Citation: *R.* v. *Simms*, 2013 YKTC 60

Date: 20130626
Docket: 12-00665
12-00665A
12-00665E
Registry: Whitehorse

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

REGINA

v.

ROXANNE SIMMS

Appearances:
Joanna Phillips — Counsel for the Crown
Gordon Coffin — Counsel for the Defence

REASONS FOR JUDGMENT

[1] LUTHER T.C.J. (Oral): Following a trial, Ms. Simms was convicted on a charge of aggravated assault contrary to s. 268(2) of the *Criminal Code* of Canada. She wounded Patrick Lethbridge, a man 11 years older than she, with whom she had had a tumultuous relationship for about two to three years. While at times, during the relationship, they undoubtedly cared for one another, there were disturbing themes of jealousy, infidelity (perceived or real), drug and alcohol abuse, separations, and violence. Indeed, on the occasion of this serious crime of violence the offender was attempting to retrieve her belongings from the apartment they had once shared, more than just temporarily.

[2] Patrick Lethbridge weighs about 25 kilograms more than the offender and is significantly taller than she. He assaulted her viciously by pounding her in the face, pinning her to the floor, elbows surrounding her throat, and kicking her. She almost lost consciousness. Despite the 9:00 a.m. hour, both were still significantly under the influence of alcohol and/or drugs as a result of personal choices of consumption since the evening before.

[3] As pointed out in my decision on conviction, this was not a case of self-defence as Ms. Simms had a realistic opportunity to escape this apartment, which was no longer, technically speaking, hers. Neither was she defending family or friends, or even her personal property. No doubt she was very angry, and probably dazed, and certainly not in her normal state of mind, but rather than leave when she could, she grabbed the 30 centimetre knife and stabbed Mr. Lethbridge in the arm requiring a hospital stay, requiring 16 stitches. He appears to have recovered fully from this injury.

[4] The Court has had the benefit of two excellent and thorough reports; a *Gladue* Report from Chantal Genier, and a Pre-Sentence Report from Sean Couch-Lacey. Roxanne Simms is 25 percent Inuit; her father is Caucasian, her mother had an English father and an Inuit mother. I want to point that there is no magic in the percentage number. Born in Guelph, Ontario, she has lived in Yellowknife, N.W.T., then back to Ontario; Aylmer, Quebec; and Victoria, B.C. But the most significant period of her life was spent in Iqaluit, Nunavut for grades five through six, and eight through twelve. Afterwards she attended Fashion College in Toronto. For purposes of this sentencing hearing she is considered to be an Inuit person.

[5] The most traumatic events in her childhood included: frequent physical abuse by her father towards her mother; her father's mental health, eventually diagnosed as bipolar disorder; a family bankruptcy, but otherwise she was able to enjoy many activities including acting, art, ballet, figure skating; some drug abuse; racial discrimination by the Inuit female students towards her because they considered her "eejeujiq quablunaak" or "whitey"; and, of course, her parent's separation. Iqaluit was a tough place to grow up in. Nonetheless, Ms. Simms graduated high school and participated in numerous community events and then attended college in Toronto, where, unfortunately, she first used cocaine and enjoyed a party lifestyle.

[6] Ms. Simms has a good work record; she is industrious and has worked at a number of jobs over the years. She now works as a server at a local hotel and, as I understand it, is a valued employee.

[7] What is most regrettable, in my view, about her life thus far is the relationship she had with Mr. Lethbridge. In his email to her lawyer and the Probation Officer he wrote, and I am just quoting excerpts of this:

> Roxanne and I have known each other for four years and have been romantically involved for three… Unfortunately we met during a rough patch in my life. I feel that I have introduced her to a dark world of alcohol and drug addiction. A relationship that at first built on love was sidetracked and fueled, mostly on my part, by use of substances. Roxanne tried relentlessly to help me find my way with little to no reciprocation by me. It is regrettable to also inform you that I knowingly pushed her to act out in violence by initiating it myself… Even though Roxanne and I have ceased to maintain communication I truly believe she's learned from this experience, as have I.

[8] Unlike most First Nations offenders who appear all too frequently in the courts of this country, Ms. Simms does not experience lack of employment, opportunities, and

options. Her education thus far is quite relevant and important, and may well become even more so as she pursues potential careers in the arts, where she is talented, or possibly as a flight attendant. While she does not have a high income, she is debt- free and manages her expenses well. Substance abuse has been a problem for her and her father, grandmother, and possibly other family members. She has lived in a fragmented community but has not been overwhelmed by loneliness as she seems to have always had a circle of friends and has an excellent relationship with her mother, in particular, and also her two brothers. The Court also notes the letters of reference from two close friends. Despite her father's mental health issues and history of violence, she has a unique bond and a unique communication style with her father.

[9] With her education and intelligence, notwithstanding her naïveté, I believe this offender has an appreciation of the traditional sentencing ideals of deterrence, separation, and denunciation.

[10] In 2012, the Supreme Court of Canada released the important judgment in *R.* v. *Ipeelee*, 2012 SCC 13. I will refer briefly to certain paragraphs from the *Ipeelee, supra,* decision at para. 68:

> Section 718.2(e) is therefore properly seen as a "direction to members of the judiciary to inquire into the causes of the problem and to endeavour to remedy it, to the extent that a remedy is possible through the sentencing process" (*Gladue*, at para. 64 (emphasis added)). Applying the provision does not amount to "hijacking the sentencing process in the pursuit of other goals" (Stenning and Roberts, at p. 160). The purpose of sentencing is to promote a just, peaceful and safe society through the imposition of just sanctions that, among other things, deter criminality and rehabilitate offenders, all in accordance with the fundamental principle of proportionality. Just sanctions are those that do not operate in a discriminatory manner. Parliament, in enacting s. 718.2(e), evidently concluded that nothing short of a specific direction to pay particular

> attention to the circumstances of Aboriginal offenders would suffice to ensure that judges undertook their duties properly.

From the original *R*. v. *Gladue*, [1999] 1 S.C.R. 688, decision, and I am quoting from para. 71 of *Ipeelee*, *supra*:

> … Cory and Iacobucci JJ. were very clear in stating that "s. 718.2(e) should not be taken as requiring an automatic reduction of a sentence, or a remission of a warranted period of incarceration, simply because the offender is "aboriginal"…

In para. 73 of *Ipeelee*:

> … Canadian criminal law is based on the premise that criminal liability only follows from voluntary conduct. Many Aboriginal offenders find themselves in situations of social and economic deprivation with a lack of opportunities and limited options for positive development. While this rarely -- if ever -- attains a level where one could properly say that their actions were not *voluntary* and therefore not deserving of criminal sanction, the reality is that their constrained circumstances may diminish their moral culpability. …

[11] In my view, Ms. Simms does not find herself in situations of social and economic deprivation, with a lack of opportunities and limited options for positive development, as I just quoted from para. 73.

[12] Two final quotes from *Ipeelee*, *supra*, at para. 75:

> Section 718.2(e) does not create a race-based discount on sentencing. The provision does not ask courts to remedy the overrepresentation of Aboriginal people in prisons by artificially reducing incarceration rates. Rather, sentencing judges are required to pay particular attention to the circumstances of Aboriginal offenders in order to endeavour to achieve a truly fit and proper sentence in any particular case. …

Then, finally, at para. 79:

> In practice, similarity is a matter of degree. No two offenders will come before the courts with the same background and experiences, having committed the same crime in the exact same circumstances. Section

> 718.2(b) simply requires that any disparity between sanctions for different offenders be justified. …

[13] Amendments to the *Criminal Code* preclude consideration of a conditional sentence order for this offence. Defence counsel has encouraged me to consider a tightly crafted probation order via a suspended sentence to achieve the same result. I do not agree with that approach in this case. This is a wounding case involving a 30 centimetre knife and 16 stitches in the victim's arm. The principles of sentencing set out in the *Criminal Code* of Canada would simply not be properly addressed. The Crown has put forward a range of six to eighteen months imprisonment and has filed relevant authorities to support that submission.

[14] In *R.* v. *Kablutsiak,* 2013 NUCJ 3, Mr. Justice Cooper imposed essentially a nine month sentence and two years probation on a charge or aggravated assault. The victim was the wife of the offender. The tire iron thrown by the offender bounced off the wall and hit her in the head. After several surgeries she made a full recovery but did end up with a plate in her head. Other than a previous conviction for assaulting her there were a number of mitigating factors. I am quoting now from para. 30 of that decision:

> … The systemic factors that contribute to bringing Inuit into the criminal justice system are well known to the Court and have been set out in various decisions of this court. Recent colonization, the residential school experience, high rates of substance abuse, substandard and overcrowded housing, to name but a few, all impact on criminality.

These factors, while extremely relevant in *Kablutsiak*, *supra*, are not quite as relevant in the present case.

[15] In another spousal assault case, *R*. v. *Donnelly*, 2010 BCSC 1786, the offender was sentenced to nine months imprisonment on the assault causing bodily harm and

one week concurrent for the assault on his young son, and probation for three years. A lengthy list of mitigating factors rivaling, if not exceeding those in this case, were listed at para. 10. The sentence was reduced to essentially six months; four months time had already been served and he likely would been eligible for statutory release. Probation was reduced to one year. Both the sentencing judge and the appellate judge rejected a conditional sentence order. From para. 28:

> Spousal assault is a very serious matter, and a sentence for a serious spousal assault must impress upon the offender and others the abhorrence with which society ought to view violence committed in a person's home. All persons have a right to feel safe within their home, from their spouses as well as from strangers. If it is to act as a deterrent to others, the sentence for a serious spousal assault must impress upon others who might be inclined to engage in similar conduct that, if they are convicted, they will receive a punishment that is more than simply a partial denial of one's liberty.

At paras. 32 and 33:

> It is my view that conditional sentence in this case would not adequately address the principles of denunciation and general deterrence. A conditional sentence that would enable the offender to carry on with his daily life, going to work, watching his television, sleeping at home, subject perhaps to a curfew forcing him to remain in his home during the evening and night-time hours, would not, in my view, send the message that spousal assaults are considered serious. Even a condition akin to house arrest would not, in my view, serve as an adequate deterrent.
>
> In my view, this case demanded a sentence that informs others that if a spouse allows a domestic dispute to develop into physical violence, that spouse will face serious consequences. I believe that a sentence of incarceration was appropriate.

[16] In the two cases filed by the Crown, coming from Newfoundland, *R.* v. *Goodyear*, 2013 NLTD(G) 71, and *R*. v. *Dicker,* (2013) 333 Nfld. & P.E.I.R. 72 (NLPC), sentences of 18 months' jail with 18 months' probation, and six months jail with two years' probation were imposed respectively. The former was a spousal assault while the latter

was between two acquaintances. There is no solid floor to sentences for s. 268 but there is an established range, which would be from several months in prison to a lengthy penitentiary term.

[17] In my reasons for sentencing in *R*. v. *K.B.Q.,* 2012 YKTC 49, I imposed a nine month conditional sentence order on the far less serious charge of s. 266. This involved a beating in front of the Extra Foods store here in Whitehorse, and some kicking, resulting in the victim having a cut on her chin and slight bruises on her cheek. The far more serious charge under s. 267(b) of the *Criminal Code* was dealt with by a sentence of 419 days, the time served credit. For the more serious charge the victim required medical attention with a total of nine stitches. There was no weapon involved in the s. 266 charge, but in the more serious charge under s. 267(b) there was the throwing of a piece of wood, which did strike the victim, but the injuries were largely caused by the offender hitting and slapping her repeatedly.

[18] The compelling mitigating factors in that case were listed at para. six. In particular, while at the WCC, the offender developed a strong bonding with adult First Nations' males, who had a tremendous impact on his life, but I want to emphasize again that the conditional sentence order in that case was only on the s. 266 charge and definitely not on the serious charge under s. 267(b). While I mentioned *R*. v. *Knott*, 2012 MBQB 105, in *K.B.Q.*, *supra*, it was only a reference. I certainly did not follow that case and, on reflection, would state that, with respect, I entirely disagree with the approach taken in that particular case.

[19] In both *R*. v. *Patrick*, 2012 YKTC 13, and *R*. v. *Johnson*, 2011 YKTC 70, Territorial Court judges imposed conditional sentence orders for breaches of s. 267(b). Neither were spousal assaults. Here, Ms. Simms and Mr. Lethbridge had been apart for some time and essentially were no longer living together. They were not common-law partners, nor married, as was the case in *Kablutsiak*, *supra*, *Donnelly*, *supra*, and *Goodyear*, *supra*. While s. 718.2(a)(2) does apply in this case, it does not apply as much as it did in these three cases. In all sentencing cases judges always have to go back to s. 718 of the *Criminal Code*:

> The fundamental purpose of sentencing is to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:
>
> (a) to denounce unlawful conduct;
> (b) to deter the offender and other persons from committing offences;
> (c) to separate offenders from society, where necessary;
> (d) to assist in rehabilitating offenders;
> (e) to provide reparations for harm done to victims or to the community; and
> (f) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims and to the community….

I believe that (e) and (f) have largely taken place especially by the profound statement made by Ms. Simms this afternoon.

[20] I am going to go back to the *K.B.Q.*, *supra*, decision. As made abundantly clear by the Supreme Court of Canada in *Ipeelee*, *supra,* and cases before, sentencing is very much an individualized process. In para. 18 of *K.B.Q.*, *supra*:

> … Largely because of the Supreme Court of Canada decisions in *Ipeelee*, *Ladue, supra*, and *Gladue, supra*, and others, and given that I see that there is a ray of hope in this case, I am prepared to order that the nine

> months remaining be served conditionally in the community… I do believe the Supreme Court of Canada is telling us that if there seems to be a viable plan and a ray of hope, sentencing is very much individualized, and we should work to have a creative sentence which will not endanger the community but will foster a major turnaround for this young man.

[21] Ms. Simms presents little or no threat to the community at large. However, if she gets entangled again with Mr. Lethbridge, or some other male with serious drug and alcohol issues, she would be considered to be a moderate risk to reoffend. To impose a suspended sentence with even stringent or oppressive probation terms with no jail sentence sends the wrong message to the community. In this case, where there was a viable means of removing herself in the horrendous situation she found herself in, but where she instead used a 30 centimetre knife to inflict wounds requiring 16 stitches, given the compelling mitigating factors in this case, a normal floor of four to six months is not necessary. Much has been learned by Ms. Simms. She has largely complied with her recognizance for nine months, which contained strict terms, and as defence counsel has ably pointed out, there were no overtly defiant breaches. There were breaches but I think we can easily say that they were not defiant.

[22] Ms. Simms is a first offender, she is an Aboriginal person, she has bright prospects, she is hard working, and she is industrious. In the case of *Dicker*, *supra*, I am going to refer to para. 150, and this is a quote from *R.* v. *Nasogaluak*, 2010 SCC 6:

> ... it must be remembered that while courts should pay heed to these ranges, they are guidelines rather than hard and fast rules. A judge can order a sentence outside that range so long as it is in accordance with the principles and objectives of sentencing. Thus a sentence falling outside the regular range of appropriate sentences is not necessarily unfit. Regard must be had to all the circumstances of the offence, and the offender, and to the needs of the community in which the offence occurred.

[23] So even in the exceptional circumstances of this case, where Ms. Simms had been beaten badly, an aggravated assault involving wounding by a reasonably large knife must be met with some period of imprisonment. Taking into account all of the factors listed above, it is my opinion that the sentence should be a period of 60 days less the six days for pre-trial custody, with a net result of 54 days. I will hear submissions from counsel as to the viability of that being served intermittently under s. 732 of the *Criminal Code*. There will be a period of probation for one year, and I will hear from counsel on suggested terms. There will be a DNA order on the s. 268 charge; there will also be a s. 109 order for ten years, and there will be a Victim Surcharge of $50, with one year to pay. As to the two breaches, the Court will suspend the passing of sentence on those. There will be probation for one year, there will be a Victim Surcharge of $50 on each, and there will be 15 hours of community service work attached to each of those probation orders.

[24] Now then, let us address the most important topic left ,which would be the intermittent sentence. First of all, Mr. Coffin, would you be making application for the intermittent sentence?

[25] MR. COFFIN: I believe so but I wonder if Your Honour, in the circumstances, would allow me a few minutes to speak with Ms. Simms about her options?

[26] THE COURT: Sure. Now we are going to need some specificity with that and I have given that some thought. You might want to talk to her about -- what I had in mind was two nights per week, which would count as three days, and the three

days into the 54 would then be 18. An intermittent sentence is not a weekend sentence. It can be any time that we set. So, for example, if the Edgewater Hotel has slow days midweek, she could be in custody Tuesday and Wednesday night, as an example. These are the types of things you can explore with her. With regard to the probation terms, perhaps you might just have a word with the Crown on those as well, but I do agree with the Crown that probation order should amount to a year.

[27] MR. COFFIN: Yes.

[28] THE COURT: How much time would you like?

[29] MR. COFFIN: Perhaps five minutes.

[30] THE COURT: We will adjourn then, Madam Clerk, for five minutes.

(PROCEEDINGS ADJOURNED)

(PROCEEDINGS RECONVENED)

[31] MR. COFFIN: Thank you, Your Honour. In discussing with Ms. Simms she feels this time of year that no date is better than another but suggests Monday to Wednesday.

[32] THE COURT: Okay.

[33] MR. COFFIN: So I would suggest attend WCC every Monday, starting this Monday, at 7:00 p.m. for release Wednesday at 7:00 a.m., and each following Monday until the sentence is served in full. And as far as the terms of the Probation Order, the terms suggested in the Pre-sentence Report, except for the curfew, and probably 9 and 14 aren't required, everything -- those I would submit wouldn't be appropriate, and Ms. Simms wishes me to address the abstention and not

attend bars and taverns and so forth. She recognizes that there have been comments about potential problems with alcohol, and acknowledges that there are some elements of alcohol in this particular offence. However, this has been a long strain on her and she indicates that when you work to 11:00 p.m. it is sometimes nice to have a glass of wine with co-workers and friends after work. She does not feel that it will be a problem for her and she will seriously engage in whatever alcohol, counselling, programming, assessment that may be directed. And so she would seek not to have those terms contained in the Probation Order.

[34] THE COURT: Okay. So 9 and 14. What is the problem with 14?

[35] MR. COFFIN: Well, there's really nothing, I suppose. It's no contact directly or indirectly with known drug users. I don't see a problem with that really.

[36] THE COURT: Okay. And term 7, then, the curfew, have that deleted?

[37] MR. COFFIN: Well, again, she's been residing under a curfew for a lengthy period of time. If Your Honour feels that that will be of benefit to her rehabilitation, again, it's -- she would prefer not to have a curfew.

[38] THE COURT: Sure. I understand that. Okay, how does the Crown feel about this?

[39] MS. PHILLIPS: The Crown is opposed to it being served intermittently based on the severity of the offence itself; this still a s. 268. I recognize that we have to look at the age and character of the offender but we also have to look at the nature of

the offence and the circumstances surrounding it. The Crown would be saying that a 60 day sentence, 54 left to serve, would have more force if it was straight jail time. In terms of the terms of probation, I don't mean to rehash everything because I went through that in terms of the custody.

[40] THE COURT: Sure.

[41] MS. PHILLIPS: So if you take into account what I said during the sentencing hearing as well as being relevant for this. In terms of the probation order, the Crown was looking -- there are a lot of conditions that Mr. Couch-Lacey asked for. The Crown was going to be asking for these ones, and I have them marked off and I can give it to you after I read it. The statutory terms:

1. Keep the peace, be of good behaviour, appear before the Court when required to do so by the Court;
2. Notify your Probation Officer in advance of any change of name or address, promptly notify the Probation Officer of any change of employment or occupation;
3. Remain within the Yukon Territory unless you obtain written permission of your Probation Officer or the Court;
4. Report to a Probation Officer within two working days, thereafter when and in the manner directed by the Probation Officer;
5. Reside as approved by your Probation Officer and not change that residence without the prior written permission of your Probation Officer;

The Crown is asking for an abstain from alcohol and drugs, and the reason for that is, as Your Honour mentioned, alcohol was involved in this incident and likely played a role in what happened, that is the injuries and the offence itself.

6. Abstain absolutely from the possession or consumption of alcohol and/or controlled drugs or substances except for in accordance with a prescription given to you by a qualified medical practitioner;
7. Not to attend any bar, tavern, off sales, or other commercial premises whose primary purpose is the sale of alcohol except with the permission of your Probation Officer for work purposes;
8. Take such alcohol and drug assessment, counselling and programming as directed by your Probation Officer;
9. Take such psychological assessment counselling and programming as directed by your Probation Officer;
10. Take such other assessment counselling or programming as directed by your Probation Officer;

The Crown is asking for an absolute no-contact with Patrick Lethbridge. She has been on one for this entire time, as I understand it. There haven't been any exceptions allowed.

11. Not to attend within 50 metres of any residence or known place of employment of Patrick Lethbridge;
12. Make reasonable efforts to find and maintain suitable employment; provide your Probation Officer with all necessary details concerning your

efforts. Provide your Probation Officer with consents to release information with regards to your participation in any programming, counselling, employment, or educational activities that you have been directed to do pursuant to this Probation Order.

[42] THE COURT: Now as to the curfew, I do not recall if you said anything about that.

[43] MS. PHILLIPS: No. I think the only reason a curfew would be imposed is if we are looking at a punitive aspect to the Probation Order and I'm not sure if that's what Your Honour is thinking or not.

[44] THE COURT: No.

[45] MS. PHILLIPS: So if it's strictly rehabilitative then, I don't think it's required. In addition, the offence, as your Honour mentioned, was about nine - ten o'clock in the morning.

[46] THE COURT: Yes. Mr. Coffin, any final comments?

[47] MR. COFFIN: No. Thank you.

[48] MS. PHILLIPS: Although, one last thing, in terms of if Your Honour grants the intermittent sentence, the Probation Order that binds her from week to week, perhaps there we might be able to have a curfew, just to reinforce the punitive nature of that sentence. That is if Your Honour is going to go for the intermittent.

[49] THE COURT: Sure.

[50] MR. COFFIN: This is a comment. I have never heard it said that probation was intended to be punitive. That seems to fly in the face of what probation is talked about, and so --

[51] THE COURT: Well, maybe not punitive. When it comes to intermittent sentences we want to make sure there are no foul-ups and therefore sometimes the terms pertaining to probation surrounding the intermittent sentence are quite tight.

[52] MR. COFFIN: Certainly. And it would be appropriate in that order to have - if there is not an absolute abstention - abstain 48 hours prior to reporting, that sort of thing, simply to --

[53] THE COURT: In taking a look at s. 732 of the *Criminal Code*, what I am obliged to consider, in whether or not imposing the intermittent sentence, is the age and character of the offender, the nature of the offence, and the circumstances surrounding its commission, and the availability of appropriate accommodation to ensure compliance with the sentence. I do not think the latter is a problem. As to the age and the character of the offender, the nature of the offence, and the circumstances surrounding its commission, I have gone over that in great detail in the decision and I am satisfied that the sentence here can and should be served on an intermittent basis.

[54] The intermittent sentence will be somewhat as suggested by Mr. Coffin, except that for purposes of going into the institution the Court is going to order that that take place at 2:00 p.m. rather than 7:00 p.m., and that the release would be on Wednesdays at 7:00 a.m., I do not have a problem with that.

[55] As to the Probation Order, rather than craft an individual order for the intermittent sentence, I will incorporate the provisions that I had in mind in an overall Probation Order. The Court will impose the statutory terms as they are, the jurisdiction, the reporting, and the residence. With regard to the abstain, the condition there will be that she is to abstain absolutely from the possession or consumption of alcohol on every Saturday, Sunday, and Monday. That will ensure that there will be no alcohol in her body when she shows up to serve her sentence. That will be until the intermittent sentence is concluded. So until the intermittent sentence is concluded she is to abstain absolutely from the possession or consumption of alcohol every Saturday, Sunday, and Monday.

[56] With regard to controlled drugs and substances, that is an absolute abstention. With regard to attending bars and taverns, except for work purposes, with the permission of your Probation Officer:

> Do not attend any bar, tavern, off-sales or other commercial premises whose primary purpose is the sale of alcohol except for work purposes and for socialization with employees from your workplace, only with the permission of your Probation Officer;

[57] To take such alcohol and drug assessment programming and so on as in this insert sheet, and the psychological and general programming as contained in the insert sheet. No contact directly or indirectly or communication in any manner with Patrick Lethbridge nor enter or attend at within 50 metres of any known residence and place of employment of Patrick Lethbridge. Make reasonable efforts to maintain suitable

employment, et cetera. Provide the Probation Officer with consents to release and so on.

[58] As to the 15 hours of community service work on the two breaches, those 30 hours will be completed within a period of six months. I think I have already addressed the Victim Surcharge, I am giving a year to pay. The total of those are three times fifty, which is $150. Now on a Thursday what time would she normally be going to work?

[59] MS. PHILLIPS: 4:30 p.m.

[60] MR. COFFIN: 4:30 p.m. On Thursday.

[61] THE COURT: Okay. I am taking quite an interest in this case. I am going to be back the first week in September and I would like this case called again. Are counsel available on Thursday, September 5th at 11:30 a.m.?

[62] MS. PHILLIPS: I can make myself available.

[63] MR. COFFIN: I am scheduled in a trial that morning at 10:00 a.m.

[64] MS. PHILLIPS: Maybe it’s the same circuit point?

[65] MR. COFFIN: Possibly, but yes, I think --

[66] THE COURT: Or I could say 1:30 p.m.; would that better for you?

[67] MR. COFFIN: Yes. 1:30 p.m. would be great.

[68] THE COURT: Is that okay with the Crown as well?

[69] MS. PHILLIPS: That's fine.

[70] THE COURT: I will personally review this case on Thursday September the 5th at 1:30 p.m.

[71] MS. PHILLIPS: Do we know the circuit point or shall I find that out later?

[72] THE COURT: I think you can find that out from Madam Trial Coordinator.

[73] All right, Ms. Simms, would you stand, please? The Court has taken into account everything that has been placed before me. I believe that I have come up with a fair and just solution to the situation that has been presented to me and now I leave it up to you. I am sure that you can comply fully. If you have any doubts whatsoever about your probation conditions or your reporting for the intermittent sentence, make sure you go through it clearly with the Probation Officer beforehand. I still think that you have a bright future, and this, unfortunately, is a major wrinkle in your life thus far but I am sure that you have the ability and the fortitude to get by this and move ahead. I look forward to seeing you on September the 5th.

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LUTHER T.C.J.