

Citation: *R. v. Prasad*, 2018 YKTC 21

Date: 20180601
Docket: 17-00595
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before His Honour Chief Judge Chisholm

REGINA

v.

RAM NARESH PRASAD

Appearances:
Jean-Benoit Deschamps
J. Robert Dick

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCE

[1] Ram Naresh Prasad entered guilty pleas to the offences of assault with a weapon and uttering a death threat, contrary to ss. 267(a) and 264.1(1)(a), respectively, of the *Criminal Code*.

[2] Mr. Prasad committed these offences in Whitehorse on December 13, 2017.

[3] The Crown has elected to proceed summarily.

Relevant Facts

[4] Mr. Prasad committed these offences in the Elijah Smith Building where he was employed as a commissionaire who provided security to the building. The victim,

Shirley Baumung, was a co-worker of Mr. Prasad and was discharging her commissionaire duties at the time of the offences.

[5] On the day in question, prior to the end of Mr. Prasad's shift, he and Ms. Baumung disagreed about the scope of his duties. Ms. Baumung advised him that she believed he was not properly carrying out his duties. Mr. Prasad became agitated and replied that she could not tell him what to do.

[6] As a result of this incident, Ms. Baumung phoned their off-site Supervisor to complain about Mr. Prasad. This action by Ms. Baumung clearly upset Mr. Prasad who had been working as a commissionaire for a lengthy period of time.

[7] Mr. Prasad finished his shift and returned home. Contrary to his routine, he drank some hard liquor upon arriving home. He then returned to his place of work with a small bottle of alcohol and an axe concealed in a garbage bag.

[8] Mr. Prasad confronted Ms. Baumung who was seated in a chair by the Commissionaire's desk. He took the axe out of the bag and walked around the desk to where Ms. Baumung was seated. He commenced screaming that he was going to kill her and yelled profanities at her. A witness overheard Mr. Prasad say on more than one occasion 'kill that fucking bitch and cut her head off'. Although he did not directly touch Ms. Baumung with the axe, he held it in the vicinity of her neck.

[9] When two individuals intervened in an attempt to calm down Mr. Prasad, Ms. Baumung escaped from where she was seated. One of the two removed the axe from him. The police subsequently arrived and arrested Mr. Prasad.

Position of the parties

[10] The Crown seeks a global jail sentence in the range of 15 to 18 months plus a three-year probation order. The Crown submits that this serious assault is aggravated by the fact that Mr. Prasad committed it in the workplace which he was tasked, through his employment, with keeping safe and secure. The Crown also argues that there was some premeditation and planning to this incident.

[11] The defence contends that a lesser jail sentence than proposed by the Crown, served in the community, is the appropriate penalty, having regard to the relevant principles of sentencing and the personal circumstances of Mr. Prasad.

[12] The Crown is opposed to the imposition of a conditional sentence.

Victim Impact

[13] The victim impact statement of Ms. Baumung clearly demonstrates the negative effects of Mr. Prasad's crime on her. Since the incident, she feels unsafe and spends some nights in her daughter's home. It has made her wary of others. Unfortunately, at times, Ms. Baumung relives the events which comprise the assault with a weapon and uttering threats charges.

[14] Ms. Baumung has changed her shift schedule to avoid being outside of her workplace in the dark and risking the chance of running in to Mr. Prasad. She has consulted psychologists in an attempt to overcome the negative emotional and psychological impact of these offences.

Personal circumstances of Mr. Prasad

[15] Mr. Prasad is 76 years of age and has lived in the Yukon since 1981 and in Canada since 1967. Prior to this, he studied and obtained post-secondary degrees in both his native India and in England.

[16] Mr. Prasad enjoyed a successful working career, including employment as a mining engineer with the Federal government. He also acted as the Chief Mines Inspector for the Yukon Workers Compensation Board in the Yukon. He started his security work as a commissionaire in 2011 in order to stay active. As a result of these charges, his employer terminated this employment.

[17] Mr. Prasad has been actively involved in the Whitehorse community, as a member of various government boards and as a volunteer for a number of societies, including the Whitehorse Food Bank and the Anti-Poverty Coalition.

[18] Additionally, he has also been an active member of the Canadian Filipino Association of Yukon for more than 27 years. He has spearheaded fundraising activities for this organization and has volunteered his time to assist individual members of the association.

[19] Overall, it is clear that his sustained community work has greatly benefited Whitehorse.

[20] Mr. Prasad does not have a criminal record.

[21] During the preparation of the Pre-Sentence Report, Mr. Prasad acknowledged the inappropriateness of his criminal acts. He indicated that violence is never an appropriate response. On the other hand, despite taking responsibility for his actions, he continues to express a strong dislike for the victim of his crime. His manner of describing the victim to the author of the Report was wholly inappropriate.

Analysis

[22] The more serious of the two offences committed by Mr. Prasad is the assault with a weapon. As with most offences of this nature, a review of the caselaw reveals a wide range of sentences in this jurisdiction for assault with a weapon and assault causing bodily harm offences (*R. v. Germaine and Moses*, 2007 YKTC 90, *R. v. Currie*, 2008 YKTC 23, *R. v. Elias*, 2009 YKTC 59, *R. v. Smith*, 2009 YKTC 103, *R. v. Kerluke* 2010 YKTC 35; *R. v. Johnson*, 2011 YKTC 70, *R. v. R.R.J.*, 2012 YKTC 14, and *R. v. Dickson*, 2015 YKTC 13). Although none of these cases involves facts completely analogous to the matter before me, some involve very serious assaults. The sentences imposed range from a six-month conditional sentence of imprisonment to 18 months' imprisonment.

[23] The Crown has referred to a number of aggravated assault cases in the workplace, namely, *R. v. Rose*, 2012 BCCA 453, *R. v. Wickham*, 2015 ONSC 1544, *R. v. Sultan*, 2007 BCSC 849 and *R. v. Parker* (2013), 342 Nfld. & P.E.I.R. 205 (P.C.).

[24] This caselaw underlines the fact that unprovoked assaults committed in the workplace require denunciatory sentences that will deter offenders and others from

similar conduct. In each case, serious physical injuries were suffered by the respective victim and in each matter, a term of imprisonment resulted.

[25] It should be noted, however, that due to the fact that the maximum sentence for aggravated assault is 14 years' imprisonment and due to more recent amendments to the *Criminal Code*, a conditional sentence was unavailable in *Rose* and *Wickham*.

[26] The matter before me is a very serious crime which has traumatized the victim. Although there was no physical injury occasioned, the psychological and emotional impact is significant and ongoing.

[27] The principles of sentencing require a sentence that denounces the conduct of Mr. Prasad and deters him and others from crimes of a similar nature. Of course, the punishment must be proportionate to the gravity of the offence and commensurate with Mr. Prasad's moral culpability.

[28] There is no disagreement that the offences committed by Mr. Prasad warrant a sentence of imprisonment. The two questions to be resolved are the length of that term and whether or not it may be served in the community.

[29] Mr. Prasad receives the benefit of a timely guilty plea. In addition to accepting responsibility for the offence, he has acknowledged to the author of the Pre-Sentence Report that what he did was unacceptable. However, he does not display any real empathy for the victim and appears to lack meaningful insight into the harm that he has caused her.

[30] The offence is by all accounts completely out of character for Mr. Prasad. He is a productive member of society and has an impressive track record of community service. He is described in one of the reference letters as “gentle and respectful”; and in another as “a great advocate and champion for the poor”.

[31] As suggested by the Crown, I take into account that there was some premeditation to these offences, although it was not elaborate. It consisted of his drinking alcohol at home and returning to the workplace to confront Ms. Baumung with the weapon.

[32] Considering all relevant factors, I find that the appropriate length of imprisonment for this serious assault is 12 months followed by 18 months of probation. The uttering threats charge warrants a one-month jail term, however taking into account the principle of totality and the circumstances of this case, it will be served concurrently.

[33] I have considered whether the prerequisites for a conditional sentence have been met. As indicated, a sentence of less than two years’ imprisonment is appropriate. Additionally, there is no mandatory minimum sentence for these offences as the Crown has proceeded summarily.

[34] I must also consider whether a conditional sentence would endanger the community. I am advised that the results of the criminogenic risk assessment place Mr. Prasad in the low level category of necessary supervision. Also, he has abided by very strict conditions of release, similar to those of a conditional sentence, for approximately five and one half months. Prior to these offences, his reputation and record of service was unblemished.

[35] As noted, Mr. Prasad comes before the Court without a criminal record.

[36] Although the circumstances of this incident are disconcerting, considering all the relevant factors, I find that the risk of Mr. Prasad reoffending is low.

[37] On balance, I am satisfied that a conditional sentence would not endanger the safety of the community.

[38] The next question is whether a conditional sentence is consistent with the fundamental purpose and principles of sentencing set out in ss. 718 to 718.2 of the *Criminal Code*.

[39] I am mindful of the principle of restraint which is codified at ss. 718.2(d) and (e). It is necessary to consider whether less restrictive sanctions than incarceration are 'appropriate' and alternatives to incarceration 'reasonable' in the circumstances of these offences.

[40] It is important to remember that in *R. v. Proulx*, 2000 SCC 5, the Court found that a properly structured conditional sentence can achieve "a significant amount of denunciation". (para. 102)

[41] The Court also noted, in considering the sentencing principle of deterrence, that:

...Moreover, a conditional sentence can provide significant deterrence if sufficiently punitive conditions are imposed and the public is made aware of the severity of these sentences. (*Proulx* at para. 107)

[42] A conditional sentence is also well situated to achieve rehabilitation, reparations and to instill a sense of responsibility in the offender. (*Proulx* at para. 109)

[43] I am satisfied that despite the serious nature of the offence, having regard to all the relevant factors, including the personal circumstances of the offender, that an appropriately crafted conditional sentence is appropriate and consistent with the fundamental purpose and principles of sentencing.

[44] Mr. Prasad will be subject to strict conditions that will limit his movements. He will also be obligated to perform community work service as part of the reparations for the harm caused. He will undergo counselling sessions to address the root causes of his actions.

[45] The terms of the 12-month conditional sentence will be as follows. The statutory terms are that Mr. Prasad:

1. Keep the peace and be of good behaviour;
2. Appear before the court when required to do so by the court;
3. Report to a Supervisor immediately and thereafter when required by the Supervisor and in the manner directed by the Supervisor;
4. Remain within the Yukon Territory unless you have written permission from your Supervisor or the court;
5. Notify the Supervisor in advance of any change of name or address and promptly of any change of employment or occupation. You will reside as approved by your Supervisor and not change that residence without the prior written permission of your Supervisor;

[46] Additionally, Mr. Prasad will be subject to the following terms:

6. For the first six months of this order, at all times you are to remain inside your residence or on your property, except with the prior written permission of your Supervisor; except for the purposes of employment, including travel directly to and from your place of employment; except for the purpose of counselling, including travel directly to and directly from the place of counselling; and except for grocery shopping, medical or dental appointments and physical fitness activity, to a maximum of four hours per week, arranged in consultation with your Supervisor. You must answer the door or the telephone to ensure you are in compliance with this condition. Failure to do so during reasonable hours will be a presumptive breach of this condition;
7. For the final six months of this order, you will abide by a curfew by being inside your residence between 8 p.m. and 6 a.m. daily except with the prior written permission of your Supervisor or except in the actual presence of a responsible adult approved in advance by your Supervisor. 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;
8. You will not possess or consume alcohol and/or controlled drugs or substances that have not been prescribed for you by a medical doctor;

9. You will not attend any premises whose primary purpose is the sale of alcohol, including any liquor store, off-sales, bar, pub, tavern, lounge, or nightclub;
10. You will attend and actively participate in all assessment and counselling programs as directed by your Supervisor and complete them to the satisfaction of your Supervisor for the following issues: anger management and any other issues identified by your Supervisor, and provide consents to release information to your Supervisor regarding your participation in any program you have been directed to do pursuant to this order;
11. You are to have no contact directly or indirectly or communication in any way with Shirley Baumung;
12. You are not to attend any known residence or place of employment of Shirley Baumung, except that any attendance at the Elijah Smith building must be with the prior written permission of your Supervisor in consultation with Victim Services;
13. You are to not possess any firearm, ammunition, explosive substance, or any weapon as defined by the *Criminal Code*;
14. You must perform 75 hours of community work service as directed by your Supervisor.

[47] The terms of the one-month conditional sentence will be identical, except that the house arrest clause, condition 6, will apply to the one-month term. As such there will be no curfew clause in this order.

[48] With respect to the period of probation that will follow, as indicated, this will be for a period of 18 months. The statutory terms are that:

1. You will keep the peace and be of good behaviour;
2. You will appear before the court when required to do so by the court;
3. You will notify the Probation Officer in advance of any change of name or address and promptly of any change of employment or occupation;

[49] Additionally, you are subject to the following conditions:

4. You will report to a Probation Officer immediately upon completion of your conditional sentence and thereafter when and in the manner directed by the Probation Officer;
5. You will reside as approved by your Probation Officer and not change that residence without the prior written permission of your Probation Officer;
6. For the first six months of this order, you will not possess or consume alcohol and/or controlled drugs or substances that have not been prescribed for you by a medical doctor;
7. You will attend and actively participate in all assessment and counselling programs as directed by your Probation Officer and complete them to the

satisfaction of your Probation Officer for the following issues: anger management and any other issues identified by your Probation Officer, and provide consents to release information to your Probation Officer regarding your participation in any program you have been directed to do pursuant to this order;

8. You are to have no contact directly or indirectly or communication in any way with Shirley Baumung;
9. You are not to attend any known residence or place of employment of Shirley Baumung, except that any attendance at the Elijah Smith building must be with the prior written permission of your Supervisor in consultation with Victim Services;
10. You are to not possess any firearm, ammunition, explosive substance, or any weapon as defined by the *Criminal Code*.

[50] I also make the following ancillary orders:

1. A 10-year firearms prohibition, pursuant to s. 110 of the *Criminal Code*.
2. An order under s. 487.051 of the *Criminal Code* for the provision of samples of DNA for analysis and recording. As the assault with a weapon conviction is a primary designated offence, the order is mandatory.

[51] The victim surcharges total \$200. I order that this amount be paid within three months.

CHISHOLM C.J.T.C.