

Citation: *R. v. Morberg*, 2009 YKTC 64

Date: 20090522
Docket: 08-00729B
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Judge Faulkner

REGINA

v.

DAVID BRIAN MORBERG

Appearances:
Eric Marcoux
Nils Clarke

Counsel for Crown
Counsel for Defence

REASONS FOR SENTENCING

[1] FAULKNER T.C.J. (Oral): David Brian Morberg has entered a plea of guilty to a charge of assault with a weapon on two persons, Colleen Kinch and Randy Moore.

[2] The facts, very briefly stated, are that Mr. Morberg attacked Ms. Kinch with a knife. Mr. Moore intervened and Mr. Moore's hand was cut during the ensuing struggle. It should be noted that eventually it appears that Mr. Moore got the better of the situation and Mr. Morberg, as a result, suffered some fairly substantial injuries to his face.

[3] I have been presented by counsel with a joint submission for disposition in this

matter. I am prepared to accede to the joint submission given a number of factors, including Mr. Morberg's state of health, the fact that, although he has a criminal record, it is very dated and has no entries for violence, and the fact that, as Mr. Clarke points out, some rough justice has already been applied to the offender.

[4] With respect to this matter, Mr. Morberg, you are sentenced to a period of imprisonment of nine months; however, I give you credit for the time you have already spent in custody which I calculate at six months, leaving a remanet of three months yet to be served.

[5] Following your release from imprisonment, you will be subject to a probation order for a period of ten months. The conditions of that order will be:

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 within two working days to an adult probation officer and thereafter as, when and in the manner 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 have no contact, directly or indirectly, by any means whatsoever with Colleen Kinch and Randy Moore.
6. You will take such assessment, treatment and counselling as directed by your probation officer.
7. You will abstain absolutely from the purchase, possession or consumption

of alcohol.

8. You will not attend at any place where alcohol is sold except a restaurant which might be incidentally licensed for the sale of alcohol with meals.

[6] This matter being an indictable offence, there will be a surcharge of \$100.

[7] Additionally, there will be an order whereby you will provide samples of bodily substances for the purpose of DNA analysis and banking.

[8] Finally, you are prohibited from having in your possession any firearm, crossbow, restricted weapon, ammunition or explosive substance for a period of ten years following your release from imprisonment.

[9] You are prohibited for life from having in your possession any prohibited firearm, restricted firearm, prohibited weapon, prohibited device or prohibited ammunition.

[10] Is Mr. Morberg requesting time to pay the surcharge?

[11] MR. CLARKE: Anticipating what Your Honour's response might be, but my application would be, given Mr. Morberg's limited means, would the Court consider - and where he will be for the next few months - that the Court consider waiving the surcharge?

[12] THE COURT: I will order it payable forthwith and he can serve the default time concurrently.

[13] MR. CLARKE: Thank you.

[14] MR. MARCOUX: I will ask the clerk to enter stays of proceedings on the remaining counts.

[15] THE COURT: Stay of proceedings on Counts 2, 3 and 4.

[16] MR. MARCOUX: Thank you.

[17] THE COURT: Thank you, gentlemen.

FAULKNER T.C.J.