

Citation: *R. v. Smarch*, 2007 YKTC 60

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Docket: T.C. 07-00029
07-00061A
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: Her Honour Judge Ruddy

REGINA

v.

SIDNEY FRANCIS SMARCH

Appearances:
Jennifer Grandy
James Van Wart

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCING

[1] RUDDY T.C.J. (Oral): Sidney Smarch has entered guilty pleas with respect to four offences. The facts of the first arise on 13th of April, at which point Mr. Smarch stole a vehicle belonging to the Tagish Gold Corporation. He was later located by use of police dog, and his print was found on the rear-view mirror of the vehicle.

[2] The other three counts all arise while he was on release with respect to that first offence, some two weeks later, on the 26th of April 2007. The facts indicate, essentially, a spree of offending behaviour, which can only be described, quite frankly, as deeply disturbing.

[3] The first of the incidents arises in the early morning hours of April 26th. Mr. Smarch had been at the residence of Lisa Carvill. He left the residence with others who had been there, only to return to the residence shortly thereafter, entering her vehicle and committing significant damage to the vehicle in an attempt to steal it. Ms. Carvill noted his attempts and she attempted to prevent him from taking the vehicle, at which point Mr. Smarch got out of the vehicle with a claw hammer in his hand. Ms. Carvill ran. He chased after her, struck her in the back kidney area with the hammer, continued to pursue her as she continued to run, hit her in the head with the claw end of the hammer, tearing out a chunk of her hair, fortunately, not breaking the skin or creating any more significant damage than he did. In any event, Ms. Carvill fell to the ground, at which point he kicked her a number of times. Ms. Carvill may well have lost consciousness. She is unsure.

[4] Mr. Smarch left her in that state, stole her vehicle. No, sorry, he did not take this particular vehicle. He left the damaged vehicle behind, in which the police found a number of syringes. He attended at a nearby property, broke a window in a van. Again the police found a syringe inside. He then went to the house next door to that, the home where he located a pickup truck.

[5] I should comment that these events commenced in the Carcross area and ended in Whitehorse. In any event, while still in the Carcross area, he smashed the steering column of a pickup truck in an effort to hotwire the vehicle, which he essentially did. He drove it to Tagish, put it into the ditch, causing considerable damage. Again, a syringe was found inside, as well as some tools, including vice grips.

[6] He left the vehicle in the ditch and proceeded to the residence of Ethel Tizya, an elder in the Carcross-Tagish area. He removed an axe which she had outside, went to her vehicle. She exited her home and asked him what he was doing. He advised her that he needed to get to Whitehorse to get to work and to pick up his girlfriend. She asked him why he did not simply ask for help. His indication was that that never worked. She describes him as having a stoned or crazed look. He made some comments which caused her to fear for her safety. She retreated into the residence and contacted the police.

[7] He took her vehicle, lost control of that vehicle as well, put it into the ditch, but attempted to continue to drive it for some distance. Again, that vehicle had damage to the steering column, consistent with the damage to the other vehicles. Mr. Smarch then hitched a ride to Jake's Corner, where he bought food and drink. He is again described as appearing strange in his behaviour.

[8] He was ultimately dropped off in Whitehorse where he was noted to attempt to steal yet another vehicle. He was approached by a neighbour and insisted the vehicle was his. When the neighbour noted that he knew it to be the vehicle of his neighbour, Mr. Smarch ultimately left on foot. Again, there was significant damage to the ignition of that vehicle consistent with that of the damage caused to the previous vehicles.

[9] Mr. Smarch comes before the Court with a prior criminal record. It is a fairly lengthy one when one considers his young age. He is only 20 years of age. He has nonetheless spent significant periods of time in and out of custody over the last several years. There clearly appears to be a lack of stability in his life. Prior to the most recent

offences he was residing with his father, although at times he has resided with his mother as well, who appears to have some serious alcohol issues. He dropped out in grade 10, has had only sporadic employment since then, probably largely due to his stints in and out of custody, and, not surprisingly, by the facts before me, he has significant substance abuse problems. He has been consuming alcohol and various illicit drugs since the age of 15. Of particular note, his drug usage has escalated to the point where he is now actively using drugs intravenously.

[10] I am advised by his counsel that he has little to no recollection of the events of the 26th as a result of presumably both drug and alcohol usage on that particular evening.

[11] I also have before me a joint submission from counsel, that being a submission of two years plus one day in custody, which would put Mr. Smarch in a federal facility, where it is hoped that he will find appropriate programming to meet his fairly significant needs.

[12] Lastly, I have before me three victim impact statements from some of the individuals affected by Mr. Smarch's behaviour on the 26th of April. In reading those victim impact statements, and I hope, Mr. Smarch, you have taken the opportunity to read those so that you can understand the impact of your behaviour on these families. I note Ms. Tizya said at one point that you made the comment that she can just get insurance for her vehicle. Well, if you read those, you will find out that these people suffered a whole lot more than that. It was not so easy as just calling up their insurance company and having that vehicle magically replaced. Each of these families suffered

significant financial loss. For Ms. Carvill, just the financial losses, in the three to four thousand dollar range. For the Pringles, the \$7,000 range, and for Ms. Tizya, in the \$6700 range.

[13] But that does not even come close to the impact that your behaviour had on them and the way that they feel every day, and whether they feel safe in their homes and in their neighbourhoods. Each of them speaks to that sense of vulnerability they now feel. Each of them speaks to feeling unsafe in their own homes. It is not just a thing you took. You have affected how these people are going to live from now on, and that is not a small thing. When I look at the people I have heard from in these victim impact statements, Ms. Carvill is someone you knew, and she knew you. The Pringles are retired individuals, and Ms. Tizya is an elder in the community. This is clearly not just a matter of property being taken and you need to understand that.

[14] Unfortunately, there is little that I can do now to go back and repair the damage for all of these individuals. It is my hope that anything I do today gives them some comfort, that at least they have been heard, and hopefully Mr. Smarch has heard them as well, so that he starts to think not just about his own actions but about the impact of those actions on other people.

[15] In considering the facts of this case, which, again, in my view, are quite disturbing, most notably the offence involving Ms. Carvill and the use of the claw hammer to assault her. I must say I had some concern about whether the joint submission presented to me was indeed too low for the facts of this particular case.

When I consider the principles that are relevant in this case, in my mind, on these facts, deterrence and denunciation have to be the dominant principles.

[16] However, the question for me in assessing a joint submission, quite frankly, is not whether or not it is the sentence I would have given, but whether or not the sentence presented to me is one that is within the range. I am prepared to come to the conclusion that it is for the following reasons.

[17] Firstly, Mr. Smarch's young age. Secondly, and perhaps most importantly, his early guilty plea, and the fact that in entering his plea of guilty he has saved the state the need to run a rather complex prosecution, but also he has saved the victims of his offences from having to come to court to testify about what has happened to them, and I do consider that factor to be significant. Lastly, as I will not be reducing the proposed joint submission by the time that he has spent in remand, I will also note that I have considered his time in remand in determining whether or not the joint submission presented is within the range. For the record, I will note that he has served some 56 days in remand. So with appropriate credit he is in the three to four month range on remand.

[18] So when I consider those three factors, I am prepared to find that the joint submission presented is within the range. I am prepared to adopt it for that reason. Accordingly there will be a sentence of two years plus one day in custody, Mr. Smarch, which will put you in the federal system. It is my hope that you spend the time that you are in there seeking out help, counselling, support, and considering what you want to do

with the rest of your life, and whether this is the direction you want to keep going in, because the sentences are just going to get longer.

[19] Submissions have been made with respect to restitution. Defence counsel quite fairly points out that there is little to no chance of his being able to pay restitution. That is something I am required to consider in whether I make a restitution order. However, I do have the option of making a civil order which would allow the complaints, if they so choose, to pursue a stand alone order, and if he has some means down the road, in the future, they may recover some of those funds. This is often a very difficult area, from my perspective, because what you want to do is ensure that the victims get the money coming back to them. In this particular case, unfortunately, they are going to need to understand that this is virtually impossible in the circumstances that are before me. However, I am of the view that there should be at least some restitution to each of the victims down the road, and while I do not see how, in these circumstances, I can order the full amount of each, I do want them to know that it is something that I consider to be very important.

[20] So what I am going to do is make three stand alone restitution orders, each in the amount of \$1,000. I am going to do it with the ones that have provided their victim impact statements to me. For the other people who may have suffered loss, unfortunately, I do not have the information about amounts, but there will be a restitution order for \$1,000 for Lisa Carvill, for Bill and Linda Pringle, and for Ethel Tizya.

[21] In addition, there will be a mandatory order prohibiting you, Mr. Smarch, from possessing any firearms, crossbows, prohibited weapons, restricted weapons,

prohibited devices, ammunition, prohibited ammunition and explosive substances for a period of ten years.

[22] Also, for the record I will note that I am not making a DNA order as I am advised by Crown that Mr. Smarch's DNA is already on file in the data bank.

[23] I will waive the victim fine surcharge given his custodial status, and if he does come up with any money I would rather it be going directly to these particular victims as opposed to into the general fund.

[24] Anything further?

[25] MS. GRANDY: The remaining counts can be marked as withdrawn, please.

[26] THE COURT: Thank you.

[27] THE CLERK: Can I confirm that it is two years plus a day on each count Mr. Smarch has plead guilty to.

[28] THE COURT: It is definitely two years plus a day on the Carvill offence. What I am going to do -- I will hear submissions from counsel, and thank you, Madam Clerk, for raising this. I am going to suggest three months on the April 13th incident. Two years plus a day on the Carvill incident, the 243. Now, the 344(b), okay, and then I am going to suggest simply doing nine months on the first 344, and 12 months on the second, make all of it concurrent, so he does a total of two years.

[29] MS. GRANDY: The only thing I would say about that is just that Count 3 is also a robbery, so there the theft with the threat, and then Count 5 is just a straight theft.

[30] THE COURT: Sorry, and I have mixed those up. So we will switch those the other way around. So on the 344, there will be a 12 month sentence, then, and on the 344(a), the nine months. In particular, Mr. Van Wart, do you have any submissions on those?

[31] MR. VAN WART: No, that's fine.

[32] THE COURT: Okay. So just so we are clear, Madam Clerk, then, on the 343(d) count, that being Count 1 of the multiple count Information, the sentence will be two years plus a day. On Count 1 of the two-count Information, that being an offence contrary to s. 344(a), there will be a sentence of three months concurrent. On Count 5 of the six-count Information, that being an offence contrary to s. 334(a), there will be a sentence of nine months concurrent. The remaining count to which he has entered a plea of guilty, that being Count 3, the 344(b) charge, the threat to Ms. Tizya, there will be a sentence of 12 months concurrent.

RUDDY T.C.J.