

Citation: *R. v. Nukon-Netro*, 2013 YKTC 32

Date: 20130326
Docket: 12-00955
12-00955A
12-00956
Registry: Whitehorse
Heard: Old Crow

IN THE TERRITORIAL COURT OF YUKON
Before: His Honour Chief Judge Cozens

REGINA

v.

KEVIN NUKON-NETRO

Appearances:
John Phelps
David Christie

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCING

[1] COZENS C.J.T.C (Oral): Kevin Nukon-Netro has entered guilty pleas to one offence under s. 267(a) of the *Criminal Code* and 733.1(1) of the *Criminal Code* from an incident that occurred on December 21, 2012. Crown proceeded indictably on that Information. Mr. Nukon-Netro has also entered guilty pleas to a charge of 267(b) and 733.1(1) for an incident that occurred on December 29, 2012. Crown has proceeded summarily.

[2] These matters were set for trial. Crown and defence have provided an Agreed Statement of Facts that were originally set out as admissions with respect to the trials.

As I understand it, the issues in the trial were going to be self-defence. They were triable issues. Crown has fairly conceded that these were difficult matters to bring to trial and complicated by the relationships between all the parties. Nonetheless, Crown suggested I give recognition to the guilty pleas in this case.

[3] Briefly put, with respect to the December 21, 2012 incident, Mr. Nukon-Netro showed up at a residence where Mr. Stanley Njootli was. He was not allowed into the residence. He subsequently encountered Mr. Njootli outside his own residence. Mr. Njootli came outside with a wooden club with an intent to keep Mr. Nukon-Netro away. Mr. Nukon-Netro was able to obtain the club and strike Mr. Njootli, causing him to have a swollen left eye, a laceration on his head for which he received stiches, and a broken arm which is continuing to provide him problems to this day. He was consuming alcohol and was prohibited from doing so on the terms of the Probation Order that he was currently on.

[4] Mr. Nukon-Netro was not picked up on these charges, and subsequently, on the 29th of December he was at a residence in Old Crow where there was a party going on. It was the house of Charles Montgomery, who told Mr. Nukon-Netro to leave the residence. They got into a fight on the steps, and during that fight, Mr. Nukon-Netro struck Mr. Montgomery, causing him to receive two stiches to his cheek, with permanent scaring, and three stiches to his head. As I indicated earlier, defence is not pursuing the argument that this was justifiable, and has conceded it was not in self-defence. At that time, Mr. Nukon-Netro was again under the influence of alcohol, contrary to the terms of the Probation Order that he was on.

[5] Mr. Nukon-Netro has a substantial criminal record for a 21-year-old individual with a number of youth entries for fails to comply with conditions, assault, mischief, break and enters, other property offences, uttering threats, and arson. The most significant entry that he has is as an adult, for which he received on a s. 267(b) conviction 15 months jail and the two years' Probation Order that he was on at the time he committed these offences.

[6] There is a joint submission before me that has taken considerable work between counsel in the circumstances of this case. I was provided sufficient information to satisfy me that the joint submission is appropriate in the circumstances. I have some familiarity with Mr. Nukon-Netro having read previous Pre-Sentence Reports and know him to be a young man that has the potential to live a non-criminal lifestyle, and he is a young man whose potential to do so will be severely impacted if he drinks and consumes alcohol. Mr. Nukon-Netro has a supportive father in court who has work for him. He has the ability to function in this community with the supports that he has if he makes the right choices.

[7] The sentence that is proposed is the sentence that I will impose for this, as I said, 21-year-old member of the Vuntut Gwitchin First Nation. Taking into account all the principles of sentencing and the considerations relevant to dealing with a young First Nations' offender, the sentence imposed is nine months custody on the 955 Information s. 267(a). Mr. Nukon-Netro has been in custody since January 21st, and Crown and defence have agreed on the information they have that he should be given credit of three months, therefore, you will have six months left to serve in custody on this charge. There will be a sentence of 30 days concurrent time served on the 733.1(1)

on the 955 Information.

[8] With respect to the 956 Information, he will be given a sentence of nine months on the s. 267(b) to be served conditionally in the community. There will be a concurrent sentence of 30 days conditional on the s. 733.1(1) charge on that Information. There will, attached to all charges, be a period of six months' probation following.

[9] The terms of the Conditional Sentence will be as follows:

1. You are to keep the peace and be of good behaviour;
2. Appear before the Court when required to do so by the Court;
3. You are to report to a Supervisor immediately upon your release from custody and thereafter when required by the Supervisor and in the manner directed by the Supervisor;
4. You are to remain within the Yukon Territory, unless you have written permission from your Supervisor;
5. Notify the Supervisor in advance of any change of name or address, and promptly notify the Supervisor of any change of employment or occupation;
6. You are to reside as approved by your Supervisor; abide by the rules of that residence and not change that residence without the prior written permission of your Supervisor;
7. For the first three months of this order, you are to remain within your place of residence, except with the prior written permission of your Supervisor, and except for the purposes of employment, including travel directly to and from your employment, or except in the direct company of an individual

- approved in writing in advance by your Bail Supervisor;
8. You must present yourself at the door or answer the telephone during reasonable hours to ensure you are complying with this condition. Failure to do so will be a presumptive breach of this condition;
 9. For the fourth, fifth, and sixth months of this order, you are to abide by a curfew by remaining within your place of residence between the hours of 6:00 p.m. and 7:00 a.m. daily, except with the prior written permission of your Supervisor, or except in the actual presence of a responsible adult approved in writing in advance by your Supervisor;
 10. 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;
 11. You are to abstain absolutely from the possession or consumption of alcohol;
 12. You are to provide a sample of your breath for the purposes of analysis upon demand by a Peace Officer who has reason to believe you may have failed to comply with this condition;
 13. You will not attend any bar, tavern, off-sales, or other commercial premises whose primary purpose is the sale of alcohol;
 14. You are to take such alcohol assessment, counseling or programming as directed by your Supervisor and attend and complete a residential treatment program as directed by your Supervisor;
 15. You are to take such other assessment, counselling and programming as

directed by your Supervisor;

16. You are to perform 40 hours of community service as directed by your Supervisor or such other person as your Supervisor may designate. This community service is to be completed by the end of the seventh month of this order;
17. You are to participate in such educational and life skills programming as directed by your Supervisor;
18. You are to make reasonable efforts to find and maintain suitable employment, and provide your Supervisor with all necessary details concerning your efforts;
19. You are to provide your Supervisor with consent to release information with regard to your participation in any programming, counselling, employment or educational activities you have been directed to do pursuant to this Conditional Sentence Order;

[10] The Probation Order of six months that will follow on all charges, will require you to:

1. Keep the peace and be of good behaviour;
2. Appear before the Court when required to do so by the Court;
3. Notify the Probation Officer in advance of any change of name or address, and promptly notify the Probation Officer of any change of employment or occupation;
4. You are to remain within the Yukon Territory unless you obtain written permission from your Probation Officer or the Court;

5. You are to report to a Probation Officer immediately upon completion of your Conditional Sentence and thereafter, when and in the manner directed by the Probation Officer;
6. You are to reside as approved by your Probation Officer; abide by the rules of the residence and not change that residence without the prior written permission of your Probation Officer;
7. You are to abstain absolutely from the possession or consumption of alcohol;
8. You are not attend any bar, tavern, off-sales or other commercial premises whose primary purpose is the sale of alcohol;
9. You are to take such alcohol assessment, counselling and 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;
10. You are to take such other assessment, counselling and programming as directed by your Probation Officer;
11. You are to participate in such educational or life skills programming as directed by your Probation Officer;
12. You are to make reasonable efforts to find and maintain suitable employment, and provide your Probation Officer with all necessary details concerning your efforts;
13. You are to provide your Probation Officer with consent to release information with regard to your participation in any programming,

counselling, employment or educational activities that you have been directed to do pursuant to this Probation Order;

[11] There is a mandatory DNA order on the 267(a) charge. I make that order. There is also a mandatory s. 109 order. I note that you are already on one, but there will, nonetheless, be one that attaches itself to this order, prohibiting you from possessing any firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition, and explosive substance for a period of 10 years.

[DISCUSSION RE SECTION S. 267(A) AND 267(B)]

[12] I am going to waive the Victim Fine Surcharges on all the Counts. The DNA order is mandatory, actually, on the 956 information as well, notwithstanding the summary election, because that is a 267(b).

[13] MR. PHELPS: Correct.

[14] THE COURT: But I will not make the s. 110 firearms order on that file. Does that cover everything?

[15] MR. PHELPS: Stay of proceedings with respect to the outstanding accounts. Thank you.

[16] THE COURT: Stay of proceedings.

COZENS C.J.T.C