

Citation: *R. v. Preston*, 2025 YKTC 51

Date: 20250917
Docket: 24-05445
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before His Honour Judge Brooks

REX

v.

TIMOTHY PRESTON

Appearances:
Amy Porteous
Joseph J. Saulnier

Counsel for the Territorial Crown
Counsel for the Defence

**This decision was delivered from the Bench in the form of Oral Reasons.
The Reasons have since been edited without changing the substance.**

REASONS FOR SENTENCE

[1] BROOKS T.C.J. (Oral): Timothy Preston has pled guilty to two offences. The first is that on or about November 13, 2023, at or near Whitehorse, he installed or altered an appliance, housing piping, vent, or a gas installation, to wit: a gas fireplace, without a permit, contrary to the *Gas Burning Devices Act*, RSY 2002, c. 101.

[2] Count #2 — same date, same place — having installed an appliance, housing piping, vent, or a gas installation, to wit: a gas fireplace, did use or permit the use of that gas fireplace without a permit being issued and approval by an inspector, contrary to the *Gas Burning Devices Act*.

[3] As I say, he has pled guilty to those two offences and today is for sentencing.

[4] The offences are territorial offences. They are not *Criminal Code* offences, so the sentence that is imposed in this case must be within the context of territorial offences and should not be a sentence that is reflective of a *Criminal Code* violation. I make that point at the outset because in the facts of this case, there has been an almost unspeakable tragedy: a human life has been lost. I will refer later in these reasons to the impact on the victims in this case, which is a serious aggravating factor in my view.

[5] On top of the weight and sorrow is also the opportunity of Mr. Gould himself to live out his life, to bring to others all the joy and wisdom he brought to life — that is gone. He does not get to experience the love, laughter, and wisdom of all those people around him who obviously care about him and who he, I am sure, loved deeply. I say this simply to highlight that the seriousness of this matter has not escaped me. I understand it as well as I can, and I have taken it into account in all of my considerations as to the appropriate sentence in this case.

[6] Any sentencing involves a consideration of the circumstances of the offence and of the offender. I have been told a great deal by the thorough and very helpful submissions of counsel. I do not intend to go through everything that they have told me and repeat everything they have told me, but I have taken it all into account.

[7] I begin with the circumstances of the offence, which are helpfully placed into Exhibit 1, the Agreed Statement of Facts. I will just summarize that Agreed Statement of Facts as follows.

[8] In para. 3, it is noted that Mr. Preston installed the fireplace without a permit to do the work. He retained an electrician to do electrical work but did the rest himself, and had a man he knew to have worked as a gas fitter attend twice to provide some advice.

[9] Paragraph 4 says that on the morning of November 13, 2023, Mr. Preston texted the man who had previously advised him and let him know that the fireplace was ready for the gas connection, hoping he would attend to it. He did not receive a response. Later that day, Mr. Preston went to a hardware store and as a result of a purchase there, he completed the installation himself.

[10] The next morning, November 14, 2023, shortly after 5:30 a.m., a gas explosion originating from the Preston home rocked the Riverdale neighbourhood. Two forensic experts unfortunately were not able to agree on what exactly was the precise mechanism that caused that explosion, but the effect of it can only be described, I think, as catastrophic. The home of Mr. Preston was levelled, several houses had significant damage to them, and the explosion blew out the south side of the house at 15 Bates Crescent, home to David and Linda Gould.

[11] At the time of the explosion, the Agreed Statement of Facts states, in para. 9:

... Ms. Gould was in [the] bathroom down the hall from the bedroom and escaped physical injury. She could not get back to the bedroom due to the damage to the house but was able to run outside and call 911. Mr. Gould, who had been asleep in bed, was found deceased. He had sustained a fractured skull, clavicle and ribs, and died of trauma to his lungs caused by a sudden change in air pressure.

[12] Mr. Preston had been home at the time of the explosion, and he was found in a pile of rubble, conscious and lucid but seriously injured. He was medevac'd to Vancouver, where he spent approximately one month in hospital. He has other permanent injuries.

[13] Those are the facts as they have been put in the Agreed Statement of Facts.

[14] One thing I take from those facts is the importance of the failure to obtain a permit. It is hard to find words to describe what exactly is the logic or failure in logic in not getting a permit. Those regulations and those rules are there to give us safe communities. That is how we have a safe community. They are not impediments of some overreaching government to make our lives miserable. They are there to keep us safe — and Mr. Preston ignored them. I do consider that he has, on the basis of those facts, a significant moral culpability.

[15] I turn to the circumstances of the offender. Mr. Preston is 78 years old. He does not have a criminal record. He is a person without question of prior good character. He has been a member of this community for approximately 50 years. He has raised his family here. He spent 37 years working as a lawyer. He became a Queen's Counsel (QC) in 1984, which is an honour given to lawyers who are exceptional and provide high quality legal work. Mr. Preston retired in 2007. He has been engaged in significant volunteer work for the community. He was president of the organization that dealt with the Arctic Winter Games when they came to Whitehorse. I have read twice each of the character letters written on his behalf. I can say without any question they are impressive — very impressive.

[16] To show that, I will just quote from some of them.

[17] The letter of Mr. Densmore of Ketza Construction writes about his friend Tim, who he has known for a good 30 years, known as a good person and a person who has earned his stellar reputation. A person who had a piece of property, he sold it to a young woman, and it turned out to be contaminated. He stepped up and paid the cost of the clean-up without any legal obligation to do so. He did it because it was the right thing to do. When the war with Ukraine and Russia started, he rented Airbnbs with no intention of making use of them. He did this to help funnel money to the people most affected and most in need.

[18] Another letter, of Tim Koepke, who is a retired businessman, professional engineer, and had been a chief federal negotiator. He described Mr. Preston in very positive terms, gaining the highest respect of people who know him and watched his work. He says:

Our families' relationship has continued through childhood, teenage, university, marriages and grandchildren phases to this day. Throughout all our respective ups and downs Tim has been a good husband, father, friend to many and a respected member of our legal and broader communities.

[19] Mr. Preston's son wrote as well, and what he said about Mr. Preston now is of some importance to me. He said:

Over the past 15 months he's [Tim Preston] been quieter and timid. He's more frail and seems smaller than he was before. In one of the rare vulnerable moments I've ever seen him express, he said, "it should have been me that died that day". As someone who knows how stoic my dad has always

been, I can't think of anything else that's affected him deeply enough to cause him to dwell on regret and let it show.

[20] There have been collateral consequences for Mr. Preston. Medically, there is a series of disabilities that still impact him to this day. There are obvious financial consequences that have flowed and will continue to flow to him, but there is no question that the emotional ones are extremely significant, as indicated by what his son had to say for his comments.

[21] I turn to the Victim Impact Statements. I do not turn to them now because there is to be some kind of comparison of suffering that has occurred as a result of this tragedy, but just to be clear that I am doing what I am supposed to do, which is understand the harms done by these actions. The harms done as shown by the Victim Impact Statements are emotional. The suddenness of the loss of Mr. Gould was obviously critically important. The fact that he and his home was completely gone is clearly very important to those around him and those family members. Of course, the financial ripples are ones that impact many. The Victim Impact Statements are all extremely eloquent.

[22] I take all of that and I apply the principles of sentencing, for a sentencing must be approached in the logical way of paying attention to the principles that guide all sentencing. That is the only way for a fair and just sentence to result.

[23] Some of those principles are these.

[24] First, that there should be consideration of specific deterrence. That is to say the law says if it is necessary to send a message to an individual to deter him, then the

sentence should do that. In the particular circumstances of this case, I do not consider specific deterrence to be particularly important. I do that because of the background of Mr. Preston, his law-abiding life, and his contributions to this community. He understands what he has done. He does not need to be deterred.

[25] More importantly is general deterrence. The concern that something like this, as the Victim Impact Statements said, was preventable. It should never have happened. To the extent that any sentence can send the message to others that this should not happen and that they should take all steps to prevent a tragedy like this from happening again, then that sentence should do that. I do consider general deterrence to be important in this case.

[26] There are other principles as well.

[27] There is the principle of restraint, because we do not operate on sentencing on the basis of vengeance or anger. We use restraint in any punishment that a person has to endure.

[28] There is the principle of parity, as well. The sentence that Mr. Preston receives should be in accordance with similar cases in similar circumstances, so that our law is predictable and understandable by all its citizens.

[29] Also important is accountability. In this case, that accountability is, in my view, shown by Mr. Preston having entered his pleas of guilty. It is important to bear in mind that the charges in this matter were sworn in November 2024. The first appearance of the case was in January 2025, and Mr. Preston the next month was gathering character

letters to be used at his sentencing. That is important to me because that indicates the preparedness to take accountability for what he had done at a very early stage. That is a factor and a principle to be taken into account, and I do take it into account.

[30] I come to one thing that has been the subject of submissions of both counsel, and I wish to explain it for a moment — and it is this. There was reference to the submission being a joint submission, and it may have been thought that we were talking about something a lot more than we needed to. We were talking about a joint submission because the Supreme Court of Canada has told me what to do with a joint submission.

[31] Obviously, I am to do what the Supreme Court of Canada directs me to do, and they have given me directions about joint submissions. They have said to me that when counsel do their work and bring before the Court a case in which they have worked out and are in agreement as to the sentence, then it has to be a very, very unusual circumstance for a judge to do anything different. I should not be doing anything different or it becomes as if the law is arbitrary — me just doing whatever occurs to me to do — and that is not right.

[32] I should give very strong weight to joint submissions. That is what the Supreme Court has told me to do and I would say parenthetically if they had not told me to do it, in this case, I would probably be doing it anyway because I have the very thorough submissions of two very experienced lawyers. I think I am entitled to rely on their experience and wisdom.

[33] Having said that, that does not mean that is the end of my job or my thinking about the case. I do need to look at whether the sentence being proposed is the right one or not.

[34] That brings us back to the very difficult factual matter I referred to at the beginning of this case: a life lost. It was said in a similar case by a very experienced judge of this Court, Judge Faulkner, how to think of a situation in which a life is lost. He said this at para. 17 in *R. v. Matta*, 2010 YKTC 128:

I want to conclude my remarks by saying that I understand that those who knew and loved Becky Shank may think the sentence I have just imposed is inadequate. The short legal answer is that the sentence must be within the limited range permitted by the *Motor Vehicles Act*. It must not be out of proportion to sentences imposed in other similar cases. However, that is not really an answer. Becky's loved ones will say that her life was worth more than \$1,000 and a month of house arrest. Of course, they would be right, but no sentence I can pass could ever be adequate in that sense. No sentence the Court can impose can undo what is done; no sentence can end the pain of those who have been touched by this sad event. The best the Court can do is to denounce the careless driving that has occurred in the hope that other drivers will be more vigilant in the future.

[35] I agree very much with those comments of Judge Faulkner. They contain a great deal of wisdom.

[36] The key here is to see that this sentence, which cannot undo what has happened, sends out the clearest message to others that they are to abide by every detail of the law, including provincial law, and including things that keep our communities safe.

[37] The joint submission that I have received in this case is one of two months on each count to be served as a conditional sentence. I do have to consider whether that is adequate and whether that does, really, in the circumstances, send out the message that needs to be sent out. In doing that, I consider the principles I have already referred to, and particularly I consider the issue of parity, which is very important in my view.

[38] The Crown has given me cases in which individuals have broken a territorial or provincial law and it has resulted in the death of an individual. The sentences of those cases have been very much the sentence that is suggested here. While they are driving offences, they are not necessarily a momentary lapse of attention.

[39] For example, in *R. v. Biondelli*, 2005 YKTC 56, the individual had a trailer. Mr. Biondelli did not hook up the brake lights. He had way too much weight. It was concluded that as he drove the vehicle, he would have seen and known that the vehicle could not stop properly, and he went out on the highway anyway and he killed somebody. That person received the kind of sentence that is being discussed today. Mr. Biondelli had an extensive knowledge and, in my view, a prior deliberation that he was going to go out on the road when he posed a great risk to others on the road. The case indeed is more serious than this one — even bearing in mind that I have found, as I do find, the significant moral culpability of Mr. Preston.

[40] We come to the issue of conditional sentences and the sentence which is suggested. As I have said, the sentence suggests it is two months of jail served conditionally. The Supreme Court of Canada, again, has told me how I am to deal with conditional sentences.

[41] The first consideration is that I am to impose them if I think that a jail sentence is appropriate. We do not talk about conditional sentences unless that is the case.

Generally speaking, jail sentences do not follow for territorial or provincial offences. In this case, I am of the view that a jail sentence should follow for this case because of the harm that was caused, because of the moral culpability that I have already referred to. In order to send out that message of general deterrence, it should be jail.

[42] The Supreme Court of Canada has said that the next thing that I should consider is can that jail sentence be served in the community or does it have to be served in a real jail? In essence, the Supreme Court of Canada has said to me if the community can be safe with an individual serving it in the community, it should be served in the community. In this case, we have a 78-year-old man with the background that I have already described. Is the community safe if he serves his sentence in the community? I think the answer to that is yes, given his background and given everything, and particularly bearing in mind that today, the day on which I am sentencing him, he is a 78-year-old man with the frailty that I think we can all see.

[43] For that reason, I am of the view that the sentence that is suggested by Crown and defence is, in fact, the right one. It is, in fact, one that I could have easily come to myself if it were not for a joint submission, which the Supreme Court of Canada tells me that I should give great weight to.

[44] I come to another issue, a final issue — which is a thorny one for my way of thinking — and it is thorny as to the issue of restitution. It would be nice to be able to remove some worry and some thought from the people who have suffered from this

matter by trying to take the financial aspect as much as I can off their plate. I have to do what the law directs me to do, and so I am just going to refer to what the law directs me to do on the issue of restitution.

[45] The Supreme Court of Canada in *R. v. Zelensky*, [1978] 2 S.C.R. 940 says, first of all, that the Court's power to make a concurrent order of compensation is discretionary. They tell me, on page 961, a relevant consideration is whether there are civil proceedings that have been taken or whether they are being pursued. Whether the criminal court will be involved in a long process of assessment of loss is also a factor to take into account.

[46] After referring to all of the things that should be taken into account, the Supreme Court of Canada says an order for compensation should only be made with restraint and with caution. The section, they say on page 962:

... is not to be used ... as a substitute for or a reinforcement for civil proceedings. Its validity is based, as I have already said, on its association with the sentencing process, and its administration in particular cases must be limited by that consideration.

[47] In this case, there have been some amounts put forward for restitution by Ms. Gould and by Paula Carlos. Mr. Saulnier tells me that those amounts are going to be paid, and he is prepared to do so forthwith. Ms. Carlos had no insurance. The claims of Ms. Gould do not fall within the insurance policy. Accordingly, they are the ones to be paid. Mr. Saulnier has assured me that they will be paid, and he would not say such a thing if it were not the case, and so I accept his word unreservedly that those things will happen.

[48] The rest deal with issues of insurance. The insurance companies can have orders made in their favour, and that makes sense, but, unhappily, this is a case in which there are factual difficulties that are of such significance that the path to restitution, in my view, is not there. I simply cannot exercise my discretion to provide the restitution without doing something that is essentially arbitrary and unfair to those who may want to argue that they do not have that responsibility, that a different insurance company has a responsibility. That is all something which they ought to figure out themselves.

[49] I decline to make a restitution order.

[50] With regard to the conditions that attach to Mr. Preston's two-month conditional sentence, which is on each count concurrent, the conditions are:

1. He is to keep the peace and be of good behaviour;
2. He is to appear before the court when required to do so by the court;
3. He is to report to a Supervisor within 48 hours, and thereafter, when required by his Supervisor and in the manner directed by his Supervisor;
4. He is to remain within the Yukon unless this order is transferred to the jurisdiction of British Columbia, or he has the written permission from his Supervisor or from the court;

5. He is to reside at an address approved of by his Supervisor and not change that residence to British Columbia without the prior written permission of his Supervisor;
6. For the duration of this order, he is to remain on the property of his residence except with the prior written permission of his Supervisor and if this order is transferred to Vancouver, British Columbia, it is at the property of 1501 Howe Street. For any medical emergencies and for any medical appointments, he is to provide such proof of such appointments or emergencies as is requested of him by his Supervisor. He may be outside of his property for one hour per day for the purposes of meeting with his kinesiologist or for rehabilitative exercise. I decline to give Mr. Preston any additional time for errands or other matters. He is serving a jail sentence; and
7. He is not to possess or consume alcohol.

[51] Those are the terms.

BROOKS T.C.J.