Date: 2017 02 24
File: T1-CR-2017-000242
T2-CR-2017-000037
T2-CR-2017-000045

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

HER MAJESTY THE QUEEN

- and -

IAN ARNAULT

REASONS FOR SENTENCE
of the
HONOURABLE JUDGE B.E. SCHMALTZ

Heard at:	Yellowknife, Northwest Territories
Date of Decision:	February 23, 2017 Reasons Filed: February 24, 2017
Date of Sentencing:	February 21 and 23, 2017
Counsel for the Crown:	Ryan Clements
Counsel for the Accused:	Jay Bran

[Sections 733.1(1), 267(b), and 145(3) of the *Criminal Code*]

R. v. Ian ARNAULT, 2017 NWTTC 08

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A. INTRODUCTION

[1] Ian Arnault pleaded guilty to one count of breach of probation, one count of assault causing bodily harm, and one count of breach of recognizance contrary to ss. 733.1(1), 267 (b) and 145(3) respectively of the *Criminal Code*.

[2] The sentencing began on February 21, 2017, and at the end of submissions during which a joint submission on sentence was put forward, I adjourned the sentencing to February 23, 2017, to allow counsel to make any further submissions or provide more information, and also to allow me to consider the matter further. I did not accept the joint submission for the reasons set out below.

B. FACTS

B.1 Breach of Probation

[3] Mr. Arnault was placed on Probation on July 26, 2016; one of his conditions required him to report to his Probation Officer as directed. On December 1, 2016, Mr. Arnault failed to attend a meeting with his probation officer.

B.2 Breach of Recognizance

[4] On February 1 or 2, 2017, Mr. Arnault was released on a recognizance with a number of conditions including not to consume alcohol, and to abide by a curfew and be inside his mother's residence between the hours of 10:00 pm and 7:00 am. Sandra Arnault, Mr. Arnault's mother, was his surety on the recognizance. On February 3, at 2:35 a.m. Ms. Arnault contacted the RCMP in Hay River, advising that Mr. Arnault was not at home, and therefore in breach of his recognizance. Mr. Arnault was arrested at 7:15 a.m. and was very intoxicated at the time.

B.3 Assault Causing Bodily Harm

[5] Before January 21, 2017, Cheyanne Martel and Ian Arnault had been in a relationship, and they have a son together. On January 21, 2017, Cheyanne Martel, Adrian Drake and Nathan Fabian went to Adrian Drake's home. Ian Arnault was at Mr. Drake's home, and Mr. Arnault became upset and jealous that Ms. Martel arrived with the two other men. Mr. Arnault became even more upset when Ms. Martel would not talk to him, and pulled her hair and punched her several times in the face, causing what was described as "bruising around her eyes." The assault ended when Mr. Drake intervened and Ms. Martel was able to leave. Photographs (Exhibit S1) of Ms. Martel were entered on the sentencing. The photographs depict a severe black eye and bruising around her other eye; a photograph showing a large bruise on Ms. Martel's knee was also entered. When questioned about this injury, the Crown said this injury was as a result of Mr. Arnault assaulting Ms. Martel and stated: "her bruised knee was a result of the altercation and her hitting the ground." In Ms. Martel's Victim Impact Statement she refers to having two black eyes and other bruising and scratches on her face, along with pain in her neck; her eye was swollen shut for 2 days.

C. THE JOINT SUBMISSION ON SENTENCE

[6] Crown and Defence jointly recommended a global sentence of 90 days for these offences, being 60 days for the assault causing bodily harm, 15 days for the breach of probation, and 15 days for the breach of recognizance, all being consecutive, followed by one year probation.

D. IAN ARNAULT'S CIRCUMSTANCES

[7] On consideration of the circumstances of these offences, and especially of Mr. Arnault's criminal record, I asked Defence Counsel if a Presentence Report may be appropriate, and specifically whether Mr. Arnault was waiving the preparation of a Pre-Sentence Report. Counsel advised that Mr. Arnault did not want a Pre-Sentence Report prepared to assist with the sentencing.

[8] Mr. Arnault is 22 years old, and has lived in Hay River all his life. He has 2 children, a 6 month old who lives in Saskatchewan, and an 18 month old son who lives with Ms. Martel in Hay River. Mr. Arnault's mother is not well, and I was told she was not able to work, though my understanding was that on the date Mr. Arnault breached his undertaking, Mr. Arnault's mother located Mr. Arnault at the hospital when she went to work there.

[9] Mr. Arnault is Metis, and has a grade 10 education. He has taken employment programs, and has worked for Rowe's Construction in Hay River. Since Mr. Arnault has been in custody, he has attended four AA meetings. Mr. Arnault has been attending counselling since he was placed on Probation on July 26, 2016; he says he sees his counsellor once every two weeks.

[10] Mr. Arnault has a youth record with 10 entries, and on his adult record he has 13 convictions. Mr. Arnault's record shows that his criminal behaviour is consistent and persistent. From the material placed before me, Mr. Arnault's youth record began in 2008, with further entries in 2010, 2011, and 2012, and his adult

criminal record continues on with convictions in 2013, 2014, 2015, 2016, and now in February 2017, there will be three additional convictions on his record. Mr. Arnault has been placed on probation seven times, and notably been found guilty or been convicted of breaching his probation five times.

[11] With respect to offences of violence, in 2010, as a youth, Mr. Arnault received 9 months' probation for assault; as an adult in November 2015, he was sentenced to 60 days and 12 months' probation for assault causing bodily harm, and then while still on that probation order, in July 2016, he was convicted of simple assault for which he was sentenced to 60 days (as part of a 90 day global sentence) and one year probation. Now today while he was on that probation order he has been convicted of an assault causing bodily harm, which was spousal in nature.

E. SUBMISSIONS IN SUPPORT OF THE JOINT SUBMISSION

[12] I had serious concerns about the joint submission on sentence for these offences. On February 21, I expressed my concerns, and the Crown advised that this position was arrived at after negotiation, that Mr. Arnault's guilty plea spared Ms. Martel from testifying, and that this would be the longest period of custody that Mr. Arnault had ever received as a sentence. The Crown was clearly mistaken about that last point as in February 2014 Mr. Arnault was sentenced to 3 months for failing to comply with an undertaking; last July Mr. Arnault was sentenced to 90 days for a simple assault and two breaches of probation and two fail to appears. The criminal record including an "Offence Record Report" and the Probation Order from July 26, 2016, (Exhibit S3 and S4) had conflicting information on them with respect to the offences that Mr. Arnault was convicted of in July 2016. I do not know whether the Crown was aware of this discrepancy when it was negotiating the resolution of these matters; the discrepancy was not brought to my attention by the Crown, and as I have said, the Crown was mistaken in its

submission that a 90 day sentence would be the longest sentence that Mr. Arnault had ever received. I would expect that meaningful plea negotiations would be based on a consideration of complete and correct information.

[13] On February 23, I was advised by the Crown that there was a "litigation risk" and that the guilty pleas Mr. Arnault entered resolved three criminal trials. I was told the "litigation risks" related to the possibility that someone else may have been responsible for assaulting Ms. Martel. I assume this "risk" arose before the matter was completely investigated. I note that Ms. Martel's Victim Impact Statement was completed three days after the assault, and a warrant for arrest was issued for Mr. Arnault's arrest two days after the assault. In any event I took those factors into account. But again I will say that I would expect that meaningful plea negotiations would be based on a consideration of complete and correct information, after the investigation was completed.

[14] Defence counsel stressed the very early guilty pleas. And yes, Mr. Arnault entered early guilty pleas after he had been remanded into custody for breaching his recognizance.

F. *R.* v. *Anthony-Cook*, [2016] S.C.J. No. 43

[15] Last year the Supreme Court of Canada considered the circumstances of when a trial judge should or could reject a joint submission, and established a very high threshold for rejecting a joint submission, and recognized that joint submissions are an efficient and important tool for resolving criminal cases.

[16] As the Supreme Court said in *Anthony-Cook*, at paragraph 2:

> Joint submissions on sentence … are a subset of resolution discussions. … They occur every day in courtrooms across this country and they are vital to the efficient operation of the criminal justice system. … [N]ot only do joint submissions "help to resolve the vast majority of criminal cases in Canada",

> but "in doing so, [they] contribute to a fair and efficient criminal justice system". (Citations omitted)

[17] I agree with that assessment, but the very next sentence from the Supreme Court in *Anthony-Cook* is also important: "But joint submissions are not sacrosanct." (paragraph 3)

[18] Section 606(1.1)(b)(iii) of the *Criminal Code* also makes *that* abundantly clear.

[19] The Court held in *Anthony-Cook* that the test or the threshold for when a trial judge may depart from a joint submission must meet the "public interest test" and the threshold is high. As the Court said at para. 32:

> Under the public interest test, a trial judge should not depart from a joint submission on sentence unless the proposed sentence would bring the administration of justice into disrepute or is otherwise contrary to the public interest. …

[20] The Supreme Court went on to give examples of when that threshold may be met. One example cited by the Court at Paragraph 33 was if a joint submission is so "markedly out of line with the expectations of reasonable persons aware of the circumstances of the case that they would view it as a break down in the proper functioning of the criminal justice system". Another example is referred to in Paragraph 34 of *Anthony-Cook*:

> … Rejection denotes a submission so unhinged from the circumstances of the offence and the offender that its acceptance would lead reasonable and informed persons, aware of all the relevant circumstances, including the importance of promoting certainty in resolution discussions, to believe that the proper functioning of the justice system had broken down. This is an undeniably high threshold…

[21] Counsel submitted that the joint submission in the case before me was not "so unhinged" that it should be interfered with.

[22] I am also cognizant that I should "avoid rendering a decision that causes an informed and reasonable public to lose confidence in the institution of the courts".

[23] I have given much and serious consideration to the joint submission in this case. I have considered what I have been told of Mr. Arnault's circumstances, I have considered the circumstances of this offence; I have considered Ms. Martel's Victim Impact Statement and the effect this offence had, and continues to have on her. And I have given very serious consideration to what the expectations of reasonable persons aware of the circumstances of the case, including the importance of promoting certainty in resolution discussions, would be.

[24] What would reasonable people think when a person is before the court for the eleventh time, with 13 prior convictions as an adult; and less than six months before the offence he is to be sentenced for occurred, he had been convicted of a *less* serious offence and was sentenced to 60 days and one year probation; and now today, having a more serious criminal record due to the convictions from 6 months ago, and being convicted of a more serious offence, with an additional aggravating factor, and *the same sentence* is being suggested – what would reasonable people think?

[25] In reality what is being suggested is *a lesser sentence* because this offence is more serious, Mr. Arnault's record is more serious today than it was when he was sentenced last July, and there is the aggravating factor of Mr. Arnault assaulting his former partner, the mother of his son. With all due respect, I find the reasonable person would view this as a prime example of a *breakdown in the proper functioning of the criminal justice system*. I also find that if I were to accept the joint submission in these circumstances I would be rendering a decision that causes an informed and reasonable public to lose confidence in the institution of the courts. Consequently, I will not accept the joint submission on sentence for these offences.

G. SENTENCE

[26] We cannot as a society, and I will not as a judge, only pay lip service to the seriousness of spousal violence, or family violence. Ms. Martel was beaten because she showed up at a house with two other men. She and Mr. Arnault were separated at the time. Looking at the pictures I find it difficult to imagine the pain and suffering that was inflicted upon her that night. And I am not just referring to the physical pain. I expect that Ms. Martel's bruises have faded, her injuries are likely healed, but it is the psychological and emotional harm that is done when a person is assaulted by her, or his, partner or former partner, that is the primary reason that deterrence and denunciation have to be and are the main sentencing objectives for offences of domestic violence. Ms. Martel has not asked that her Victim Impact Statement be read out, but it is important that we recognize the harm done beyond the physical injuries. Ms. Martel says, in part: "It is … heartbreaking to have the father of my child do this to me and to have my son see me like this."; "I haven't gone to the hospital because I am afraid and embarrassed for people to see me like this."; "Because of the bruises on my face I am unable to go to work."

[27] It has to stop. The seriousness of domestic violence cannot be overstated. Wilson, J.'s comments from *R.* v. *Lavallee* (1990), 55 C.C.C. (3d) 97 (S.C.C.), (paras. 32-34) are worth repeating:

> The gravity, indeed, the tragedy of domestic violence can hardly be overstated. …
>
> … Long after society abandoned its formal approval of spousal abuse, tolerance of it continued and continues in some circles to this day.
>
> Fortunately, there has been a growing awareness in recent years that no man has a right to abuse any woman under any circumstances.

[28] I know that prosecutions for domestic violence are difficult, and it is to everyone's benefit when they are resolved. As can be seen from Ms. Martel's Victim Impact Statement, and is often the case, victims may feel a sense of shame, being beaten can effect a person's sense of self-worth, and being a victim of domestic violence is not easy to admit publicly. I recognize that Mr. Arnault must to be given significant credit for his guilty plea, for accepting responsibility for this offence.

[29] General deterrence is achieved by sending a strong message to the community that this behaviour will not be tolerated *and* there are consequences for such behaviour. And the consequences have to be proportional to the seriousness of the offence, and the degree of responsibility of the offender. The intentional infliction of injury, of harm to another because she showed up at a house with two other men, or because she chose not to talk to Mr. Arnault, again, has to stop. The potential for truly tragic consequences is too great.

H. CONCLUSION

[30] In all the circumstances of the offence of assault causing bodily harm, and taking into account the circumstances of Mr. Arnault, and the fact that he is still relatively young, I am going to impose the most lenient jail sentence that I consider appropriate in these circumstances, and a longer period of probation. On the assault causing bodily harm, without consideration of the pre-trial custody, I would have imposed a sentence of 4 months.

[31] On the breach of probation, the circumstances that I have been told of that offence do not warrant a jail sentence. Mr. Arnault missed an appointment, he should not have, it was a technical breach of his probation order, and I would impose a sentence of 1 day concurrent.

[32] On the breach of recognizance, Mr. Arnault has a terrible record for breaching court orders, and this breach occurred only one day after the recognizance was entered into; I would have imposed a sentence of 15 days consecutive taking into account totality.

[33] Mr. Arnault has been in custody for 30 days, and will be given credit for 45 days. Taking into account the remand time, the actual sentences will be: three months for the assault causing bodily harm; one day concurrent for the breach of probation; and, 15 days concurrent for the breach of recognizance.

[34] In addition Mr. Arnault will be placed on probation for a period of three years. The reason I am imposing a three year probation order is for the safety and peace of mind of Ms. Martel; the statutory conditions and the no contact condition will be for the entire three year period. However, the reporting and counselling conditions will only be for the first eighteen months of the probationary period.

[35] There will also be a mandatory DNA Order, and a three year discretionary firearms prohibition.

B.E. Schmaltz
Territorial Court Judge

Dated at Yellowknife, N.W.T.,
this 24 day of February, 2017

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