

IN THE TERRITORIAL COURT OF YUKON
(Before His Honour Judge Faulkner)

REGINA

v.

ALEXANDER ERNEST SMARCH

Kevin Drolet

Appearing for Crown

Robert Dick

Appearing for Defence

REASONS FOR SENTENCING

[1] FAULKNER T.C.J. (Oral): Alexander Ernest Smarch has entered guilty pleas to six criminal offences, theft over \$5,000, breach of probation, a charge of counselling the commission of a criminal offence, a charge of obstructing justice and two charges of uttering threats.

[2] The charges, particularly the counselling, obstruction and threats charges, are very serious offences. Firstly, of course, the courts can hardly turn a blind eye to people who attempt to obstruct the course of justice by having witnesses change their stories.

[3] There is also inherent in all of these circumstances a clear indication of Mr.

Smarch involving himself in a criminal sort of lifestyle, including the unsavory aspects of a collection of debts by threats of violence or worse. These circumstances indicate that things have definitely taken a turn for Mr. Smarch and it is a serious and downhill turn.

[4] It seems to me that, given the nature of the offences, that the protection of the public and denunciation must be prominent aspects in sentencing.

[5] I have been given a joint submission by counsel that a sentence globally of one year in addition to time already served, and a fairly restrictive probation order for the further period of 18 months, would be fit. It seems to me that, given the nature of some of these offences, that the proposed sentences are at the lower end of the scale of what would be fit, but I am not prepared to deviate from it.

[6] With respect to the charge of theft, you are sentenced to a period of imprisonment of two months. With respect to the charge of breach of probation, one month consecutive. With the charge of counselling, four months consecutive to any other sentence. For the first charge of threats, two months consecutive to any other sentence. For the charge of obstructing justice, three months consecutive to any other sentence. On the final charge of uttering threats, two months concurrent.

[7] MR. DROLET: Your Honour, could the record reflect that the time served, which is 30 days, is attributed to the offence contrary to s. 139.

[8] THE COURT: Yes, it will.

[9] Following your release from imprisonment, you will subject to a probation

order for a period of 18 months. That probation order, for convenience, can be attached to the charge of obstruction of justice.

[10] The terms of the probation order will be:

- (1) That you will keep the peace and be of good behavior.
- (2) That you will report to the court when required to do so.
- (3) That you will report to a probation officer forthwith upon your release from imprisonment and thereafter as directed.
- (4) That you 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) That you will reside at such place as your probation officer will approve and direct.
- (6) For the first six months of the probation order you will be in your place of residence and not be abroad between the hours of 11:00 p.m. and 6:00 a.m. daily.
- (7) You will present yourself at the door, or answer the telephone when there is a curfew check during the curfew hours; and your failure to do so will be deemed to put you in breach of the probation order.
- (8) For the first six months of the probation order you will abstain absolutely from the purchase, possession, or consumption of alcohol.
- (9) You will abstain from the possession of controlled drugs or substances.
- (10) You will provide such samples of breath or bodily fluids as may be demanded from you by a peace officer or by your probation officer, if either has reason to believe that you are in breach of the probation order.
- (11) You will attend to such substance abuse treatment or counselling as

your probation officer directs.

(12) You will not attend at any place where alcohol is sold, except for restaurants which may be incidentally licensed to serve alcoholic beverages.

(13) You will have no contact, directly or indirectly, with Richard Nieman, Pamela Jim or Michael Nehass.

[11] In the circumstances, I will waive the victim fine surcharges.

FAULKNER T.C.J.