

Citation: *R v. Porter*, 2013 YKTC 56

Date: 20130610  
Docket: 12-00757  
12-01088A  
Registry: Whitehorse

**IN THE TERRITORIAL COURT OF Yukon**  
Before: His Honour Judge Luther

REGINA

v.

VALENTINE EDWARD PORTER

Appearances:  
Eric Marcoux  
Melissa Atkinson

Counsel for the Crown  
Counsel for the Defence

**REASONS FOR SENTENCING**

[1] LUTHER T.C.J. (Oral): Mr. Valentine Edward Porter pled guilty to assaulting Patricia Chudy on September 15, 2012, at Whitehorse, Yukon, contrary to s. 266 of the *Criminal Code*. As well, on March 8, 2013, at Whitehorse, Yukon, he assaulted Patricia Chudy causing her bodily harm, contrary to s. 267(b) of the *Criminal Code*.

[2] The facts from September 15, 2012 reveal that the accused and the victim had been fighting. There was fresh blood on the face of the victim and no substantial physical injuries. She had been pushed down the stairs as well. The damage to her face had been caused by the fist of the accused.

[3] On March 8, 2013, there was another domestic assault occurring in the

basement suite that Ms. Chudy was occupying. The accused fled the scene. Mr. Porter had gained entry through a window. The victim had been sleeping on the couch and the accused was drunk and said nothing as he continually kicked and punched her, which led her to be taken to the hospital by EMS where she stayed for five days. Fortunately, there are no permanent injuries, but in taking a look at the photographs, which were entered as Exhibit 1, it is clear that the assaults were brutal.

[4] The Crown and defence have put forward a joint submission on sentence for two years less a day, less the 90 days that Mr. Porter served in pretrial custody. I am prepared to accept the joint submission. With regard to the purpose and principles of sentencing, they are well set out in the *Criminal Code*, in particular ss. 718.1, 718.2 (a)(ii), and also I am taking a look at s. 718.2 (e). I am going to rule out s. 718.2 (e) right away. Mr. Porter is a member of the Liard First Nation, but given his extensive record, these being his seventh and eighth crimes of violence, he is basically disentitled to consideration under s. 718.2(e), regardless of his background.

[5] The defence has capably shown that Mr. Porter came from a disadvantaged background, in the sense that there were alcohol and drugs present, and family violence, throughout his time of growing up. Mr. Porter was taken into the care of the Director of Child and Family Services at the young age of eight, and released on his own at the age of 16. But the time comes when a person has to move beyond the unfortunate background and basically establish a better path for their lives. This offender, in fact, has done that at periods of his life. I note that from the end of 2010 to the offence in September 2012 there were no apparent crimes committed by him. Mr. Porter was working at lawful, gainful employment over the years as a hunting guide with

ALS and also with the Wolverine Mine. Throughout the course of his working life, Mr. Porter has acquired several tickets, which are valuable to him in terms of acquiring employment. When he is released from custody on these charges, hopefully Mr. Porter will be able to reacquire the type of employment that he has enjoyed in the past.

[6] The pleas of guilty and not wanting to put the victim on the stand are definitely mitigating factors on sentence. While in no way is this considered an early guilty plea, the fact that the victim has been spared the negative experience of having to testify in court under these circumstances is certainly a significant mitigating factor on sentence. It is quite likely, if this matter had gone to trial and he were convicted under the original charge of s. 268, that Mr. Porter would have been given a federal sentence.

[7] The courts will do their utmost to protect victims of domestic violence, and I do feel that the sentence proposed of two years less a day, given the background of Mr. Porter, is appropriate. For the assault charge from September 15, 2012, the sentence will be fixed at five months. For the sentence of the s. 267(b) from March 8, 2013, the sentence will be fixed at 19 months less one day, less 90 days pretrial custody. The Court will impose a DNA order on the s. 267(b) charge, as well as a lifetime prohibition under s. 109 of the *Criminal Code*.

[8] The Probation Order of 18 months will attach to the s. 267(b) charge. The conditions are as outline in the sheet prepared by the Crown with agreement of defence counsel:

1. Keep the peace and be of good behaviour. Appear before the Court when required to do so;

2. Notify the Probation Officer in advance of any change of name or address, and notify the Probation Officer of any change of employment or occupation;
3. Remain within the Yukon Territory unless you obtain written permission from the Probation Officer or the Court;
4. Report to the Probation Officer within two working days of your release from custody;
5. Reside as approved by the Probation Officer and not change that residence without the prior written permission of the Probation Officer;
6. Abstain absolutely from the possession or consumption of alcohol and controlled drugs or substances, except in accordance with a prescription given to you by a qualified medical practitioner;
7. Not attend any bar, tavern, off-sales, or other commercial premises whose primary purpose is the sale of alcohol;
8. To take such alcohol and drug assessment, counselling or programming as directed by your Probation Officer;
9. To report to the Family Violence Prevention Unit to be assessed and attend and complete the Spousal Abuse Program as directed by the Probation Officer;
10. To take such other assessment, counselling, and programming as directed by your Probation Officer;
11. Have no contact directly or indirectly or communication in any manner with Patricia Chudy, except with the prior written permission of the Probation

Officer in consultation with Victim Services;

12. Not attend at or within 50 metres of Patricia Chudy's residence or place of work, except with the prior written permission of the Probation Officer in consultation with Victim Services.
13. Not have in your possession any firearm, ammunition, explosive substance, or weapons, including knives, other than when consuming meals.

[9] Was there anything else then, for the Crown?

[10] MR. MARCOUX: Yes. I would ask the clerk to enter stay of proceedings on the remaining counts.

[11] THE COURT: Ms. Atkinson, anything else for you?

[12] MS. ATKINSON: Nothing further.

[13] THE COURT: Okay. Mr. Porter, would you stand, please? I am sure you feel very bad about these crimes you have committed against Ms. Chudy. I am pleased that you did not drag her through a trial and have her testify, and that has gone a considerable distance in keeping you here in the Whitehorse Correctional Centre. As I indicated in my decision, if she had been forced to testify and you were convicted, you would have definitely gone federal, which means the sentence would have been a fair bit over the two year time. Let us hope that you can make good use of the time you spend in the Whitehorse Correctional Centre.

[14] You have already shown us that you can work and that you can work well.

Strive towards that. You have a number of tickets now. Hopefully, the mining industry will stay in good shape over the next few years and you can make a good life for yourself. But really, given these great number of convictions, you are going to have to put the drinking behind you. There is no compromise. For you it has to be no drinking, period. I am sure that you will appreciate the benefits of living an alcohol-free life because you will be enjoying freedom, you will be enjoying financial rewards for your good work, and hopefully a good relationship with someone. On the other hand, if you persist in drinking, it is just a matter of going back and forth to jail, which is a waste of your time and, in the end, you do not want to end up being 45 or 50 years old and all you have to show for yourself is a longer criminal record. We do wish you well and hopefully this will be the turning point in your life.

[15] Madam Clerk, anything else for you on this?

[16] THE CLERK: Just to be clear, as far as [indiscernible/away from microphone] go, is the sentencing running consecutive?

[17] THE COURT: Yes. The sentences will be consecutive. I failed to say that, but clearly, the sentences will be consecutive.

[18] MR. MARCOUX: Thank you.

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LUTHER T.C.J.