

Citation: *R. v. Hager*, 2014 YKTC 25

Date: 20140529
Docket: 13-00679
13-00679A
Heard: Mayo
Registry: Whitehorse

TERRITORIAL COURT OF YUKON
Before His Honour Judge Schmidt

REGINA

v.

JOEY MATTHEW HAGER

Appearances:
Noel Sinclair
Lynn MacDiarmid

Frank Patterson

Counsel for the Crown
Counsel for the Defence
(Agent for Malcolm E.J. Campbell)
Chairperson, First Nation of
Nacho Nyak Dun Wellness Committee

REASONS FOR SENTENCING

[1] SCHMIDT T.C.J. (Oral): The Crown is seeking a jail term for an assault and a breach of probation.

[2] In respect to Mr. Hager, who is a resident and has always been a resident of Mayo, he is a First Nation man. He has had a break-up with his wife or his partner, and they have two children who are 11 and 12 years of age. His partner is hopelessly lost in alcohol and so Mr. Hager is taking care of the children. He is a single father and has full-time employment, and has had full-time employment for many years.

[3] On this occasion, January 1st, 2014, he got into a provocative discussion with another man with respect to his partner, who he was estranged from at the time and trying to struggle through that. That disagreement led to him fighting with this man and hurting him. It was an assault. He has admitted that it was an assault and he has admitted he was wrong.

[4] He is also charged with breaching an Undertaking with respect to keeping the peace and being of good behaviour for some other event that I believe was an Undertaking to an officer about something. That became a bigger deal as time went on because it was still not settled in the community and part of the Undertaking was that he obey a curfew. He was late coming home for that curfew because he was ice fishing, possibly providing for his family in other ways.

[5] Mr. Hager stands before the Court charged and comes before the Court with a record that is not good. Sixteen years ago, he was charged with assault and he was given a conditional sentence order of 30 days. Eighteen years ago, he was charged with assault and given a 30-day intermittent sentence. Twenty-two years ago, he was charged with assault and given a suspended sentence. Twenty-four years ago, he was charged with assault and given probation. The Crown says he has had four charges, four convictions for assault.

[6] The defence, interestingly, says, if you look at the record, he was on probation a lot for those assaults in those bad old days, and we do not see much in the way of failing to comply with the Probation Order. There was one 22 years ago. In 1998, 16 years ago, after being released from jail for that assault, he gained employment as a

heavy-duty equipment operator. He only had grade 10 and so -- but he has obtained several qualification tickets -- and from 1998 to the present, he has worked as a heavy-duty equipment operator and there have been no more assaults. Since that time, he is raising his two children by himself. He has had a little bit of difficulty since that 16-year-old assault, and that was -- he had an impaired driving in 2005. And again, he was sent to jail for the impaired driving.

[7] He has had periods of time when he has been in trouble in the community and with the law. But since then he has been a productive member of this community and has worked full time for many years for the same company and is raising two sons.

[8] What I want to say is that I think the Court can be satisfied that he has come out of something that looked very bad, indeed, and it looked like he would be one of those people that we housed in jail for many years of his life but for some reason or other, he managed to get a hold of himself. And for 16 years he has proved himself to be exactly what we want in these communities and in society in general. He is a man that can resolve and quit the path of destruction of himself and other people and stand by it for many years. If I met him on the street I would shake his hand. If I was a reporter I would write a story because this is something that we need to have in front of us. It can be done and he did it. That does not mean he does not have a long way to go. An alcoholic, if he is one, has the rest of their life to go.

[9] Mr. Patterson has been very helpful in saying what the path would be from this point on for Mr. Hager. Mr. Hager is amenable and agrees and wants to do that and wants to raise his children in a way that is proper, in a way that they can be proud of

him. He said that. So once again he is making, having made bad decisions in the past, he is making good ones again based on everything we want people to make decisions on: the raising of children; the building of a strong community; and the retention of our sobriety.

[10] This is not a man that I am going to send to jail. Previously, I talked a little bit about the disproportionate number of Aboriginals in jail. There is no need to send anybody to jail if they can do what Mr. Hager has been doing for the last 16 years. And they can do it. We need to celebrate the success of the criminal justice system if that is what did it because at some point we leaned hard enough on him that he changed and made some decisions. I am pretty hesitant to take credit for that as a criminal justice system. Something, though -- and maybe we participated, made him change, and that is a success. Everybody that participated in that should be proud.

[11] In no way, Mr. Hager, do I condone anything that you have done here that you are standing before the Court for. In giving you words of praise for what you have done, that is right, I also give you words of warning and condemnation for the things that you have done that are wrong.

[12] I am satisfied, on the balance, that you will go forward as you said you have gone forward in this community and be a role model and example to other people that are coming through the things that you have come through because of whatever factors existed for you and for other people in this community. That role model is so important to keep and to generate in these communities.

[13] By knocking you down when you make a mistake, we will be telling the community there is no point trying. By building you up, we will be telling the community there is a point in trying because it can be done. You cannot do it on your own so I am going to ask the community to assist you. I will place you on a suspended sentence with 12 months of probation.

[14] The terms are:

1. You are to 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 report to a Probation Officer by the June 6 and thereafter, as required by the Probation Officer.
4. 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.
5. You are to provide a sample of your breath for the purposes of analysis upon demand by a Peace Officer who has reason to believe that you may have failed to comply with this condition.
6. You are not to attend any bar, tavern, off-sales, or other commercial premises whose primary purpose is the sale of alcohol.
7. You are to take such alcohol and drug assessment counselling or programs as directed by your Probation Officer.

8. Having given the Court your consent, you are to attend and complete a residential treatment program, as directed by your Probation Officer.
9. You are not to have any contact, directly or indirectly, or any communication in any way with Mr. Fred Algar.

[15] That is the sentence that is on each count and concurrent.

[16] MR. SINCLAIR: With respect to the no contact conditions, Your Honour, I would ask you to consider including Miranda Blanchard, Caroline Blanchard, and Jeanette Blanchard. Jeanette being, as I understand it, the estranged spouse and the others being sisters. They were the targets of the drunken, threatening conversations and phone messages. I'm suggesting that there be a condition that he not have any contact, directly or indirectly, with either of them, except with the prior written permission of his Probation Officer in consultation with Victim Services. Maybe there is some sort of a reconciliation that can happen among these people but that it is one that needs to be guided or supported through Corrections and Victim Services.

[17] THE COURT: Yes, I agree.

[18] There will be a term with respect to no contact, directly or indirectly, with Miranda Blanchard or Caroline Blanchard; and a term that there be no contact, directly or indirectly, with Jeanette Blanchard, except with the written approval of your Probation Officer in consultation with Victim Services. That will allow you to work through your family problems, if you get an opportunity to, but you have to go through some other

people first. I make that just because family courts are so unavailable here that it is easier to work with Probation, I would think.

[19] Is there any question about any of this?

[20] MS. MacDIARMID: We just have to deal with the Victim Fine Surcharges.

[21] THE COURT: I think that they should be paid in this case. So what would they be?

[22] MS. MacDIARMID: I understand they're \$100 on each charge.

[23] THE COURT: That is \$300. Does he need time to pay that?

[24] THE CLERK: Your Honour, if I may, on Information 679, preceded by indictment and as of the new legislation, it's \$200 each count: \$100 for Summary; \$200 for Indictment.

[25] THE COURT: Okay. So now you have got yourself up to \$500.

[26] MS. MacDIARMID: If he could have four months' time to pay --

[27] THE COURT: It is whatever he wants. He has got kids to look after. I will give him a year to pay. Pay this by May 1, 2015.

[28] Mr. Patterson.

[29] MR. PATTERSON: Your Honour, in regard to the family treatment -- like I mentioned, the men, the women, and the sons -- I'd have to work with Victim Services and a Probation Officer --

[30] THE COURT: Correct.

[31] MR. PATTERSON: -- in order to set that up?

[32] THE COURT: Correct.

[33] MR. PATTERSON: Okay.

[34] MR. SINCLAIR: I believe, in the circumstances of this case, the Court is also compelled to consider a firearms prohibition under section 109 of the *Criminal Code*, this being an indictable offence. I don't know what Mr. Hager's access to firearms is.

[35] THE COURT: Do you hunt, Mr. Hager?

[36] MR. HAGER: I'm the -- totally the main provider of all the family, all my sisters and parents, and they all totally rely on me to get the meat every year.

[37] THE COURT: All right. I will not impose a firearms prohibition in this case.

[38] MR. SINCLAIR: Just for the record, it is an order that the Crown was seeking on the basis that Mr. Hager assaulted someone on, you know, in a drunken condition requiring that victim to have medical treatment and then furthermore, made a number of threats against family members of his ex-spouse and demonstrated very volatile behaviour toward those family members and serious threats against them. So it's the Crown's position that in his drunken condition, Mr. Hager poses a very real and substantial threat to other members of this community.

[39] THE COURT: And did more, particularly, many years ago when he had four assaults and was a volatile person --

[40] MR. SINCLAIR: Absolutely.

[41] THE COURT: -- but there is no problem with firearms in all these years and I do not think that anything indicates to me that that is a danger now. On balance, he is the sole provider for his elderly parents and children of the game meat that they rely on and on balance, I am not making the order.

[42] MR. SINCLAIR: Thank you.

[43] THE CLERK: The remaining counts, Your Honour?

[44] MR. SINCLAIR: The Crown [indiscernible] a stay of proceedings.

[45] THE COURT: Thank you. That is all.

SCHMIDT T.C.J.