveyed to Ms. Grey that his attitudes and his behaviour are not acceptable. Ms. Grey relayed that it has taken a long time for their relationship to build and Mr. James has not been ready for in-depth counselling until recently. She feels that Mr. James is being honest and forthright with her and he has identified loneliness and a sense of belonging as significant issues in his life. Ms. Grey is willing to continue to work with Mr. James in the future.

Mike Birkett, Men's Support Coordinator

Mike Birkett is a former counsellor for Many Rivers and he is currently employed as the Men's Support Coordinator for Carcross Tagish First Nation. Mr. Birkett began working with Mr. James in September 2014 when he was a participant in the Log Cabin Builder's Program. Mr. Birkett advised that Mr. James participated in all meetings and circles as required during the program and he also attended two individual counselling sessions which focused on healthy relationships. In addition to relationship issues, Mr. James identified alcohol consumption, housing and employment as challenges in his life. The program ended in May 2015. Phase two of the Log Cabin Builder's Program occurred between November 2015 and May 2016. Mr. Birkett advised that Mr. James was present for the majority of the meetings and circles but missed some due to temporary incarceration. In October 2016 Mr. James met with Mr. Birkett on two occasions for individual counselling. It appears that Mr. Birkett is willing to continue to offer services to Mr. James.

Laurenda James, Mother

On February 7, 2017 the writer spoke to Mr. James' mother, Laurenda James. Laurenda James advised that her son was a well-adjusted child who had positive relationships with his family members and he made friends easily. She reported that he performed well in school and she does not recall if he was ever suspended or expelled. Laurenda James said that Mr. James is a very good worker when work is available to him. She stated that he is a skilled log home builder.

Laurenda James described Mr. James as a well-liked, generous, kind individual. She reported that he is not often influenced by others and he chooses his own path in life. Laurenda James said that her son used to spend a lot of his time by himself playing video games so when he told her that he was in a relationship with Ms. Hall she was pleased. She advised that it became apparent during the early stages of the relationship that the relationship was not working very well. Laurenda James stated, "She (Ms. Hall) seemed to be having a number of relationships. Family members gave Garrick a lot of advice to stay away from her. She did not appear very committed to the relationship. She does not treat him very well."

Laurenda James said the Mr. James had not been involved in the Justice System until he met Ms. Hall. She said that his use of alcohol was not an issue for him until he began a relationship with Ms. Hall. Laurenda James is not aware of any issues relating to Ms. James' use of drugs. She has no concerns regarding his mental health.

Laurenda James said the when Mr. James consumes alcohol he sometimes becomes violent. She relayed that he would likely benefit from substance abuse counselling. Laurenda James voiced concern regarding her son's continued involvement in a relationship with Ms. Hall.

[32] The Pre-Sentence Report concludes, in part, as follows:

Mr. James concedes that alcohol is causing him problems in his life. He has taken some responsibility for his criminal behaviour and he does express some remorse. It does not appear that he fully comprehends the effect of his actions on the victim and the community. It would appear that he continues to minimize his violence and abuse of substances. To his credit, he has reached out for help and he will be encouraged to continue to access his supports upon his release from custody. Mr. James appears to have professionals in his life who are willing to assist him.

The Law

[33] As mentioned previously, Mr. James comes before the Court as a first offender. At age 29, he may not be “youthful” in a chronological sense, but he is also not as mature or experienced as his age might suggest. The case law is clear that special considerations apply to sentencing first offenders. For example, in *R. v. Priest* (1996), 30 O.R. (3d) 538 (C.A.) the Court stated, beginning at para. 17:

17 The primary objectives in sentencing a first offender are individual deterrence and rehabilitation. Except for very serious offences and offences involving violence, this court has held that these objectives are not only paramount but best achieved by either a suspended sentence and probation or a very short term of imprisonment followed by a term of probation. In *R. v. Stein* (1974), 15 C.C.C. (2d) 376 (Ont. C.A.) at page 377, Martin J.A. made it clear that in the case of a first offender, the court should explore all other dispositions before imposing a custodial sentence:

It is the view of the Court that the sentence imposed upon the appellant does reflect an error in principle. In our view, before imposing a custodial sentence upon a first offender the sentencing Court should explore the other dispositions which are open to him and only impose a custodial sentence where the circumstances are such, or the offence is of such gravity that no other sentence is appropriate. In our view, this offence does not fall within the category of offences where a custodial sentence is the only appropriate sentence to be imposed upon a first offender, nor are there other circumstances which require the imposition of a custodial sentence.

[Emphasis added]

18 As the Stein case shows, it has been an important principle of sentencing in this province that the sentence should constitute the minimum necessary intervention that is adequate in the particular circumstances. This principle implies that trial judges consider community-based dispositions first and impose more serious forms of punishment only when necessary. These principles have now been codified in the recently proclaimed sections 718 and 718.2 of the Criminal Code. Section 718(c) instructs that separation of offenders from society is an appropriate objective of sentencing “where necessary”. Section 718.2(d) directs that

an offender should not be deprived of liberty "if less restrictive sanctions may be appropriate in the circumstances".

[34] In *Priest*, the Court went on to observe that even if a custodial sentence of imprisonment is appropriate for a first offence, it should be as short as possible, and tailored to the individual circumstances of the accused rather than for the purpose of general deterrence. *R. v. Bates* (1977), 32 C.C.C. (2d) 493 (Ont. C.A.) and *R. v. Leask* (1996), 112 C.C.C. (3d) 400 (Man. C.A.) enunciate similar principles.

[35] I note that the 11 offences to which Mr. James pleaded guilty and for which he is to be sentenced are technically "first offences". As discussed in *R. v. Andrade*, 2010 NBCA 62, this does not mean that each conviction is to be treated as if it were a first offence, ignoring those that had been committed previously. *Andrade* holds that the principle that a harsher sentence for a second offence cannot be imposed unless the offender was convicted for the first offence prior to the commission of the second, applies only to those cases, like impaired driving, where the *Criminal Code* imposes a harsher sentence for a subsequent conviction of the same offence. In this case, Mr. James has been arrested on six separate occasions and released on process on five of them. It is an aggravating factor for the purposes of sentencing that he has continued to reoffend by breaching his release conditions and by committing assaults. Moreover, the justice system responds to his reoffending escalated over time, and his bail conditions became stricter and eventually resulted in a form of house arrest. After the January 7 incident, he was not granted bail and remained in custody.

[36] In these circumstances, it is still open to respond to the earlier offences by Mr. James by imposing sentences which emphasize specific deterrence and rehabilitation.

For the latter offences, the Court's response should also convey to the public a message of general deterrence.

Sentence

[37] For the s. 267(b) assault causing bodily harm committed on April 15, 2016 against Mr. Perrault-Whip, I impose a sentence of one day in jail, deemed served today followed by 12 months' probation.

[38] For the May 20, 2016 s. 266 assault against Ms. Hall, I am suspending the passing of sentence and place Mr. James on probation for one year.

[39] For the breach of his undertaking by consuming alcohol, s. 145(5.1) the sentence is suspended and Mr. James is placed on probation for one year.

[40] For the conviction for the offences committed on August 6, 2016, namely the s. 266 assault on Ms. Hall, the s. 430(4) mischief and the s. 145(5.1) breach of his no contact order, I impose a sentence of 30 days' custody on each charge, concurrent to each other.

[41] On December 10, 2015, Mr. James was convicted of two separate s. 145(3) breaches. I sentence him to 30 days' custody on each, concurrent to each other but consecutive to the custodial sentence above.

[42] For each of the s. 266 assault convictions on January 7, 2017, I impose a sentence of 60 days' custody, concurrent to each other but consecutive to the earlier

custodial sentences. For the s. 145(3) breach, the sentence will be 30 days' custody, to be served concurrently.

[43] The total custodial sentence for Mr. James is 120 days. Counsel will note that this sentence is less than the 138 days' time served credit. It is important that judges and counsel do not make the mistake of allocating all of the available time served credit merely because it is convenient to do so. The sentence imposed must always be consistent with sentencing principles. The sentence imposed today may become relevant if Mr. James commits further offences. For that reason, it must reflect the sentence that is appropriate in all of the circumstances, and not merely the available credit for time served awaiting sentence.

[44] In addition, Mr. James, you are on probation for a term of one year as follows:

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;
4. Have no contact directly or indirectly or communicate in any way with Petrina Hall except with the prior written permission of your Probation Officer in consultation with Victim Services if you are under the influence of alcohol;

5. Do not go to any known place of residence or employment of Petrina Hall except with the prior written permission of your Probation Officer;
6. Report to you Probation Officer within two working days of your release from custody and thereafter, when and in the manner directed by your Probation Officer;
7. Reside as approved by your Probation Officer and not change that residence without the prior written permission of your Probation Officer;
8. 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,
 - any other issues identified by your Probation Officer,

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;

9. Make reasonable efforts to find and maintain suitable employment and provide your Probation Officer with all necessary details concerning your efforts;

10. Not possess any firearm, ammunition, explosive substance or any weapon as defined by the *Criminal Code* except with the prior written permission of your Probation Officer.

[45] As Mr. James has been convicted of a primary designated offence, the DNA order will go as requested by the Crown.

[46] In all of the circumstances, including the Aboriginal status of Mr. James, the fact that a weapon was not used or threatened and the fact that he has no prior record, there will be no s. 110 firearms order.

[47] There is a \$1,200 victim surcharge with one year time to pay.

LILLES T.C.J.