

Citation: *R. v. Wolfe*, 2009 YKTC 32

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Registry: Whitehorse

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

REGINA

v.

STEVEN OWEN WOLFE

Appearances:
Susan Bogle
Gordon Coffin

Counsel for Crown
Counsel for Defence

REASONS FOR SENTENCING

[1] RUDDY C.J.T.C. (Oral): Steven Wolfe is before me in relation to five counts to which he has entered pleas of guilty. They include an assault with a weapon, a common assault, both of which are spousal in nature, and three breaches of his release conditions.

[2] Mr. Wolfe first came to the attention of the police with respect to these matters on October 10, 2008. The police received two 9-1-1 calls; first, a hang up, and then a follow-up call, both from the Family Hotel. It appears that Mr. Wolfe and his then spouse, Ms. Rozak, were residing there at that particular point in time. Both had been

drinking. Indeed, it appears that Mr. Wolfe was drinking to a significant enough degree that he has some difficulties with his recollection as to what actually occurred on this evening.

[3] It is my understanding that the two began arguing, at which point Mr. Wolfe put his hands around Ms. Rozak's throat. She was able to get away, which is when she made the initial 9-1-1 call, with the hang-up.

[4] She returned to the room, locked herself in the bathroom, at which point Mr. Wolfe grabbed a steak knife and was able to use the knife to open the door, and he walked towards Ms. Rozak with the knife in his hand.

[5] It does not appear from the information provided to me that he did anything beyond that with the knife specifically, but he concedes that his possession of the knife, in the context of what was going on, would have been, no doubt, quite disturbing and frightening to Ms. Rozak.

[6] I am also advised that at some time over the course of the incident there was a slap to the face with an open hand. Ms. Rozak displayed some visible injuries, including scratching, bruising and blood around the lip area, a small wound on her right hand and redness in the throat area.

[7] As indicated, Mr. Wolfe has difficulty with recollection of this particular offence and does not specifically recall the choking that has been admitted to, but accepts that Ms. Rozak has a better recollection with respect to that particular issue and has admitted the facts.

[8] During the course of providing her statement, Ms. Rozak provided information with respect to two prior incidents of assault, which together form the basis of the 266 count to which he has entered a plea of guilty.

[9] They include Mr. Wolfe, on September 17th, grabbing and pulling Ms. Rozak by the hair, and then a couple of weeks later, on October 1st or 2nd, slamming her into a wall and holding her against the wall by her jaw, resulting, I understand, in some bruising in her chest area.

[10] Mr. Wolfe was initially detained on October 10th, but subsequently released November 3rd to reside at the YARC and to allow for him to participate in the DVTO process, having entered pleas of guilty to both of the assault offences. He was placed on a number of conditions, including conditions that he attend and complete the spousal abuse program, that he abstain absolutely from the possession and consumption of alcohol, and that he reside as directed.

[11] Between November 18th and January 30th it appears that he missed a number of the required sessions for the spousal abuse program. There was some dispute as to how many he actually missed. Suffice it to say that it was sufficient for him to be removed from the program and to be breached for failing to complete.

[12] Then, between January 6th and February 3rd, there are two occasions in which he was located by the RCMP under the influence of alcohol, contrary to his abstain condition.

[13] Between January 28th and 29th he went AWOL from the YARC, where he had

been redirected to reside on January 22nd. He did not return to the YARC but was located February 3rd and arrested pursuant to a warrant.

[14] He has been in custody since that date. I am advised there is a total of some 81 days in remand, which would entitle Mr. Wolfe to, roughly, four months credit with respect to pre-trial custody.

[15] Mr. Wolfe comes before the Court with a prior criminal record. It is extensive. It is related. There are at least three prior assault offences on it, which include a spousal assault, in the context of a different relationship, which occurred in 2003, for which he served 90 days in custody. There is also an additional assault in 2006, and an assault causing bodily harm in 2004, both of which I believe were on male victims and not in the context of a relationship.

[16] There are also on his record a number of process-related offences. I think it is fair to say from the information in front of me today that Mr. Wolfe does have some significant issues with respect to compliance with court orders.

[17] In terms of understanding why that is, I do have the benefit of a very thorough pre-sentence report. It is not my intention to read all of that into the record, and indeed, given that this is a public decision, there is a fair amount of information in there that is rather sensitive that I think need not be included in this decision but that I have taken into account.

[18] What I will say is that, in a very general way, as has been noted by a number of people here today, it is not surprising that Mr. Wolfe finds himself where he is today,

given his antecedents.

[19] He is currently 32 years of age, but his early years can be said to have been characterized by his having been subjected to all manner of abuse. As I indicated, I do not feel it is necessary to get into the specifics of that, but it is clear to me that Mr. Wolfe's earliest circumstances were among some of the worst that I have seen and provide him, no doubt, with significant issues that he really needs to work through, to come to terms with, if he is going to be able to successfully move beyond his history of returning to custody.

[20] So, Mr. Wolfe, you certainly have your work cut out for you in terms of what you need to do.

[21] He has been involved with the system, off and on, since the age of 16. He has also had significant issues with both drugs and alcohol since his teen years. I understand by the age of 19 he was abusing alcohol on a daily basis. He has also spent significant parts of his life under the influence of hard drugs, although he appears to have been able to maintain his distance from those since at least 2007, which is to his credit. But alcohol continues to remain a significant problem for him and to interfere with his ability, significantly, to comply with court orders and to complete the DVTO program.

[22] On a more positive note, it appears that from an educational standpoint Mr. Wolfe is a bright young man. He did well in school. Although he did drop out, he ultimately obtained his GED while in custody. He has, in terms of employment, a sporadic employment history, but he certainly does have potential and aspirations to

return to school, which could provide him with some longer-term stability in terms of employment.

[23] He has a history of depression, which has manifested itself, I think, into situations where he puts himself at risk. He, fortunately, now is connected to Dr. Heredia and is currently on medication, which hopefully will help him to manage that in a more positive way.

[24] As indicated, he was released to participate in the DVTO program. What we have is, essentially, partial completion of the program. He completed 12 of 20 sessions of the group program, and did complete a number of one-to-one sessions. The information I have before me indicates, quite clearly, that he began the programming with a fair amount of enthusiasm and motivation, which appears to have deteriorated over time as his abuse of alcohol interfered with his compliance. It appears that initially he was maintaining sobriety but was not able to maintain that, and ultimately was unable to complete the program.

[25] He, nonetheless, is entitled to credit for the work that he did do. When we are sentencing in the DVTO Court, quite frankly, these are often the most difficult cases to do, in determining what kind of credit ought there to be for partial completion, when someone has not successfully completed the whole program. That is something, I must say, I have struggled somewhat with here, today.

[26] Crown is suggesting that an additional sentence of three to six months plus 12 to 18 months probation would be appropriate, in all of the circumstances. Defence is suggesting a sentence of time served, with a somewhat longer period of probation.

[27] As I indicated, the difficulty is how to assign some credit for the work that Mr. Wolfe has done and for the mitigating factors of his guilty plea. I do accept that he is sincere in his desire to want to change his life, to engage in counselling, to address his underlying issues. The difficulty, I believe, for Mr. Wolfe at this point in time is not so much the desire but the ability, which really stems from, I think, the role that alcohol has played, and continues to play, in his life.

[28] In terms of the suggestion made by the Crown, I must say that, based on the facts before me and Mr. Wolfe's record, the range presented by the Crown is an entirely appropriate one, on all of the circumstances. At the same time, I am satisfied that I need to provide Mr. Wolfe with credit for the efforts that he has made and with recognition for the work that he has done, albeit without successfully completing the program.

[29] In terms of balancing all of those issues, I am satisfied that an additional brief period of time in custody is warranted but that it need not be as long as that suggested by the Crown. Firstly, I think it is necessary from a deterrence standpoint, but I also am of the view that it would provide you, Mr. Wolfe, with some additional time of enforced sobriety before you are out there dealing with the temptations of alcohol, which have been such a problem for you. It would give you some additional time to do some planning and preparing, to make sure that you are in the best possible position when you are out to address all of the issues that you have.

[30] So here is what I am going to do in terms of the sentence. I will deal, first, with the breaches. On the breach for failing to abstain, I am mindful of the fact that Mr.

Wolfe has an extensive history of breaching. Given the circumstances that are before me, I am not of the view that this is an appropriate kind of situation for the step-up principle as it relates to these breaches, given that we have an individual that was struggling to complete programming but was unable to do so as a result of addiction issues.

[31] With respect to the abstain breach, there will be a sentence of one day deemed served by his attendance in court today and I am going to credit him for 15 days of time spent in remand. With respect to the breach for failing to complete the spousal abuse program, similarly there will be a sentence of one day deemed served by his attendance in court today and I am crediting him for 15 days time spent in remand. With respect to the reside breach, I view this one a little more seriously as this is where you went completely off the rails by disappearing, so there is going to be a sentence of one day deemed served by your attendance in court today and I am going to credit you for 30 days spent in remand.

[32] With respect to the 266, there will be a sentence of one day deemed served by your attendance in court today and I am going to credit you for the remaining two months you have spent in remand.

[33] For the assault with a weapon, it is on the lower end of assaults with weapons, as there was nothing overt done with the knife. I am also satisfied that you ought to be credited for the efforts that you have made to partially complete the DVTO program. So the sentence with respect to that offence is going to be two months.

[34] So you will have an additional two months in custody.

[35] Following that, you are going to be placed on probation for a period of 12 months on the following terms and conditions. There will be the statutory terms:

1. That you keep the peace and be of good behaviour;
2. That you appear before the Court as and when required 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 and thereafter when and in the manner directed by the probation officer;
5. That you reside as approved by your probation officer and not change that residence without the prior written permission of your probation officer.
6. That you abstain absolutely from the possession or consumption of alcohol and/or controlled drugs or substances except in accordance with a prescription given to you by a qualified medical practitioner;
7. That you not attend any bar, tavern, off-sales or other commercial premises whose primary purpose is the sale of alcohol;
8. That you take such alcohol and/or drug assessment, counselling or programming as directed by your probation officer;
9. That you attend for assessment and participate in and complete a spousal abuse program, as directed by your probation officer;
10. That you take such other assessment, counselling and programming, including attending for psychological assessment, as directed by your probation officer;

11. That you make reasonable efforts to find and maintain suitable employment and provide your probation officer with all necessary details concerning your efforts;
12. 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.

[36] This leaves us with the issue of the no-contact. Ms. Rozak clearly does not want a no-contact order. The two are no longer in a relationship; however, there is ongoing contact and there are concerns that some of the supporting agencies have with respect to ongoing contact. There is a suggestion that there be a condition that there be no contact except with prior written permission.

[37] I am satisfied that the way to most appropriately manage both the risk factors and Ms. Rozak's clear desire for contact is to have a condition, Mr. Wolfe:

13. That you have no contact, directly or indirectly, or communication in any way with Marie Rozak if you are under the influence of alcohol.

It clearly raises significant risk factors for you when you are, and I think the best way to manage those risk factors is simply not to have you together if you are under the influence.

[38] There is a requirement in law that I also make an order that you provide such samples of your blood as are necessary for DNA testing and banking.

[39] Crown has also sought a firearms prohibition, which is discretionary in this case. It appears that Mr. Wolfe, while Métis, is not involved in subsistence hunting and has no particular need for firearms, although defence questions the necessity for it in this particular case.

[40] As I indicated in our earlier discussions, this is one of those cases where it, in my view, is on the line as to whether or not there ought to be a firearms prohibition. I believe there is enough --

[41] MR. COFFIN: I hesitate to interrupt, Your Honour, but I noted on the record there appears to have been one made in 2003.

[42] THE COURT: In 2003?

[43] MR. COFFIN: Yes. I don't know what it was connected to --

[44] THE COURT: It seems to be connected to a fail to appear.

[45] MR. COFFIN: -- because it seems to have stemmed from a failing to appear.

[46] THE COURT: It is more likely that assault, I would think, the spousal.

[47] MR. COFFIN: There must have been an application made for -- as a result of previous convictions, but there is one now until 2013.

[48] THE COURT: Then, in that case, I would not have gone beyond five years in any event, so it appears that would cover the period. So I will decline to make

a further firearms prohibition order, given that he is already subject to one.

[49] Victim fine surcharge will be waived, given his custodial status. Does that leave us anything outstanding?

[50] THE CLERK: Sorry, Your Honour, is the DNA order on the charge with the assault?

[51] THE COURT: It is the 267(a) it would attach to; that is the designated offence.

[52] THE CLERK: And the probation order is to attach to all the files?

[53] THE COURT: The probation order should attach to the two assault counts, the 266 and the 267(a).

[54] THE CLERK: Thank you.

[55] MS. BOGLE: The Crown will enter stay of proceedings on the remaining charges.

[56] THE COURT: Thank you. Okay, Mr. Wolfe, you have got a hard road ahead of you. The best I can do is wish you luck with it. Thank you. Ms. Rozak, thanks for taking the time to be here today.

RUDDY C.J.T.C.