

IN THE TERRITORIAL COURT OF YUKON
(Before His Honour Judge McGivern)

REGINA

v.

RAVEN TSANDAYA
(AKA BEVERLY SMITH)

Kevin Drolet

Appearing for Crown

Barry Ernewein

Appearing for Defence

REASONS FOR SENTENCING

[1] MCGIVERN T.C.J. (Oral): Ms. Tsandaya, I am satisfied that it would be appropriate under all the circumstances that have been brought to my attention, and not withstanding the position that the Crown has urged upon me, to grant to you what is called a conditional sentence.

[2] It is a form of sentence which imposes on you statutory responsibilities and, of course, carries with it the possibility that if you do not comply with the conditions of the conditional order, you could remain in custody for some period of time or for the rest of time that remains on your sentence.

[3] One of the purposes of a sentence of this nature is to impose some penal

sanction on you without restricting completely your ability to function responsibly and lawfully within the community.

[4] The length of the sentence will be 15 months. The statutory conditions I will bring now to your attention:

1. You are to keep the peace and be of good behaviour;
2. You are to appear before the court when required to do so by the court;
3. You are to report to a supervisor at or before four o'clock on Monday August 25, 2003, and thereafter as directed by your supervisor;
4. You shall remain within the jurisdiction of the court unless written permission to go outside that jurisdiction is obtained from the court or the supervisor;
5. You are to notify the court or your supervisor, in advance, of any change of name or address;
6. You are to promptly notify the court or the supervisor of any change of employment or occupation.

[5] In addition to these statutory conditions, there will be a curfew imposed on you for the next five months. The curfew will be from eight o'clock in the evening through to eight o'clock in the morning, unless you have obtained written permission from your supervisor or the court.

[6] The next condition is that should you decide to obtain any counselling or treatment for either, or both, of your drug and alcohol problems, you may ask your supervisor for assistance in obtaining such counselling or treatment programs.

[7] In addition to the conditional sentence, you will be prohibited from driving a

motor vehicle anywhere in Canada for a period of 20 months.

[8] Now, I am aware that you have had some considerable difficulties recently, at least, in following conditions, in attending court, and so on and so forth. You have a sentence to serve, and if you are able to serve it as it has been directed, then it will not be necessary for you to be back in a courtroom. If you are not able to do it, you will be back into the courtroom and will have to handle whatever problems may arise.

[9] MR. DROLET: Your Honour, may the Crown make some submissions with respect to the conditions of the conditional sentence order?

[10] THE COURT: If you wish to, I will certainly entertain any additional conditions.

[11] MR. DROLET: Yes, Your Honour. Simply from the point of view from the experience of Adult Probation Services with respect to enforcing the court's orders regarding sentences of this nature, the Crown respectfully submits it would be appropriate to include a condition requiring Ms. Tsandaya to reside, where directed, by her conditional sentence supervisor. The curfew would, therefore, require her to be within her approved residence. That eases the enforcement, to a considerable extent, for the Adult Probation Services and is the norm in the Yukon. The Crown also --

[12] THE COURT: What do you say about that?

[13] MR. ERNEWEIN: Yes, I do not think that is unreasonable, because she has got to reside somewhere.

[14] THE COURT: Specifically, where is she residing now and where does she intend to reside?

[15] MR. ERNEWEIN: Well, right now she is compliments of the Queen.

[16] THE COURT: No, I appreciate that, Mr. Ernewein. She must have had a residence before she was taken into custody.

[17] MR. ERNEWEIN: Okay. At her mother's until such time that she gets her house back, so that will give her a place to roost.

[18] THE COURT: Have you got her mother's address?

[19] MR. ERNEWEIN: 23 Hanna Crescent. She owned a house, or she had a band house at 2 McCandless, which is just a couple of blocks away. When she start -- when she had her problems, I guess she could not pay the rent, and they took it away from her.

[20] THE COURT: Thank you. There will be an additional condition then.

[21] MR. ERNEWEIN: She thinks she can get her house back.

[22] THE COURT: You shall reside at 23 Hanna Crescent in the City of Whitehorse, and if you are intending to change that address, you shall notify your conditional sentence supervisor of the new address, and it must be an

address that is approved of by your supervisor or the court.

[23] MR. DROLET: The second matter, Your Honour, consistent with the decision of the Supreme Court of Canada in *R. v. Proulx*, [2000] 1 S.C.R. 61, it has been the practice in this jurisdiction, to ensure that conditional sentences of imprisonment reflect conditions of imprisonment, by requiring the defendant to abstain absolutely from the possession or consumption of alcohol and controlled substances, as well as to provide breath or bodily fluids to supervise compliance with such an order.

[24] THE COURT: No, I am not putting that condition in, simply because I am giving this person the opportunity to get whatever assistance she may wish on her own, and if she is back into a situation where she is drinking and using drugs she is going to be brought in very quickly in connection with a breach of some provision in the statute referred to in the *Criminal Code* of Canada.

[25] MR. DROLET: The third matter, Your Honour, is that the *Criminal Code* provides that the driving prohibition imposed by the court commences upon the expiration of the term of imprisonment, therefore, the conditional sentence order itself has to include a driving prohibition.

[26] THE COURT: All right. It was not my intention to allow her to drive now, that is for sure. Yes, Ms. Tsandaya, you will not be permitted to drive a motor vehicle while this conditional sentence is being served.

[27] MR. DROLET: One final matter, Your Honour, which I expect will not be problematic for Ms. Tsandaya at all. The victim, Geraldine Nagano Kerr, and her husband, Richard, have requested that the conditional sentence order

include a provision prohibiting Ms. Tsandaya from having any contact or communication with them, except in the course of legal proceedings.

[28] MR. ERNEWEIN: No problem with that.

[29] THE COURT: Certainly, if that is going to be of some assistance to either or both of them, so much the better. Ms. Tsandaya, you are not to have any contact with either Geraldine Nagano Kerr, or her husband, Richard, while your conditional sentence order is being served, except in the course of legal proceedings. Now, that's it?

[30] MR. ERNEWEIN: Yes, thank you.

[31] MR. DROLET: Your Honour, the Crown assumes from the nature of your decision that the 15 month conditional sentence of imprisonment applies to the offence contrary to s. 249(3)?

[32] THE COURT: Yes.

[33] MR. DROLET: The Crown would respectfully submit that the 24 days previously spent in custody can appropriately be reflected as time served in respect of each of the charges contrary to s.145?

[34] THE COURT: I did not know anything about 24 days being served.

[35] MR. ERNEWEIN: Yes. She did, in fact, serve that long.

[36] THE COURT: All right. Do you have any objection to that?

[37] MR. ERNEWEIN: No.

[38] THE COURT: Thank you. In view of the time served then, one day on each of the matters that are before the court now, run concurrently one with the other. She need not specifically be taken into custody in connection with the serving of that one day.

[39] MR. ERNEWEIN: Thank you.

[40] THE COURT: Now, does that conclude the matter, as far as counsel are concerned?

[41] MR. DROLET: Yes.

[42] THE COURT: Thank you.

MCGIVERN T.C.J.