

Citation: *R. v. Burgess*, 2009 YKTC 13

Date: 20090123
Docket: 08-00254
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: Her Honour Chief Judge Ruddy

REGINA

v.

VERONICA MARIE BURGESS

Appearances:
Noel Sinclair
Norah Mooney

Counsel for Crown
Counsel for Defence

REASONS FOR SENTENCING

[1] RUDDY C.J.T.C. (Oral): Veronica Burgess is before me in relation to two offences to which she has entered pleas of guilty. The first of those is an assault with a weapon, and the second is the offence of unlawful confinement. Both offences relate to an incident which occurred on the 14th day of July 2008, in Carmacks.

[2] It appears that at that particular time Ms. Burgess was suffering from depression. She also appears to have gone on an alcohol binge and was feeling suicidal. My understanding is it appears that she, herself, felt that she could not commit suicide but instead took steps which in her mind would lead towards the police ending her life for her.

[3] Unfortunately, they were choices that she made that put others at significant

risk. They involved her entering a local residence in which the complainant, Cynthia Blackjack, was asleep. She entered the room in which Ms. Blackjack was sleeping, yelled at her to get up and proceeded to kick and punch her several times. She ultimately prevented her from leaving and held a knife to her throat, threatening to cut her throat.

[4] All of the events were observed by a third party, a Blaine Blackjack, who was also in the residence. He was told by Ms. Burgess that both he and Ms. Blackjack would be held hostage, but she then let him leave, telling him to call the police, and told them of her intentions, essentially to commit suicide by cop.

[5] Fortunately, Ms. Blackjack was ultimately able to get free and leave the residence. She was observed to have a cut to her lip and blood on her face. She was taken to and received treatment at the nursing station and was then released.

[6] Ms. Burgess was then subsequently located by the police and arrested. She exhibited signs of intoxication consistent with the facts that have been put before me.

[7] She provided a warned statement the following day in which she made a full admission with respect to her behaviour, admitting both to assaulting Ms. Blackjack by pulling her hair, kicking her in the face, and also admitted to holding a knife to her throat to prevent her from leaving.

[8] She indicated that she was extremely remorseful, and expressed the fact that she needed help.

[9] Given the seriousness of the facts of this particular offence, one might expect to

see someone, as we often do, who has had a long history of violence and problems with the law; however, in this particular case Ms. Burgess comes before the Court with no prior criminal record.

[10] Also, I have a very thorough pre-sentence report, which has been extremely helpful in setting out her circumstances and background, as well as the steps that she has taken since this offence.

[11] Of particular note to me, in terms of background, it appears that Ms. Burgess was exposed at a very early age to substance abuse and to certain levels of violence, as well. There appear to have been issues within the family early on, although, fortunately, both parents ultimately were able to address their substance abuse issues and maintain sobriety.

[12] Ms. Burgess is currently 35 years of age. She is a member of the Little Salmon/Carmacks First Nation. She has been in a common-law relationship with Mr. Burgess for some 18 years. There are two children, including a 15-year-old daughter who resides at home with them. She has a strong employment history, appears to have a commitment to education, a commitment to her children.

[13] Of particular note to me are the steps that she has taken post-offence. On her own initiative it appears that she has maintained sobriety, has actively participated in and attended AA meetings. She has also actively sought out counselling, including medical care for depression through her doctor. I understand she is currently taking medication in an attempt to address that particular issue. While she is not herself certain that it has had significant impact, those around her have noted that there has

been significant change in her mood and behaviour as a result. She also has sought out counselling, both through Many Rivers as well as with Bill Stewart and Nina Bolton, ultimately deciding that the best fit for her was her counsellor through Many Rivers.

[14] The positive steps that she has taken and the impact that they have had have been reflected in a number of support letters which have been filed before me from friends and family and neighbours. There is also a letter from her employer, the First Nation where she is a custodian and has been for an extended period of time, attesting to the fact that she is a good worker and that they have seen a change in her behaviour since this particular offence.

[15] I am also advised by the probation officer who completed the report that, in her view, this is a case in which an individual has really made a concerted effort to address the underlying issues which have brought her before the Court and to make a change in her behaviour.

[16] I would also note that I have heard from her spouse, who has noted that not just she but he as well has made some positive changes. Both have stopped drinking, and this has had a positive impact on the family, and he noted that Ms. Burgess is doing quite well and described her as being a different person.

[17] So on the one hand I have before me an extremely serious offence with very disturbing facts. On the other hand I have a young woman with no prior history of violence who has, to her credit, taken all of the right steps to take responsibility for her behaviour and to address the issues which led to the behaviour in a way that one hopes that we will not see her again before the courts.

[18] Given the somewhat unique circumstances of this particular case, counsel are before me essentially in agreement that it is a matter that ought to be resolved by way of a conditional sentence.

[19] Based on the information before me, and I should say that obviously the Crown felt strongly enough about that that they were prepared to re-elect to make it possible for me to grant a conditional sentence which I would not otherwise have been able to do, I am satisfied on the information before me that the Crown, having re-elected, the pre-conditions to a conditional sentence have been met.

[20] I am satisfied, firstly, that the sentence is going to be one of less than two years. Crown is suggesting a range of 12 to 15 months and defence is suggesting that 12 months is appropriate in this particular case.

[21] I am equally satisfied that a conditional sentence would not endanger the community. Firstly, because Ms. Burgess has been on strict conditions for several months and she has maintained compliance with those conditions and demonstrated that she is able to do so, and I am of the view that while there are clearly risk factors, we would not be looking at offences this serious if there were not risk factors, I am satisfied that those risk factors can be managed by conditions and I am satisfied that Ms. Burgess is committed enough to herself and her family and addressing her issues that she will comply with the necessary conditions to manage her risk factors.

[22] That being said, I am also satisfied that, while unusual, on the facts of this case a conditional sentence would be consistent with the fundamental principles of sentencing, simply because it is such a unique set of circumstances that we see here

today. We do not often see such a wide disparity between the circumstances of the offence and the circumstances of the offender, and that is something which in my mind warrants us taking a somewhat exceptional approach.

[23] In terms of length, which is the primary question in terms of the disposition, I am satisfied that in looking at that range of 12 to 15 months, that 12 months is a sufficient response in this particular case, firstly, because of the fact that Ms. Burgess has been on strict conditions since last July, something that I have considered in reaching my decision as to length. I have also considered her performance on those conditions. I think, most importantly, I have considered the steps that she has taken to address her issues and the fact that much of what she has done has been done on her own initiative, which demonstrates to me a real commitment to addressing her issues rather than someone who is going through the motions in an attempt to reduce or minimize their sentence.

[24] So I am satisfied that 12 months is a disposition which appropriately responds to the facts of this particular offence and offender.

[25] With respect to probation, Crown is suggesting up to two years and defence is suggesting a one-year probationary term would be appropriate.

[26] I am of the view that the conditional sentence needs to be followed by a probationary term of two years. I recognize that is lengthy, but the facts of this case are serious enough that should Ms. Burgess's commitment wane, in terms of addressing her behaviour, there are very real risk factors that need to be managed. I am also satisfied that a lengthier probationary term would provide her additional supports in

undertaking the very hard work which she has started and needs to continue pursuing.

[27] So there will be a 12-month sentence with respect to both counts, concurrent to each other, and that sentence will be served conditionally within the community. I will get back to the conditions in a minute. It will be followed by a two-year term of probation.

[28] In the event that Ms. Burgess finds herself doing extremely well after a year or a year and a half of the probationary term, it is certainly open to the matter being brought back before the Court to terminate the order, if that is appropriate in the circumstances. The probation officer would at that point in time be able to provide some insight as to her progress and whether or not such a step would be appropriate.

[29] Dealing with conditions, firstly, the conditions with respect to the conditional sentence. There are a number of terms and conditions which are required by law to be included. They are as follows, Ms. Burgess:

1. That you keep the peace and be of good behaviour;
2. That you appear before the Court when required to do so by the Court;
3. That you report to a supervisor immediately, and thereafter when required by the supervisor and in the manner directed by the supervisor.

So you want to make sure that you -- I am assuming, Ms. Casselman, that given the location, you would likely be the supervisor? Okay, you want to connect with Ms. Casselman before you go anywhere today, okay, to set that up.

4. That you remain within the Yukon Territory unless you have the written permission of your supervisor;

5. That you notify the supervisor in advance of any change of name, address, and promptly notify the supervisor of any change of employment or occupation;

Those are the mandatory terms that I am required to include in every conditional sentence order.

[30] In addition to those terms I am going to add the following. Firstly:

6. That you reside as approved by your supervisor and that you not change that residence without the prior written permission of your supervisor;

[31] There has been much talk about curfew. I am satisfied, based on the decision of Mr. Justice Veale of our Supreme Court, a decision which binds me, that it is appropriate in the circumstances of this case that there be a house arrest situation. You need to remember, Ms. Burgess, that this is a jail sentence, and it is only by virtue of your own behaviour that you are serving that at home instead of in jail. But it is still a sentence which is a jail sentence, so there will be a restriction on your movements and behaviour, okay? So there is a punitive aspect to it.

[32] I am mindful of the comments of Mr. Justice Veale that house arrest is appropriate in conditional sentences unless there are somewhat exceptional circumstances that would dictate otherwise. There are not, in my particular view, in this case any exceptional circumstances which would suggest that I ought to deviate from that position.

[33] Accordingly, there will be a requirement:

7. That you remain within your place of residence at all times, except for the

purposes of employment, including travel directly to and directly from employment --

So you do not want to go visit anyone along the way, okay? You have the Court's permission to go directly to work and go directly back home. There are going to be a number of other things that need to be accommodated. Your counsel has mentioned shopping. In my view, I think it makes more sense for you to sit down with Ms.

Casselman and discuss the types of things that you might need so that she can give you permission to be outside of your residence for any of those types of things, such as shopping or activities with the volunteer group, that kind of thing. So I am also going to add an exception that

-- except with the prior written permission of your supervisor.

Okay? So you sit down with her before you go back today and you can clear some of that up today. If additional things come up you can speak to her about the exceptions that you need. The one thing you need to make sure is that you get the permission first. You do not go out and do something and call her later and ask if that was okay, because if you go out without the permission, you will be in breach of your sentence, and you need to understand that you can be arrested and you may be facing the possibility of spending the rest of your sentence in jail. So it is very, very important that you follow every condition to the letter, okay? You want to make sure you are talking to Ms. Casselman and you understand exactly what you can and cannot do.

7. You are also going to be required to present yourself at the door or answer the telephone during reasonable hours for curfew checks. Failure to do so will be a presumptive breach of this condition;

They will be checking that you are there when you should be there, okay?

8. That you 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;
9. That you not attend any bar, tavern, off-sales or other commercial premises whose primary purpose is the sale of alcohol;

That is intended to help you abstain. It is really hard to be in places where other people are drinking and not drink yourself. Although it sounds to me, from what your husband has told me, that both of you have been staying out of bars, in any event, and there has been a real financial benefit to the family as a result. So hopefully that will give you some incentive as well in maintaining your sobriety.

10. That you take such alcohol and/or drug assessment, counselling or programming as directed by your supervisor, and attend and complete a residential treatment program if so directed by your supervisor;
11. That you report to the Family Violence Prevention Unit to be assessed for the Women and Anger Program, and attend and complete this program if so directed by your supervisor;

My understanding is that is a continuous intake program, so they are pretty flexible in terms of how you come in and out of that program. So you want to speak to Ms.

Casselman further about that.

12. That you take such psychological assessment, counselling and programming as directed by your supervisor;
13. That you take such other assessment, counselling and programming as

directed by your supervisor;

14. That you have no contact directly or indirectly or communication in any way with Cynthia Blackjack until such time as an apology is received and Ms. Blackjack supports such contact. Prior written permission from your supervisor, in consultation with Victim Services, will be required before such contact is made;

So part of that is to make sure that she has an opportunity to see the apology, and to consider whether or not she wants to have contact with you. In these circumstances it should be her decision.

15. That you not attend within 50 metres of the --

Sorry, are Cynthia and Blaine Blackjack in the same residence?

[34] MR. SINCLAIR: I'm not certain.

[35] THE COURT: Do they live together?

[36] UNKNOWN SPEAKER: No.

[37] THE COURT: No?

[38] MS. MOONEY: No.

[39] THE COURT: Okay.

15. That you not attend within 50 metres of the residence of Cynthia Blackjack or the residence of Blaine Blackjack --

I am going to say:

-- except with the prior written permission of your conditional sentence

supervisor.

In the event that there is a desire expressed by Ms. Blackjack to have some contact with you, your supervisor can give you permission to attend at her residence, if that is where she wants the contact, but you are not to be there otherwise, okay?

[40] Have I missed any of the conditions that were suggested in relation to the conditional sentence?

[41] MR. SINCLAIR: You got the assessment, the Family Violence Prevention?

[42] THE COURT: Yes. That was included

[43] MR. SINCLAIR: Right. And the psych assessment.

[44] THE COURT: Okay.

[45] MR. SINCLAIR: No, I don't think so. I should have mentioned as well, Your Honour, that with respect to the house arrest, and having regards to the long period of time that she's been under conditions and the length of the order that you've made today for the 12-month sentence, I would say that the Crown would not oppose some period of curfew being, perhaps --

[46] THE COURT: A graduated --

[47] MR. SINCLAIR: -- made at the end of it. And I'm -- with respect, I might suggest that for the first eight months of the sentence that she be under the house arrest, and that that could be relaxed into a curfew situation --

[48] THE COURT: Okay.

[49] MR. SINCLAIR: -- subsequent to that.

[50] THE COURT: Okay. Given the Crown's position on that, then I am prepared to make that change. So the condition will read:

7. That for the first eight months, you are to remain within your place of residence at all times, except for the purposes of employment --

As we discussed.

-- or except with the prior written permission of your supervisor. For the remaining four months of your sentence you are to abide by a curfew by remaining within your place of residence between the hours of 8:00 p.m. and --

Sorry, I just want to get the suggested times that were in the report.

-- and 7:00 a.m. daily.

[51] What time does your employment start?

[52] THE ACCUSED: I usually go to work at 1:00 to 6:00 or 6:30.

[53] THE COURT: Okay. So I was just concerned that 7:00 a.m. was not early enough, but it appears that that will accommodate your employment. Okay. So for the remaining four months you are to abide by a curfew by remaining within your place of residence between the hours of 8:00 p.m. and 7:00 a.m. daily. The condition will go on to include the knock-and-talk as discussed earlier.

[54] Thank you, Mr. Sinclair.

[55] MR. SINCLAIR: I make that concession in the unique circumstances of this case.

[56] THE COURT: Agreed. I would state, for the purposes of this decision, that from a precedential standpoint I think this case is unique enough that both in terms of the length of the sentence and the type and nature of the sentence, it is probably not something that ought to be considered as a precedent down the road because it is something that is fairly exceptional.

[57] Okay. That leaves us with the probation order. The terms and conditions of the probation order will be as follows:

1. That you keep the peace and be of good behaviour;
2. That you appear before the Court when required to do so by the Court;
3. That you 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;
4. That you report to a probation officer immediately upon completion of your conditional sentence, and thereafter when and in the manner directed by the probation officer;

[58] Because the probation order is intended more to support you in your rehabilitation and is not intended to be punitive, I am not going to include a residency clause or a curfew clause, but I do think it is central to your rehabilitation that you maintain your sobriety. So I am going to include the clauses:

5. That you 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. That you not attend any bar, tavern, off-sales or other commercial premises whose primary purpose is the sale of alcohol;
 7. That you take such alcohol and drug assessment, counselling or programming as directed by your probation officer;

Most of the other conditions will continue the earlier ones, because it is going to take some time to get through everything. So it will be required:

8. That you report to the Family Violence Prevention Unit to be assessed for the Women and Anger Program. Attend and complete this program if so directed by your supervisor;
9. That you take such psychological assessment, counselling and programming as directed by your supervisor;
10. That you take such other assessment, counselling and programming as directed by your supervisor.

[59] This leaves us just with the no-contact and the not-attend conditions that I previously put into the conditional sentence order. Should there be a suggestion that those be handled differently on the probation order?

[60] MR. SINCLAIR: I'm advised by my friend and Ms. Casselman that the victim in this case does want to reconcile, and so, you know, that can be facilitated through the conditional sentence process. I don't know that we require that for the probationary period.

[61] THE COURT: Okay. That was the suggestion I got, as well, from the report. So I am content that it need not be included in the probation order and that working towards that reconciliation can occur over the course of the conditional sentence.

[62] I will state that coming to that conclusion I am, again, very mindful of the significant steps that Ms. Burgess has taken towards her own rehabilitation. So I am satisfied those conditions are not necessary for the probationary term.

[63] Any concerns, as it relates to conditions on the probation order?

[64] That leaves us with the two remaining issues of the DNA order, which is a mandatory order, and the firearms prohibition, which is not.

[65] The DNA order will go. I take it you have no submissions in relation to whether there ought to be an exception?

[66] MS. MOONEY: No, I will not.

[67] THE COURT: Accordingly, Ms. Burgess, you will be required to provide such samples of your blood as are necessary for the purposes of DNA testing and banking, okay?

[68] That leaves us with the firearms prohibition. The Crown has suggested, and is seeking, a five-year discretionary firearms prohibition on the facts of this case, citing the fact that there was a weapon. While not a firearm, there was a weapon used in this particular case. There was the clear expression that Ms. Burgess was attempting to

commit suicide by cop, and that should she not adequately manage down the road her mental health and substance usage issues, that there is some potential that she may resort at some point to the use of firearms.

[69] Defence has asked that I not make the order, noting the significant steps that Ms. Burgess has taken, and also noting her First Nation heritage and the fact that she does spend time on the land with her family.

[70] In considering this particular issue, I am satisfied on the facts of this case that there are risk factors, and there are risk factors as they relate to weapons of any sort. Those risk factors reduce dramatically, provided that Ms. Burgess continues the efforts that she has started, in terms of managing those risk factors and accessing the appropriate supports and resources, but it is a concern.

[71] In the circumstances, I am satisfied that there ought to be a firearms prohibition, and what I am going to do is make it for a three-year term so that it coincides with your term of involvement with the courts, where you are addressing your rehabilitation. It is my hope, based primarily on what I have seen you already do, that over that period of time you will have been successful in sufficiently addressing your risk factors that I do not believe that a firearms prohibition needs to extend beyond that period. That does not prevent you from being out on the land with others who are in possession of firearms. It simply means that you cannot have possession of them yourself, okay?

[72] So there will be an order that you not have in your possession any firearms, weapons, ammunition or explosive substances for a term of three years.

[73] Any submissions on the victim fine surcharge?

[74] MR. SINCLAIR: I don't see any reason to waive it in the circumstances.

[75] THE COURT: She is employed.

[76] MR. SINCLAIR: The accused is employed and the money goes to some very useful programs in the territories.

[77] THE COURT: Okay.

[78] MR. SINCLAIR: So I would seek the order.

[79] THE COURT: Any submissions? It would be \$50 on each count.

[80] MS. MOONEY: Your Honour, Ms. Burgess is employed. She doesn't make a great deal of money, and --

[81] THE COURT: No. Time to pay is less of a concern for me. I am prepared to give her -- I appreciate there is another fine that is of some priority so that she is able to drive, so I do not have an issue with the length of time that she needs to pay it.

[82] MS. MOONEY: Okay. Because there's also one other matter that we're hoping will be resolved by way of diversion, and it's going to involve a payment, so we would be --

[83] THE COURT: Okay. That, I take it, relates to one of the letters that I

saw, in terms of damage, of estimates, that I was fairly certain did not relate to this particular matter.

[84] I am satisfied there ought to be a victim fine surcharge of \$50 on each count, for a total of \$100. How long do you think that she would need to pay those, in light of the other two concerns, which I am satisfied ought to take priority over this?

[85] MS. MOONEY: Six months, Your Honour.

[86] THE COURT: Okay. Any issue with six months, in light of the circumstances?

[87] MR. SINCLAIR: No. Content.

[88] THE COURT: Okay. Six months time to pay. I fully accept and expect that you will address the other two issues first, okay? So you do have six months to pay these two small victim fine surcharges.

[89] Does that leave anything outstanding?

[Discussions re other Informations]

[90] MADAM CLERK: And the remaining counts on this Information?

[91] MR. SINCLAIR: Stay of proceedings, please.

[92] THE COURT: Okay. Thank you.