

Citation: *R. v. Kirby*, 2010 YKTC 56

Date: 20100512
Docket: 09-00690
Registry: Whitehorse

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

REGINA

v.

ALICIA SARAH KIRBY

Appearances:
Ludovic Gouaillier
David Christie

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCING

[1] CAMERON J.P.T.C. (Oral): Ms. Kirby has pled guilty to one count under s. 4(1) of the *Controlled Drugs and Substances Act*.

[2] On October 15th of last year in the downtown area, Ms. Kirby was involved with some suspicious activity. She was a known drug user by the SCAN crew and they were following her. They observed her get some drugs from a local known area; take a cab winding up in an alleyway, where they then found her to be in possession of .6 grams of cocaine.

[3] She has no prior criminal history. We have a very comprehensive pre-sentence report that outlines Ms. Kirby's background to date. It is very telling, Ms. Kirby, and I

have to say that what surprises me, it has already been alluded to here, is that you have not been in the system before. It is very clear that you have a tragic history, but that you have, through your own strength, been able to try to pull yourself out of what was clearly drawing you in and drawing you down. It is hoped that certainly your slips will be much fewer and farther between, if you continue to have any at all. I know that what will certainly give you great assistance is what is written up now as a very stable relationship that you are in, and those kinds of things, I think, are things that take work. They are not just there day in and day out, you have to continue to work on them, to continue to build them as healthy relationships, and as a healthy relationship, it will go a long ways to helping keep you healthy as well.

[4] You have clearly been able to make some changes in your behaviour. You have been able to abide by some restrictions for a considerable period of time, since October of last year, and nothing new has arisen out of it. I think all of those things speak well for your potential good future.

[5] As such, the joint submission that is suggested is agreed to by the Court. I am going to discharge you conditionally and place you on probation for a period of four months. The terms and conditions will be as follows:

1. You must keep the peace and be of good behaviour;
2. Appear before the Court when required to do so by the Court;
3. You are to notify the Court or your Probation Officer in advance of any change of name or address and promptly notify the Court or your Probation Officer of any change of employment or occupation;

4. You must report to a Probation Officer within two working days of today's date and thereafter as often and in the manner directed by the Probation Officer;
5. You are to reside as approved by your Probation Officer and not change that residence without the prior written permission of your Probation Officer;
6. You are to continue to abstain absolutely from the possession of consumption of alcohol and/or controlled drugs or substances, except in accordance with a prescription given to you by a qualified medical practitioner;
7. You are not to be found in attendance in any bar, tavern, off sales or other commercial premises whose primary purpose is the sale of liquor or alcohol;
8. You are to take such assessment, counselling, and programming as directed by your Probation Officer;
9. You are to have no contact directly or indirectly or communicate in any way with any known drug users and not attend at or within any known drug homes or houses within Whitehorse.

Are there any of the conditions that are unclear to you, or that you need clarification on?

[6] The involvement of conditions that basically are focused on alcohol are not because it is suggested that you have an alcohol condition or problem, but more along

the lines that the drug culture is also closely tied into the alcohol culture. So that is why you are not to be in any bar, tavern, off sales, and so on and so forth.

[6] Upon the successful completion of your four months on those terms, then your discharge would become absolute and this will not formulate part of a criminal record, which means that your travel across borders and so on will not be impinged. Good luck to you. I think that is it. She has some paperwork to sign.

[7] MR. CHRISTIE: Thank you, Your Worship. The only issue, it wouldn't necessarily be a problem, but the wording of that, the suggested wording, not to have contact with known drug users, I mean I think part of the plan is NA or AA. I'm just raising that. I don't think -- I wouldn't expect her to be breached on that, but I didn't catch that until now, but. Again, I understand and appreciate the necessity for a clause like that. Maybe I'm making --

[8] THE COURT: Well, it should probably be clarified by this: Any known drug users as identified in writing by the Probation Officer.

[9] MR. CHRISTIE: Okay. I didn't want to be too picky, it just struck me. Thank you.

[10] THE COURT: But that is a good point. What I also did not address was the victim fine surcharge. There should be a victim fine surcharge of \$50 applied. How long would you need to come up with that?

[11] THE ACCUSED: I could probably do that within a week.

[12] THE COURT: Two weeks, can you do it in two weeks?

[13] THE ACCUSED: Sure. Thank you.

[14] THE COURT: Two weeks time to pay.

[15] MR. CHRISTIE: Thank you, Your Worship.

[16] THE COURT: Thank you.

CAMERON J.P.T.C.