

Citation: *R. v. Menard*, 2010 YKTC 11

Date: 20100121
Docket: 09-00354
09-00355A
09-00387
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Judge Overend

REGINA

v.

STACEY ROSE MENARD

Appearances:
Judy Bielefeld
Robert Dick

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCING

[1] OVEREND T.C.J. (Oral): Ms. Menard, you are still very young. You have many years ahead of you. You have choices to make. At 22, you can change your life. You may have difficulties in your past that make that change difficult. I understand that, but only you can make the change. I cannot change it for you; no one can change it for you unless you want to change. Do you understand that?

[2] Now, I am going to place you on a Probation Order as part of this sentence. That is designed to assist you. You have been on probation before and have breached the probation. So that may happen again. That is, again, up to you. If you breach the probation of course you will be back here and you will not be making any progress. The

Probation Order is not punishment. It is designed to assist you to get you on track, to help you deal with some issues you may have. This was, basically, an outrageous evening for you, for the community, for the people who were victims of your criminal activity. I have listened to the submissions of your counsel and I agree with some of what Mr. Dick says, that is that this is almost all one continuous event, and I am taking that into consideration. That does not make it any less traumatic for the people who were the victims in these events.

[3] You have spent 170 days in custody; that is just a little over eight months. I am going to give you credit for that. Having given you credit for that, I am, on Information 354 on Count 1, sentencing you to a term of imprisonment of four months. That is, I am making it four months, considering that you have spent the eight plus months in custody.

[4] On Count 3, I am sentencing you to a term of imprisonment of one month concurrent.

[5] On Count 5, I am sentencing you to a term of imprisonment of one month concurrent. In addition, on that Information, I am placing you on probation for a period of 12 months. The terms of probation are as follows:

1. You are to report forthwith on your release to a Probation Officer in Whitehorse, be under the supervision and direction of the Probation Officer, and report thereafter at the times and in the manner directed by the Probation Officer.
2. You will take such assessment and counselling as may be directed of you

by your Probation Officer from time to time and, in particular, substance abuse or anger management counselling. You will complete any course of counselling to the satisfaction of your Probation Officer.

3. You will have no contact with Travis Smith, David Surgenor, Harley Bowe, Edward Smarch, Tina Bailey, Beverley Rissanen or Philip Smith.
4. You will not attend within 100 metres --

Now I want to make sure that her residence is not within 100 metres of any of these places.

[6] MR. DICK: Her advice to me is that they all live at least a block away, which would be over the 100 metres.

[7] THE COURT: Seventy-five metres just to make sure. All right.

4. You will not attend within 75 meters of any place known by you to be the residence of any of those persons I have just named, nor are you to attend at their place of employment or schooling.

[8] Now did you have some comment about this? I appreciate, Mr. Dick, you talked about alcohol not being as important as anger management, but is there any reason I should not impose a non-alcohol clause? Clearly this was --

[9] MR. DICK: It was part, you know, drugs, and I guess, seeing this, my fear, of course, is that that's the easiest one to lead to a breach, you know?

[10] THE COURT: Well, but if it leads to that one, it is going to lead to all the others as well, that is pretty clear. I think that this young lady has a better chance of

making it if she is not drinking. I mean we all have a better chance of making it if we are not drinking, but she is particularly vulnerable, I would suggest.

5. You are to abstain absolutely from the consumption of alcohol and you are not to attend within any premises whose main business is the sale of alcohol.

[11] Do you understand the terms of the Probation Order?

[12] THE ACCUSED: Yes.

[13] THE COURT: All right. You are to provide a DNA sample as required by the *Criminal Code*, and there is a ten year firearm prohibition pursuant to s. 109(1)(a) of the *Criminal Code*. That is with respect to that Information.

[14] On Information 355A, I am sentencing you to a term of imprisonment of one month concurrent on Count 2 and one month concurrent on Count 5.

[15] On Information 387, on Counts 1 and 2, I am sentencing you to a term of imprisonment of one month concurrent on each count, and concurrent with the other counts. I am also making a restitution order in favour of Tina Bailey in the amount of --

[16] MR. DICK: Your Honour, I believe that the person that paid for the damage and owns it is Kwanlin Dun First Nation.

[17] THE COURT: Oh, I see. All right, Kwanlin Dun Housing.

[18] MS. BIELEFELD: Sorry, you're referring to the damage to the vehicle or the house?

[19] THE COURT: I am referring to the damage to the smashed living room window.

[20] MS. BIELEFELD: Oh yes. No, sorry, yes. No, my friend's current, yes, that's the Kwanlin -- the name's on the top of the receipt there, they're --

[21] THE COURT: Right. Kwanlin Dun, all right.

[22] MS. BIELEFELD: Yes.

[23] THE COURT: Okay. So perhaps I could just combine the two, if somebody has a calculator, for both of these.

[24] MS. BIELEFELD: I come up with \$3,022.30.

[25] THE COURT: \$3,022.30?

[26] MS. BIELEFELD: Yes, for the two residences; the two amounts added.

[27] THE COURT: Right, okay. All right, so there will be a restitution order in that amount in favour of Kwanlin Dun Housing. Now, that restitution order is basically payable forthwith. I know you cannot do that. So you should talk to Kwanlin Dun to see if you can make some arrangements to pay it over a period of time. All right.

[28] I am also making a restitution order in favour of Tina Bailey in the amount of \$478.54 for the damage to the window of her vehicle. Have I covered everything?

[29] MS. BIELEFELD: There were just a couple of other conditions I had requested and perhaps if Your Honour could just advise. I had also indicated a no-contact with Mr. Bill.

[30] THE COURT: Oh, I did not include that, right. All right, no contact with Gordon Bill, yes.

[31] MS. BIELEFELD: And not to -- I specified the two addresses where the occurrences happened.

[32] THE COURT: Well, those are where people that she knows lives; so she cannot go where people live.

[33] MS. BIELEFELD: And then the other request was that, given that she's -- I understand she's not from the village, to not attend within that -- the Kwanlin Dun Village, which I understand is a fairly small area.

[34] THE COURT: Well, I am not making that because she is a Kwanlin Dun member. If the band does not want her there, they can take some steps, presumably.

[35] MR. DICK: I missed a point in regard to Mr. Bill. Mr. Bill is no longer a co-accused, Mr. Bill wasn't involved in the incident, and there's no indication that Mr. Bill was present, encouraged her, or had anything to do with it. They do see themselves as a couple. I believe, you know, it's an intrusive order.

[36] THE COURT: Okay. Sorry, I did not give you the opportunity to comment on that. Well, they were together on the evening in question.

[37] MR. DICK: They were together, they're co-accused, but they've both been tried and sentenced on the issues and they're --

[38] THE COURT: They are a couple?

[39] MR. DICK: They are a couple now; they consider themselves a couple and it's a relationship that goes beyond just a matter of friendship or collusion in criminal nature, and it's -- if there had been something there, where Mr. Bill had been driving it or vice versa, or that somehow, between the two of them, when they are together they get in trouble, but there's not that kind of indication. Mr. Bill was not convicted of the offences for which she had and I don't think it would be appropriate for the Court to interfere with the relationship that may develop between them.

[40] THE COURT: Do you want to further comment on that?

[41] MS. BIELEFELD: I appreciate what my friend's saying, but I mean Mr. Bill was with her while she was doing all these things and --

[42] THE COURT: Well, she has been sentenced for that now. So when she is finished her sentence, presumably, she has done her time, as it were, and I do not know that I need to add that as part of the Probation Order. So I agree with you, Mr. Dick. I will delete Mr. Bill from the Probation Order.

[43] Ms. Menard, I wish you well. I hope that this works out for you, but I just want you to completely understand that you can be back here unless you are careful. You are the only one who is going to decide whether you come back here or not, and, you know, with your background, it is not going to get any easier for you if you are back here. So, good luck.

[44] THE ACCUSED: Thank you.

[45] MR. DICK: Your Honour, just to be clear, my understanding is that the -- she was given credit for eight months and there's an additional four months to be served?

[46] THE COURT: That is correct.

[47] THE CLERK: And the Victim Fine Surcharge, Your Honour?

[48] THE COURT: I am waiving that.

[49] MR. DICK: Thank you, Your Honour.

[50] MS. BIELEFELD: And sorry, just out of clarity, the pre-sentence custody will be noted on the Information?

[51] THE COURT: Yes.

[52] MS. BIELEFELD: Thank you, sir.