

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

HER MAJESTY THE QUEEN

- and -

TATIYANA CAMPBELL

REASONS FOR DECISION
of the
HONOURABLE JUDGE DONOVAN MOLLOY

Heard at: Inuvik, Northwest Territories

Date of Decision: March 27, 2019

Counsel for the Crown: Martine Sirois

Counsel for the Accused: Peter Harte

[Sections 430x3, 270, 349, 266x2, 264.1 & 145(3) of the *Criminal Code*]
[Sentencing]

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A. INTRODUCTION

A.1 Offences

[1] Tatiyana Campbell has entered guilty pleas to the following 9 charges:

- (a) Tatiyana Campbell on or about the 1st day of February, A.D. 2019 at or near the Town of Inuvik in the Northwest Territories did knowingly utter a threat to Cst. Christopher MAIN to kill Cst. Christopher MAIN contrary to section 264.1(1)(a) of the Criminal Code.
- (b) Tatiyana Campbell on or about the 1st day of February, A.D. 2019 at or near the Town of Inuvik in the Northwest Territories did being at large on her Recognizance entered into before a justice and being bound to comply with a condition of that recognizance directed by the said justice, fail without lawful excuse to comply with that condition to wit; you shall not go to 45 Centennial Street or the residence of

Desmond NORMAN, contrary to section 145(3) of the Criminal Code.

- (c) Tatiyana Campbell on or between the 31st day of January, 2019 and the 1st day of February, A.D. 2019 at or near the Town of Inuvik in the Northwest Territories did commit mischief by wilfully damaging without legal justification or excuse and without color of right the property of Desmond NORMAN, the value of which did not exceed five thousand dollars, contrary to section 430(4) of the Criminal Code.
- (d) Tatiyana Campbell on or about the 31st day of January, A.D. 2019, at or near the Town of Inuvik in the Northwest Territories, did commit mischief by willfully damaging without legal justification or excuse and without color of right the property of Desmond NORMAN, the value of which did not exceed five thousand dollars, contrary to section 430(4) of the Criminal Code.
- (e) On or about November 7, 2018 at or near the Town of Inuvik, in the Northwest Territories did assault Tristan Sydney contrary to section 266 of the Criminal Code of Canada.
- (f) On or about November 7, 2018 at or near the Town of Inuvik, in the Northwest Territories did commit mischief by willfully damaging without legal justification or excuse and without colour of right property, to wit the window, iPad and television of Tristan Sidney the value of which did not exceed five thousand dollars contrary to section 430(4) of the Criminal Code of Canada.
- (g) On or about November 7, 2018 at or near the Town of Inuvik, in the Northwest Territories without lawful excuse did enter the dwelling house of Tristan Sydney situated at 45 Centennial Street, Inuvik with intent to commit an indictable offence therein contrary to section 349(1) of the Criminal Code of Canada.
- (h) On or about November 7, 2018 at or near the Town of Inuvik, in the Northwest Territories did assault Allan Linde contrary to section 266 of the Criminal Code of Canada.
- (i) On or about November 7, 2018 at or near the Town of Inuvik, in the Northwest Territories did assault Jenna Moore and Robin Lee Watt, peace officers engaged in the execution of their duties, contrary to section 270(1) of the Criminal Code of Canada.

[2] The Crown read in the circumstances of these offences and Ms. Campbell has admitted the truth of them, however has little present recollection of most of them due to having consumed substantial amounts of alcohol on the dates in question. I have made findings of guilt with respect to each of the nine counts. The findings of guilt were made on March 26, 2019. In the course of the sentencing hearing, an issue arose as to whether quantum of restitution was ‘readily ascertainable’ and whether a standalone restitution order should be made or incorporated as a condition of a probation order.

[3] In the decision that follows, a reference to a section number without mention of a specific statute means a section of the *Criminal Code*.

B. POSITION OF CROWN AND DEFENCE

[4] The Crown submits that a global sentence of 90 days in custody is appropriate, to be served in the community, followed by a 12 month period of supervised probation.

[5] Counsel for Ms. Campbell submits that a suitable global sentence would be time served (equivalent of 18 days after a credit of 1.5 to 1), followed by a period of supervised probation.

C. CIRCUMSTANCES OF THE OFFENCES

[6] The offences occurred on November 7, 2018, January 31, 2019 and February 1, 2019. On November 7, 2018 Ms. Campbell and a companion were drinking alcohol with friends, one of whom she believed left and went to the residence of Tristan Sydney. Ms. Campbell decided that she wanted to continue to party at Mr. Sydney’s residence, however her knocks on his door went unanswered. The failure to be admitted was a source of consternation for Ms. Campbell, leading her to break the side windows of the door. On his then opening his door, Ms. Campbell and her companion forced their way into the residence, proceeding to assault Mr. Sydney and damage his personal property.

[7] On the attendance of officers of the Royal Canadian Mounted Police, they noted a cut to Ms. Campbell’s hand that required medical attention. While endeavoring to get her that attention, Ms. Campbell deliberately got her blood on the officers, assaulted the officers and a health care provider. Medical personnel administered a sedative to Ms. Campbell as she was endeavoring to harm herself and she was then able to be controlled.

[8] On January 31, 2019 Ms. Campbell got into an argument with Desmond Norman, the father of their one year old daughter. The argument escalated to the point that Ms. Campbell proceeded to take a cooking pot to Mr. Norman's vehicle, causing damage to it, including breaking the windshield and a side window.

[9] On February 1, 2019 the RCMP was called to Mr. Norman's residence as Ms. Campbell went there and caused additional damage to Mr. Norman's property, despite having been released on recognizance the previous day, with conditions including that she refrain from attending at that location. On being processed by the police, Ms. Campbell uttered a threat to one of the constables that she would arrange to have him killed.

[10] Ms. Campbell was arrested and remained in custody until being released again on February 11, 2019. Ms. Campbell did not reoffend between February 11 and March 26, 2019, the date of her sentencing hearing.

D. THE OFFENDER'S CIRCUMSTANCES

[11] Ms. Campbell is just shy of 20 years of age. While no Pre-sentence Report was requested, Ms. Campbell's counsel fully apprised the Court of her circumstances, including factors relevant to her status as an indigenous person and considerations pursuant to section 718.2(e).

[12] Ms. Campbell has no prior criminal record. To say that she was and is disadvantaged is an understatement. Ms. Campbell is a young indigenous woman who was abandoned at birth. She had no relationship with her mother, who died recently as a result of a drug overdose. While she knows her father, due to his serving various periods of incarceration, she has little relationship with him.

[13] Ms. Campbell spent the majority of her life in various forms of foster care. Her experiences in the child welfare system did little to ameliorate the circumstances of her birth and likely caused her additional harm. She got no further than Grade 9 in terms of her education and her only work experience involved babysitting. On an informal basis, she shares custody of her daughter with Mr. Norman.

[14] Ms. Campbell struggles with alcohol addiction issues and is actively seeking admission to an in-patient treatment program. She has attention deficit hyperactivity disorder and her counsel alluded to potential issues associated with fetal alcohol syndrome.

E. THE PURPOSE, PRINCIPLES AND OBJECTIVES OF SENTENCING

[15] The Crown proceeded by summary conviction on all matters. Ms. Campbell entered guilty pleas to all of the charges and while all of those pleas were not entered at the earliest opportunity, most of them were.

[16] In determining a fit sentence, I am guided by the purpose, principles and objectives set out in the *Criminal Code*, the circumstances of the offences and of Ms. Campbell, and the case law.

[17] The fundamental purpose of sentencing is to contribute to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:

- (a) to denounce unlawful conduct;
- (b) to deter the offender and other persons from committing offences;
- (c) to separate offenders from society, where necessary;
- (d) to assist in rehabilitating offenders;
- (e) to provide reparation for harm done to victims or to the community;
and
- (f) to promote a sense of responsibility in offenders, and acknowledgement of harm done to victims and to the community.

[18] I must start my analysis with the principle of proportionality which is considered to be the fundamental principle of sentencing. The principle of proportionality states that a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

[19] Then the sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances.

[20] I must also be guided by the principle of totality which states that where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh; and the principle of parity which states that a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances.

[21] Finally, all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention paid to the circumstances of aboriginal offenders.

F. AGGRAVATING AND MITIGATING CIRCUMSTANCES

[22] Ms. Campbell, a first offender, entered early guilty pleas, demonstrating the willingness to accept responsibility for her conduct. While she is not averse to paying restitution to Mr. Norman in regards to the property damage, she objects to making restitution a condition of her probation order.

[23] On being offered an opportunity to address the Court, Ms. Campbell expressed remorse, acknowledging that she is responsible and that the events described above should never have happened. As already noted, she is actively pursuing residential treatment for her alcohol addiction.

[24] On the other hand, the assaults are very serious offences, especially in regards to the medical personnel trying to treat her injury. Police officers working in small rural communities have extra reasons to be concerned for their own welfare as lacking anonymity and residing in known locations lead to apprehensions of enhanced vulnerability. A threat to arrange for the death of a police officer is very serious. Similarly, assaulting police officers in the execution of their duties must be deterred and denounced.

[25] Breaching her recognizance in what appears to be less than 24 hours is also aggravating and Ms. Campbell and the community at large must understand that bail conditions are not suggestions, nor do they simply permit doing one's best to comply. Promising to obey conditions to secure one's release is a very serious matter.

[26] I have considered Ms. Campbell's aboriginal background. The *Gladue* and *Ipeelee* factors have some significance. She has been exposed to substance abuse and many of the systemic factors to which those two cases direct the Court to be aware of are present. There is a relationship between her life experience and where she finds herself now – little education, no real work experience and a dependence on alcohol.

[27] Given Ms. Campbell's young age, I must also keep in mind her potential for rehabilitation. Is imprisonment, served conditionally, necessary to achieve the goals of sentencing? The period of time spent on remand appears to have registered upon Ms. Campbell in the sense that she has not offended subsequent to re-release.

She is a first offender who has demonstrated remorse via her guilty pleas and her comments on being invited to address the Court.

[28] I conclude that in the circumstances of Ms. Campbell and the circumstances of these offences, a period of additional imprisonment is not necessary or required. Given that conclusion, there is no need to determine whether a conditional sentence would be appropriate pursuant to section 742.1.

[29] Rehabilitation must be the foundation of the sentence to be imposed upon Ms. Campbell. An extended period of probation is meant to facilitate that objective and to limit her ability to interact with the victims of her offences while she works towards that goal.

[30] The Crown appropriately requested restitution of \$600 to Mr. Norman. The Form 34.1 submitted by Mr. Norman pursuant to section 737.1(4) contained only what he stated were oral estimates he received to repair his vehicle. The amount seemed modest and was acknowledged as such by counsel for Ms. Campbell, however counsel questioned whether it was readily ascertainable within the meaning of section 738. While I was prepared to consider that the amounts were readily ascertainable, as \$600 to replace an automobile's windshield and side window are reasonable claims, I do not have to decide that issue as given Ms. Campbell's current position in life, there is little chance that she would be able to make the necessary payments and therefore she would soon find herself in breach of her probation order should restitution be incorporated as one of its conditions.

[31] While present inability to pay does not preclude a standalone restitution order, it is a relevant factor to consider, along with the complications and conflict likely to arise from any efforts to enforce a restitution order in a situation where there is no formal custody order or agreement. Reducing the prospects of future conflict is in the interest of Ms. Campbell, Mr. Norman and especially their young daughter. As such, I exercise my discretion to not order restitution pursuant to section 738.

G. SENTENCE

[32] Ms. Campbell served 12 days on remand. Giving her credit on a 1.5 to 1 basis, she has served the equivalent of 18 days in custody.

[33] For the reasons stated above, Tatiyana Campbell is sentenced as follows:

| Date | Section of <i>Criminal Code</i> | Sentence |
|---------------------|--|--|
| November 7, 2018 | 266 | 18 days imprisonment (time served), concurrent |
| November 7, 2018 | 430(4) | Suspended Sentence |
| November 7, 2018 | 349 | Suspended Sentence |
| November 7, 2018 | 266 | 18 days imprisonment (time served), concurrent |
| November 7, 2018 | 270 | 18 days imprisonment (time served), concurrent |
| January 31, 2019 | 430(4) | Suspended Sentence |
| February 1, 2019 | 264.1 | 18 days imprisonment (time served), concurrent |
| February 1, 2019 | 145(3) | 18 days imprisonment (time served), concurrent |
| February 1, 2019 | 430(4) | Suspended Sentence |

[34] In addition, in relation to all matters in regards to which the passing of sentence was suspended, Ms. Campbell will be subject to a probation order for 18 months. The terms of this probation order will be as follows:

- a) keep the peace and be of good behavior;
- b) appear before the Court at Inuvik at 9:30am on August 27, 2019 and thereafter as required to do so by the court;
- c) abstain from communicating, directly or indirectly, with Tristan Sydney, and refrain from going to his place of employment, residence or schooling;
- d) abstain from communicating, directly or indirectly, with Desmond Norman, and refrain from going to his place of employment, residence (195 Mackenzie, Apt. 210, Inuvik) or schooling, with the exception of contact while in the presence of a sober adult person and then only for the purposes of attending to child care, custody or access visits or any emergency medical treatment that the child may require;

- e) report to a probation officer within 2 business days and thereafter as required by the probation officer;
- f) take counselling as recommended by the probation officer, including, but not limited to, counselling or programs dealing with, or related to, substance abuse;
- g) explore opportunities to achieve a high school diploma or other equivalency;
- h) remain in the Northwest Territories except for any attendance in or at an addictions treatment program or facility; and,
- i) abstain from alcohol and drugs, except for medications prescribed by a licensed medical practitioner.

[35] Sections 264.1, 266 and 270 are secondary designated offence with respect to an order for the collection of DNA samples. Given the number of assaults and in particular, the assaults on medical personnel and a peace officer, as well as uttering a death threat to a peace officer, I am satisfied that the interests of society in crime detection and investigation outweigh the minimal incursion into Ms. Campbell's privacy and security of the person caused by a DNA test and I make an order for the taking of DNA under section 487.051 of the *Criminal Code*.

[36] There will be a firearms prohibition order pursuant to section 110 of the *Criminal Code*. Ms. Campbell will not possess firearms or any of the other items enumerated in section 110 for one year from today's date.

Donovan Molloy
T.C.J.

Dated at Inuvik, Northwest
Territories, this 27th day of
March, 2019.

R v Tatiyana Campbell, 2019 NWTTC 05

Date: 2019 03 27

File: T-1-CR-2018-000399

T-1-CR-2019-000065

T-1-CR-2019-000253

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