

Citation: *R. v. Tizya*, 2013 YKTC 104

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13-00580
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Chief Judge Cozens

REGINA

v.

CHANTAL AMBER-LYNN TIZYA

Appearances:
Bonnie Macdonald
Lynn MacDiarmid

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCING

[1] COZENS C.J.T.C. (Oral): Chantal Tizya has entered guilty pleas to five offences: two under s. 266, one under s. 267(b) and two under s. 145(5.1) of the *Criminal Code*.

[2] Circumstances are, firstly, with respect to the s. 266 from August 5, 2013, Ms. Tizya was at a house party. She and Ms. Benjamin had been drinking and were intoxicated. An argument ensued between them in which Ms. Tizya grabbed Ms. Benjamin and took her to the ground, where she continued to kick and hit her. Ms. Benjamin suffered a black eye and ended up taking a week off work.

[3] Ms. Tizya was released on an undertaking to a Peace Officer that required her to have no contact or communication with Ms. Benjamin. On the 21st of October, Ms. Tizya, while intoxicated - and this was in Old Crow, as was the assault - approached Ms. Benjamin on the street and suggested a fight, and grabbed her by the arm. Ms. Benjamin was able to get away without further incident. But again, on October the 27th, both Ms. Benjamin and Ms. Tizya were at a party. They had been drinking, and Ms. Benjamin made an insulting comment to Ms. Tizya. Ms. Tizya responded and they ended up in a consensual fight, but this was also a breach of the no contact condition.

[4] On November 9, 2013, again in Old Crow, Kathy Charlie was at a residence when Ms. Tizya showed up at the residence. Ms. Charlie did not want to be there with Ms. Tizya there, and went to leave. Ms. Tizya grabbed her by the hair and scratched her face and Ms. Charlie's brother had to break up the fight. Ms. Tizya was on an undertaking at that time.

[5] She was released, and on November the 16th, in the early morning hours at a residence in Old Crow, Dana Lord went to leave and, entirely unprovoked and by surprise, Ms. Tizya struck her in the face and continued to strike her in the face repeatedly while she had a lighter in her hand, causing Ms. Lord to suffer a concussion. She had a swollen forehead, eyes and nose. She has a corneal abrasion on her eye, and she is having ongoing difficulties as a result of what took place. Ms. Tizya has been in custody since that time.

[6] Crown has proceeded summarily on all charges. Ms. Tizya has 40 days in custody. The report from the Whitehorse Correctional Centre provides sufficient information that Crown and defence agree that the 40 days should be credited as 60 days. Ms. Tizya has been working, she has been taking counseling; there are no negative behaviours.

[7] I also have letters in relation to the schooling that she intends to take.

[8] Ms. Tizya has a related record; in 2010 she was fined for an assault that took place in Grande Prairie, Alberta.

[9] Crown's position is a joint position with defence counsel, that there should be three months time served with respect to the s. 267(b), and concurrent three months conditional sentences for the s. 266 charges, and then nine months probation for the s. 145(5.1) charges.

[10] Ms. Tizya is 23 years of age; born in Whitehorse, raised in Old Crow, and a member of the Vuntut Gwitchin First Nation. As I understand it, her father and mother and at least one grandmother attended residential school. The mother left home at the age of 11 and lives in Fort McMurray but goes back and forth. Ms. Tizya was raised primarily by her father, who struggled with alcohol and his own issues. For all practical purposes Ms. Tizya's older sister in fact ended up raising her and her younger brother. She began drinking at the age of 13. She got to grade eight in Old Crow, and came to Whitehorse for school without a lot of supervision; dropped out in grade ten, and subsequently attended for some grade 11 in Fort McMurray. She has clearly struggled

with alcohol. The concern in her case is that consuming alcohol leads to violent behaviour, and serious violent behaviour, not just minor.

[11] Ms. Tizya has a four-year-old son.

[12] The submission that is before me with respect to the Conditional Sentence is supported by the fact that Ms. Tizya has been accepted into the Yukon College into programming. She has received the funding for the programming; and this, in addition to her commitment to not drink and to try to be a mother for her four-year-old son, who is currently with her sister and will be living with her, should satisfy the requirements of s. 742.1, that the safety of the community not be endangered. If Ms. Tizya drinks, the safety of the community is endangered. If she does not drink, it is not, in her case.

[13] I am satisfied the joint submission is appropriate.

[DISCUSSION WITH CLERK]

[14] With respect to the Conditional Sentence, there will be a sentence of 60 days time served on the s. 267(a) offence. With respect to the two s. 266 offences, there will be a three-month Conditional Sentence Order on each, concurrent to each other. You will be required to:

1. Keep the peace and be of good behaviour, appear before the Court when required to do so by the Court;
2. Report to a Supervisor immediately upon your release from custody and thereafter when required by the Supervisor and in the manner directed by the Supervisor;

3. Remain within the Yukon Territory, unless you have written permission from your Supervisor or the Court and;
4. Notify the Supervisor or the Court in advance of any changes of name or address and promptly notify the Supervisor or the Court of any change of employment or occupation;
5. Reside as approved by a Supervisor and not change that residence without the prior written permission of your Supervisor;
6. At all times remain within your place of residence, except with the prior written permission of your Supervisor. You must present yourself at the door or answer the telephone during reasonable hours to ensure you are complying with this condition; failure to do so will be a presumptive breach of this condition;
7. Abstain absolutely from the possession or consumption of alcohol and controlled drugs or substances, except in accordance with a prescription given to you by a qualified medical practitioner;
8. Not attend any bar, tavern, off-sales or other commercial premises whose primary purpose is the sale of alcohol;
9. Take such alcohol assessment, counselling or programming as directed by your Supervisor and attend and complete a residential treatment program as directed by your Supervisor;
10. Take such other assessment, counselling and programs as directed by your Supervisor, including anger management counselling;

11. Have no contact directly or indirectly or communication in any way with Alanna Benjamin, Dana Lord, or Kathy Charlie, except with the prior written permission of your Supervisor;
12. Not attend at the residence or workplace of Alanna Benjamin, Dana Lord, or Kathy Charlie except with the prior written permission of your Supervisor;
13. Participate in such educational or life skills programming as directed by your Supervisor;
14. Provide your Supervisor with consents to release information with regard to your participation in any programming, counselling, or educational activities that you have been directed to do pursuant to this Conditional Sentence Order.

[15] With respect to the Probation Order that will attach only to the s. 145 charges, and this will be for nine months, you are to:

1. Keep the peace and be of good behaviour, appear before the Court when required to do so by the Court;
2. Notify the Probation Officer in advance of any changes of name or address; promptly notify the Probation Officer of any change of employment or occupation;
3. Remain within the Yukon Territory, unless you have written permission from your Probation Officer or the Court;

4. Report to a Probation Officer immediately upon the completion of your Conditional Sentence; and 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;
6. Abstain absolutely from the possession or consumption of alcohol and controlled drugs or substances except in accordance with a prescription given to you by a qualified medical practitioner;
7. Not attend any bar, tavern, off-sales or other commercial premises whose primary purpose is the sale of alcohol;
8. Take such alcohol assessment, counselling or programming as directed by your Probation Officer and, having given the Court your consent, attend and complete a residential treatment program as directed by your Probation Officer;
9. Take such other assessment, counselling or programming as directed by your Probation Officer;
10. Have no contact directly or indirectly in any way with Alanna Benjamin, Kathy Charlie or Dana Lord, except with the prior written permission of your Probation Officer;
11. Not attend at the residence or workplace of Alanna Benjamin, Kathy Charlie or Dana Lord except with the prior written permission of your Probation Officer;

12. Perform 20 hours of community service as directed by your Probation Officer or such other person as your Probation Officer may designate. Any hours spent in assessment, counselling or programming during the term of the Probation Order may count as community work service hours in the discretion of the Probation Officer;
14. Participate in such educational or life skills programming as directed by your Probation Officer;
15. Make reasonable efforts to find and maintain suitable employment and provide your Probation Officer with all necessary details concerning your efforts;
16. Provide your Probation Officer with consents to release information with regard to your participation in any programming, counselling, employment or educational activities that you have been directed to do pursuant to this Probation Order.

Those are all the terms I believe that were suggested. Do you understand all those terms?

[16] With respect to the DNA order, there will be a mandatory DNA order on the s. 267(b). You will provide a sample of your DNA. I will not make an order on the s. 266. With respect to the s. 267 charge, there will be a discretionary s. 110 firearms prohibition. That will be for a period of three years, prohibiting you from possessing any firearm, crossbow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition, or explosive substance. Again, that is for a period of three years.

[17] With respect to the Victim Fine Surcharges, due to your financial circumstances - you are in school, you are raising a son, you do not have much that I can foresee in the way of income - with respect to the August 5th charge, I am going to waive it. With respect to the two s. 145(5.1) charges, in addition to the nine months probation on those, I am going to impose \$1 fines. There will be a 30 cent fine surcharge on each of those; so on each of those there is a \$1.30. I will deal with time to pay at the end.

[18] With respect to the s. 266 charges, for which you are receiving a Conditional Sentence, in addition to the Conditional Sentence on the s. 266 and s. 267(b) -- in addition to the Conditional Sentences on the s. 266 charges, there are going to be -- you are right, I waived it on the first s. 266; with respect to the other s. 266 there is going to be a fine. That fine is going to be a \$25 fine, and there will be the 30 percent fine surcharge on top of that. There will also be a fine with respect to the s. 267(b). It will be \$25 as well. Time to pay on all the fines is going to be six months: the fines and the fine surcharges. All right?

[19] MS. MACDONALD: Your Honour, with respect to any charges to which a guilty plea wasn't entered, the Crown enters a stay of proceedings.

[20] THE COURT: There will be a stay of proceedings on the remaining charges.