

Citation: *R. v. Smarch*, 2007 YKTC 93

Date: 20071213
Docket: T.C. 07-00418
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Judge Overend

REGINA

v.

LLOYD BENEDICT SMARCH

Appearances:
Michael Cozens
Jennifer Cunningham

Counsel for Crown
Counsel for Defence

REASONS FOR SENTENCING

[1] OVEREND T.C.J. (Oral): Mr. Smarch has a long history of conflict with the law. Much of that history, particularly the early history, is significant in that it includes four offences of robbery. In addition, there is at least one further robbery charge and there are several assault charges over the years.

[2] As the Crown has fairly stated, in the last eight years there has only been one crime of violence, that is, an assault in 2003. It was a common assault for which he was sentenced to a term of imprisonment of 45 days. Prior to that, his more recent offences of violence were a sexual assault in 1999, where he received 60 days, and a charge of uttering threats in 1993, for which he received a term of imprisonment of eight months.

[3] I think that Mr. Smarch's counsel has said that most of his recent offences are property offences, which probably were done for the purpose of feeding his substance abuse, which Ms. Cunningham said were now opiates.

[4] In terms of the results, this is not a very serious offence, but that does not address the issue. The real issue here is that with his background, Mr. Smarch, in the mind of the victim, was a serious threat to her. He committed this offence in his house, where she went because she expected to feel safe there. He assaulted her when he was in possession of a knife, and his threat was not something that was regarded by her as an idle threat.

[5] In all of the circumstances, the most important factor I have to consider today is his specific deterrence. Now, given the fact that Mr. Smarch has a substance abuse problem, if he continues to abuse substances, he may, while doing that, have no recollection of any deterrent aspect of my sentence today. Hopefully, the sentence I impose will have the effect of reminding him while he is sober that he must not continue this lifestyle.

[6] Counsel has addressed the issue of a period of probation and counselling during that period of probation. Ms. Cunningham, on behalf of Mr. Smarch, has said that if I am to impose probation, I should not include counselling as a term of probation, and that that is something that Mr. Smarch may want to do on his own. She points out that he has had a number of breaches of past probation orders. Clearly, as the old saying goes, "You can lead a horse to water but you cannot make it drink." The best result here would be for Mr. Smarch to recognize that if he is going to get out of this

continuous difficulty with alcohol and drugs, or drugs themselves, that he will do it basically better on his own than by being under some Court-ordered terms. So I will not, as a part of the probation order, require him to take counselling, but I will, as part of the sentence, make it plain to him that his continuing abuse of drugs will undoubtedly lead to his being back here in court, that his being in court may be as a result of his assaultive behaviour, and that his assaultive behaviour is unacceptable to the Court and to the community.

[7] Mr. Smarch, would you stand please, sir. Mr. Smarch, I am crediting you with having served 72 days in custody. I am giving you time and a half credit for that time you have served in custody, which I make to be the equivalent of three and a half months. I am sentencing you to an additional six months in custody on Count 1 and a concurrent six months on Count 2. In addition, I am placing you on probation for a period of 18 months. There will be the statutory conditions, and in addition to the statutory conditions, one term only, and that is that you have no contact directly or indirectly with Nadine MacIntosh.

[8] Anything else?

[9] MR. COZENS: The DNA and the firearms.

[10] THE COURT: Oh, yes. There will be a DNA order; you will provide DNA as required by the *Code*. I am not making a firearms order.

[11] MR. COZENS: And the victim fine surcharge, Your Honour?

[12] THE COURT: Fifty dollars on each count. I will give him six months, until the 15th of June next year, to pay.

[13] MS. CUNNINGHAM: Thank you, Your Honour.

[14] THE CLERK: Your Honour, can I just ask: Is there a reporting clause on the probation order?

[15] THE COURT: A reporting clause is a statutory condition, is it not?

[16] THE CLERK: It is --

[17] THE COURT: Report forthwith to a probation officer, period.

[18] THE CLERK: Thank you.

[19] MR. COZENS: Thereafter as directed, I believe, is part of it.

[20] THE COURT: Yes. That is as directed, yes.

OVEREND T.C.J.