

Citation: *R. v. Dupont*, 2009 YKTC 131

Date: 20091118
Docket: 08-00758A
09-00625
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before: His Honour Judge Faulkner

REGINA

v.

GERALD FERDINAND DUPONT

Appearances:
Judy Bielefeld
Lynn MacDiarmid

Appearing for the Crown
Appearing for the Defence

REASONS FOR SENTENCING

[1] FAULKNER T.C.J. (Oral): Gerald Ferdinand Dupont is before the Court to be sentenced for four offences.

[2] The first in point of time occurred on the 28th of September of this year when Mr. Dupont was found in contact with Marlene Johns contrary to a condition of his recognizance that he have no contact with her. It is to be noted that he was intoxicated at the time, also in breach of the recognizance which also forbade him to consume alcohol. Significantly, Marlene Johns was the complainant in the matters that proceeded to trial the following day and which resulted in his convictions on the other three counts for which he is now to be sentenced.

[3] With respect to those matters, they are a charge of assault arising from the 7th of February 2009, and charges of assault causing bodily harm and uttering death threats, both arising on the 12th of February 2009.

[4] With respect to the earlier of the two assault incidents, Ms. Johns provided only the barest of indications that she was assaulted on that day. The Court knows little of the circumstances, other than the obvious inference that she was struck by Mr. Dupont. She also suggested that there may have been some bruising as a result of that. But the point is that the facts before the Court with respect to that incident are the barest possible and in my view would not justify any particularly significant response from the Court in terms of a sentence, much less a custodial sentence. The only significance, really, that the February 7th incident has is that it was repeated in rather more spectacular fashion on the 12th of February.

[5] On that occasion there was a serious, prolonged and nasty assault on Ms. Johns which included her being struck a number of times, choked and suffering bruising as well as a cut to her head which required her hospitalization and stitches to close. At the same time the offender uttered death threats to Ms. Johns. So the incident from the 12th was a serious one and I think has to be the primary focus of the sentencing today.

[6] In that regard, I have already indicated that it was a serious assault. It was perpetrated in the context of a relationship between Mr. Dupont and Ms. Johns, and consequently there is a breach of trust element to the incident.

[7] Mr. Dupont has a significant prior record, although it is fair to note that in most cases, the occasions in which he has received periods of imprisonment, they have not

been of length. It is also to be noted that there was a gap between 2001 and the present offences. However, at the same time, there are three prior related convictions.

[8] Given the antecedents of the offender and given the circumstances of the assault, it seems to me, and indeed it is conceded, that a custodial sentence is inevitable. It also seems to me and is conceded that that custodial sentence should be of more than nominal duration.

[9] With respect to these matters what I intend to do is impose a global sentence with respect to all matters and I do not intend to parse too finely how it should be apportioned between the various offences. I also, of course, am required to give consideration to the time Mr. Dupont has already spent in custody.

[10] The additional matter for consideration before the Court is the question of whether some or all of the sentence could be served conditionally. The defence contended for, I guess, what could be called a blended sentence in that regard, although, as I understood the submissions, the actual custodial portion would be all or substantially dealt with by way of time already served.

[11] In any event, the issue is before the Court of whether the sentence could be served conditionally. Certainly the sentence to be imposed would be within a range where a conditional sentence could be imposed. Now, that having been said, in my view there is no real prospect that a conditional sentence order could be successfully completed by this offender, having regard to his attitude, as expressed freely in the pre-sentence report, and having regard to the rather egregious breach of his prior release order, only the day prior to trial. In my view, there is a significant risk to the public, in

general and particularly to the victim of these offences. As the Probation Officer herself concluded: "...his success on a community disposition is unlikely."

[12] With respect to these matters, Mr. Dupont has served a total of 52 days in custody. It is suggested by the defence that that should be grossed up at the normal rate of 1.5 to one. The Crown suggests not providing any additional credit, given that it was Mr. Dupont's own actions which wound him up in custody.

[13] At the end of the day, I am going to dispose of the matters as follows. With respect to the charge of assault arising from February 7, 2009, Mr. Dupont, you are sentenced to a period of imprisonment of one day. With respect to the charge of assault causing bodily harm, six months in addition to time served, which I calculate at 50 days, and on Count 3, six months concurrent. On the charge of breach, one day in addition to time served, which I calculate at 28 days.

[14] Following your release from imprisonment you will be subject to a probation order for a period of one year. The terms will be that:

1. You will keep the peace and be of good behaviour;
2. You will report to the Court as and when required;
3. You will report forthwith upon your release from imprisonment to an Adult Probation Officer, and thereafter as, when, and in the manner directed;
4. You will advise the Probation Officer in advance of any change of name or address, and promptly notify her of any change of occupation or employment;

5. You will have no contact, directly or indirectly, by any means whatsoever, with Marlene Johns;
6. You will take such alcohol assessment, treatment and counselling as the Probation Officer may direct, including, if so directed, attendance at residential treatment;
7. You will attend for assessment at the Family Violence Prevention Unit and, if directed, complete the Spousal Abuse Program, or other related counselling as directed by your Probation Officer.

[15] The Crown having proceeded summarily on all matters, there will be a surcharge of \$50 in each case. Do you require time to pay the surcharges?

[16] MS. MACDIARMID: He has no income at this time, of course. He's been incarcerated now for a period of time. I hadn't asked for it to be waived prior. I wonder if it's still possible? If not, he would require significant time to pay.

[17] THE COURT: Payable forthwith. He can serve the time in default concurrently.

[18] MS. MACDIARMID: Thank you.

[19] THE COURT: Additionally, there will be an order whereby the offender will provide samples of bodily substances for the purpose of DNA analysis and banking.

[20] I also consider this to be an appropriate case in which to impose a firearms prohibition. For a period of ten years he will be prohibited from having in his possession

any of the firearms, ammunition, explosive substances or other items enumerated in s. 109, and he is directed to forthwith surrender to the RCM Police at Whitehorse any such items now in his possession.

[21] MS. BIELEFELD: Your Honour, I would ask that the DNA order -- that a DNA order made with respect to each count, given that the matter -- if there are counts appealed or overturned, the DNA order would attach to each count.

[22] THE COURT: Well, it should attach to all those counts on docket number 08-00758A.

[23] MS. BIELEFELD: So, just to be clear then, Your Honour is making that DNA order with respect to each of the substantive offence counts? I think they attach individually to the count, to each count designated.

[24] THE COURT: I'm sorry?

[25] MS. BIELEFELD: Sorry. I think the DNA orders attach independently to each count, given that they are independently designated; so I'm just trying to clarify that.

[26] THE COURT: Well, if anything turns on it, it should be with respect to all three counts.

[27] MS. BIELEFELD: Thank you. And, Your Honour, I'd just like to suggest also, with respect to the probation order, that he not attend anywhere known that the victim lives or works or goes to school.

[28] THE COURT: I think the order is clear enough on its face. He is to have no contact with her, period, by any means.

FAULKNER T.C.J.