

Citation: *R. v. James*, 2017 YKTC 72

Date: 20171215
Docket: 17-00324
17-00324A
17-00324B
17-00324C
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before Her Honour Judge Orr

REGINA

v.

KASHIES CHARLES ANDREW JAMES

Appearances:
Amy Porteous
Amy Steele

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCE

[1] ORR T.C.J. (Oral): Mr. James wants to have this matter dealt with now and does not want to have a *Gladue* Report to delay the process. In light of that, I will not adjourn the matter but will give the decision today.

[2] Certainly, the cases that have been provided to me, and I have had the opportunity to review them briefly, certainly those from the defence, and they all set out the same principles. It is just a question of the facts. The two cases that the Crown has provided are a little different and set out other decisions that are referred to.

[DISCUSSIONS]

[3] The cases that have been provided with respect to the charge of cruelty to the puppy in this matter certainly set out the very concerning circumstances that have come before the courts in cases of this nature.

[4] *R. v. Perrin*, 2012 NSPC 134, a very well-written decision of Judge Hoskins, sets out various considerations for the Court. One of the comments that he makes in that decision is at para. 9:

[9] The inherent nature of this offence is aggravating because it involves a senseless act of extreme violence against a household pet, a cat. This act of brutality can only be described as an unprovoked attack against a helpless and defenceless animal. Indeed, there are no mitigating factors surrounding the offence that could provide a plausible explanation of why Mr. Perrin acted in the manner that he did in killing the cat. This inexplicable extreme act of violence is of concern because it raises troubling questions about whether Mr. [Perrin] possesses a real propensity toward violence. I am mindful that he was intoxicated at the time, but that clearly does not explain why he became extremely violent toward the helpless cat. . . .

[5] In that case, Mr. Perrin had post-traumatic stress disorder because of his involvement in helping with the salvage effort of Swiss Air. The Court said there was no evidence to show there was:

[9] . . . a causal connection between Post Traumatic Stress Disorder and the offence. To put it another way, there is no plausible explanation offered to explain what caused Mr. Perrin to become extremely violent toward the cat. Further, Mr. Perrin cannot offer an explanation because he professes not to have any memory of the incident.

[6] This is quite similar to what we have here, other than in this case the indications are that Mr. James suffered some significant trauma in his life and that the *Gladue* factors are very dominant in Mr. James' life.

[7] Again, Mr. James was significantly under the influence of substances, indicating that he does not have any great recollection of what he did or why he did it because of the drugs that he was injecting at the time and that, basically, he was on a suicide attempt because of the drugs. Obviously, following that or in the course of that, he was having contact with his sister and trying to get money from her, which would certainly not be in accordance with a suicide attempt. You do not need any money if that is what you are doing.

[8] Mr. James has a very unenviable record. It starts in Youth Court, and continues up to the present time. As noted, there are offences of violence on his record. He has an assault in Youth Court from 2010. That is still disclosable. He has another one in 2013. In adult court, he has possession of stolen property in 2014; an adult conviction for an assault in 2015; a breach of probation in 2016; and then in 2017, another breach of probation and a breach of an undertaking.

[9] The one positive out of all of this is that Mr. James now acknowledges that he needs to get some help; that he needs to deal with the issues that have caused him some great difficulty in his life; and that his course of actions to date, which would appear to be avoidance and consumption of substances to try and help him forget those, really have not been very productive and have only led him back before the Court. There certainly are issues that do need to be addressed.

[10] The cases that have been filed indicate that when you have a defenceless animal and you are upset over something, it is not acceptable and our society will not tolerate individuals who decide that they are just going to do what they want to some poor, defenceless animal because it happens to be there and it is either kicked, picked up, thrown down, thrown around, or has its neck snapped because you are unhappy with what is going on or you are intoxicated or under the influence of drugs and you do not really give a darn about anything. Our society has indicated that is not acceptable.

[11] As Judge Hoskins has noted in *Perrin*, there is always the concern as to how you treat an animal and how violent you are with an animal, is that going to be transmitted to a person? What we see in Mr. James' case is that that has already occurred. He has a number of charges of assault on his record.

[12] The cases also indicate that the primary considerations are denunciation and deterrence — imposing a sentence that brings home, not only to Mr. James but to anybody else who might be of a like mind, that if you are going to do something of this nature, you should expect that there will be consequences. Normally, those consequences are such that you are not going to like the outcome of them and are necessary in order to bring home to people that perhaps before they do something as unfortunate as what we have in this particular matter, that they stop and think about what they are doing. If they have a great deal of anger and hostility and need to vent, they either find a punching bag or some sort of an object, other than an animal, other than a person, and be able to get rid of that hostility in a much more appropriate manner that does not constitute a criminal offence.

[13] There is no question that rehabilitation is also a primary consideration.

Mr. James is a young man. He has the best part of his future ahead of him and it is time that he gets his life under control so that he is able to be in a better position, be able to do the things that he wants to do, and be able to follow the traditional ways that he enjoys. He has expressed an interest in setting up a program or a camp that would enable others to be able to benefit from that and to provide them with some assistance in that regard.

[14] Of course, Mr. James is not going to be able to do that as long as the addictions that he seems to be heavily involved in have a grip on his life. He is not going to be the positive influence for others that he would like to be.

[15] COURT ADDRESSES THE ACCUSED:

[16] So it's going to be very important, Mr. James, that you not only say you want to get some help but you do something about it and that you follow through on it, sir.

[17] It is obviously causing you a great deal of difficulty, and whatever the issues are — and I appreciate that you don't want to go into all of them — but whatever those issues are, whatever difficulties that you had in your childhood, it's important for you to be able to deal with those, to get the help that you need so that you can move forward and be able to do some things in a positive way. They're obviously troubling you. They're obviously causing you a great deal of difficulty, and they'll continue to do so. They may not be things that you can forget. They may not be things that you can put out of your mind completely.

[18] Obviously the fact that you use alcohol and drugs to try and forget them hasn't worked. They're still there. So you need to deal with them through counselling, get the proper help, get the proper treatment so that you can put them where they need to be, dealt with, and move on so that you can do some positive things. You've got some ambitions of wanting to do things for the community, helping out with the gathering of food and providing it to single parents. That's very worthwhile. So those are the good things. Coming here and the actions that bring you before the Court are not.

[19] And there's a great deal of avoidance. You don't keep your appointments. You don't show up for court. You don't keep your appointments with your bail supervisor. You have breaches of your probation.

[20] Your probation officer should be your new best friend. They're there to help you. They're there to support you. When things aren't going so well, they're there to suggest to you some options, some programs. They're not there to hurt you, and when you avoid them or your bail supervisor, you're only hurting yourself, because the help that they could be providing to you, you're not getting.

[21] A lot of times when people are out on bail and they have a bail supervisor, they're very helpful in getting them into some programs so when they come to court things look a whole lot better than they did when they committed the offences. And then the judge is able to give a much better sentence to that person because they've actually done something positive while they've been out. You don't have the benefit of that because you didn't take advantage of that, and now you're sitting in jail for the last 30 days.

[22] So hopefully, Mr. James, you will follow through on the things that you've said here today through your counsel. Unfortunately, if you don't, you're likely to get back here again. So it might be time for you to stop and think about where you're at and where you want to be and take advantage of the people that are there to help you.

[23] Would you stand, please, sir.

[24] I consider the guilty pleas that you have entered in respect of these matters. The Crown has already acknowledged that the guilty plea on the charge of cruelty to a dog is a very significant factor in this matter. It saved having a trial. It saved your sister and her friend from having to come before the Court to testify. As the Crown has indicated, they believe they could have established the case but it saved them from having to go through that effort and for everybody to have to hear the details in respect of this whole matter. That certainly is a significant factor, that you have accepted responsibility and that you have not put anybody through a trial in respect of that matter. As I say, that is a very significant mitigating factor.

[25] I consider the principles of sentencing that are set out in ss. 718 to 718.2. of the *Criminal Code*. Certainly in respect to the cruelty to the puppy, the significant factors are denunciation and deterrence — imposing a sentence that will bring home to you and to others that this is not acceptable, nor appropriate behaviour — but also balancing that with rehabilitation and providing you with some support to get the help that you need.

[26] I note in respect to the *Gladue* factors, the fact that you are a member of the First Nations and the trauma that you have suffered, which has been documented through

the community member and that has been confirmed by your counsel, that you have had some great difficulties in your upbringing and the causes of that.

[27] I have considered that and the principle of imposing a sentence that is the least restrictive as possible; avoiding jail at all times, if possible. However, I do not believe that it is possible in this particular matter. I do believe that the sentence that is imposed does need to be one that is served in jail but, given all of those factors, it is probably not going to be as long as it might otherwise be.

[28] On the charge under s. 445 from August 15, 2017, a charge of maiming a dog, in respect of that matter, I impose a period of 60 days in jail. I gave you credit for the time that you have served on remand of 30 days at the rate of 1.5 for each day that you have served and that gives you a credit of 45 days in jail, which leaves 15 days yet to be served on that charge.

[29] There has to be a \$100 assessment for the Victims of Crime Fund in respect of that matter.

[30] On the charge of failing to show up for court, on October 3, 2017, contrary to s. 145(5)(b), in respect of that matter, I impose a period of five days in jail and make that concurrent and impose a \$100 assessment for the Victims of Crime Fund.

[31] On the charge under s. 145(3), failing to report to your bail supervisor as required, I impose a period of 10 days in jail consecutive to any other sentence as well as a \$100 assessment for the Victims of Crime Fund.

[32] The time in custody imposed in respect of all of these matters considers your prior record and the nature of that record and, as I say, also considers all of the *Gladue* factors that have been brought forward in this particular matter.

[DISCUSSIONS]

[33] The victim surcharges are to be payable forthwith.

[34] On the s. 445 charge, there will be an order pursuant to s. 447.1 of the *Code*. You are hereby prohibited from owning, having the custody or control of or residing in the same residence as an animal during the next 12 months.

[35] While I appreciate that everybody in Carcross has an animal, you cannot own one, you cannot have custody of one. "Custody" means it is yours, you are looking after it, you are walking it, or you are responsible for the care or control of it. If you just happen to be walking down the street and there is a dog there, as long as you are not taking responsibility for it, sir, it should not be a problem. If you go to visit somebody and they have a dog, as long as you are not doing something with respect to the dog, there should not be a problem.

[36] With respect to residing in the same premises as an animal, I am going to add "unless he has the prior written consent of his Probation Officer." If there is an issue with respect to residency, I do not want Mr. James out on the street with no place to go. If that becomes a problem, then his Probation Officer can give him permission to reside at the same residence as an animal, if he thinks that is going to be all right.

[37] On the s. 445 charge, sir, the cruelty to an animal, upon your release from custody, you are going to be on probation for a period of 12 months.

[38] The terms of the probation are that you are to:

1. Keep the peace and be of good behaviour;
2. Appear before the court when and if required to do so;
3. Immediately notify your Probation Officer if there is any change of your address, place of employment, education, or training;

[39] Those are the statutory conditions and they remain in effect throughout the period of the probation.

[40] The following conditions are additional. They remain in effect unless you come back before the Court and the Court changes them.

[41] You are to:

4. Report to your Probation Officer immediately upon your release from custody and then at such times and places as directed by your Probation Officer;
5. Attend and actively participate in all assessment and counselling programs as your Probation Officer directs and you are to complete them to the satisfaction of your probation for the following issues: substance abuse, alcohol abuse, anger management, and any other issues that are identified by your Probation Officer, including trauma in your life, and you

are to provide consents to release information to your Probation Officer regarding your participation in any program that you have been directed to do under this condition;

6. Perform 25 hours of community service as directed by your Probation Officer or such other person as your Probation Officer may designate. The community service is to be completed within six months from the start of the probation period. Any hours that are spent in programming may be applied to your community service at the discretion of your Probation Officer; and
7. Make reasonable efforts to find and maintain suitable employment and provide your Probation Officer with all necessary details concerning your efforts. However, treatment and counselling for the issues that are identified would be the first priority.

[42] COURT: I'm not going to make an order that you not use or not drink, sir. I don't think that would be realistic, to think that you'd be able to comply with that. I'd like to hope you could, but I'm not going to set you up for a breach.

[43] When you get out of custody, you're going to have some — you're going to be straight, sober, so that would be a good time to start some treatment because you're going to be in the best place, best frame of mind to be able to start that, sir. Hopefully when you get out, you will maintain that sobriety so that you can take advantage of the treatment programs to the best of your ability and get things under control.

[44] Ms. Steele, would you explain to your client the terms of probation, the consequences of breach of probation, commission of another offence while he's on probation, as well as the provisions to review the additional terms if there's any change in his circumstances?

[45] And with respect to the outstanding charges?

[46] Ms. Porteous: Those can be stayed, please.

[47] COURT: Okay, thank you.

[48] Thank you, Mr. James. Hopefully you'll be able to take advantage of the help that's out there, sir.

[49] As indicated by the Crown, there will be a stay of proceedings on the outstanding charges.

ORR T.C.J.