

Citation: *R. v. Martin*, 2006 YKTC 7

Date: 20060111
Docket: T.C. 04-00734
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Chief Judge Faulkner

REGINA

v.

JASON RICHARD MARTIN

Appearances:
Ludovic Gouaillier
Gordon Coffin

Counsel for Crown
Counsel for defence

REASONS FOR SENTENCING

[1] FAULKNER C.J.T.C. (Oral): Jason Richard Martin was originally charged on a three-count Information alleging the offences of aggravated assault, assault with a weapon and unlawful confinement.

[2] The trial commenced on the 24th of October of last year and the Crown's case was heard. The matter was then adjourned at the request of the accused and was, on a subsequent date set for trial, further adjourned. The matter was set for continuation today. At that point, Mr. Martin offered pleas of guilty with respect to Count 1, to a charge of assault causing bodily harm, and a guilty plea on Count 3, the charge of

unlawful confinement. With the consent of the Crown, those pleas were accepted. The charge of assault with a weapon was stayed. The matter is now for disposition.

[3] The facts of the matter are significant and should be recounted in some detail. On the date in question, which was in late March of last year, Mr. Martin had been staying at the residence of his mother, Doris Martin. On the night in question, the accused and his mother had been at a local bar. Later in the evening, they returned home to Doris Martin's apartment. Not long after they arrived back at the apartment, and without any warning, the accused attacked his mother.

[4] The reasons for the attack were never made clear in evidence, but there was some suggestion that the accused may have been annoyed with his mother, owing to a report that she had allegedly made about the accused to Social Services personnel. This report had apparently been made, if it was made, some months previous to the date of the attack.

[5] What occurred was that the accused pushed his mother into a chair and grabbed her glasses. This is significant because Doris Martin indicated that she has very poor eyesight without her glasses. As she sat in the chair, the accused kned his mother in the face. She sat there dazed and bleeding badly. When she tried to get up to attend to the wound, the accused prevented her from doing so and in fact got a phone cord, wrapped it around her neck and proceeded to attempt to choke her with it. Doris Martin was having difficulty breathing and was struggling to get free. In addition to the obvious problem in breathing from having the cord around her neck, she was bleeding

substantially from her nose and the blood was running into her throat and causing further difficulties.

[6] Eventually, Doris Martin decided that her only chance of survival was to cease all resistance. She did so and the accused ceased his attack. Despite this, Ms. Martin was still afraid to get up. However, the offender, Jason Martin, eventually went into the bathroom and got a towel and threw it at his mother, presumably so she could use it to clean herself up as she was still bleeding profusely. Mr. Martin then said to his mother, words to the effect of, "You better go to bed," and Ms. Martin went to her room.

[7] Once in her room and in bed, she was afraid to go to sleep because of the bleeding into her throat. She knew that she should seek medical attention, but her son lay down in the doorway to prevent her from leaving. At some point, he also rigged up a contraption of tape, string and a broom and bucket in front of her door, apparently, to act as an alarm system should Ms. Martin try to leave the apartment.

[8] Finally, some hours later, Ms. Martin decided that she should try to leave because she thought that her son had finally fallen asleep. As she made her attempt to leave the apartment, her son awoke, but he did not prevent her from leaving at that time. Ms. Martin had taken the cordless phone with her and as she proceeded towards the apartment of a friend in the same building, she was able to call 9-1-1. By the time the police arrived, Jason Martin had fled. Ms. Martin was taken to the hospital and there was treated for a fractured nose and associated bruising and bleeding. Ultimately, rhinoplasty was necessary to repair the resulting nasal obstruction. There were also marks noted on Ms. Martin's throat and bruising on her chest and back.

[9] Obviously, this was a serious attack and, just as obvious, it was a most egregious break of trust in that Mr. Martin attacked his own mother in her own home. I have already mentioned that there was a guilty plea, but that the guilty plea came only after the trial commenced and Doris Martin had testified.

[10] Jason Martin has a substantial criminal record, albeit, only one of his prior convictions is for a crime of violence. Making reference to the circumstances of the offence and the antecedents of the offender, Mr. Gouaillier, for the Crown, indicated to the Court that he was seeking a global sentence of 16 months. Mr. Coffin, on behalf of the accused, indicated that he did not disagree with this assessment of the matter.

[11] I am bound to say that, given the circumstances of this offence, I would have started at a higher point, but I have decided that this is not a case in which I will depart from what was essentially a joint submission of counsel.

[12] One item that appeared to be in dispute between the parties was the question of what credit, if any, should be given for pre-trial custody. The amount of pre-trial custody, in this case, is substantial, amounting to some eight months at this point in time.

[13] It appears that during the time Mr. Martin has been in pre-trial custody that he was variously in general population, in segregation and in the remand unit. I am told that Mr. Martin's sojourns in segregation had nothing to do with misconduct by Mr. Martin, but were primarily the result of violence or threats of violence from other inmates and that Mr. Martin was segregated from general population for his own protection.

[14] I was also advised that while in pre-trial custody and, notwithstanding that during a portion of the time he was in segregation or remand, Mr. Martin had the opportunity to attend schooling or programming, although he had taken fairly limited advantages of those opportunities. As pointed out by Mr. Coffin, some of his reluctance to become involved could well have resulted from the difficulties that he was having with other inmates.

[15] The additional factor that I think needs to be considered with respect to what credit should be given to pre-trial custody is the undeniable fact that a substantial period of the time in which Mr. Martin has been in pre-trial custody, certainly dating from the original trial date, if not before, is the result of the manner in which Mr. Martin chose to conduct his defence. Taking all of these matters into account, I have decided to allow credit for the pre-trial custody at the rate of one and a half times the time actually spent.

[16] It follows from that, Mr. Martin, that the sentence of the Court is that you will be in prison for 16 months. However, I am allowing 12 months credit for your eight months pre-trial custody, leaving a remanet of four months. Following your release from imprisonment you will be subject to a probation order for a period of 18 months. The terms of the order will be that:

1. You will keep the peace and be of good behaviour.
2. You will report to the Court as and when required.
3. You will report forthwith upon your release to a probation officer and thereafter as directed.

4. You will advise the probation officer in advance of any change of name or address and promptly notify him of any change of occupation or employment.
5. You will reside at such place as your probation officer will direct and approve.
6. You will abstain from the possession or consumption of alcohol or controlled drugs or substances, except in accordance of a prescription given to you by a qualified medical practitioner.
7. You will have no contact directly or indirectly with Doris Martin, except with the prior permission of your probation officer in consultation with Doris Martin.
8. You will not attend at or within 10 meters of the residence of Doris Martin, again, except with the prior permission of the probation officer, in consultation with Doris Martin.
9. You will take such assessment and counselling as directed.

[17] In the circumstances the surcharges are waived.

[18] Pursuant to the provisions of the *Criminal Code*, you are prohibited from having in your possession any firearm, ammunition or explosive substance for a period of five years following your release from imprisonment and I direct that you surrender any such

items now in your possession to the RCM Police in Whitehorse and that you do so forthwith.

[19] Are either of these offences primarily designated for the purpose of DNA?

[20] MR. GOUAILLIER: Yes, the s. 267(a) offences.

[21] THE COURT: I further direct that you provide samples of bodily substances for the purpose of DNA analysis and banking.

FAULKNER C.J.T.C.