

Citation: *R. v. Villemaire*, 2009 YKTC 100

Date: 20090911
Docket: 08-00741
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: Her Honour Chief Judge Ruddy

REGINA

v.

PATRICK JOSEPH VILLEMAIRE

Appearances:
Kevin Komosky
Malcolm Campbell

Counsel for Crown
Counsel for Defence

REASONS FOR SENTENCING

[1] RUDDY C.J.T.C. (Oral): Patrick Villemaire is before me having entered pleas of guilty with respect to two counts. The first of those is an assault on a police officer; the second is an assault with a weapon. Both offences arise out of the same set of circumstances which occurred in Alberta. The charges have been waived to the Yukon.

[2] On January 13, 2008, it appears that Mr. Villemaire was the only adult in what is, I believe, his ex-spouse's residence. He was alone with three children ages 11, 15 and 16, two of whom are his children, the 11 and 16-year-old.

[3] He began drinking. He then began, apparently, swearing and yelling and throwing things around. The kids were, understandably, disturbed by the events and

frightened. They contacted Mr. Villemaire's adult son, and he and another male individual arrived at the home at approximately 11:00 p.m. and proceeded to attempt to calm Mr. Villemaire down. It appears that they were unsuccessful. He continued to swear and to yell and to throw items around, including breaking a stereo.

[4] Eventually 9-1-1 was called for assistance. Two members attended at the residence shortly before midnight. It appears that, from their observations, Mr. Villemaire was obviously intoxicated. There were significant signs of impairment. He also exhibited mood swings.

[5] The police made numerous efforts to calm him down. He continued to yell and to swear and began yelling and swearing at the children for having contacted the police and began throwing items, some of which were thrown in the direction of the children. He was told by the police he would have to leave the residence but refused to leave. They attempted to handcuff him, at which point, after having cuffed only one of his hands, he became aggressive, pulled away and proceeded to punch one of the officers two times in the face. The officer attempted to subdue him with a baton. Mr. Villemaire went to the ground but pulled the officer down with him. He was tasered on two occasions by the officers, initially with no appreciable effect. He continued to kick and punch both members from the ground. Pepper spray was used, again, with no effect.

[6] He was then able to get up, and proceeded to the sink to wash his face, and then proceeded to throw a number of items, which form the basis of the assault with a weapon charge, towards the members. These included two coffee makers, numerous pots and also included two chopping blocks with knives contained in them. Fortunately

for all concerned, none of the items thrown struck any of the officers. However, Mr. Villemaire's behaviour continued to be aggressive and uncooperative.

[7] Other members arrived and had to assist. He was tasered a third time. Another officer, with his gun drawn, ordered him to the ground. He refused and, in fact, advanced on the officer. He continued to ignore all commands and it appears that eventually a number of officers were required to subdue him. I understand, in the course of that, two of the officers suffered injuries, which included a number of small cuts and scrapes and some bruising. The officers also had some health concerns, related to the fact that Mr. Villemaire has in the past been positive for Hepatitis C, although there is some question as to whether or not he could have transmitted the disease, in any event, as he had been successfully treated. But it was clearly a concern for the officers and they did attend for medical examination to make sure that there were no concerns.

[8] I would say at the outset that Mr. Villemaire's behaviour on the night in question can really only be described as reprehensible. The police, as was pointed out by the Crown and has been noted in numerous cases, ought not to have to put up with this type of behaviour doing the important job that they do to protect us. That is something that this Court has to recognize in setting an appropriate sentence. But I would also add, Mr. Villemaire, that your children and the other child should never have been exposed to this kind of behaviour, and it is behaviour that is going to have an impact on them over the long term.

[9] There are clearly serious offences that are before me today. I do have, however,

a pre-sentence report before me. It is one of the lengthier ones that I have seen, setting out in detail Mr. Villemaire's current and past circumstances. He is currently 43 years of age. He does come before the Court with a prior criminal record. It is a record which includes prior offences of violence, including three prior assaults, an extremely dated robbery and an uttering threats. However, defence counsel is quite right in stating that the majority of the record, which I understand to be almost entirely alcohol and drug related, precedes 1994, so it is quite dated. There is a single assault, a domestic assault, in 2003. There is nothing since that date. The record, in terms of the sentences he has received in the past, is fairly minor.

[10] He is of First Nation descent. It is my understanding he is of Coast Salish background but was adopted into, I take it, a non-First Nation family at a very young age. It appears he was raised in a fairly stable environment but in his adolescent years he began to have some difficulty in his circumstances, and by that I mean his own behaviour, which resulted in him being placed in a group home for a couple of years. He also appears to have, at that point in time, developed significant substance abuse issues with both alcohol and drugs, and they have been, for him, a lifelong struggle.

[11] It appears from the information before me that he has been actively in recovery since 1996. Prior to this offence he had actually maintained four years of sobriety. But unfortunately for all concerned, he relapsed on this particular evening, resulting in the very serious behaviour that is before me. But he has had some significant periods of sobriety over the past several years.

[12] He also, in terms of other circumstances, has a high school education and some

additional courses as well. He has a fairly strong employment history and is currently employed providing care and assistance to some individuals through an assisted living program. I have a letter from his employer that speaks very highly, not just of his performance in that employment, but also of the changes that have been observed in his own behaviour over the past year as he has developed in the employment.

[13] Also of significant importance to me is the great deal of information about what Mr. Villemaire has done as a result of and since this offence. While his behaviour on the night in question is, as I stated, reprehensible, his efforts since that particular night are what one could only describe as commendable. He has returned to his recovery efforts with significant vigour. He has completed a residential treatment program. He has actively attended AA, and the sign-up sheets are attached to the pre-sentence report to confirm. I have also heard from his sponsor, who has taken the time to be here today to support him. He has written a couple of letters that are attached, and he has also spoken about the fact that, in his opinion, Mr. Villemaire's efforts as they relate to rehabilitation are about his rehabilitation and not necessarily about the ultimate sentence he might receive from the Court. So it is his view that his efforts are sincere and that he is committed and motivated with respect to his recovery.

[14] Mr. Villemaire has also, to his credit, made arrangements for programming, through the Child Abuse Treatment Centre here, with his family. He and his daughters have been participating in that programming. He has taken steps to reconnect with his own First Nation roots as well as to provide those connections for his daughters as well. He has also taken steps to arrange family treatment at the Kakawis Treatment Centre on Vancouver Island. He has been taking anger management with Cameron Grandy.

[15] I would also note there were a number, obviously, of consequences to Mr. Villemaire as a result of his behaviour. This included his receiving some injuries that required stitches; also, of course, the tasing which he was subjected to. As counsel points out, it is important to recognize that most of the consequences he suffered are as a result of his behaviour, as opposed to something that someone else has done, but I do recognize that there were consequences. I think the most significant of those, really, was the loss of custody of his girls. They were taken into care as a result of these incidents, and it appears they were initially placed together but unfortunately were separated as a result of whatever requirements there were, I take it, for Social Services.

[16] I have information that indicates that Mr. Villemaire was very active in working towards having his daughters returned to his care. It appears that he was extremely cooperative in working both with social workers in Alberta and also here in the Yukon. There is, in fact, a letter from the social worker in the Yukon that speaks positively about his efforts to reunite his family and to keep his family together. I accept the information he has provided to the Court, both through the pre-sentence report and in Court today, about his significant remorse for the impact that his actions had on his family. But he has, to his credit, done what was necessary to satisfy the authorities that the children can be safely left in his care.

[17] I understand, and I also think it is relevant, that he has been on strict conditions for some 19 months since this offence. There have been no breaches of those conditions. I would also note there are no breaches on his prior criminal record, notwithstanding his having been placed on more than one sentence which required community supervision. It appears he was fully cooperative in the preparation of the

report.

[18] I have before me fairly different positions that have been advanced by both Crown and defence. Crown has provided a number of cases and suggests that the appropriate sentencing range illustrated by those cases is one of five months to two years, and they suggest that the behaviour in this case falls within the eight to 14 month range, to be followed by 18 months of probation. Based on the positive pre-sentence report, Crown takes no issue as to the appropriateness of that sentence being served conditionally within the community.

[19] Defence has filed cases, as well, and suggests that the appropriate disposition would be one of three months reduced by time in remand. I understand that 30 days were spent in the Edmonton remand centre. I also understand from counsel, and would note that Crown has direct experience in Alberta, that the conditions in that particular remand centre are not what we would see in our correctional centre here, such that two to one credit would be appropriate with respect to that remand time. Defence is also suggesting that, given the steps that Mr. Villemaire has taken, probation would not be necessary in this particular case.

[20] As indicated, there have been a number of cases filed before me. The lowest of those, I believe, would be around five months, although counsel for defence has filed the case of *R. v. Bradasch*, 2009 YKTC 12, and notes that the specific sentence for the assault of a peace officer in that case was one of three months. There were a number of offences that related to a series of circumstances and the global sentence was one of six months. There are a number of cases. As is not unusual, there is nothing directly

on point.

[21] Having reviewed those cases, my conclusion would be that the range presented by defence is somewhat lower than I would think appropriate, given the fact that the offences I am dealing with here are somewhat more serious. We are not just talking about the assault; there are assault weapon charges here as well and, regardless of whether or not he was successful in actually striking the officers with the items that he was throwing, there were clearly efforts to injure them in throwing weapons towards them. On the other hand, I would conclude that the significant efforts that Mr. Villemaire has made towards his own rehabilitation put him at a range that would be lower than that suggested by the Crown.

[22] In all of the circumstances, noting the importance of denunciation and deterrence as it relates to the offences that are before me and the seriousness of those offences, but also noting the equal importance in this particular case of rehabilitation and the significant efforts that Mr. Villemaire has made towards his rehabilitation and his commitment and motivation to continue, noting his early guilty pleas, his obvious remorse, including the apology letter that he has written, and his comments today to the Court, which clearly indicate to me that he feels both shame and remorse for his actions, I reach the conclusion that the appropriate sentence, in all of the circumstances of the offence and of the offender before me today, would be one of six months. That sentence would be reduced by two months for credit spent in remand, which would leave a remainder of four months.

[23] I am satisfied on all of the information before me that the pre-conditions to a

conditional sentence are met in this particular case. There is absolutely nothing before me to suggest that there would be a risk to the community if Mr. Villemaire were to serve that sentence within the community, particularly in light of the efforts he has made towards rehabilitation. So that four month sentence will be served conditionally within the community.

[24] I am going to return in a minute to conditions. The issue of probation also has come up. Mr. Villemaire has in the past successfully maintained sobriety, but he himself recognizes the risk of relapse, and the offences before me today indicate that that is indeed a risk. A lot of the letters that have been filed by those who have participated in AA with Mr. Villemaire suggest that he has a very good chance at being successful at maintaining sobriety and can be one of the long-term success stories, but I am satisfied that a period of probation and supervision would be appropriate to provide him both with support and, also, to ensure that he maintains his focus on his rehabilitation. So the four-month conditional sentence is going to be followed by a period of 12 months probation.

[25] The conditions of, firstly, the conditional sentence order will be as follows, Mr. Villemaire:

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 remain within the Yukon Territory unless you have the written permission of your Supervisor;
4. That you notify your Supervisor in advance of any change of name or

address, and promptly notify the Supervisor of any change of employment or occupation;

5. That you report to a Supervisor immediately, and thereafter when required by the Supervisor and in the manner directed by the Supervisor;

There is nothing in the facts before me that suggests that this ought not to be a house arrest situation. So it will be required:

6. That you remain within your place of residence at all times except with the prior written permission of your Supervisor or except for the purposes of employment, including travel directly to and directly from your employment. You must present yourself at the door or answer the telephone during reasonable hours for curfew checks. Failure to do so will be a presumptive breach of this condition;

[26] Obviously, there are other things you are going to need to do from time to time. You need to sit down with your Supervisor to talk about what those might be, and he will set out the permissions of what you are entitled to do and not do. So the only clear exemption I am giving you is your employment, but speak to him today about anything else that might relate to your children or to other requirements in your life.

[27] It will also be required:

7. That you abstain absolutely from the possession or consumption of alcohol and controlled drugs or substances except in accordance with a prescription given to you by a qualified medical practitioner;
8. That you not attend any bar, tavern, off-sales or other commercial

- premises whose primary purpose is the sale of alcohol;
9. That you take such alcohol and/or drug assessment, counselling or programming as directed by your Supervisor;
 10. That you take such other assessment, counselling and programming as directed by your Supervisor;
 11. That you have no contact, directly or indirectly --

Sorry, we have the letter.

[28] MR. CAMPBELL: I'm not sure that that condition is really necessary.

[29] THE COURT: Is the Crown concerned about a no contact with the officer?

[30] MR. KOMOSKY: No.

[31] THE COURT: Okay, so we will just simply leave that condition out.

11. That you make reasonable efforts to find and maintain suitable employment and provide your Supervisor with all necessary details concerning your efforts;
12. That you provide your Supervisor with consents to release information with regard to your participation in any programming, counselling, employment or educational activities that you have been directed to do pursuant to this Conditional Sentence Order.

[32] Any issues with respect to the conditions on the conditional sentence?

[33] MR. KOMOSKY: Your Honour, the Crown would suggest that we inquire of Mr. Villemaire what his work hours are, work those hours into the conditional sentence and then otherwise have curfew.

[34] THE COURT: I understand that position. I am content to leave it as worded.

[35] MR. KOMOSKY: The Crown would suggest that leaving it with “except for the purposes of employment” makes it virtually unenforceable.

[36] THE COURT: I understand what your position is. I am content to leave the wording as is, thank you.

[37] MR. CAMPBELL: Nothing to say.

[38] THE COURT: No. Okay. The conditions as it relates to the Probation Order will be:

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 your 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 completion of your conditional sentence, and thereafter when and in the manner directed by the Probation Officer;
5. That you abstain absolutely from the possession or consumption of

alcohol and controlled drugs or substances except in accordance with a prescription given to you by a qualified medical practitioner;

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 and drug assessment, counselling or programming as directed by your Probation Officer;
8. That you take such other assessment, counselling and programming as directed by your Probation Officer; and
9. That you provide your Probation Officer with consents to release information with regard to your participation in any programming, counselling, employment or educational activities that you have been directed to do pursuant to this order.

[39] Any issues with the conditions on the Probation Order?

[40] MR. CAMPBELL: No, Your Honour.

[41] MR. KOMOSKY: No, Your Honour.

[42] THE COURT: In addition to that, Mr. Campbell, you made no submissions as it relates to the mandatory orders with respect to DNA and firearms prohibition?

[43] MR. CAMPBELL: No.

[44] THE COURT: I am then satisfied that those mandatory orders should be made in this particular case. There will be an order, Mr. --

[45] MR. KOMOSKY: With respect, I don't believe the firearms are mandatory. I would suggest --

[46] THE COURT: For an assault weapon? My understanding was that a s. 267 was mandatory, but I am open to being --

[47] MR. KOMOSKY: It is not an indictable offence. It is not one of the listed offences, and the subject matter does not involve a firearm.

[48] THE COURT: I am satisfied, nonetheless then, that a discretionary order ought to be made in this particular case, given the attempted use of weapons of some nature. Accordingly, there will be an order prohibiting you, Mr. Villemaire, from having in your possession any firearms, ammunitions or explosive substances for a period of five years.

[49] DNA also will be required, so I will make the order that you provide such samples of your blood as are necessary for DNA testing and banking.

[50] Remaining counts?

[51] MR. KOMOSKY: Those can be withdrawn, please.

[52] THE COURT: Thank you. Anything further?

[53] MR. CAMPBELL: Usually the DNA is taken here by the police, but he can just attend the RCMP detachment, I assume? I'm not --

[54] MR. KOMOSKY: Yes, he can attend to the detachment and they can take the sample. It's a very quick process.

[55] THE COURT: I just make the orders.

[56] MR. CAMPBELL: I will direct Mr. Villemaire to the Registry to sign those documents.

[57] THE COURT: Great. Thank you very much.

RUDDY C.J.T.C.