

Citation: *R. v. Carlick*, 2012 YKTC 83

Date: 20120801
Docket: 12-10045
12-10050
Registry: Watson Lake

IN THE TERRITORIAL COURT OF YUKON

Before: Her Honour Judge Ruddy

REGINA

v.

JAMES HERMAN CARLICK

Appearances:
Terri Nguyen
Lynn McDiarmid

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCING

[1] RUDDY T.C.J. (Oral): James Carlick is before me for sentencing with respect to three counts to which he has entered pleas of guilty. It includes two counts of common assault and one count of uttering threats. The incidents occurred over two different days in May of this year, May 19 and May 27.

[2] On the 19th of May, there was an incident between Mr. Carlick and his then spouse, Martina Donnessey, in which the RCMP were called. It appears that there was drinking occurring at the trailer in which the two of them resided. The women were inside the trailer, Mr. Carlick and the men were outside. He wanted to come into the trailer, was told no, smashed the window to get into the trailer, then began to push Ms. Donnessey around and struck her in the head. I am advised that through the course of

the incident, and in attempting to defend herself, she kicked him in the face. Her nephew, Jonathan Donnessey, attempted to intervene with respect to the assault and was himself assaulted by Mr. Carlick, who began to push him around. Mr. Carlick then left the residence. He was on probation at the time of the offence. He was -- I believe, there was not an indication to me whether he was arrested at that time and released?

[3] MS. MACDIARMID: He wasn't arrested or charged until the second incident.

[4] THE COURT: Okay, thank you. That being said, apparently there was no arrest or charges in relation to the first incident until the second incident occurred, which was only eight days later, on May 27th. Ms. Donnessey indicated that she had been struck in the head several times by Mr. Carlick. The RCMP arrived to investigate. They were advised that Mr. Carlick was in the bushes across the street. When they went to arrest him, he fled. There was a chase. He was ultimately captured by the RCMP and this led to an interaction between Mr. Carlick and the RCMP in which he was belligerent and uncooperative, cursing, yelling, hitting and kicking the inside of the truck, and ultimately uttering a threat to the police officer, telling him to put his face up against the glass in the police vehicle so that he could smash it.

[5] He comes before the Court with a prior criminal record with numerous offences for failing to comply with court orders. It is not a lengthy record as it relates to a history of violence, although there is a prior assault conviction in 2003 for which he received 21 days plus two years probation, and a prior uttering threats in 2005 for which he received a suspended sentence and a six-month probation order.

[6] The Crown is suggesting that a sentence in the range of six to eight months plus probation with no contact provisions would be appropriate in the circumstances. I understand from defence counsel that Mr. Carlick has spent approximately 67 days in remand, which counsel is suggesting be credited at 1.5 to 1. Crown takes no issue with that submission, recognizing that Mr. Carlick has completed programming while on remand, including AA and the Violence Prevention Program. At 1.5 to 1 credit, the total credit for remand would be 100 days.

[7] Mr. Carlick is now 31 years of age, almost 32, born in Cassiar, but raised in a number of different places, including Whitehorse and Dease Lake. He has a number of siblings and family members in B.C. and the Yukon. I am advised that alcohol and the abuse of alcohol played a major role in his upbringing, although by and large he appears to have had some stability with his family. His mother went to residential school and I have no doubt that that had impacts on both her and the family. In addition, there appears to have been some abuse of Mr. Carlick when young, by a member of the community. He has a Grade 10 education and a history of working in construction and diamond drilling. He advises that he has a job lined up in Good Hope Lake, although that has not been something for which I have been provided confirmation.

[8] In terms of assessing the appropriate disposition, I have to be mindful of a number of principles, as well as considering the aggravating and mitigating factors in this particular case. The principles that are appropriate to consider, in my mind, in this particular case, quite frankly, are denunciation, both specific and general deterrence, as we have two instances of assault on Ms. Donnessey, and one on her nephew, Jonathan

Donnessey. I also am of the view that protection of the public, in particular, Ms. Donnessey, is an important factor to be considered in this particular case, and, lastly, I am mindful of the fact that rehabilitation is something which also must be considered. Mr. Carlick has taken some steps while in custody, appears to recognize that he needs assistance, in particular with his abuse of alcohol, and I would also add, obviously, with managing his temper. In my view, taking the Violence Prevention Program is a good start, but in reading the Progress Report, it is evident to me that he would benefit from further programming in the area of anger management and domestic violence.

[9] In terms of aggravating factors, the factors which cause me most significant concern in this particular case, quite frankly, are that we have two assaults on a spouse within an eight-day period. The fact that the assault involved a spouse is a statutorily aggravating factor, which in my mind is then aggravated significantly by the fact that there are two incidents within such a short period of time.

[10] In addition, I note that we are here today when the matter had been set down for trial. So we are dealing with guilty pleas at trial. Mr. Carlick is entitled to some credit for those guilty pleas, but the fact that they come on the date of trial, when the witnesses were subpoenaed and required to be present, makes it clear to me that the credit that he is entitled to for that guilty plea is significantly less than he would otherwise have been entitled to had the pleas been entered at an earlier date; although I am mindful of the fact that Mr. Carlick did enter his pleas before the witnesses were actually required to testify, which can be incredibly stressful. I also have noted that he has made an indication that his particular concerns related to the uttering threat to the officer, that he would have been prepared to enter pleas as it related to Ms. Donnessey at an earlier

time. But, in any event, it is not a situation in which we are dealing with guilty pleas at the earliest possible opportunity.

[11] At the end of the day, when I consider all of the factors that are before me, I am satisfied that a custodial disposition is appropriate, and having considered the factors that I have outlined, I would sentence Mr. Carlick in relation to the three offences as follows: I am satisfied that an appropriate sentence with respect to the assault on Jonathan Donnessey would be one of 30 days. Being mindful of the fact that there is remand credit to be applied, that sentence will be one day deemed served by Mr. Carlick's attendance in court today, and I would ask the record reflect that he is being credited with 30 days spent in pre-trial custody.

[12] For the uttering threats that relate to the officer, I should make a couple of comments. Ms. MacDiarmid, as counsel for Mr. Carlick, did, at length, discuss the seriousness of this particular offence and noting that at the time the threat was made Mr. Carlick did not have the present ability to act on the threat as he was in handcuffs in the back of the police vehicle. However, I would also note, as pointed out by the Crown, that he was certainly not going to be remaining in the back of the police vehicle and it was evident that he was going to need to be moved by the police in the near future, which may well have been opening the door to him acting on the threat. But more importantly, from my perspective, I consider it highly aggravating that inclusive with the threat was an extended period of very belligerent, uncooperative and verbally abusive behaviour by Mr. Carlick. So, I do not consider it a minor matter. In my view, a sentence of 30 days is appropriate with respect to that matter. Again, with the credit for

remand, the sentence will be one day deemed served by his attendance in court today and the record will reflect that he is being credited for 30 days spent in pre-trial custody.

[13] Now, the most serious of the matters before me is the single count relating to Ms. Donnessey, encompassing, as it does, two separate incidents of assault, and recognizing that it occurred within the context of a spousal relationship. I am satisfied that an appropriate sentence with respect to that count is a sentence of four months or 120 days. Recognizing that there is some remaining credit, if I have done the calculations correctly, he will be credited for the remaining 40 days in pre-trial custody and there will be a sentence of 80 days remaining with respect to the assault on Ms. Donnessey.

[14] That will be followed by a period of probation. Crown has suggested that the terms be limited to no contact provisions. I should advise that in terms of victim impact, Ms. Donnessey, apparently, has taken treatment and programming, is doing very well by all accounts at this point in time. She wants a different life for herself and has determined that the relationship should be terminated, but she also would like to see Mr. Carlick get into programming himself so that he, too, can have a different life.

[15] In the circumstances, while the focus is not entirely rehabilitative, I am of the view that the conditions of the Probation Order need to go beyond simply no contact provisions. In particular, I want to ensure that there is additional programming with respect to domestic violence, and also that Mr. Carlick pursue programming as it relates to substance abuse.

[16] So the probation term is going to be for a period of 12 months. The terms and conditions will be, Mr. Carlick, that:

1. You keep the peace and be of good behaviour; appear before the Court when required to do so by the Court;
2. Notify your 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 immediately upon your release from custody and thereafter when, and in the manner directed by the Probation Officer.

[17] In the circumstances, I am not going to include an abstain provision. I am not interested in setting Mr. Carlick up when he gets to the Probation Order. I am primarily interested in him getting the programming that he needs. So, I am going to require, Mr. Carlick, that:

4. You take such alcohol assessment, counselling, and programming as directed by your Probation Officer;
5. You take such other assessment, counselling, and programming as directed by your Probation Officer, including, but not limited to, programming with respect to domestic violence;
6. You are to have no contact directly or indirectly or communication in any way with Martina Donnessey, except with the prior written permission of your Probation Officer in consultation with Victim Services;

7. You are not to attend at or within 20 metres of the residence of Martina Donnessey, and/or the place of employment of Martina Donnessey, except with the prior written permission of the Probation Officer in consultation with Victim Services.

[18] I am assuming from what I have been told that the relationship is not going to continue. I am including the exception provisions in the event that something changes. It is an eight-year relationship. I am advised that while it is at its end now, I have no idea what Ms. Donnessey's position is going to be if Mr. Carlick does get himself into programming and starts making the changes that he needs to.

8. You are going to be required to provide your Probation Officer with consents to release information with regard to your participation in any programming or counselling that you have been directed to do pursuant to this Probation Order.

[19] Now, is there anything that I have missed or any concerns that relate to the conditions on the Probation Order?

[20] MS. NGUYEN: Not from the Crown.

[21] MS. MACDIARMID: Mr. Carlick did advise me that he did require an opportunity to retrieve some belongings because they resided together for quite a long time and he hasn't been back since his arrest.

[22] THE COURT: He needs to speak to his Probation Officer with respect to that, because that can be dealt with through the permission provision, and

arranged with her so that there are no unfortunate meetings between them. I will leave that to the Probation Officer to sort out. All right.

[23] MS. NGUYEN: Your Honour, the remaining counts are stayed and the Crown's content to waive the surcharge.

[24] THE COURT: Yes. The victim fine surcharge is waived given his custodial status. The remaining counts have been addressed.

RUDDY T.C.J.