

Citation: *R. v. Harper*, 2016 YKTC 13

Date: 20160311
Docket: 14-00750A
15-00058
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before His Honour Judge Luther

REGINA

v.

BENJAMIN MICHEL HARPER

Appearances:
Eric Marcoux
Vincent Larochelle

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCE

[1] LUTHER J. (Oral): Mr. Harper has been convicted of armed robbery and also assault causing bodily harm.

[2] The circumstances surrounding the commission of the offences are set out in the agreement of facts which were read into Court by Mr. Marcoux and filed. The following is taken directly from the filed Agreed Statement of Facts:

1. On February 19th, 2015 at 11h45pm Whitehorse RCMP responded to a report of a drive-by-shooting at the Yukon Inn on 4th avenue, Whitehorse, Yukon.
2. Following their investigation about the drive-by-shooting, the RCMP received from source information that the house connected to the shooting was

located at 24, 11th avenue, Whitehorse, Yukon. Accordingly, the RCMP put the house under surveillance.

3. On February 24th, 2015 around 5h03pm, the RCMP received a report of an armed robbery committed at a phone repair shop at 207 Elliott Street, Whitehorse;
4. The owner of the store, two employees (one of which visibly pregnant) and a customer were present during the armed robbery;
5. According to the witnesses, two suspects entered the store, a white male wearing a black zipper hoodie and a tall black male;
6. The white male was wearing black gloves and carrying a black expandable baton in his right hand;
7. The black male was wearing a balaclava with eye holes, a black hoodie and black gloves and carrying a machete in his right hand;
8. The black man described by the witnesses is the accused Benjamin Harper;
9. The suspects waved the baton and a machete around and made death threats to the employees;
10. The accused asked the owner for money and phones. Given the small amount of money provided, the accused said the owner was lying and asked the white guy to punch the owner, which he did, in the area of the neck under his left ear.
11. The suspects took a couple of iphones, iphones cases, \$310.00 in cash, and all of the employee's business card with the name "Ash Jordon" on them.
12. A witness followed the suspects to the parking lot and saw them get into a dark brown Chrysler vehicle that was running with two occupants already inside;
13. About an hour later, while conducting surveillance at the house located at 24, 11th avenue, Whitehorse police officers saw people arriving in a grey jeep. Several occupants exited the jeep and ran inside the house. One was wearing a black hoodie, another a black balaclava and black gloves matching the description of the suspects from the armed robbery committed at 207 Elliott Street, Whitehorse.
14. Shortly after, several persons exited the residence and entered the grey jeep.
15. The grey jeep departed the residence with a group of persons and was stopped by police who arrested the occupants;

16. Two of the occupants arrested out of the jeep matched the description of the robbery suspects;
17. One of the occupants was identified as the accused.
18. Police found inside the grey jeep the following items; a small axe (machete), collapsible baton, rubber mask, black gloves, loose cash, small amount of cocaine and a balaclava. A key for a Chrysler vehicle was also found.
19. Upon arrest, police searched the accused and found on his person a black iphone, a blackberry phone, a broken green iphone and \$2900.00 in cash.

[3] The principles of sentence are laid out in ss. 718 to 718.3 of the *Criminal Code*. We have spoken about those a lot, certainly this week and in many previous weeks, here in Whitehorse. The main principles in this case, of course, would be denunciation for this horrendous crime and deterrence: specific deterrence to this man, Mr. Harper, and general deterrence to the community at large. Those who might be inclined to think about committing an armed robbery will realize that there are severe consequences to it. It is necessary to separate him from society for these crimes, no question about that. The sentence will be crafted in such a way as to assist in his rehabilitation, and he has already taken some steps in that direction himself.

[4] Mr. Harper has taken full responsibility for these crimes and, therefore, the aspect of promoting a sense of responsibility in the offender and an acknowledgment of the harm done to the victims and to the community is hereby recognized. The sentence will, over the course of time, give him ample opportunity to reflect on the harm that he has done and to resolve in his own heart and soul not to get involved with this again.

[5] The idea of finishing the GED and continuing with the Yukon College is a sound one. Returning to his family in Edmonton and getting a degree in kinesiology is certainly a worthwhile goal, and we would hope that he is able to achieve that.

[6] As to joint submissions by the Crown and defence, I have had occasion to speak about that in some detail earlier this week in the case of *R. v Prowal*, 2016 YKTC 8, a major drug offender who has already been sentenced. In this particular case, the sentence put forward is perhaps on the low side but it does not cause me to feel in any way that the administration of justice is brought into disrepute, nor is the sentence an unfit one. The Court appreciates that the Crown and defence have spent considerable time on this, in conjunction with the RCMP as well.

[7] The two guilty pleas are significant mitigating factors, as is the age of Mr. Harper, being only 21 years of age.

[8] Furthermore, the pre-sentence report clearly identifies anything but a stable upbringing. He certainly had his challenges in life. He has made many wrong decisions in his young life. But now that he is drug-free, he is able to hopefully come to the realization this is not the pattern that he wants to go. We see all too often young men who express this resolve in court and yet continue on their ways and, ultimately, largely through middle or old age, stop their criminal activity. But what a useless life that is, bouncing in and out of jail.

[9] Mr. Harper, I hope that your resolve is strong enough to make sure that that is not your fate.

[10] As to the actual sentence, the Court will impose a sentence on the armed robbery of three years. The Crown has filed a book of authorities and it clearly sets out that three years is within the range.

[11] As to the assault bodily harm, this offender was involved with two others. It is to be noted that Mr. Saskiw received 12 months — he had the sock — and Mr. Gilbert only used his fists and he was sentenced to 9 months. What we have to remember here is that the Court has to consider the aspect of totality in sentence. Mr. Harper is already sentenced to 3 years and, therefore, it is appropriate to reduce what would have been a 12 month sentence down to about 8 months. The sentence will specifically be 8 months less a day on the charge of assault bodily harm.

[12] As per the recommendation of the Crown and defence, there will be a 20 month credit for the time that he has served in the WCC.

[13] The sentence being two years less a day, the Court can impose probation. I think that is important in this case, given his age. Probation will be assessed at the maximum period, which is three years.

[14] As per the joint submission, the probation terms are as follows:

1. Keep the peace and be of good behaviour.
2. Appear before the court when required to do so by the court.
3. Notify the probation officer in advance of any change of name or address, and promptly of any change of employment or occupation.

4. Have no contact directly or indirectly or communication in any way with all the co-accused, namely:

Robert Gilbert;

Joshua Saskiw;

Jonathan MacLeod;

James Graham;

Kelsey Galbraith;

Dale Babiy; and

Adam DesBarres.

5. Remain within the Yukon Territory unless you obtain written permission from your probation officer or the court.

[15] Now, what that means is basically that puts a strong responsibility on you to report to the probation officer before you leave to Alberta. You cannot leave for Alberta until you have seen the probation officer and received his or her permission. Do you understand that?

[16] THE ACCUSED: Yes, sir.

[17] THE COURT: And it seems that could take place within two or three days. This is not designed to keep you here for five or six months, but it is designed that you have to see the probation officer right away.

6. Report to the probation officer immediately upon your release from custody, and thereafter, when and in the manner directed by the probation officer.

[18] If it turns out that you move to Alberta, then the probation order would be transferred down there.

7. Reside as approved by your probation officer.
8. For the first six months of this order, you are to abide by a curfew by being inside your residence between 11 p.m. and 6 a.m. daily, except with the prior written permission of the probation officer. You must answer the door or the telephone for curfew checks. Failure to do so during reasonable hours will be a presumptive breach of this condition.

[19] Now, what that means is that, say, for example, you were to get a job that required you to work from 12 midnight to 8 in the morning, then you approach the probation officer with that and he/she can give you permission then to be outside your residence.

9. You are not to possess or consume controlled drugs or substances that have not been prescribed for you by a medical doctor.
10. Not attend any premises whose primary purpose is the sale of alcohol, including any liquor store, off sales, bar, pub, tavern, lounge or nightclub.

11. Attend and actively participate in all assessment and counselling programs as directed by your probation officer, and complete them to the satisfaction of your probation officer, for the following issues:

substance abuse,

any other issues identified by your probation officer,

and provide consents to release information to your probation officer regarding your participation in any program you have been directed to do pursuant to this condition.

[20] I am going to add a couple of conditions, neither of which are onerous:

12. Participate in such educational or life skills programming as directed by your probation officer and provide your probation officer with consents to release information in relation to your participation in any programs you may have been directed to do pursuant to this condition.

[21] What that would mean is, let us say, for example, you ended up going to the University of Alberta working on a kinesiology degree. From time to time, you would update your probation officer as to how that is going.

13. If you are not going to school, you are to make reasonable efforts to find and maintain suitable employment and provide your probation officer with all necessary details concerning your efforts.

[22] So in addition to what is going to be two years less a day, plus the three years probation, there will be a s. 109 *Criminal Code* order prohibiting you from having in your possession any firearm, ammunition, explosive substance, et cetera.

[23] There will also be a DNA order.

[24] There will be a victim surcharge. Given your means, I am going to make that payable forthwith.

[25] There will also be forfeiture of all items seized, except for \$1,450, which can be returned to you.

[26] Mr. Marcoux, was there anything else?

[27] MR. MARCOUX: Stay of proceedings on all remaining matters for Mr. Harper.

[28] THE COURT: Mr. Harper, would you stand, please?

[29] So here we are. You have made a number of mistakes. You have made a couple of big ones here, particularly the armed robbery. You have told me that that is going to be it for you and I am going to take you at your word.

[30] Like I said in my judgment, we have seen far too many times people who just bounce in and out of jail, and then the next thing you know, they are 55 or 60 and they say, "Well, I have had enough of this" and they stop committing crimes. I am really hopeful that you do not fall in that category.

[31] If you can go ahead and make a good life there for yourself in Edmonton with your family and pursue a degree in kinesiology, you have a lot to look forward to. I

certainly hope that that is the case here. I take you at your word when you say that you are not going to be committing further offences.

[32] That is all, then, for this particular case.

LUTHER J.