

Citation: *R. v. Singh and Lowe*, 2011 YKTC 01

Date: 20100531
Docket: 09-00489
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Judge Faulkner

REGINA

v.

JOHN VIJEND SINGH
ROBERT KEVIN LOWE

Appearances:
Ludovic Gouaillier
Gordon Coffin
Nils Clarke

Counsel for the Crown
Counsel for the Accused Singh
Counsel for the Accused Lowe

REASONS FOR SENTENCING

[1] FAULKNER T.C.J. (Oral): In this case, John Vijend Singh and Robert Kevin Lowe were convicted after trial. Both were convicted on Count 1 of a charge of assault on Reginald Ram. Additionally, Mr. Singh was convicted of two counts of uttering threats against Mr. Ram.

[2] In a nutshell, what occurred is that the three men found themselves at a local drinking establishment after hours. This was a bar that both accused were employed at, which is how they were able to be there when the premises was not open. Initially, there appeared to have been drinking and conversation, but eventually Mr. Singh accused Mr. Ram of being a rat and alleged that Mr. Ram had provided information to the police against a drug dealer acquaintance of Mr. Singh's. In the course of these

accusations, Mr. Ram was assaulted by Mr. Singh, and, as well, Mr. Singh uttered threats both to kill Mr. Ram and to rape Mr. Ram's wife.

[3] Mr. Lowe, for his part, was present throughout and clearly acting in a supporting role to increase the level of intimidation being offered to Mr. Ram. As such, I found him guilty as a party to the charge of assault.

[4] The Crown seeks custodial sentences with respect to both offenders. It seeks five to eight months for Mr. Singh, and suggests that although Mr. Lowe should also be imprisoned, that a lesser sentence would be sufficient having regard to his lesser role in the affair. Crown also seeks a probation order, primarily for the purpose of imposing a no contact order with respect to the victim and his spouse. Crown also seeks discretionary DNA and firearms orders.

[5] The purpose of this incident to me was clear, but it seems to have been debated again today. It was quite obvious that the purpose of the incident was to intimidate Mr. Ram and to silence him regarding illegal drug activities. One might otherwise say to attempt to obstruct justice. I accept that the incident may have been fuelled to some extent by alcohol consumption, but what happened, happened. In my view, this type of egregious conduct must be denounced. If people want to play the heavy in Miami Vice, well, they have to be prepared to pay the price. I have already mentioned the purpose of the assault and the intimidation that was offered to Mr. Ram, and I am quite satisfied that that was the purpose.

[6] Mr. Lowe did not testify at trial, but he has asserted through the pre-sentence report that his role was otherwise. I completely reject his assertion that he was doing no

more throughout this incident than offering marital counselling to Mr. Ram. That is simply absurd. It is interesting to note that that was his theory in the pre-sentence report. Now, it appears that his theory is that he did not even know what was being said. He knew very well what was going on.

[7] I have already said that this type of conduct must be denounced. In my view, custodial sentences are fully warranted. In my view, it is not entirely irrelevant, both from the point of view of assessing what happened in this case and in assessing sentence, that both have prior drug-related records. Mr. Singh's record, of course, is more serious.

[8] In terms of mitigation, I think the primary thing that can be pointed to is that both have done extremely well whilst on supervision as this matter has wended its way through the courts. Both are employed. Both appear to have stable family situations. But at the end of the day, the nature of this offence is such that denunciation and deterrence must be the primary focus of sentence.

[9] The sentences I intend to impose are certainly within the conditional range, and such a sentence was sought by Mr. Lowe. I will say that, in my view, a conditional sentence is simply not an appropriate response in a case such as this, that its use must be precluded in this case by the overarching need to denounce what occurred.

[10] With respect to disposition in regards to Mr. Singh, having regard to the mitigating factors that I have already referred to, I am going to impose a sentence at the lower end of the range contended for by the Crown. There will be a sentence with respect to all three counts of five months concurrent. Following his release from

imprisonment, Mr. Singh will be subject to a probation order for one year, and I will return to the terms of that order.

[11] With respect to Mr. Lowe, having regard to his lesser involvement in this matter, he is sentenced to a period of imprisonment of 30 days. I will consider allowing that sentence to be served intermittently if there is an application in that regard. As well, Mr. Lowe will be subject to a probation order for a period of one year, and again, I will return to the conditions of that order.

[12] With respect to Mr. Singh, in my view, it is appropriate, having regard to his track record to date and the types of offences that he has been involved in, that there should be both a DNA order and a s. 110 firearms order for a period of ten years.

[13] The surcharges will be waived.

[14] The terms of the probation order with respect to both offenders will be as follows:

1. They will keep the peace and be of good behaviour;
2. They will report to the Court as and when required;
3. They will report within two working days after the order comes into force, and thereafter, as, when and in the manner directed to an adult Probation Officer;
4. They will advise the Probation Officer in advance of any change of name or address, and promptly notify him of any change of occupation or employment;
5. They will take such assessment and counselling as the Probation Officer will direct;

6. They will have no contact directly or indirectly by any means whatsoever with Reginald Ram or Jeanene Gallinger, except with the prior permission in writing of the Probation Officer.

[15] MR. CLARKE: Just a moment, Your Honour.

[16] MR. COFFIN: I take it, Your Honour, with respect to Mr. Singh, there's no intention to include the term of his probation not to attend anywhere near the residence, given that his residence is in the same building?

[17] THE COURT: Well, in my view, he is going to have to find someplace else to live. He simply should not be in the same building as Mr. Ram. If you want me to make it clearer, I will make it clearer.

[18] MR. COFFIN: No, that's fine. I'm just clarifying it for myself what I hadn't heard.

[19] MR. CLARKE: Yes, Your Honour, with respect to the proposed intermittency, I've just had an opportunity to speak to my client, Mr. Lowe, as well as his Supervisor, and my suggestion is attending at WCC on Tuesday mornings at eight o'clock for release on Thursday morning at eight o'clock in the morning.

[20] MR. GOUAILLIER: No objection.

[21] THE COURT: The sentence may be served intermittently commencing --

[22] MR. CLARKE: Tomorrow's fine, Your Honour.

[23] THE COURT: -- Tuesday, June 1st at 8:00 a.m., to be released Thursday, June 3rd at 8:00 a.m., and then from each Tuesday to Thursday from time to time until the sentence has been fully served. At all times when you are not actually in custody, Mr. Lowe, you will be subject to a further probation order with the conditions:

1. That you keep the peace and be of good behaviour;
2. That you will report to the Court as and when required;
3. That you will report forthwith to an adult Probation Officer, and thereafter as, when, and in the manner directed;
4. That you will advise the Probation Officer in advance of any change of name or address, promptly notify him of any change of occupation or employment;
5. That you have no contact directly or indirectly by any means whatsoever, except with the prior written permission of a Probation Officer, with Reginald Ram or Jeanene Gallinger;
6. That you take such assessment and counselling as directed by the Probation Officer;
7. That you not consume any alcohol or controlled drugs or substances in the 48-hour period before going to the Whitehorse Correctional Centre;
8. That you will submit to breathalyzer, breath test or urine analysis on demand by a Peace Officer or a Correctional Officer if either believes that you have breached that term of the order.

FAULKNER T.C.J.