Citation: *R. v. Nehass*, 2015 YKTC 11

Date: 20150326
Docket: 13-00181A
13-00385A
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before His Honour Judge Luther

REGINA

v.

MICHAEL DAVID ARCHIE NEHASS

Appearances:

Eric Marcoux	Counsel for the Crown
Michael David Archie Nehass	Appearing on his own behalf
Bibhas Vaze	*Amicus curiae*

REASONS FOR SENTENCING

[1] LUTHER T.C.J. (Oral): This morning, Mr. Vaze indicated that we had gotten off the rails with this case. I do not entirely agree with that. We were proceeding as was set out and agreed all along, albeit a little bit more slowly than we had anticipated.

[2] The issue of disclosure, I believe, would have been effectively dealt with if we had been able to have that trial management conference as originally set down. The fact that Mr. Vaze had to excuse himself and attend to his father's needs, of course, is totally understandable. We would all do the same.

[3] As to joint submissions, to reject a joint submission, the sentencing judge must be satisfied, on proper grounds, that the acceptance of the proposed sentence would bring the administration of justice into disrepute or would otherwise be contrary to the public interest.

[4] In this case, I have to ask myself whether the joint submission is so inordinately low and lenient and markedly out of line with the expectations of reasonable persons aware of the circumstances of the case that they would view it as a breakdown in the proper functioning of the criminal justice system.

[5] I do find that the sentence put forward by the Crown and defence is clearly on the low side. But in my view, it does not bring the administration of justice into disrepute. And I will, with some reluctance, sanction it.

[6] I refer to *R. v. Nehass*, 2010 YKTC 64. Judge Ruddy wrote:

> Michael Nehass is a 26-year-old First Nations man...

-- of course he's 31 now --

> ...with ties to the Teslin Tlingit Council through his mother and the Tahltan First Nation through his father. In his relatively short life, Mr. Nehass has managed to build a reputation in this community, particularly with law enforcement, for being an angry young man with a penchant for violence, who presents as a significant risk to the safety of both the general public and of staff and fellow inmates when housed within a correctional facility.

[7] Nothing has changed.

[8] To say that the Whitehorse Correctional Centre had difficulties managing this offender would be a gross understatement. But from what I saw and heard in Court, Mr. Nehass can either be very difficult to deal with or he can be very reasonable. It largely depends on how he wants to be.

[9] It is my belief that he set out from the start to be difficult and to try and get his own way insofar as he could. This invariably led to encounters with the staff at Whitehorse Correctional Centre and within less than 16 months from his entry day on December 30, 2011, he was being transferred back and forth from the Secure Living Unit ("SLU") to segregation -- mostly in segregation -- until today. In fact, within four days of admission, he was already getting into trouble.

[10] An examination of Exhibits 6, 7, and 8 show clearly the mindset of Mr. Nehass even before May 2013, after which point he was basically in segregation. We read from December 30, 2011 to May 13, 2013 of the many threats to correctional officers, fighting with inmates, and so on, being rude and abusive to the nurse, even to officials from Elections Canada. We remember, of course, prisoners do have the right to vote. Also, he exposed himself to another inmate; and on another occasion, he came out of the shower and while naked chased the inmates around the unit.

[11] Most, if not all, of his severe deprivation of liberty was brought on by himself.

[12] The Crown and defence have proposed a sentence of 26 months and grossing up the 21 months he has served by 1.25:1. Like I indicated, the sentence put forward by the Crown and defence does not bring the administration of justice in disrepute, although I indicated that I found it to be on the low side. However, I cannot bring myself

to give Mr. Nehass a 1.25:1 credit, but I am not going to interfere with the sentence proposed. The credit will be limited to 1:1. I do not want to be seen as setting a precedent for prisoners who behave in such an unruly fashion to get a 1.25:1 credit.

[13] Therefore, on Information 181(a) on Count #1, there will be a sentence of not 10 months but eight months; Count #2, eight months concurrent. And on Information 385(a), the sentence will be on Count #1, five months consecutive; Count #5, 8 months consecutive; and on Count #4, three months concurrent, for a total of 21 months as counsel had agreed. So these 21 months will be reduced by the 21 months on a 1:1 basis that he has been in since June 2013.

[14] With regard to the probation order, the Court agrees to have Mr. Nehass placed on probation for two years. And for the record, we will put that on Count #1 of Information 181(a).

[15] The conditions will be as agreed by the parties, including the statutory conditions. These will be followed by:

1. Report to the probation officer as required, including within two days of your release from custody, and thereafter when and in the manner directed by the probation officer.

[16] So we will be able to accommodate Mr. Nehass if he is in another community and is not able to visit the probation officer in person. He can talk to the probation officer about that and get that worked out in advance.

2. The curfew will be in effect from 11 p.m. to 6 a.m., for the first year, and that will be daily except with the prior written permission of the probation officer. You must answer the door or the telephone for curfew checks. Failure to do so during reasonable hours will be a presumptive breach of this condition.

[17] Now, as to the permission of the probation officer -- what that means, Mr. Nehass, is that if you are out and you get a job and you are working, say, a night shift, like 11 to 7 or something like that, you can get permission from the probation officer in advance. That should not be a problem.

[18] In addition to the abstention not to possess or consume alcohol and/or controlled drugs or substances that have not been prescribed for you by a medical doctor, the Crown never mentioned this, but I am going to add the condition:

3. Not to attend any premises whose primary purpose is the sale of alcohol, including any liquor store, off-sales, bar, pub, tavern, lounge, or nightclub.

4. Not to contact directly or indirectly or have any communication in any manner with Christopher St. George, and do not go within 50 metres of his residence or place of work.

[19] There will be a s. 109 order in effect for life, attached to Count #1 of Information 181(a).

[20] I will waive the victim surcharges. They are not mandatory, given the dates of these offences.

[21] Mr. Nehass has thanked the Court for being patient. Of course, we have had to be patient on a number of occasions. But today, he has presented himself in a very fine fashion and we certainly appreciate that.

[22] As to Exhibits 6, 7, and 8, in following with the court policy, all I am going to say is this. They were compiled from Whitehorse Correctional Centre records by Karen Shannon for the sentence hearing. The exhibits were entered into evidence without any objection at the time but have not been fully tested on cross-examination. However, I believe based on the evidence that I heard from Ms. Shannon that the contents are, for the most part, reliable and accurate.

[23] The other thing I would like to say for your benefit, Mr. Nehass, and also Mr. Vaze, is that in terms of sentencing, perhaps the most flexible vehicle that we have in the *Criminal Code* is a probation order. So that Mr. Nehass, if you do really well on probation, you can bring this back to court and the court can reduce it down to a year.

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LUTHER T.C.J.