

Citation: *R. v. Karolev*, 2008 YKTC 74

Date: 20080924
Docket: 07-00644
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before: His Worship Justice of the Peace Cameron

REGINA

v.

NIKOLA KAROLEV

Appearances:
Edith Campbell
Jamie Van Wart

Counsel for Crown
Counsel for Defence

REASONS FOR SENTENCING

[1] CAMERON J.P.T.C. (Oral): Mr. Karolev has pled guilty to one count under s. 346(1).1. The facts before the Court; on January of this year, Mr. Karolev approached his ex-wife and their son, indicating that he was in debt to some rather unpleasant individuals, Hell's Angels. They were in town collecting debts. He needed money, they would kill him and they would kill the family. He was convincing enough that the son withdrew \$400 and gave it to him.

[2] Mr. Karolev comes before the Court with a somewhat limited record. It is varied and stretched over a significant period of time. I think of significance, it appears that between 1979 and 1981, Mr. Karolev had some difficulties, then he seemed to have no difficulties up until 2006, at which time he got an impaired driving conviction. In 2007,

he got a possession of drug conviction. His earlier involvement back in 1979 and 1981 involved drugs and violence. I have got a rather very complete presentence report that outlines the ups and downs for Mr. Karolev. He certainly had many ups and downs and it would appear that more recently he has had a bit of a rough time. He has lost his family and a number of things. However, even more recently than that, it would appear that perhaps he has gotten a handle on what was becoming a runaway drug addiction. Things have started to look better and more improved for him. He seems to have reconciled with his family and he has indicated to the Court that he has in fact compensated the son for the \$400.

[3] Crown is suggesting a further jail term, essentially in the 30 to 90 day range, depending whether it is a conditional sentence or an intermittent sentence. Defence is suggesting that it maybe not require custody, but if it does, it should be in the lower range suggested. The Crown elected indictment on this charge. It is clearly a very serious charge, but when I review this report, the presentence report, and I look at the history of Mr. Karolev, I cannot help but say to myself, you know, what is really going on.

[4] This report seems to show that Mr. Karolev went into a downhill spiral for a number of reasons. There was a number of negative aspects that started to sort of pile up on him, including familial breakdown, loss of employment; there were physical factors, health factors. It would appear that it sort of started in 2006 for him and has continued. I think to his credit, we have to look at the fact that he has done reasonably well. In fact, he has done very well. In the last 10 months he has been subject to conditions, rather strict conditions, and has managed to stay out of trouble. In addition,

he has taken and completed a 28 day program. He has got, apparently, some work lined up for him shortly and appears to have things back on track.

[5] As such, the Court is of the view that perhaps a slightly different tact be taken with Mr. Karolev. If we put this offence in its context of Mr. Karolev more or less hitting rock bottom in his spiral of drug addiction and so on, the fact that he has pulled himself out of that spiral, I think, must be given significant credit. He appears, so far, to have been successful in doing that. It is, however, the Court's concern that it is not fragile, that you are not going immediately start back onto the drugs. It is important that you maintain your contact with Narcotics Anonymous and Alcoholics Anonymous. These are not problems that you become cured from. They are problems that you learn to live with everyday and that you learn to make positive choices not to re-involve yourself.

[6] As such, I am going to propose to deal with it in this matter, Mr. Karolev; I am going to suspend the further passing of sentence. I am going to place you on probation, however, for a period of one year. The probation is going to be the conditions as outlined in your presentence report, which are similar, but I think a little less restrictive than the conditions that you have been on for the last 10 months. The reason for that is that I want you to get a further distance between you and what has been going on. I want you to maintain the contact in the healthy direction that you are going. So the conditions are going to be that you:

1. Keep the peace and be of good behaviour;
2. Appear before the Court when required to do so by the Court;

3. Notify your probation officer in advance of any change in your name or address and promptly notify your probation officer of any change of employment or occupation;
4. Report to a probation officer in Whitehorse immediately upon your release from court here today.

[7] I will say within 24 hours because their office will be closed now. So by tomorrow you have to check in with your probation officer.

And then thereafter, as often and in the manner directed by your probation officer.

5. Continue to abstain absolutely from the possession or consumption of alcohol and non-prescription drugs, except in accordance with a prescription given to you by a qualified medical practitioner;
6. Not be found in attendance in any bar, tavern, off-sales, liquor store or other commercial premises whose primary purpose is the sale of liquor or alcohol.

[8] You cannot go in there to see who is in there, you cannot go in there to use the bathroom or telephone, or get out of the weather. You simply cannot go in there.

7. Have no contact with Phyllis Harlton, Temjana Karolev or Breaden Karolev if you are under the influence of alcohol or drugs;

8. Take such alcohol and/or drug assessment, counselling and programming as directed by your probation officer;
9. Take such other assessment, counselling and programming as directed by your probation officer;
10. Provide your probation officer with consents to release information in regards to your participation in any programming, counselling, employment or educational activities that you have been directed to do pursuant to this probation order;
11. Reside as approved by your probation officer and not change that residence without the prior written permission of your probation officer;
12. Make reasonable efforts to find and maintain suitable employment, and provide your probation officer with the necessary details concerning those efforts.

[9] The suspending of sentence means that, ultimately, if you were to not do well on your probation, you could be brought back and sentenced. I would put it to you at this point in time that you would be looking at the higher end of the scale if that was the case. I am taking a chance on you. You seem to have been able to walk the straight and narrow for the last 10 months. I am assuming that that is taking hold and you are now going to be able to carry on in that positive direction. This is your opportunity to do so.

[10] There will be a victim fine surcharge of \$50. How long would you need to come up with \$50?

[11] THE ACCUSED: Well, let's see, when I get back in, November 1st.

[12] THE COURT: You get back in November 1st?

[13] THE ACCUSED: Yeah.

[14] THE COURT: So if I give you two months to pay that?

[15] THE ACCUSED: Yeah.

[16] THE COURT: Two months time to pay.

[17] MS. CAMPBELL: Crown directs a stay of proceeding on Count 1, Your Worship.

[18] THE COURT: Count 1 is stayed. There is documentation that will require your signature. What is happening at the Registry, Madam Clerk, are they shut down?

[19] THE CLERK: No, there are people there. Just the door is locked. If you just have a seat in the atrium, they will come and get you when the documents are ready.

[20] THE ACCUSED: All right.

[21] THE COURT: Thank you. Good luck, Sir.

[22] THE ACCUSED: Thank you, Sir.

CAMERON J.P.T.C.