

Citation: *R. v. Rutley*, 2013 YKTC 19

Date: 20130214
Docket: 11-11015
Registry: Dawson City
Heard: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: Her Honour Judge Ruddy

REGINA

v.

DARREN TROY RUTLEY

Appearances:

Jennifer Grandy
Darren Rutley

Counsel for the Crown
Appearing on his own behalf

REASONS FOR SENTENCING

[1] RUDDY T.C.J. (Oral): Darren Rutley is before me for sentencing with respect to a single count of break, enter and commit aggravated assault, for which he was convicted following trial. The facts that I found in relation to the trial are set out in more detail in the trial decision, but, in summary, the situation involved Mr. Rutley entering into the home of Angela Rear without permission. When he was challenged by the victim, Patrick McCormick, he assaulted Mr. McCormick, resulting in a number of injuries, including the loss of three teeth and a broken arm, which required surgical intervention.

[2] In determining the appropriate sentence I would note that I have before me a Victim Impact Statement, not from Mr. McCormick but rather from Ms. Rear, in which she speaks of the fact that she and her two sons, since the incident, have felt unsafe in their own home. They are leery of strangers, and she herself harbours a significant amount of guilt with respect to the incident as it was through her that Mr. Rutley was introduced into their lives.

[3] In addition, I have been provided information from Mr. Rutley; information that he has provided me in court here today with respect to his background and circumstances, and I have also reviewed a report that he has provided, which is entitled "A Career Assessment Inventory," that was completed in 2002, and attached to that there is also a psychological report that was completed. I understand both reports were completed in relation to a Workers' Compensation matter which Mr. Rutley had as a result of a number of injuries suffered while on the job.

[4] I am sorry, Mr. Rutley, I did not ask how old you are now?

[5] THE ACCUSED: I think I'm 45.

[6] THE COURT: Forty-five?

[7] THE ACCUSED: Yes.

[8] THE COURT: That would be right, based on the reports, as you were 34 in 2002. Okay.

[9] Mr. Rutley is now 45 years of age. He describes a childhood with a certain

amount of instability and some violence. He also spent a few of his formative years in foster care, was kicked out of the family home at age 14, and from there stayed with extended family or friends while he attempted to complete school. He was unable to do so and left school in Grade 10 to support himself. His employment history appears to be relatively full and stable, up until injuries that he suffered while working in the oil industry, and he has had ongoing contact with Workers' Compensation. I believe he received, for a period of time, some funds as a result of the disabilities flowing from the injuries.

[10] Mr. Rutley came to the Yukon in 2011 to look for gold. He indicates that he staked a claim and had taken steps towards building himself a cabin on the property when he was taken into custody with respect to the incident that is before me today.

[11] Mr. Rutley indicates that he has no history of issues or problems with respect to drugs, although alcohol has presented some problems for him, which is evident in the criminal record that has been filed before me. He also indicates that he has had some history of mental health issues, particularly with depression, and since his being taken into custody has struggled again with depression, which is affecting his ability to both focus and to recall.

[12] Mr. Rutley spent a fair amount of time describing to me the concerns that he had with the time that he has spent in custody. It is evident to me that he has found it to be a very difficult experience. He has spent time in segregation. He has had conflicts with the administration over a number of matters, in particular access to his legal materials, and he has expressed concerns with respect to access to appropriate medical and

dental care. He has done some programming, to his credit, while in the facility, including an anger management program and what he believes was a substance abuse program, and found both of those to be helpful.

[13] I have before me a criminal record, which has been filed, for Mr. Rutley. It is not a particularly lengthy record. There are a couple of related offences, a conviction for assault in 1997, for which he received a 90 day intermittent sentence, and a conviction in 1998 for being unlawfully in a dwelling house, for which he received a fine. There are no convictions on his record since 1998. I would also note that the final entry onto his criminal record, that being a s. 145, was a conviction that Mr. Rutley was not certain was his, and for the purposes of this decision it was agreed that I would simply not consider it in reviewing his record. There are also a couple of impaired convictions on his record, referencing back to the indication that he had given me of some problems in his life as it relates to the use of alcohol.

[14] Crown is suggesting the appropriate sentence in this particular case is one of five years and has filed a number of cases. It is not my intention to go through those cases in detail. They do range in sentence from approximately two and a half years up to eight years. Those that appear to be closest in nature are in the three and a half to five year range, those being *R. v. Sidney*, 2008 YKTC 40, *R. v. Sterriah*, 2003 YKTC 37, and *R. v. Brace*, 2008 YKTC 41, and in particular, I would note the comments of His Honour Judge Faulkner in the *Sidney* case with respect to offences of this nature having, in general, a starting point of three and a half years.

[15] In determining what the appropriate disposition is in light of the facts as I have

found them, in light of Mr. Rutley's background and personal circumstances as they have been provided to me, and in light of the case law which has been filed, I have had regard to a number of issues which I think are important, first being, it is clear that this is a case in which denunciation and deterrence are the dominant sentencing principles. I would note the aggravating factor as set out in s. 348.1, relating to Mr. Rutley having entered into a home without permission, knowing that individuals were present within the home, and using violence while therein. There are a number of cases, including the case of *R. v. Moore*, [2008] B.C.J. No. 600, out of the B.C. Court of Appeal, which speak to the importance of ensuring that there are stern sanctions for crimes which violate the sanctity of one's home, and this is one such offence which is before me today for sentencing.

[16] When I consider all of the factors that I am required to, and all of the information that has been provided to me, I am satisfied that a sentence of four years is appropriate in this particular case, to be reduced by credit for time spent in pretrial custody. Mr. Rutley has spent some 560 days in pretrial custody, and I have to say that, notwithstanding his concerns with respect to his experience while in custody, as a result of a s. 524 application, I am limited by law to crediting him at one to one for that 560 days spent in custody. By my calculations, what I believe is the appropriate sentence would be 1460 days, to be reduced by the 560 days spent in pretrial custody credited at one to one, which would leave a sentence of 900 days to be served on the single count before me for sentencing. Accordingly, that will be the sentence with respect to the s. 348 before me.

[17] This is also, because of the nature of the offence, a situation in which there are a

couple of mandatory orders I am required to make by law. The first of those is pursuant to s. 109. There will be a firearms prohibition, Mr. Rutley, prohibiting you from having in your possession any firearms, ammunition or explosive substances for a period of ten years. This is also a primary designated offence as it relates to DNA, and I would make the order, Mr. Rutley, that you provide such samples of your blood as are necessary for DNA testing and banking. Which leaves me solely with the issue, I believe, of the victim fine surcharge. In light of Mr. Rutley's custodial situation, I would waive the victim fine surcharge.

[18] So, Mr. Rutley, I believe at this point, as it relates to the matters in front of me, you are now finished and you make take whatever steps you deem appropriate in terms of seeking to appeal.

RUDDY T.C.J