

Citation: *R. v. McLeod*, 2010 YKTC 99

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10-11004B
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10-11004D
10-11022A
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Judge Faulkner

REGINA

v.

ALBERT STEPHEN MCLEOD

Appearances:
Ludovic Gouaillier
Nils Clarke

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCING

[1] FAULKNER T.C.J. (Oral): Albert Stephen McLeod has entered pleas of guilty to a total of six offences, which occurred during the period from late April to early August of this year.

[2] They began with an assault on Mr. McLeod's common-law wife and involved pulling and striking his wife on the back of the head. He was arrested but released, and there then followed a series of breaches, firstly for breach of an abstention clause and then later two breaches of the no contact requirement of his release conditions.

[3] Finally, in August, Mr. McLeod assaulted his wife again, discharging a fire extinguisher in her face, punching, kicking and choking her. On that particular occasion he was also bound by the no contact order of his release conditions.

[4] I have been presented with a joint submission that Mr. McLeod be sentenced to a global period of imprisonment of one year less credit for his time served of one month, to be followed by a period of probation of two years.

[5] While the list of offences is a long one and the assault with a weapon charge is particularly serious, and while Mr. McLeod has a long and persistent criminal record including many prior instances of assaultive behaviour, in my view, the sentence contended for is not so inordinately low that I would depart from it. I do not intend to particularly finely parse the sentences to be imposed on each count. I think the important point here is the global effect of all sentences.

[6] With respect to the charge of assault with a weapon, Mr. McLeod, you are sentenced to a period of imprisonment of one year. On the charge of common assault, 60 days, and on each of the breach charges, 30 days. I will allow credit of one month for time served, leaving a remanet of 11 months yet to be served.

[7] Following your release from imprisonment, you will be subject to a probation order for a period of two years. I will return to the conditions of that probation order. In the circumstances, the surcharges will be waived.

[8] Additionally, however, there will be an order under s. 109 of the *Criminal Code* that Mr. McLeod not possess any firearm, ammunition, explosive substance, or other

items more particularly enumerated therein, for a period of ten years following his release from imprisonment, and that he not possess any prohibited firearms, restricted firearm, prohibited weapon, prohibited device or prohibited ammunition for the remainder of his life.

[9] There will also be an order whereby he will provide samples of bodily substances for the purpose of DNA analysis and banking. Although it was not mentioned, there should also be an order that he have no contact with Patricia Chudy whilst he is incarcerated. The terms of the probation order will be that:

1. He will keep the peace and be of good behaviour;
 2. He will report to the Court as and when required;
 3. He will report within two working days after the order comes into force to an adult Probation Officer, thereafter as, when and in the manner directed;
 4. He will advise the Probation Officer in advance of any change of name or address and promptly notify him of any change of occupation or employment;
 5. He will reside where directed and not change his place of residence without the prior permission of the Probation Officer;
 6. He will abstain from the possession or consumption of alcohol for the first six months that the order is in force;
 7. He will not attend at any place where alcohol is sold except a restaurant which might be incidentally licensed for the sale of alcohol with meals.
- Just to clarify, that particular order will be in effect for the entire two year period;

8. He will have no contact, direct or indirectly, by any means whatsoever, with Patricia Chudy except with the prior permission of his Probation Officer in consultation with Family Violence Prevention Unit and Victim Services;
9. He will not attend at her place of residence, again, without the prior permission of the Probation Officer;
10. He will attend for assessment and, if directed, complete the Spousal Abuse Program and take such other assessment and counselling as directed by the Probation Officer.

[10] The remaining counts?

[11] MR. GOUAILLIER: There will be a stay of proceedings, Your Honour.

[12] MR. CLARKE: Your Honour, with respect to the jail communication prohibition, given that Mr. McLeod will be in custody for some time, could the jail communication prohibition be similar to the -- be formatted like the probationary DVTO term, that he potentially could ultimately have telephone communication with Ms. Chudy, if both parties desire, with the permission of the Probation Officer?

[13] MR. GOUAILLIER: Yes. I wouldn't take any issue of that. I don't know if the Probation Officer will be assigned to Mr. McLeod until he completes his sentence, but they usually do. They usually have somebody who follows individuals who have been in the system, so I don't take issue with the suggestion.

[14] THE COURT: Yes, I see a practical problem, but do you want to

suggest how we can -- I am not opposed in principle to your suggestion, but if you could tell me how it can be done, I will hear you.

[15] MR. CLARKE: He's currently on probation, but I think it may have just expired. The order goes to the jail, I suppose, so nine months probation from the 9th of December. I guess if this order is going to the jail, I could say it could be exactly the same as Probation Officer except it could say in the recommendation of your case worker in consultation with Family Violence Prevention Unit and Victim Services, for whatever it's worth. Otherwise, there is a blanket prohibition here.

[16] THE COURT: All right. Well, we can add, "except with permission of a probation officer or case worker in consultation with Family Violence Prevention Unit and Victim Services."

[17] MR. CLARKE: Thank you, Your Honour.

[18] MR. GOUAILLIER: That's fine. I don't have any issue with that.

FAULKNER T.C.J.