

Citation: *R. v. Charlie*, 2010 YKTC 110

Date: 20100927
Docket: 10-00036
10-00036A
10-00206A
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before: His Worship Justice of the Peace Cameron

REGINA

v.

LYLE ANDREW CHARLIE

Appearances:
John Phelps
David Christie

Counsel for the Crown
Counsel for the Defendant

REASONS FOR SENTENCING

[1] CAMERON J.P.T.C. (Oral): Mr. Charlie has pled guilty to one count under s. 267, one count under s. 145(5.1), one count under s. 266, and two counts under s. 145(3).

[2] Chronologically, the facts are that on March 24th, in Old Crow, Mr. Charlie and a couple of other young men were initially working on a piece of equipment. They began drinking in the evening, carried on into the late evening and early morning. It became a party during which there was an argument amongst the men. At one point, some knives were brought out and used in a somewhat threatening manner. When knives seemed to get taken away from one Mr. Lord, Mr. Charlie walked up to Mr. Lord and punched

him in the face, broke his jaw and caused a laceration to his face.

[3] He was then released on an undertaking to a police officer with a number of conditions, including an abstain condition which he was in breach of on April the 29th in Old Crow. He was, again, very intoxicated and very belligerent with the police throughout the encounter.

[4] On June 1st, he was placed on an undertaking before the Court with a number of conditions. On June 19th, he found himself again in trouble. He had been living at his mother's house. He entered her bedroom while she was asleep and he covered her head, which of course woke her up. He indicated that he would finish them all off. About then he was acting very erratic and very bizarre. He was punching the walls and carrying on. Police attended. This behaviour continued throughout his investigation and the booking by the police. At that time, that put him in breach of the undertaking, which had an abstain condition and his keep the peace and be of good behaviour condition.

[5] Mr. Charlie is a young man. He has a criminal record that has one conviction of particular concern, which is a further assault cause bodily harm from 2005. He has six prior process convictions. He has been in custody since June 19th, and according to my rough calculations, he should be credited with three and a half months of custody time. The joint submission from counsel is indicating time served for his s. 267, and additional jail, but to be served conditionally for the other offences, along with some probation.

[6] There is a Pre-Sentence Report that has been tendered. I guess the one

concern out of the report, Mr. Charlie, is that you do not seem to be catching the obvious, which is that alcohol is not good for you. It is not a matter of, "Well, you have got to just drink a little bit, then." Do not drink at all, because it always starts out by drinking a little bit. All of the bad behaviours that make you quite ashamed, and they should, because they are bad behaviours, are brought on by alcohol. So in as much as you may start drinking to have a good time, it turns into a bad time. The message should be that you have got to find ways and means to not drink.

[7] The first thing you should do is address it as though it is a very serious issue, as though you are well on your way to becoming an alcoholic, and address it that seriously. You cannot address it by simply saying, "Well, I will not drink as much," because it does not work that way. So if you get yourself involved with some professionals that can assist you and help you in learning ways and means to just simply not drink at all; that is the way you have to deal with that issue, then your behaviours are fine and you will find that people can accept you for who you are, a good person and welcome you back into the community. As long as you do not think that alcohol is really a problem, it is going to keep causing you grief, guaranteed.

[8] The joint submission from counsel is, I think, appropriate, and I am going to endorse that joint submission. The s. 267(b) will be time served, indicated as three and a half months, Madam Clerk. There will be, then, consecutive sentencing of 30 days on the s. 145(5.1), six months consecutive on the s. 266, and for the two s. 145(3), it would be 30 days each concurrent. The s. 267(b) and the s. 266 will both have 18 months probationary terms attached to them.

[9] The conditions I am going to go through, and that are on your probation, are as follows:

1. You must keep the peace and be of good behaviour;
2. You are to appear before the Court when required to do so by the Court;
3. You are to remain within the Yukon Territory, unless you have written permission from your Supervisor or from the Court;
4. You are to notify the Supervisor in advance of any change of your name and/or address, and promptly notify the Supervisor of any change of employment or occupation;
5. You must report to your Bail Supervisor within two working days, immediately upon your release from custody, and thereafter, when required by the Supervisor and in the manner required by him or her;
6. You are to reside as approved by your Supervisor, and abide by the rules of the residence and not change your residence without the prior written permission of your Probation Officer, essentially;
7. You are to 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;

I do not believe we can utilize the sample condition.

[10] MR. PHELPS: I understand that my friend has spoken to his client about the terms of this, Your Honour, and is willing to consent to that before the Court. On his consent, I think it would be satisfactory to place it on.

[11] MR. CHRISTIE: Yes, that is by consent.

[12] THE COURT: Okay. So I understand you have given your consent:

8. That you would then be required to provide a sample of your breath or urine for the purpose of analysis upon demand by a peace officer if they believe that you are not abiding by this condition;

9. You are not to be found in attendance in any bar, tavern, off-sales, or other commercial premises whose primary purpose is the sale of liquor or alcohol;

You cannot go in there to see who is in there. You cannot go in there to use the phone, use the toilet, get out of the weather. You simply cannot go into those places.

10. You are to take such alcohol and/or drug assessment, counselling and/or programming as directed by your Probation Officer;

11. You are to attend and complete a residential treatment program as directed by your Probation Officer;

12. You must report to the Family Violence Prevention Unit to be assessed and attend and complete programming related to assaultive and violent behaviour as directed by your Probation Officer;

13. You are to take such psychological assessment, counselling, and programming as directed by your Probation Officer;

14. You are to take such other assessment, counselling, and programming as directed by your Probation Officer;

15. You are to participate in such educational or life skills programming as

directed by your Probation Officer;

16. You are to make reasonable efforts to find and maintain suitable employment or education, and provide your Probation Officer with all of the necessary details concerning those efforts;
17. You are to provide your Supervisor 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 order;
18. You are not to have in your possession any firearms, ammunition, explosive substance or weapons for the duration of this order.

[13] Now, that takes care of your probation. The probation will not cut in until you have finished serving your sentence.

[14] Your sentence can be served conditionally pursuant to s. 742.3, and you will be subject to the following conditions for that period of time:

1. You must keep the peace and be of good behaviour;
2. You must appear before the Court when required to do so by the Court;
3. You must report to a Conditional Sentence Supervisor within two working days of today's date, thereafter, as often and in the manner directed by the Conditional Sentence Supervisor;
4. You have to remain within the jurisdiction of the Court, unless you have written permission to go outside the jurisdiction, and you can get that permission from your Supervisor or from the Court;

5. You must notify the Court or your Supervisor in advance of any change in your name or address, and promptly notify the Court or Supervisor of any change of employment or occupation;

[15] You must continue, then, virtually, with all the conditions as outlined in your probation. It would be applied during that six month period as well, the difference being that the wording will indicate you report to your Supervisor, which ultimately may be your Probation Officer, so you will be reporting to the same person.

[16] The addition of a curfew would be in place for your jail term. So that is a curfew that says that:

6. You must abide by a curfew by remaining within your place of residence between the hours of 9:00 p.m. and 7:00 a.m. daily, except with the prior written permission of your Conditional Sentence Supervisor, or except in the actual presence of a responsible adult approved in advance by your Supervisor. You must present yourself at the door or answer the telephone during reasonable hours for curfew checks, and failure to do so would be a presumptive breach of this condition;

All other conditions would remain in place for that period of time as well.

[17] I want you to understand, Mr. Charlie, that in as much as it sounds like that is sort of the same thing, it is not. For this first seven months, you are in fact in jail. You will be allowed to serve that in the community as long as you abide by those conditions absolutely to the letter. It is not a situation like probation, where your Probation Officer can say, "Okay, I am going to give you a pass this time, but you know, get back on

track”; that is not the case. If you do not abide by the conditions, then you will find you are arrested. You would come back in custody and you may find that the remainder of that sentence is revoked and that you serve it at Whitehorse Correctional Centre. So it is very important to maintain good, close contact with your Supervisor. If you have any questions as to whether you are planning to go to work here or there, run it past your Supervisor first before you accept any jobs, because if, for example, it is a job that is out of the Territory, the next thing you know, you are going to be breached or you are going to wind up with a warrant out for your arrest. So, you have to get permission from your Supervisor to do those sorts of things.

[18] The abstain condition is an absolute condition. If you were in jail, you would not be expected to be able to even have access to alcohol, let alone be drinking. So, again, these conditions, take them very seriously. They are in place for the next seven months and then you will be on probation where the curfew condition changes, but the other conditions are mostly all in place.

[19] Are there any of the conditions that you do not understand?

[20] THE ACCUSED: No.

[21] THE COURT: You understand them all. The remaining charges?

[22] MR. PHELPS: Direct a stay of proceedings with respect to those, Your Worship, and I would just ask you to address the DNA order.

[23] THE COURT: Yes. Pursuant to s. 487.051, the Court requires that you, within a two day period, surrender a sample of your DNA to be placed in the DNA

data bank.

[24] In regards to the consideration for a further prohibition of weapons, pursuant to s. 110, the Court is of the view that that is not necessary beyond the prohibition that is a part of your probation.

[25] MR. CHRISTIE: Thank you, Your Worship, and I've spoken to my client about if things go really well, that we could ask maybe for a review partway through, but also, I know that sometimes Ms. Geddes wants a review if things aren't going well, so I've explained that to him as well. So, we would consent to it being brought back to court for that purpose as well, but hopefully, it's the former, when things are going --

[26] THE COURT: Okay. Stay in close contact with Ms. Geddes, Mr. Charlie. Anytime you have any questions, if you think something is changing for you, make sure that she is aware and see that it does not affect, in any way, your performance on either your conditional sentence or your probation.

[27] MR. PHELPS: Did you waive the victim fine surcharges?

[28] THE COURT: The victim fine surcharge should be waived given that Mr. Charlie is currently of limited means.

CAMERON J.P.T.C.