

Citation: *R. v. Lord*, 2010 YKTC 20

Date: 20100209  
Docket: 09-00276  
Registry: Whitehorse  
Heard: Old Crow

**IN THE TERRITORIAL COURT OF YUKON**

Before: His Honour Judge Cozens

REGINA

v.

TANYA LORD

Appearances:  
John Phelps  
Malcolm Campbell

Counsel for Crown  
Counsel for Defence

**REASONS FOR SENTENCING**

[1] COZENS T.C.J. (Oral): Tanya Lord has entered a guilty plea to an offence under s. 348(1)(b). The circumstances are that she, along with some others, broke into the residence of Stephanie Dawson and Shawn Bruce. There appears to be some personal history and alcohol involved. She, with the others, entered the residence through the broken window and damaged some items in the house, including the stereo, TV, pushed stuff over, and then left the residence.

[2] She is about to turn 20 in two days, and has no prior criminal history. She does not have a negative pre-sentence report, but has a pre-sentence report that is fairly consistent with her wanting to fly under the radar, so to speak, and stay out of court,

stay away from involvement with other people and it seems somewhat indicative of a lack of willingness to accept responsibility and to move forward with some counselling and some other aids that might help her deal with any drinking. Her counsel says that at the time that she stated some of these things to the author of the pre-sentence report she was not in a great head space and does have some degree of remorse and is not as unwilling to follow the terms of a probation order as might have been thought otherwise from the plain reading of the order.

[3] But for the fact, as defence counsel has pointed out, this is an offence punishable by life imprisonment she would have been a good candidate for a conditional discharge. That option is not available now, so she will have acquired a criminal record as a result of what takes place today. However, I have reason to believe this could very easily be the first and only entry on her criminal record and that one day she could find herself in a situation where she can receive a pardon upon application if she keeps clear of trouble in the future.

[4] The suggested disposition is a suspended sentence and probation order for six months. You will be placed on probation. The terms of the probation order are:

1. To keep the peace and be of good behaviour and appear before the Court when required to do so by the Court;
2. To notify the Court or Probation Officer in advance of any change of name or address and promptly notify the Court or Probation Officer of any change of employment or occupation;
3. To remain within the Yukon Territory unless you obtain written permission

- from your Probation Officer or the Court;
4. To report to a Probation Officer immediately and thereafter when and in the matter directed by the Probation Officer;
  5. To abstain absolutely from the possession or consumption of alcohol and/or controlled drugs or substances except in accordance with a prescription given to you by a qualified medical practitioner;
  6. To not attend any bar, tavern, off-sales or other commercial premises whose primary purpose is the sale of alcohol;
  7. To take such alcohol and drug assessment, counselling and programming as directed by your Probation Officer, and that you take such other assessment, counselling and programming as directed by your Probation Officer;
  8. To make reasonable efforts to find and maintain suitable employment or education as directed by your Probation Officer;
  9. To provide your Probation Officer with consents to release information with regard to your participation in any programming, counselling, employment or educational activities you have been directed to do pursuant to this probation order;
  10. Perform 40 hours of community service as directed by your Probation Officer or such other person as your Probation Officer may designate. This community service is to be completed in increments of ten hours per month, and to be completed in full by the end of the fourth month of this probation order.

Has there been any thought given as to whether time spent in counselling will count towards the community work service hours, or a portion of that time?

[5] MR. PHELPS: I wouldn't have an issue with that.

[6] THE COURT: Okay.

Any time spent in assessment, counselling and programming pursuant to this order can be counted as community work service hours, up to ten hours a month.

[7] Has s. 348 made it into any of the designated offences?

[8] MR. CAMPBELL: I don't know. No. It's only if there was violence against a person.

[9] MR. PHELPS: But for the s. 109?

[10] MR. CAMPBELL: For the s. 109.

[11] MR. PHELPS: It is under s. 487.04 a primary designated offence.

[12] THE COURT: Under which section?

[13] MR. PHELPS: Section 487.04.

[14] THE COURT: Yes, that is a secondary designated, right?

[15] MR. PHELPS: It is a primary designated for a residence, I believe.

[16] THE COURT: Oh, other than a dwelling place, right. Now, when did that come into force? Has it always been there?

[17] MR. PHELPS: The amendments, though, were. I'm pretty sure it came into effect in 2008.

[18] THE COURT: Right. You know --

[19] MR. PHELPS: Mr. Campbell and I were struggling with this in relation to the conditional sentence options under s. 267.

[20] THE COURT: Right.

[21] MR. CAMPBELL: It's not a -- I don't -- I don't believe it's a primary offence.

[22] THE COURT: Under my '010, it is -- they are not in order, primary designated, so they do not follow the exact order. If you go over under sub-section 1(x), right?

[23] MR. CAMPBELL: Oh, I see, yes, right.

[24] THE COURT: Yes, I had missed that before. And I mean I was looking at the exceptions, but would the impact of the order be grossly disproportionate to the public interest? I know that the case law has said that it is a pretty high threshold to cross to find that. But I do not know if it would be grossly disproportionate. I mean in the normal course it is not one. I would be inclined, if it was secondary designated, I would not do it.

[25] MR. PHELPS: I am appreciating that, but Your Honour's comments with respect to the likelihood that it would have been a discharge wouldn't -- I don't take any issue if you were to determine it is exceptional in the circumstances.

[26] THE COURT: Okay. I am going to do it and I am not going to be breaking any case law ground here doing it, but in these circumstances, just so you know what we are talking about, breaking into a dwelling place means that you are required, unless exceptional circumstances take place; that is a different way of saying sort of what is in the quote, you have to provide a DNA sample that stays on a DNA data bank, and that is almost routine for these offences.

[27] You are almost 20, you have no prior history, it was a bit of a spur of the moment thing in concert with a few friends, and the Crown is being quite reasonable by not standing and opposing my ability or arguing that I should make you provide a DNA sample. Crown is concurring that, based on the fact of the circumstances of this case and you, that they will not oppose my decision which I am going to make, but I am not going to make the DNA order in your case. I am going to find that, given your age, your circumstances, what I read in the report, that given the nature of the offence, what I have considered the appropriate sanction to be, that it would be disproportionate to the nature of that offence for you, in your circumstances, to have to give that DNA order.

[28] This is not a common order. It is a common order to be given; it is not common to have an exception, so I am going to make it in this case. Okay? So you appreciate that it is a serious offence, all right?

[29] The victim surcharge will be waived.

---

COZENS T.C.J.