

Citation: *R. v. Sraybash*, 2009 YKTC 122

Date: 20091030  
Docket: 09-00219  
09-00211  
Registry: Whitehorse

**IN THE TERRITORIAL COURT OF YUKON**  
Before: Her Honour Chief Judge Ruddy

REGINA

v.

RONNIE NOEL SRAYBASH

Appearances:  
Noel Sinclair  
Lynn MacDiarmid

Counsel for Crown  
Counsel for Defence

**REASONS FOR SENTENCING**

[1] RUDDY C.J.T.C. (Oral): Ronnie Sraybash is before me in relation to four counts to which he has entered pleas of guilty. There is a common assault, an uttering threats, an assault causing bodily harm and a breach of the no-contact provision of his release order. All of the offences arise within a spousal context.

[2] The first two offences, that being the common assault and the uttering, occurred on June 12, 2009. It appeared that Mr. Sraybash had been on a drinking binge for several days and there had been some concerns with respect to the way his behaviour was escalating. It is not my intention to repeat all of the facts with respect to the first offences as they did take some significant time to read in. Suffice it to say, over the

course of the day there appeared to be a number of issues with Mr. Sraybash's behaviour, which included his assaulting or attempting to assault the complainant on more than one occasion over the day, including throwing a sandwich at her head, attempting to punch her in the head, which he was prevented from doing so by his father. There also appears to have been, later in the day, him pulling at her hair hard enough that she hit him with an open hand in an effort to get him to stop, which resulted in an injury to her hand, which becomes important with respect to the second set of circumstances that are before me. There was an additional assault of him shoving her into the bathtub. It is understood that he was under the influence of alcohol quite significantly.

[3] In addition to the assaults which occurred over the course of the day, there appeared to have also been a quite disturbing pattern of repeated threats to kill the complainant, which are of significant concern and which are accompanied by the use of a fair degree of abusive and demeaning language as well.

[4] Mr. Sraybash was ultimately taken into custody as a result of the incidents. He was brought before the Court and released on June 14th. I have some information from a subsequent bail supervision report indicating that he had been released on a significant amount of cash bail and on the strength of a plan which involved him leaving quite soon thereafter to go to Nunavut to work. It also included, not surprisingly, no-contact conditions and not-attend conditions.

[5] Notwithstanding the order in place, there was a subsequent incident some two days after release in which Mr. Sraybash called the complainant several times in

relation to some business documents. Apparently she had done some bookkeeping for his business. It appears he was again drinking. There was some contact between them where, at his request, she had attended at his hotel room. She had left on more than one occasion because he had been drinking.

[6] He then attended at the house that they had previously shared. There was some further discussion about documents and an invitation to supper, which she declined. He appears to have gotten angry and then decided to smash the computer. When he smashed down on the computer he also smashed down on the complainant's hand, the same hand which had been injured in the assaults earlier, and this resulted in a fracture to the complainant's hand which required medical intervention at the hospital.

[7] Mr. Sraybash followed her to the hospital and was overheard demanding to know where she was, again, in breach of his no-contact order.

[8] The circumstances are of significant concern to me as they are spousal in nature. The two incidents are very close in time. The second was shortly after his release. There are a number of aggravating features with respect to the circumstances before me that cause me significant concern.

[9] In addition, Mr. Sraybash comes before the Court with a prior criminal record with related offences. There are prior assaults on his record. Of particular concern to me, there are two convictions for spousal assault in 2005, along with two charges for uttering threats in 2005, and along with those four charges, five convictions for breaching his undertaking. All of those arose within a spousal context.

[10] I do have a letter from the spouse, his ex-wife who was the subject of those convictions. She seems to feel that, subsequent to his having been sentenced to an 18-month conditional sentence which required him to complete programming, it is her view that, while he continues to struggle with alcohol, he seemed to have his aggression problem under complete control. Based on the facts before me, I would have no difficulty in finding that that is clearly not the case.

[11] So his prior record is of significant concern to me, both in its proximity to these offences, but also in the similarity between the nature of offences to which he was sentenced at that time and the nature of the offences that are before me today.

[12] There is also a victim impact statement. There are a number of comments within the victim impact statement that exceed what I am entitled to consider, and I have not considered those. They relate to whatever other behaviour might have been happening. The decision that I make today solely relates to the two incidents and the four offences that are before me today.

[13] But I am satisfied, based on the victim impact statement, that the victim is clearly very afraid of Mr. Sraybash and that this has resulted in a serious disruption to her life. She has had to move. She is afraid to answer the phone. She is experiencing nightmares and there has been an impact on her ability to work.

[14] Of concern to me is that Mr. Sraybash, through his counsel, appears to be quite surprised at the impact his behaviour has had on the complainant. Based solely on the two incidents that are before me, I have no difficulty understanding why she would be concerned and afraid, and I am concerned, to some extent, Mr. Sraybash, that that

comes as a surprise to you. The behaviour that is described before me, particularly in the first incident, is controlling, it is demeaning, it is abusive, it is prolonged, and you follow that up with breaking her hand when you are under conditions that were intended to keep her safe. It is extremely disturbing behaviour and I am not at all surprised that she would be terrified, and, in fact, I would have some concerns if she was not, when I look both at your history and the circumstances that are before me today.

[15] Mr. Sraybash does have some positives. He is 36 years of age. He appears to have a supportive family. His parents were present for the first of these incidents, and I think it is fair to say that their intervention perhaps prevented the first of the two incidents from being worse than was described before me today, for which I think we can all be thankful. But it is, nonetheless, a disturbing incident in the way that it was prolonged. He has, as I indicated, support from his prior spouse, as well, who appears to believe that he is of good character and that there are a lot of positive features.

[16] The most positive factor in his current circumstances would be what is described as a fairly good work ethic, something that he has continued in custody; he has continued to work and to use his time appropriately. He has had extensive involvement in mining, including over the last year or so running his own company, which has been fairly lucrative for him. There has been significant financial impact to him as a result of these incidents, as noted by his counsel. That is not something I have a fair degree of sympathy for, when I consider that you are sitting where you are, Mr. Sraybash, as a result of your own behaviour, and the consequences that you have suffered, you have suffered because of your behaviour. There does appear to be, however, some indication that when he is not using he can otherwise be a contributing member to

society.

[17] Crown is suggesting that an appropriate disposition with respect to the matters before me would be a global sentence in the range of 12 to 16 months, less credit for time that he has spent in remand, which is, roughly, just shy of six months. I think for the purposes of the math, it is appropriate to round out the credit that he would be entitled to, at the usual rate of one and a half to one, at six months. Which would mean Crown is seeking a further six to ten months followed by an 18-month probation order.

[18] Defence does not take issue with the notion of a probationary term to follow but is of the view that a disposition in the range of time served, to perhaps another month or two, followed by that probation order would be appropriate in all of the circumstances.

[19] In my view, based on all of the information before me - and I must note I have had the benefit of a bail supervision report which causes me some significant concern as well - it appears that Mr. Sraybash, was not only in breach of his conditions by contacting the complainant, which ultimately resulted in the second and quite serious assault causing bodily harm, it appears he also lied to his probation officer by calling and telling them that he was out of the jurisdiction when, in fact, they were able to determine that he was in a room at the SKKY Hotel.

[20] There are a number of features, as I said, overall that cause me concern. The first of those, as I indicated, is the seriousness of the offences; that they are both spousal in nature; that they are so close together in time; that he has a related history; the prolonged nature of the first series of utterings and assaults. As I indicated, it is not simply a single uttering a threat to cause death. He repeated the threat a number of

times over the course of the day. As well, we have the second assault, which resulted in significant injuries, which occurred so shortly after his release. So the behaviour itself is extremely concerning. The fact that he has a related history is extremely concerning.

[21] I am of the view that the dominant sentencing principles with respect to this particular matter need to be denunciation and deterrence. I am mindful of the fact, however, that rehabilitation must still be considered. But when I look at all of those factors, I am of the view that the range as presented by the Crown is appropriate in all of the circumstances of this case.

[22] I am going to break down the sentences as follows. I am going to deal with the six-month credit for remand time in relation to the first two offences. There will be a sentence of one day deemed served with respect to each of those, and I am going to ask that the record reflect that I am crediting him for three months in pre-trial custody on each of those counts for a total of six months credit.

[23] In addition, with respect to the most serious of the offences, the assault causing bodily harm, I am satisfied that there should be a sentence of ten months, consecutive to any other sentence being served. The no-contact arises out of the same circumstances. I am satisfied the sentence can be a concurrent one but, nonetheless, I am going to make it a 90-day sentence because I want the record to reflect the seriousness with which I view a no-contact breach in a spousal situation, particularly one where it was a not a minor or technical breach, but it was one that resulted in serious harm to the complainant. However, it arises out of the same circumstances so I am prepared to make that concurrent.

[24] So there will be an additional ten months for Mr. Sraybash to serve beyond the amount he has served in pre-trial custody. That will be followed by a probation order of -- 18 months is what has been suggested. I am satisfied that that is more than appropriate in all of the circumstances. Indeed, I am not entirely certain that a longer probation order would not have been somewhat more appropriate in all of the circumstances before me, but I am satisfied that there be an 18-month probation order.

[25] The primary focus of that order is going to be to provide the complainant with some additional comfort, in the form of no-contact orders, but there will be a rehabilitative component to it as well. The terms and conditions will be as follows. The statutory terms, Mr. Sraybash:

1. That you keep the peace and be of good behaviour;
2. That you appear before the Court when required to do so by the Court;
3. That you notify the Probation Officer in advance of any change of name or address, and promptly notify the Probation Officer of any change of employment or occupation;
4. That you report to a Probation Officer immediately upon your release from custody, and thereafter when and in the manner directed by the Probation Officer;
5. That you abstain absolutely from the possession or consumption of alcohol;
6. That you not attend any bar, tavern, off-sales or other commercial premises whose primary purpose is the sale of alcohol;
7. That you take such alcohol counselling or programming as directed by



your Probation Officer;

There is some indication he might not be here in Whitehorse. So I am going to require:

8. That you take such spousal abuse programming as directed by your Probation Officer;

[26] I am also going to require that you have no contact, directly or indirectly, with Shelley Cuthbert or -- sorry, Megan Nault?

[27] MR. SINCLAIR: Yes.

[28] THE COURT: How do you spell the last name?

[29] MR. SINCLAIR: N-a-u-l-t.

[30] THE COURT: N-a-u-l-t, okay.

9. That you have no contact, directly or indirectly, or communication in any way with Shelley Cuthbert or Megan Nault;
10. That you not attend within 100 metres of Ms. Cuthbert's residence;
11. That you not attend within 50 metres of 1 Tagish Road;
12. That you not be within a one block radius of 211 Hawkins Street;
13. That you not attend within 50 metres of The Feed Store or the Harley Davidson shop, both located in Whitehorse, Yukon;

Have I missed any of the conditions?

[31] MR. SINCLAIR: No.

[32] THE COURT: In addition, I am going to make an order, subject to s. 743.21, that you are not to have any communication, directly or indirectly, with Shelley Cuthbert while you are serving the remainder of your custodial sentence.

[33] I did not get submissions from you on the DNA or the firearms, both of which are mandatory.

[34] MS. MACDIARMID: Yes, there are no submissions.

[35] THE COURT: Okay. Both of those flow from what is before me. Accordingly, there will be an order that you provide such samples of your blood as are necessary for DNA testing and banking. It is a primary designated offence, so I am required to make that order.

[36] I am also required, because of the nature of the offence, to make an order that you be prohibited from having in your possession any firearms, ammunition or explosive substances for a period of ten years, pursuant to s. 109 of the *Criminal Code*.

[37] I would waive victim fine surcharges, in light of his custodial status and the fact that he has does have a significant period of custody to complete. It is my hope that you use that time productively. It appears that you have made a start at doing that on remand, and I hope that you continue so that you are able to get these issues under control before you are out there and in a position to present a danger to anyone else.

[38] Anything further?

[39] MS. MACDIARMID: There was the issue, Your Honour, of an exception for

Mr. Sraybash to get his belongings from --

[40] THE COURT: Where are the belongings?

[41] MR. SINCLAIR: The information I have is that the complainant has shipped some of those belongings to Mr. Sraybash's parents in Manitoba; she has discarded with some incidental items, and that she is no longer in possession of any property belonging to Mr. Sraybash.

[42] THE COURT: Okay. So she is not in possession of anything. Whatever there is has gone to your parents, so that should deal with that matter and there is no need for any further contact.

[43] THE ACCUSED: There's also a motorcycle involved; \$32,000 motorcycle. I have all the paperwork for it.

[44] MR. SINCLAIR: I've discussed that matter with the complainant. It may be a civil matter. But as I understand it, the motorcycle was purchased by the complainant. It was put, initially, into his name and then transferred back to the complainant, and she has since disposed of it. She has sold it. But that there is no legal or equitable interest in it.

[45] THE COURT: It is not there and it does not relate to these offences.

[46] MR. SINCLAIR: Yes.

[47] THE COURT: I am not in a position to make any orders as it relates to those.

[48] THE ACCUSED: Okay. I got the paperwork right here that says that it's mine, so.

[49] THE COURT: Well, I am not in a position to make any orders as it relates to that. This is a criminal court and the motorcycle is not the subject of any of the offences before me. I believe that covers everything.

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RUDDY C.J.T.C.