

Citation: *R. v. Birckel*, 2006 YKTC 51

Date: 20050608
Docket: T.C. 04-000717
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: Her Honour Judge Ruddy

REGINA

v.

BRANDON FRANK BIRCKEL

Appearances:
Tony Brown
Lynn MacDiarmid

Counsel for Crown
Counsel for Defence

REASONS FOR SENTENCING

[1] RUDDY T.C.J. (Oral): Brandon Birckel is before me having pled guilty to an offence contrary to s. 266 of the *Criminal Code*. The facts are that on 7th of January 2005, Mr. Birckel, who had been consuming alcohol, entered into the Gold Dust Lounge. He saw his girlfriend, Ms. Tulk, sitting with a gentleman by the name of Shawn Parkinson. Without provocation or any discussion, he approached the table and punched Mr. Parkinson several times in the head. The assault ended as a result of another individual, Mr. Larkin, stepping in and striking Mr. Birckel over the head with a pool cue. That resulted in some fairly significant injuries to Mr. Birckel, which has had a considerable impact on his life.

[2] Mr. Birckel comes before the Court with no prior criminal record. This is, as the Crown described, a spontaneous offence. He appears to have had no history of violence. He is 23 years of age, born and raised in the Carmacks area and has family, who reside here as well.

[3] The Court heard earlier from his father in relation to another matter. His father is very clearly supportive of Mr. Birckel.

[4] Mr. Birckel has a steady work history including working in the mining, surveying, and line-cutting fields, as well as general labour jobs.

[5] As a result of the injuries he suffered following this particular incident, he has required ongoing treatment. He is currently collecting employment insurance, although he is now able to return to work, but needs to find employment.

[6] He is still, I understand, in a relationship with Ms. Tulk, and the two of them are planning to attend treatment in September.

[7] I take from that, there is a recognition that alcohol has presented some problems for him. In addition to that, he has been advised by his doctors that he should not drink in the future as a result of the injuries that he suffered.

[8] While in other circumstances, the question for this type of matter might be whether or not jail is appropriate, in this particular case, the question is whether or not it is appropriate for there to be a suspended sentence with a probation order or a conditional discharge with a probation order attached to it.

[9] In all the circumstances, while I have no doubt that it would be in Mr. Birckel's best interest for there to be a discharge, I have not been satisfied that it is in the public interest for there to be one.

[10] As noted by the Crown, this was an unprovoked assault on an individual who was minding his own business. It appears that there were several blows that were struck. However, I do note the very significant impact that the response of Mr. Larkin had on Mr. Birckel. In my mind, that is what takes us out of a situation about whether or not we would be talking about jail. It appears there has been a significant punishment rendered already with respect to Mr. Birckel that has had an impact on his life.

[11] In all of the circumstances, I am going to suspend the passing of sentence, place Mr. Birckel on a probation order for a period of six months on the following terms:

1. That you keep the peace and be of good behaviour and appear before the Court when required to do so by the Court;
2. That you notify the probation officer in advance of any change of name or address, and notify the probation officer of any change of employment or occupation;
3. That you report, forthwith, to a probation officer, and thereafter when required by the probation officer, and in the manner directed by the probation officer;
4. That you have no contact, directly or indirectly, with Shawn Parkinson;
5. That you abstain, absolutely, from the possession, consumption or purchase of alcohol, and submit to a breathalyzer upon demand by a peace officer

who has reason to believe that you have failed to comply with this condition;
and

6. That you take such alcohol assessment counselling and programming, as directed by the probation officer, and that you not attend at the Gold Dust Lounge.

[12] He is not working at the moment. I am going to waive the victim fine surcharge. Is there anything further?

[13] MR. BROWN: I just note, Your Honour, this is a secondary designated offence. I am not seeking a DNA order.

[14] THE COURT: Thank you. Mr. Birckel, there is going to be an order that you need to sign, so I need for you to hang around for a few minutes and the clerk will let you know when the order is ready for your signature.

[15] You are also going to want to talk to Ms. Casselman, when you can find her. Do you know who she is?

[16] THE ACCUSED: No, I do not.

[17] THE COURT: Okay, your lawyer will point you out to her. Make sure you talk to her before you leave, because that will be your probation officer, and she will tell you what you need to do and when. Okay? Thank you.

[18] THE CLERK: Your Honour, for clarification, the name of the actual lounge.

[19] THE COURT: Gold Dust Lounge

[20] MR. BROWN: Gold Dust Lounge. Mr. Parkinson's first name is spelled S-H-A-W-N.

[21] THE CLERK: Thank you.

RUDDY T.C.J.