

IN THE SUPREME COURT OF THE YUKON TERRITORY

Citation: *R. v. Doucette*, 2007 YKSC 08

Date: 20061215
S.C. No. 06-01511
Registry: Whitehorse

BETWEEN:

HER MAJESTY THE QUEEN

AND:

DAVID WAYNE DOUCETTE

Publication of evidence taken at Preliminary Inquiry has been prohibited by Court Order pursuant to s. 539(1) of the *Criminal Code*.

Before: Mr. Justice R.S. Veale

Appearances:
Melissa Atkinson
Nils Clarke

For the Crown
For the Defence

**MEMORANDUM OF SENTENCE
DELIVERED FROM THE BENCH**

[1] VEALE J. (Oral): There are two guilty pleas, one to Count 2, which is a guilty plea to a process offence under s. 733.1 of the *Criminal Code*, and the agreed disposition of that between Crown and defence, which I adopt, is that the sentence for that will be time served, the time that you have already served in jail up to this point from November 30, 2006.

[2] In terms of the second offence, which is the process offence under s. 145.2(a) of the *Criminal Code*, you will be sentenced to 30 days, to be served intermittently from Friday at 7:00 p.m. to Monday morning at 7:00 a.m.

[3] With respect to the two remaining items, Count 1 and Count 2, which we will be setting a trial date for, I am going to grant you interim release on the following terms. These terms, of course, will apply as well to the time when you are not in jail on your intermittent sentence:

1. Keep the peace and be of good behaviour;
2. Appear before the Court when required to do so;
3. Notify your bail supervisor in advance of any change of name or address;
4. Promptly notify the bail supervisor of any change of employment or occupation;
5. Report to a bail supervisor immediately upon your release from custody and thereafter when and in the manner directed by the bail supervisor;
6. Remain within the Yukon Territory, unless you have the prior written permission of the bail supervisor or permission of the Court;
7. Absolutely abstain 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;
8. Provide a sample of your breath and urine for the purpose of analysis upon demand by a peace officer or bail supervisor who has reason to believe that you may have failed to comply with this condition;

I understand that Ms. Constable Rushant spoke to you about that and you consented to that term?

[4] THE ACCUSED: Yes, Your Honour, I told her that I would either give one to her on a weekly basis or when I appear at the institution to do my weekends, I will give one there or two or give one to each one if they wanted one.

[5] THE COURT: Thank you.

- [6] 9. Not attend any bar, tavern, off-sales or other commercial premises whose primary purpose is the sale of alcohol;
10. No contact directly or indirectly or any communication in any way with the witnesses or victims of the alleged assaults, and specifically, Juanita Johnson, Raymond Borle, and Victoria Elias;
11. Not attend at the residence where the assaults are alleged to have taken place, namely 6123-6th Avenue, or within 50 meters of that address or the residence of Raymond Borle;
12. Abide by a curfew by remaining within your place of residence between the hours of 7:00 p.m. and 7:00 a.m. daily, except with the prior written permission of your bail supervisor;
13. Present yourself at the door or answer the telephone during reasonable hours for curfew checks. A failure to do so will be a presumptive breach of this condition;

Do you understand what a curfew is, Mr. Doucette?

[7] THE ACCUSED: Yes, that one might be a little hard at the moment. I do not have a phone and my work -- my boss, I am living with him right now, he has a cell phone.

[8] THE COURT: I am not worried about that as much as do you understand what a curfew is?

[9] THE ACCUSED: Yes.

[10] THE COURT: What does it mean?

[11] THE ACCUSED: I got to be at home.

[12] THE COURT: From what time to what time?

[13] THE ACCUSED: From what you said.

[14] THE COURT: What time is that, 7:00 p.m. to 7:00 a.m.?

[15] THE ACCUSED: 7:00 a.m. Yeah, I might have to leave before then to go to work. Like is that a problem?

[16] THE COURT: You will have to deal with your bail supervisor if that is the case. I doubt it very much. You will be working in Whitehorse so you will not be going --

[17] THE ACCUSED: Sometimes Carmacks.

[18] THE COURT: I think the job they talked about was a Whitehorse job.

[19] THE ACCUSED: I will abide by it, sir, I do not want to screw it up or anything like that.

[20] THE COURT: You can speak to your supervisor if there is an issue there.

[21] 14. Reside as approved by your bail supervisor. Abide by the rules of that residence and not change that residence without the prior written permission of your bail supervisor;

15. Make reasonable efforts to find and maintain suitable employment and provide the bail supervisor with all necessary details concerning your efforts.

[22] I understand you are a drywaller?

[23] THE ACCUSED: Yes. I am really dirty, I really apologize.

[24] THE COURT: That is all right.

[25] THE ACCUSED: I apologize for not being at court when I am supposed to.

[26] THE COURT: I am sure there is lots of work for drywallers.

[27] Is there anything else? We were going to deal with trial date, I guess.

[28] THE ACCUSED: What about on my conditions for the curfew when I go on my weekends. I will be out before seven in the morning on the street and that.

[29] THE COURT: You are okay. Do not worry about that.

[30] MR. CLARKE: Two things, I believe. First of all, I am suggesting that perhaps this attach to a recognizance in the amount of \$500, no deposit.

[31] THE COURT: Crown agrees?

[32] MS. ATKINSON: That is agreeable.

[33] THE COURT: Ordered.

[34] MR. CLARKE: Secondly, with respect to the clause of not communicating with witnesses, I believe that the Crown and defence are in agreement that people -- the named persons, that is the intention of the no contact. There may be peripheral witnesses or witnesses who are not particularly germane to the --

[35] THE COURT: You want the clause simply to apply to those three named witnesses?

[36] MR. CLARKE: Correct, yes.

[37] THE COURT: We can make that change, Madam Clerk.

[38] THE CLERK: Thank you.

[39] MR. CLARKE: With respect to the Territorial Court matters, My Lord, and Madam Clerk, I am suggesting a return date of January 5, 2007 at 1:00 p.m. to fix a date for trial. And then I believe there should only be one Information remaining, the Supreme Court matter, and we can fix a date for trial.

[40] THE COURT: What is the anticipated length of trial?

[41] MS. ATKINSON: If I can just have a moment, please. One day.

[42] MR. CLARKE: No more than one day, My Lord.

[43] TRIAL COORDINATOR: April 19th.

[44] THE COURT: What about January? Is that too soon? I mean, we are talking one day. It just hangs over his head otherwise.

[45] MR. CLARKE: Late January, My Lord, early February.

[46] THE COURT: How about January 22nd, Monday, January 22nd?

[47] MS. ATKINSON: That is agreeable.

[48] MR. CLARKE: Mr. Doucette indicates he may have -- he may have a medical procedure towards the end of January. If there --

[49] THE COURT: Well, it would have to be after January 22nd.

[50] MR. CLARKE: I am available otherwise on January 22nd, yes.

[51] THE COURT: We will set it for January 22nd for trial. You will be getting out of the Correctional Institute that morning, I take it.

[52] MR. CLARKE: Yes, yes.

[53] THE COURT: Head straight to your lawyer.

[54] MR. CLARKE: If anything arises, I will certainly -- if anything arises with respect to Mr. Doucette's medical condition, I will certainly bring it to the Court's attention sooner rather than later.

[55] THE COURT: Thank you. Is there anything further, Madam Clerk?

[56] MS. ATKINSON: Not for me, My Lord.

VEALE J.