Citation: *R.* v. *John,* 2008 YKTC 100

Date: 20081217
Docket: 08-00153
08-00543A
07-00614
Registry: Whitehorse

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

REGINA

v.

ERIC LOGAN JOHN

Appearances:
Jennifer Grandy — Counsel for Crown
James Van Wart — Counsel for Defence

REASONS FOR SENTENCING

[1] FAULKNER T.C.J. (Oral): Mr. John is, unfortunately, one of those people who does need to be separated from society, and I intend to do that. The only question before the Court is the length of sentence.

[2] As I indicated at the outset, I have been presented with a joint submission. Now, the law is that a joint submission must be accepted by the Court, subject to the Court being satisfied that the sentence is not so out of the range, so to speak, as to be clearly and demonstrably unfit. It is not a situation where the Court can reject a joint submission simply because it would have imposed a different sentence. The Court can only depart from it if, as I say, the Court is satisfied that the sentence would be completely improper.

[3] Joint submissions are made by counsel as a result of serious deliberation and take account of many factors, not all of which may be entirely apparent to the Court. So the Court should be slow to depart from such a submission.

[4] In this case it seems to me that the sentence contended for is at the very lowest end of the acceptable range, but not so low that I would be justified in departing from the joint submission. The range of sentence for the aggravated assault in this case, I am satisfied, could easily be in the range of five years or more.

[5] That can be demonstrated by having regard to a case such as *R.* v. *D.B.M.*, [2002] Y.J. No. 96, 2002 YKTC 81, where there was a five-year sentence imposed. Clearly the injuries there were substantially more serious, but there was one victim, not two, as in this case. The offender in *D.B.M.* was virtually a first offender, where Mr. John is clearly and demonstrably not. In the *D.B.M.* case the offence was described as being out of character. In this case, the offence, unfortunately, is entirely in character.

[6] If one looks at the effective sentence contended for here of three years and nine months, it is, as I say, at the low end of the range but not to the point that I could safely depart from it.

[7] With respect to the charges of aggravated assault, Mr. John, you are sentenced to a period of imprisonment of three years on each count to be served in a federal penitentiary.

[8] On the charge of breaking and entering, two years concurrent.

[9] On the charge of breaking and entering arising from Faro, nine months consecutive, but I will allow a credit of four months for time served, leaving a remanet of five months yet to be served.

[10] On each of the breach charges, 30 days.

[11] On the possession of marihuana charge, seven days.

[12] I hereby direct that you provide samples of bodily substances for the purposes of DNA analysis and banking.

[13] I further order and direct that you be prohibited from having in your possession any firearms, ammunition, explosive substances or any of the other items mentioned in s. 109 of the *Code*, and that you be prohibited from having such items in your possession for the remainder of your life.

[14] In the circumstances, the surcharges are waived.

[15] MS. GRANDY: If I could ask for the remaining counts to be marked as withdrawn, please?

[16] MR. VAN WART: Can I just ask for confirmation on the record that the 30 days and seven days are concurrent?

[17] THE COURT: Yes.

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FAULKNER T.C.J.