

# SUPREME COURT OF YUKON

Citation: *HMTQ v. Grunerud*, 2012 YKSC 3

Date: 20120112  
Docket S.C. No.: 11-01502  
Registry: Whitehorse

BETWEEN:

**HER MAJESTY THE QUEEN**

AND:

**KEVIN ROY GRUNERUD**

Before: Madam Justice A. Moen

Appearances:  
Terri Nguyen  
André Roothman

Counsel for the Crown  
Counsel for the Defence

## **REASONS FOR SENTENCING DELIVERED FROM THE BENCH**

[1] MOEN J. (Oral) (edited): Kevin Roy Grunerud has pled guilty to two counts on an indictment, being Count 1, with respect to committing an assault on Marcia Telep using a weapon; and Count 5, which has to do with a breach of an order made by a Justice of the Peace to have no contact with Marcia.

[2] Mr. Grunerud is 35 years old. He has two children.

[3] Now, with respect to the facts, they have been read in this morning for the guilty plea. They are short. I am not going to reiterate them here. I have heard them and am taking them into account.

[4] I note the submissions of counsel for Mr. Grunerud that the injury to the head of

the complainant was the result of a reckless disregard for her safety.

[5] There is no Pre-Sentence Report in this case. There is a victim impact statement, which has been filed by the victim I have read that statement. Essentially, Marcia Telep has, over the last year, felt this assault deeply through her lack of trust and fear as a result of the incident as described in the facts put before me this morning. I am not surprised by her reaction. This is the reaction, usually, of women who have been subjected to what she was subjected to in this particular case, and it is unfortunate that you, Mr. Grunerud, could not have understood that earlier.

[6] There is also a criminal record which has been put before me and I note in that there have been incidents such as this in the past. Furthermore, incidents relating to both of the counts to which you have pled guilty. In particular, you have been involved in the past in domestic violence, and, in particular, in the recent past, in 2009. You have also, on occasion, failed to obey the orders of the Court and I am taking that into account today as well.

[7] I note in particular, and you have just told me this, in your remarks prior to my sentencing you, that underlying these events, and underlying your record, is an addiction to alcohol which brings out a beast in you when it comes to other people. You are 35 years old. You have not yet got this under control, and that causes me some concern with respect to the safety of the public and, in particular, women.

[8] Now, Mr. Grunerud, you have probably heard this before, but I am going to tell you about the sentencing principles that I have to take into account when I am sentencing you. First of all, the fundamental purpose of sentencing in our society is to

contribute to respect for the law and the maintenance of a just, peaceful and safe society. In doing so, we take into account a number of different things. There is nothing that takes primacy over another thing, but we must consider several things: we must denounce unlawful conduct; we must deter the offender from committing the crime again, if we can; we must send a message to the public and, in particular, to your friends, associates and community, that behaviour such as the behaviour I have heard about today is not to be tolerated by society. We must also, sometimes, protect the public by separating the offender, in this case you, from the public. This can take place in two ways; one is by incarceration and the other is through a probation order with conditions that keep you away from certain people.

[9] We should also assist you in your rehabilitation. Where it is appropriate, we should provide reparation to the victim or to the community where harm has been done, as it has been here, and above all we should try to promote responsibility in you and encourage you to acknowledge the harm that has been done. Acknowledging the harm that has been done, Mr. Grunerud, means a really sincere attempt on your part to avoid doing anything that would result in harm again.

[10] I will now address mitigating and aggravating factors in your case. First of all, I am going to mention a mitigating factor, which is that by pleading guilty before trial that you have ensured that the victim and her family have not had to give evidence today, which is a very traumatic thing for them to have to do. However, it was a late plea. It was not prior to the preliminary in which they had to give evidence and therefore the mitigating factor in this case is not as significant as it would be if you had pled guilty and accepted responsibility immediately.

[11] In terms of aggravating factors, this was a domestic relationship. It was a boyfriend-girlfriend situation, and that must be taken into account by the Court when a charge is relating to assault.

[12] Another aggravating factor is your record. People can have records, but yours is very particular in that it relates to the two counts on which you pled guilty today. I have mentioned already that your record shows that you tend to abuse women, especially when you are consuming alcohol. You know that when you take alcohol your behaviour is outside the limits of behaviour that is acceptable in our society. You know that and you have known that for some time; that is clear. And yet in this case you chose to drink and take the risk of exhibiting this kind of behaviour again.

[13] One of the other aggravating factors is that you subjected her to this confinement not for five minutes but for a day, except when you were asleep. But it was a very, very long time, and that is a terrorizing kind of assault, and that, too, is an aggravating factor. You would not allow her to leave, you lied to her, you had her cell phone, and you clearly wanted to punish her because she had a communication from another man, which was none of your business. You should not have looked at her cell phone in the first place. You were abusing her privacy when you did that. That, too, was aggravating.

[14] Finally, it is aggravating that you contacted her after all of this, in the face of a no contact order, knowing that what you were doing was wrong, and nevertheless you continued to terrorize her by contacting her when she had already. This shows me a complete lack of disregard for how she must have felt in these circumstances.

[15] Your counsel has pointed out to me that you are Aboriginal, but he did not make a *Gladue* application and, therefore, I am not required to take into account any systemic or background factors of Aboriginal people here because there has been no evidence put before me of that. I think your counsel's intention was to let me know that there was a community that you could turn to for assistance, and I am having regard to that here.

[16] The objective seriousness of this crime as established by Parliament in the *Criminal Code* is a maximum sentence of ten years. I have not been advised that there is a minimum period of sentencing for this particular matter, but I have been advised by counsel that the range of sentence in this particular jurisdiction can be everything from a conditional discharge to penitentiary time, usually about three years. That, of course, depends on the circumstances of the offence and the circumstances of the offender. In this particular case, I have a situation where the offence was one that took place over a long period of time and by an offender who has committed similar offences in the past. Therefore, any mitigation that one may find in terms of sentencing for someone for whom there has been a first offence is not present in this case.

[17] The objectives that I am trying to achieve here are: to denounce your conduct; I am hopeful that this will deter you from doing it again; I am going to try to protect the public by the terms of the probation order that I am going to give you; but, I particularly want to assist you in your rehabilitation. It is best for you, of course, but it is also best for society if you can get your behaviour under control, and above all, that you, in the future, will take responsibility for your actions and will continue to acknowledge the harm that you have done in this case, as well as others.

[18] Could you stand, please, Mr. Grunerud? On Count number 1, I sentence you to two years less a day, which is 719 [sic] days. I am sentencing you to two years less a day rather than the sentence requested by Crown counsel because I see no point in your going into a penitentiary. It seems to me that it would be better that you spend your time here in Whitehorse, where you do have a family and where you may be able to avail yourself of some of the programs available through your Aboriginal community.

[19] Given that you have spent one year in prison, approximately, and, in fact, 332 days in prison, the Crown and defence counsel have agreed that these are the circumstances where I should grant one and a half days for each day you have spent in remand. Therefore, you will serve the balance of the term of 719 days less 498 days, and I leave it to counsel to tell me if I am wrong.

[20] MS. NGUYEN: No, that's the correct calculation.

[21] THE COURT: Thank you. You have not calculated the balance, have you, by any chance?

[22] MS. NGUYEN: I am doing that right now.

[23] THE COURT: I think it is 221 days.

[24] MS. NGUYEN: Yes, 221 is what I get.

[25] THE COURT: Mr. Grunerud, you are sentenced to 719 days, but you will serve the balance of 221 days, taking the time of 332 days times one and a half days in remand.

[26] I am also ordering a probation term of three years to be served consecutively after the probation term which you are going to be serving as soon as you are released from prison on other matters before this Court. I will deal with the probation terms in a moment.

[27] On Count 5, I am sentencing you to 90 days concurrent.

[28] With respect to the probation terms, I am going to mirror the probation terms which you will facing as soon as you are released, and making some changes as they are appropriate here. First, I think, before I get to that, counsel have advised me that you have agreed that Condition 7 of the Probation Order made the 19th of February 2009 by Justice Gower be changed. That condition was:

Report to the Family Violence Prevention Unit to be assessed and attend and complete the Spousal Abuse Program if so directed to do so by your Probation Officer.

That will be amended to:

It is mandatory that you report to the Family Violence Prevention Unit to be assessed and that you attend and complete the Spousal Abuse Program and any other spousal abuse programs available in this jurisdiction.

[29] I will now turn to the probation conditions with respect to the probation order that I have made today.

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 change of name or address, and promptly notify the Probation Officer of any change of employment or

- occupation;
3. Report to a Probation Officer within two working days of your release, and thereafter, when and in the manner directed by the Probation Officer;
  4. Reside as directed by your Probation Officer and not change that residence without the prior written permission of your Probation Officer;
  5. 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;
  6. You are not to attend any bar, tavern, off-sales or other commercial premises whose primary purpose is the sale of alcohol;

Those last two conditions directly relate to the fact that alcohol is an underlying factor in these kinds of offences for you in the past.

7. It is mandatory that you report to the Family Violence Prevention Unit to be assessed and that you attend and complete the Spousal Abuse Program and any other spousal abuse programs available in this jurisdiction;
8. You must take such alcohol and/or drug assessment counselling or programming as directed by your Probation Officer;
9. You must attend Alcoholics Anonymous meetings not less than once per week and make your best efforts to obtain a sponsor and provide that sponsor's name to your Probation Officer or, alternatively, provide some other proof of your attendance at such meetings satisfactory to your

Probation Officer. You will be attending Alcoholics Anonymous for six years;

That, Madam Clerk, was Item number 11, and I put it with 8 [sic] because they both pertain to alcohol treatment, so he is going to be attending Alcoholics Anonymous meetings and he is going to take other treatment as directed by the Probation Officer.

10. You are to have no contact directly or indirectly or communicate in any way with the complainant, in this case, Marcia Telep, or with her mother, or with her son, her children - in case there are other children - and you are not to attend at the residence of any of those persons or the workplace of any of those persons;
11. You are to make restitution to Marcia Telep for her camera by paying into the Territorial Court the amount of \$700 in trust for Marcia Telep within one year after your release from imprisonment;

[30] Now, I hope I am not getting into trouble here. Sorry, I have to take a break from this because it just occurred to me that this three-year term starts immediately after the other three-year term. Is there going to be a problem with that?

[31] MS. NGUYEN: No, I don't believe so.

[32] THE COURT: So that is within a year of release from prison.

[33] Now, given that this starts three years after he is released from prison, I am directing that he attend this Court for a review of this probation order within six months of the commencement of this probation order. I am ordering that because a lot of water

may go under the bridge in three years, and there may be a need for some changes at that time.

[34] Now, I turn to some additional requirements of your probation order which pertain to your relationship with women, with a view to protect women.

12. You are to report all relationships you have with females, including friendships, and provide the names of those persons to your Probation Officer. You must also provide your consent to the Probation Officer for permission for the Probation Officer to contact and provide those women with full details of your criminal record and background. You are not to live with any female without written permission of your Probation Officer.

[35] Finally, with respect to weapons, you are not to possess or carry any weapon, including knives, outside of your residence.

[36] Now, comments from counsel?

[37] MS. NGUYEN: Only that I am advised, and I apologize for this, Your Honour, the Family Violence Prevention Unit existed in 2009. It's now -- the same service is provided by Offender Services, so that the condition relating to Family Violence Prevention Unit ought to be changed to Offender Services.

[38] THE COURT: All right, and it will be in both of the probation orders.

[39] MS. NGUYEN: Yes, thank you.

[40] THE COURT: Those are the terms of your probation order, Mr.

Grunerud.

[41] Now, I am going to turn to two other matters. First of all, the victim offender surcharge. I am satisfied that you are not able to pay that as you have been incarcerated and will be for the next while, so I waive the requirement of the payment of the victim surcharge for the reason that you have been incarcerated and have not been, as a consequence of that, earning any income.

[42] There has been a request for a weapons prohibition. There is one in place already, I understand, but nevertheless, given that this is at least a second offence, you are prohibited from possessing any firearm, crossbow, restricted weapon, ammunition and explosive substance for life, and you are prohibited from possessing any firearm, except a prohibited firearm, and restricted firearm, and any crossbow, restricted weapon, ammunition and explosive for life.

[43] You asked for a DNA order?

[44] MS. NGUYEN: Yes, I believe they're -- well, they're mandatory in the circumstances. And I understand that he's given DNA in the past, and the reason we ask for a new one is, as Your Honour may be aware, there have been difficulties with the DNA Registry in the past, so I'm -- although I know that he has provided a DNA sample in the past, I can't be certain that that has actually made the Registry and been properly registered there.

[45] THE COURT: Mr. Roothman, do you have anything to say about -- you may sit down, Mr. Grunerud. Mr. Roothman?

[46] MR. ROOTHMAN: There is no issue about DNA.

[47] THE COURT: All right.

[48] MR. ROOTHMAN: May I just have a moment to seek instructions on something else that my friend has raised. I just need to canvass that.

[49] THE COURT: Certainly.

[50] MS. NGUYEN: Your Honour, just one last thing. Because this probation order won't take effect for three years, there is the issue about contact with Ms. Telep and her mother and son. As I understand it, Mr. Grunerud is willing to enter into today a recognizance to keep the peace with those conditions on it, and we'll have that renewed until -- until the condition comes into effect, just so that the complainant is aware that this won't be an issue.

[51] THE COURT: That is fine.

[52] MR. ROOTHMAN: That's correct, Your Honour.

[53] THE COURT: All right, thanks, Mr. Roothman.

[54] Now, with respect to the DNA order. Mr. Grunerud, I found you guilty of a primary designated offence, that is assault, and I am required to order that you submit to the authorities for the taking of such samples of your bodily substances as are required for the purpose of forensic DNA analysis, and I have the form of order here, Form 5.03, which I am going to sign. Is there anything else, counsel?

[55] MS. NGUYEN: Just the entry into the recognizance Mr. Grunerud --

[56] THE COURT: Oh, yes.

[57] MS. NGUYEN: What I would suggest, just in terms of the form, is that it be a s. 810 recognizance with a \$1,000 no cash deposit as the amount.

[58] THE COURT: Mr. Roothman? You are okay?

[59] MR. ROOTHMAN: That's acceptable.

[60] THE COURT: Then that is fine. That is what I will order.

[61] MS. NGUYEN: Sorry, Counts 2 to 4 on the indictment are withdrawn.

[62] THE COURT: Thank you.

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MOEN J.