

Citation: *R. v. Stewart*, 2004 YKTC 29

Date: 20040415
Docket: T.C. 03-00059G
03-00590A
03-00596
03-10062
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Judge Barnett

Regina

v.

Charles Robert Stewart

Appearances:
David McWhinnie
Gordon Coffin

For the Crown
For Defence

REASONS FOR SENTENCING

[1] BARNETT T.C.J. (Oral): I am going to order that a transcript be prepared, starting from this point, and I want the transcript to be given to Mr. Netzel. Anybody else can get it, too, but I am ordering it so that it can be made available to Mr. Netzel.

[2] Charles Robert Stewart is in court this afternoon to be sentenced on a number of offences, and I should say right at the outset that to my mind, this is a particularly troubling matter. Mr. Stewart is just recently 20 years old. He spent his birthday on remand here in the Correctional Centre in Whitehorse. Mr. Stewart, at age 20, has a serious history of trouble with the law. Three years ago when he was still a youth, there was a robbery offence. There was a custodial sentence for that. Later that same year in November of 2001, there was a drinking and driving matter but of more importance, I believe there was an offence of assault with a weapon. Again there was an open

custody sentence. As a young adult in 2003 in June, Mr. Stewart was sentenced for an assault, a theft and a couple of counts of failing to comply with court orders. There are some other matters here, but these are the matters which, to my mind reveal, along with Mr. Netzel's Presentence Report and the accompanying report written in December of 2001 by Dr. Sigmund, that Mr. Stewart is a young man who, if something does not happen to change the course of his life, presents real and serious dangers to the safety of other persons. That is my own statement, but there is a great deal of support, I believe, for that statement in Dr. Sigmund's report and Mr. Netzel's Presentence Report. One trouble that has been a blight upon Mr. Stewart's life, and he is only 20, has been substance abuse. Dr. Sigmund made some very urgent recommendations in December of 2001, recommendations which remain unfulfilled; and when I say that, I am not meaning to imply fault on the part of any official person if I can use words to that effect; but the fact is that this young man might get at least some small benefit from attendance at a treatment centre, and if he did, even a small benefit would be perhaps a corresponding benefit to the public at large. I think it is a matter of some urgent need myself. That, of course, is why I have ordered the transcript so that Mr. Netzel can bring these remarks to the attention of persons who may be in a position to give this matter more than routine attention, because I think it needs that.

[3] So, what is he being sentenced for this afternoon? Well, on the 1st of August, he was released from the Whitehorse Correctional Centre, the sentences having been served that were imposed back on the 11th of June for an assault, fail to comply with an undertaking, theft, another fail to comply. The 1st of August he gets out, and either later that same day or perhaps sometime very early the next day but just hours after he has

been released from gaol, he finds himself at the Suley home somewhere down on the Carcross Road. This is a rural acreage. They are not people he knows. He goes to that house. He does a lot of vandalism-type damage there, steals some things which were particularly precious to the people who lived there, Ms. Suley and her son, and then, he steals their truck, which he pretty much wrecks. Among other things that happened while he was there, he made a number of long distance telephone calls and when Ms. Suley got her telephone bill and gave it to the R.C.M.P., it did not take them long to figure out who had been making the telephone calls and eventually when Mr. Stewart was arrested and confronted, he confessed.

[4] The next matter, on the 13th of November, the police had occasion to arrest Mr. Stewart in Whitehorse because he was at a home, drunk and causing trouble, and they knew that he was on probation not to drink. When he was arrested, he gave the police officers a good deal of difficulty. He was combative. A Taser did not work. He eventually had to be physically overpowered, put in the police vehicle, yelling and screaming; and when there was a breathalyzer test done, because one was done, he blew .24.

[5] Then, on the 25th of December, 2003, he was apparently in Watson Lake where his grandmother lives. She called the police that day to report that he had come to her house and had vandalized it with an axe, and the vandalism included wrecking her wheelchair. That is pretty extreme. It is not your usual willful damage charge. Somebody who wrecks his grandmother's wheelchair with an axe, to my mind that suggests that there is a huge amount of anger bottled up there for some reason or for no reason. Later that same day, he beat up a man who is either his uncle or a cousin, a

relation of some description, a man who I would estimate, looking at this photograph, to be perhaps in his 40's, perhaps even beyond that; but in any event, a much older man who says that he was essentially sleeping and was simply attacked for no cause at all. When the police arrested Mr. Stewart that day, he was exceedingly drunk.

[6] Of these offences, the one that I think is of the greatest concern, considering the offence itself and Mr. Stewart's history, is the assault upon Ray Stewart. There should be a sentence of eight months on that matter. The willful damage done that same day at his grandmother's place and to her wheelchair, four months concurrent. The break and enter at the Suley residence on the 1st of August, there should be a sentence of four months consecutive. The charges from the 13th of November, resisting the peace officer and breach of probation, in a strictly technical sense, my approach might seem a little unorthodox, but on those matters, the sentence should be time served. So, Mr. Stewart, what it adds up to is that you are going to do another 12 months. In addition, there will be a probation order to follow but only for a period of six months. There will be a condition in the probation order, in addition to the statutory terms that you report to a probation officer forthwith upon this order coming into effect and thereafter as the supervising probation officer requires, then there will be another condition, which I have written out for the benefit of the court clerk, and it will read this way: That you, Mr. Stewart will, as you agreed to do in open court, apply to enter a residential treatment centre forthwith upon this order coming into effect; and if you are accepted, to participate in such a program. You will attend there at the earliest opportunity, and you will remain in attendance until you have satisfactorily completed the entire program. I am not inclined to put any other conditions in that probation order. I think if I were to

order him not to drink, for instance, I would simply be setting him up perhaps unfairly for breach charges. Your commitment, Mr. Stewart, was to apply and hopefully, with an application signed by you pretty soon I hope, Mr. Netzel will be able to put some wheels in motion that hopefully will result in a treatment centre saying that they will give it a try. Mr. Netzel, is there anything more that I could properly and usefully do to achieve that end?

[7] MR. NETZEL: I've got one question, Your Honour, is there an allowance for Mr. Stewart to attend that treatment centre while he's in custody?

[8] THE COURT: If there was a treatment centre that said they would accept Mr. Stewart while his sentences are still actively being served, then I would hope that the correctional authorities would view favourably any request for whatever form of release might be available that would allow him to get into the treatment centre, although his sentence has not been fully served.

[9] MR. McWHINNIE: There is the matter of the mandatory firearm order, Sir.

[10] THE COURT: Is it a mandatory order, and is it mandatory for 10 years or is it some lesser time?

[11] MR. McWHINNIE: Ten years after release; the order commences today, and then, 10 years after release, Mr. Stewart is, of course, entitled later to make application under Section 113.

[12] THE COURT: He doesn't need to make that application today, does he?

[13] MR. McWHINNIE: No.

[14] THE COURT: Mr. Coffin, my inclination is to think that if there is to be any relaxation under that section, that is a matter which might better be dealt with on some later occasion.

[15] MR. COFFIN: Yes, I agree. I will discuss that with Mr. Stewart and advise him what steps he can take in future.

[16] MR. McWHINNIE: You need to specify, as I recall, the section, and the surrender period, which commonly is within a certain period of time, 14 days, 30 days after release from prison.

[17] THE COURT: Mr. Coffin, does Mr. Stewart have possession of any firearms, ammunition, explosive substances and the other things that are mentioned in that extended reading of the section now?

[18] MR. COFFIN: No, he indicates he does not.

[19] THE COURT: So, he needs a nominal period of time in which to surrender any of those things. He says he does not have them.

[20] Mr. Stewart, there is an order that I must make that prohibits you from being in possession of any firearms, ammunition, explosive substance and other things mentioned in the section of the *Criminal Code* for a period of 10 years, and that starts

when you are released. Mr. Stewart, there was a similar order made for a lesser period of time in Youth Court some years ago, but you need to understand, Mr. Stewart, that when a person has been ordered not to be in possession of guns and other weapons under an order like this and they are found in possession of those things, that is a matter that is likely to attract a serious sentence. There is an ability for somebody in your situation to make an application for some relief from such an order, and Mr. Coffin says he will discuss that with you.

[21] MR. McWHINNIE: There are a variety of outstanding charges. Might they be dealt with by means of a stay.

[22] THE COURT: The victim fine surcharge, of course, is waived. Mr. Netzel, if there is any way that you can arrange, with the help of others, which I hope will be forthcoming, for Mr. Stewart to get into some place where he might get some useful treatment, rather than just the Correctional Centre up the hill, you heard me say that I would unhesitatingly support an application that would allow that to happen.

BARNETT T.C.J.