

Citation: *R. v. Mulholland*, 2006 YKTC 94

Date: 20060906
Docket: 05-00734A
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before: His Honour Judge Lilles

R e g i n a

v.

Samuel Henry Mulholland

Appearances:

Michael Cozens
Lynn MacDiarmid

Counsel for Crown
Counsel for Defence

REASONS FOR JUDGMENT

[1] Mr. Mulholland has pled guilty to four charges arising out of an incident that occurred on March 23, 2006 in Whitehorse. The victims were Melissa Tulk, his partner and mother of their three year old child, and Roberta Winniandy, a 15 year old cousin of Mr. Mulholland.

[2] The charges are as follows:

- 1) Forcible confinement of Melissa Tulk and Roberta Winniandy, contrary to s. 279(2) of the *Criminal Code*;
- 2) Assault with a weapon on Melissa Tulk and Roberta Winniandy, contrary to s. 264.1(1)(a) of the *Criminal Code*; and

- 3) Possession of cocaine, contrary to s. 4(1) of the *Controlled Drugs and Substances Act*.

[3] The circumstances were set out in an Agreed Statement of Facts which was filed as an exhibit in these proceedings. The following is an excerpt from that Agreed Statement of Facts:

5. At approximately 5:00 p.m. on March 23, 2006, Ms. Tulk and Ms. Winniandy were cleaning Mr. Mulholland's trailer. He woke up and started to accuse them of stealing his dope and his money.
6. He told Brandy to tell Ms. Tulk to come into his bedroom. He told Ms. Tulk that he wanted her to have sex with him stating "coke wasn't free and she had to pay somehow".
7. Both Ms. Tulk and Mr. Mulholland were drug users. Ms. Tulk had used cocaine in the previous several days but not on March 23, 2006, although she had consumed approximately 4 or 5 beers. Mr. Mulholland had not used cocaine or consumed alcohol on that date. Ms. Winniandy had not used any drugs or consumed any alcohol.
8. Ms. Tulk said that she didn't want to have sex with him. He tried to pull her pants down but was unable to do so as she held onto them.
9. He sat on Ms. Tulk while on the bed and slapped her in the face several times. He then threw her down on the floor.
10. Once she was on the floor he then began to kick, punch and choke Ms. Tulk. He punched her approximately 4 or 5 times in the head as well as kicking her a couple of times in the back of the head. He was barefoot when this occurred.
11. While he was choking her, Ms. Tulk called out for help and Ms. Winniandy came into the room. Mr. Mulholland grabbed Ms. Winniandy and threw her down on the floor beside Ms. Tulk. In the process he punched Ms. Winniandy in the head and kicked her in the back.
12. Ms. Tulk lay on top of Ms. Winniandy to protect her from his blows. While protecting Ms. Winniandy, Ms. Tulk was also kicked and punched in the head, legs and torso by him. He was yelling and cursing at Ms. Tulk during this time. She

told him to stop because he was hurting her and he replied that he didn't care and "you fucking bitches deserve it". At one point he had his legs wrapped around Ms. Tulk's neck and was choking her.

13. Mr. Winniandy was also punched in the head and neck area the and right side of her body, despite Mr. Tulk's attempts to protect her.
14. During this time the telephone rang and Mr. Mulholland answered it. Andrea Stastny, a friend of Ms. Tulk, was calling. Ms. Tulk yelled out that Mr. Mulholland was beating them up. He hung up the phone, went into the kitchen and returned with a cake-cutting knife. The knife had an 8–10 inch blade and 4–5 inch handle.
15. He held the knife to Ms. Tulk's throat and slapped her across the face with it. He also ran it up and down her back and legs. While he was doing this he said to Ms. Tulk that he was going to gut her and Ms. Winniandy. He made Ms. Tulk beg him not to hurt her.
16. He poked both Ms. Tulk and Ms. Winniandy repeatedly with the knife, not breaking the skin on any of these occasions. He also threw the knife towards Ms. Tulk and Ms. Winniandy 5 or 6 times stating: "It's getting closer, it's getting closer".
17. He told Ms. Tulk to call Andrea Stastny back and tell her that everything was okay so that she wouldn't call the police. Ms. Tulk did as he requested, said everything was fine and asked her not to call the cops.
18. Mr. Mulholland told Ms. Tulk and Ms. Winniandy that if anyone knocked on the door that he was going to stab them both until they were dead. He stated that he was going to kill them and bury their bodies in the riverbank.
19. He said that he was going to rape Ms. Tulk and would get someone else to rape Ms. Winniandy.
20. He told Ms. Tulk that he was going to kill her and John Lavallee, whom she was currently seeing.
21. He also made the following comments to Ms. Tulk and Ms. Winniandy shortly before he left the house:
 - a. that if they left the house he was going to track them down and kill them;

- b. that if they went to the cops he would be out within the next day anyway and would find them and kill them; and
 - c. that he was going to go to his Mom's house and get his gun.
22. Both Ms. Tulk and Ms. Winniandy were scared and believed that he might kill them.
23. The entire incident in the bedroom lasted approximately 45 minutes. During this period Mr. Mulholland would leave the room briefly and return. Ms. Tulk and Ms. Winniandy did not leave the room during this entire period. For much of this time they were made to stay in a single spot, and at no time did they feel that they were free to leave. They spent much of the time huddled in a corner hugging each other.
24. Brandy was present in the room for some of this incident. She kept crying and telling Mr. Mulholland to stop. She was screaming "real hard" and saying "Daddy don't stab them".
25. The incident ended when a friend of Mr. Mulholland's came by after Mr. Mulholland had telephoned him. Mr. Mulholland told Ms. Winniandy that he was sorry but she should have stayed out of other people's business. He also told Ms. Tulk that he was sorry, kissed her and left.
26. As soon as he was gone, Ms. Tulk and Ms. Winniandy fled the house with Brandy and went to a nearby trailer to call the police.

Criminal History

[4] Mr. Mulholland's criminal record contains seven prior convictions from 1993 to 2002. He has convictions for obstruction contrary to section 129 (1993), assault contrary to section 266 (1994, 2002), impaired driving contrary to section 253(b) (1994, 1997), uttering threats contrary to section 264.1 (1995) and theft under \$1,000 contrary to section 334(b) (1995).

[5] In addition, the Pre-Sentence Report indicates that in 1995 he had two convictions for impaired driving contrary to section 253(b) and for causing a

disturbance contrary to section 175(1)(a)(i). In May of 1996 he had one conviction for breach of probation contrary to section 740(1).

[6] It is noteworthy that Mr. Mulholland's last conviction was in 2002, and that he has not re-offended for several years. The 2002 conviction, for assault, was on the same victim, Ms. Tulk. He received a suspended sentence and probation for one year. Moreover, he has only two sentences involving incarceration, both short – the longest was for 30 days and that was in 1995.

[7] Ms. Tulk and Mr. Mulholland had been in an “on and off relationship” for some 11 years. At the time of this incident, they were not living together.

Family History

[8] Mr. Mulholland's parents separated when he was ten years old. His father was an alcoholic. While Mr. Mulholland states that there was no domestic violence in the home, his mother reports a violent and controlling relationship with her husband, numerous calls to the police and at least one serious injury. It is noteworthy that the accused's behaviour towards Ms. Tulk follows in the footsteps of his father.

Education

[9] Mr. Mulholland has a limited education, he completed grade 10. He has the required tickets for fire fighting. As a result of his limited education, his jobs have been intermittent and labouring. He worked seasonally in 2004 and 2005 as a fire fighter. In the winters he collected Employment Insurance.

Relationships

[10] Mr. Mulholland has had three long-term relationships, all of which were dysfunctional and involved substance abuse and infidelity. He has a son aged 14, who lives with Mr. Mulholland's mother or with him.

[11] Mr. Mulholland's third long-term relationship is with the victim of his current offences. He has been in a relationship with Melissa Tulk for six years and they have a daughter from this union who is three years old. Ms. Tulk also has two other children from a previous relationship who usually reside with them. This relationship is also dysfunctional with assaultive behaviour, drug and alcohol abuse and infidelity.

[12] Their three year old daughter, Brandy, was present during the incident that resulted in the charges before the court.

Substance Abuse

[13] In addition to alcohol abuse, Mr. Mulholland has experimented with many substances. He has developed addictions to marijuana and crack cocaine. He stated that he used marijuana daily and has for an extended period of time. He started using crack cocaine approximately three to four years ago, and has been using it chronically for approximately one year. He further stated that cocaine withdrawal has caused him discomfort. His withdrawal symptoms include shaking, sweating, choking, vomiting, sleep disturbance and anxiousness.

Assessments

[14] Mr. Mulholland was assessed as a very high risk to re-offend generally, as well as for spousal abuse. Use of alcohol and drugs is a risk factor for him. The psychological assessment concluded:

Mr. Mulholland's manageability in the community is in the moderate risk range providing he does not abuse substances and attends regular treatment sessions for his substance addiction and his assaultive behaviour. Stringent external supervision should be implemented initially in order to assist Mr. Mulholland with his sobriety. Mr. Mulholland stated that he and his partner plan on resuming their relationship once he is out of goal and supports should be in place in order to afford for victim safety.

Amenability to Treatment

[15] Mr. Mulholland has not demonstrated any initiative or willingness to participate in treatment or counseling. For example, in 2002 he was assessed by the Spousal Abuse Program and was accepted into that program, but left the Territory.

[16] The psychological assessment concluded as follows:

Mr. Mulholland should be encouraged to embrace treatment and supervision wholeheartedly. Test results and clinical observation indicate that he believes there are areas of concern, however he was reluctant to state that he required treatment or support in order to prevent relapse. He stated that he quit alcohol successfully without a treatment program and he can do the same with crack cocaine. He did not state that he requires to desist his marijuana use nor did he believe he required a treatment program to address his assaultive behaviour. This style of idealism is consistent with persons with similar personality features as Mr. Mulholland however, often not realistic for long term behaviour change and abstinence.

[17] Treatment or counseling will also be inhibited by Mr. Mulholland's propensity to minimize facts and personal issues, and the absence of empathy for his victims. Throughout the reports filed with the Court, there are references to two versions of events – the official version and Mr. Mulholland's version. It appears that he has not fully acknowledged or accepted what happened on March 23, 2006, notwithstanding his guilty pleas. He certainly has little, if any, appreciation of how his drug abuse and violent behaviour towards Ms. Tulk impacts on his three year old daughter.

Disposition

[18] I acknowledge Mr. Mulholland's aboriginal status. A letter from his First Nation, the Na-Cho Nyak Dun First Nation in Mayo, expressed support for him, including his attendance for treatment.

[19] On the other hand, the Little Salmon Carmacks First Nation wrote to the Court asking that Mr. Mulholland be banned from their community. They know him as a drug dealer. The Chief and Council wants to reduce the substance abuse that is creating serious problems in their community.

[20] The matters before the Court are very serious offences involving violence and threats of violence. They are aggravated by the fact of a previous conviction of assault against the same victim and mother of their child. The presence of the child during the incident, which lasted some 45 minutes, is a serious aggravating factor. I note as well that the second victim, Mr. Mulholland's cousin, was 15 years of age at the time of the incident.

[21] Mr. Mulholland's involvement with hard drugs around the time of the incident is also an aggravating factor.

[22] The mitigating factors include Mr. Mulholland's guilty pleas, his limited record and the absence of any jail time greater than 30 days. It also appears that Ms. Tulk has forgiven him, that they have been in regular contact while he has been in custody and that they wish to reconcile. Mr. Mulholland is adamant that he wants to be released so he can support his family – a commendable intention. On the other hand, he fails to appreciate the negative impact his substance abuse and violent behaviour has on his children.

[23] On these facts, the applicable principles of sentencing, in order of priority are:

- 1) specific deterrence;
- 2) rehabilitation; and
- 3) general deterrence.

[24] I have reviewed a number of relevant decisions, including the following:

R. v. Morris, 2004 BCCA 305

R. v. Power, [1999] Y.J. No. 96 (YKTC)

R. v. Dick, 2000 YKTC 516

In addition, I have considered *R. v. Joe*, 2005 YKCA 9.

[25] In all of the circumstances, a global sentence of 21 months incarceration is appropriate. I am prepared to accede to the submission of the defence that I consider a blended sentence. Mr. Mulholland has spent 6 months in custody, for which I am crediting him with the equivalent of 9 months custody, using a gross up factor of 1.5.

- Count #1 Forcible confinement, s. 279(2). The appropriate sentence would be 6 months incarceration. I allocate 4 months of actual pre-trial custody to this defence, grossed up to 6 months. There will be a sentence of one day in jail, deemed served.
- Count #4 Uttering a Threat to Cause Death. An appropriate sentence would be 5 months custody, consecutive. I am allocating the remaining 2 months of pre-trial custody, resulting in a credit of 3 months. There will be a sentence of 2 months custody.
- Count #5 Possession of Cocaine, s. 4(1) of the *Controlled Drug and Substance Act*. The appropriate sentence will be 1 month custody, consecutive.
- Count #2 Assault using a weapon (knife), s. 267(a). The sentence will be 9 months custody, consecutive, served in the community as a conditional sentence. The terms of the conditional sentence are as follows:
- 1) Keep the peace and be of good behaviour and appear before the court when required to do so by the court.
 - 2) Report to a conditional sentence supervisor immediately upon your release from custody, and thereafter, when required by the conditional sentence supervisor and in the manner directed by the conditional sentence supervisor.
 - 3) Remain within the Yukon Territory unless you have written permission from your conditional sentence supervisor or the court.
 - 4) Notify the conditional sentence supervisor or the court of any change of employment or occupation.
 - 5) Abide by a curfew by remaining within your place of residence, except with the prior written permission of your conditional sentence supervisor, or except in the actual presence of another responsible adult approved in advance by your conditional sentence supervisor;

for the first THREE (3) months, between the hours of 7:00 p.m. and 6:00 a.m. daily; for the next THREE (3) months abide by a curfew by remaining within your place of residence between the hours of 8:00 p.m. and 6:00 a.m. daily and for the remaining THREE (3) months abide by a curfew by remaining within your place of residence between the hours of 9:00 p.m. and 6:00 a.m. daily. You must present yourself at the door or answer the telephone during reasonable hours for curfew checks. Failure to do so will be a presumptive breach of this condition.

- 6) Reside as approved by your conditional sentence supervisor, abide by the rules of the residence and do not change that residence without the prior written permission of your conditional sentence supervisor.
- 7) Not attend at or within the community of Carmacks unless you have the prior permission of the conditional sentence supervisor.
- 8) Abstain absolutely from the possession or consumption of alcohol and/or controlled drugs or substances except in accordance with a prescription given to you by a qualified medical practitioner. Provide a sample of your breath and urine for the purposes of analysis upon demand by a peace officer who has reason to believe that you may have failed to comply with this condition.
- 9) Not attend any bar, tavern, off-sales or other commercial premises whose primary purpose is the sale of alcohol.
- 10) Take such alcohol and drug assessment, counseling or programming as directed by your conditional sentence supervisor, and having given the court your consent, attend and complete a residential treatment program as directed by your conditional sentence supervisor.
- 11) Report to the Family Violence Prevention Unit to be assessed, and attend and complete the Spousal Abuse Program, as directed by your conditional sentence supervisor.
- 12) Take such psychological assessment, counseling and programming as directed by your conditional sentence supervisor.
- 13) Take such other assessment, counseling and programming as directed by your conditional sentence supervisor.
- 14) Have no contact directly or indirectly or communicate in any way with Melissa Tulk and Brandy Tulk/Mulholland, except with the prior written permission of your conditional sentence supervisor in consultation with Victim Services, Family Violence Prevention Unit and Family and Children's Services.

- 15) Make reasonable efforts to find and maintain suitable employment and provide your conditional sentence supervisor with all necessary details concerning your efforts.
- 16) Provide your conditional sentence supervisor with consents to release information with regard to your participation in any programming, counseling, employment or educational activities that you have been directed to do pursuant to this conditional sentence order.
- 17) Not have in your possession any firearm, ammunition, explosive substance or weapon unless you have the written permission of your conditional sentence supervisor.
- 18) Provide for the support or care of your dependants.

[26] In addition, all counts will have an 18 month probation order with the following terms:

- 1) Keep the peace and be of good behaviour and appear before the court when required to do so by the court.
- 2) Notify the court or the probation officer in advance of any change of name or address, and promptly notify the court or the probation officer of any change of employment or occupation.
- 3) Remain within the Yukon Territory unless you obtain written permission from your probation officer or the court.
- 4) Report to a probation officer immediately upon completion of your conditional sentence order, and thereafter, when and in the manner directed by the probation officer.
- 5) Reside as approved by your probation officer; abide by the rules of that residence and not change that residence without the prior written permission of your probation officer.
- 6) Abstain absolutely from the possession or consumption of alcohol and/or controlled drugs or substances except in accordance with a prescription given to you by a qualified medical practitioner. Provide a sample of your breath and urine for the purposes of analysis upon demand by a peace officer who has reason to believe that you may have failed to comply with this condition.
- 7) Not attend any bar, tavern, off-sales or other commercial premises whose primary purpose is the sale of alcohol.
- 8) Take such alcohol and/or drug assessment, counseling or programming as directed by your probation officer, and having given

the court your consent, attend and complete a residential treatment program as directed by your probation officer.

- 9) Report to the Family Violence Prevention Unit to be assessed, and attend and complete the Spousal Abuse Program, as directed by your probation officer.
- 10) Take such psychological assessment, counseling and programming as directed by your probation officer.
- 11) Take such other assessment, counseling and programming as directed by your probation officer.
- 12) Have no contact directly or indirectly or communicate in any way with Melissa Tulk and Brandy Tulk/Mulholland except with the prior written permission of your probation officer in consultation with Victim Services, the Family Violence Prevention Unit and Family and Children's Services.
- 13) Make reasonable efforts to find and maintain suitable employment which does not interfere with your ability to attend counseling and provide your probation officer with all necessary details concerning your efforts.
- 14) Provide your probation officer with consent to release information with regard to your participation in any programming, counseling, employment or educational activities that you have been directed to do pursuant to this probation order.
- 15) Not have in your possession any firearm, ammunition, explosive substance or weapon unless you have the written permission of the probation officer.
- 16) Provide for the support or care of your dependants.

[27] In summary, Mr. Mulholland will have three additional months to serve in custody, followed by a 9 month conditional sentence, followed by 18 month probation order.

Lilles, T.C.J.