

# SUPREME COURT OF YUKON

Citation: *R. v. Zanolli*, 2012 YKSC 02

Date: 20120119  
S.C. No. 11-01507  
10-01512  
10-01513  
10-01514  
Registry: Whitehorse

Between:

HER MAJESTY THE QUEEN

And

RICCO ZANOLLI

Before: Mr. Justice R.S. Veale

Appearances:

David McWhinnie  
Ricco Zanolli  
Michael Reynolds

Counsel for the Crown  
Appearing on his own behalf  
*Amicus Curiae*

## REASONS FOR JUDGMENT

### INTRODUCTION

[1] Ricco Zanolli has been charged with five counts of drug related offences which took place in Newfoundland between September 3, 2009 and January 12, 2010. These charges have been transferred into the Yukon (11-01507) pursuant to s. 478(3) of the *Criminal Code* with the consent of the Attorney General of Canada and on the agreement of Ricco Zanolli to plead guilty to the charges.

[2] Ricco Zanolli is also charged with a 13-count indictment (10-01514) in the Yukon relating to threats, extortion and an assault on Scott Buchanan as well as the discharge of a handgun with the intent to wound Kevin Ehret. He also stands charged with uttering a threat to cause the death of Jordie Amos at the Whitehorse Correctional Centre (10-01512) as well as lighting a fire and damaging a jail cell (10-01513).

[3] Mr. Zanolli has been in pre-trial custody since December 26, 2009, either at the Whitehorse Correctional Centre or in a correctional facility in Newfoundland. Preliminary Inquiries took place on the Yukon charges in November 2010. This matter has been case managed by myself or Justice Gower since the Yukon indictments were issued in December 2010. The Crown acknowledges that Mr. Zanolli has been attempting to resolve his charges without a trial since the spring of 2010. Mr. Zanolli has had difficulty with retaining of his defence counsel and has not been represented for most of 2011. However, I am advised by the Crown Attorney, Mc McWhinnie, who has been involved with the case throughout, that complex discussions have been pursued between the Newfoundland Crown and defence counsel during 2011. The delay has resulted from the fact that Newfoundland and Yukon charges are involved in addition to Mr. Zanolli's difficulties with his own counsel. The Yukon charges were set for several weeks of trial in December 2011 and January 2012. The court appointed Michael Reynolds as *amicus curiae* in October 2011 to make an application on behalf of Mr. Zanolli for the appointment of counsel to defend him at trial. As a result of that appointment, further discussion has led to a joint sentence submission on all counts that would result in a 10-year sentence with credit being given on a 2 to 1 basis for the approximately two years

of pre-trial custody. If the joint sentence submission is accepted, Mr. Zanolli will have approximately six years left to serve in prison.

[4] Mr. Zanolli is representing himself but has consulted with Mr. Reynolds.

[5] I am satisfied, pursuant to s. 606(1.1) that Mr. Zanolli is making his guilty pleas voluntarily and that he understands the pleas are an admission of the essential elements of the offences. I am also satisfied that he understands the nature and consequences of the pleas and that the court is not bound by any agreement between him and the prosecutor.

### **The Newfoundland Offences**

[6] I have therefore accepted his guilty pleas on the following Newfoundland offences in indictment 11-01507:

Count #1: that he committed drug offences in association with a criminal organization contrary to s. 467.12(1) of the *Criminal Code*.

[7] The facts admitted for this offence are set out in detail in a 42-page document entitled Statement of Allegations filed in this court on January 6, 2012. The Statement of Allegations details the drug deals, collection of drug debts and money laundering between September 2009 and January 12, 2010 when Operation Razorback, conducted by the Royal Newfoundland Constabulary, concluded with the arrest of a number of individuals in a criminal organization based in Victoria, British Columbia, but operating in St John's, Newfoundland. Mr. Zanolli admits of all the facts set out in the Statement of Allegations only as it pertains to him. Because these matters apparently remain outstanding in Newfoundland in relation to other individuals, I have ordered under s. 486.5(1) of the *Criminal Code* that no information that could identify the victims or

witnesses named in the Statement of Allegations shall be published in any documents, broadcasted or transmitted in any way so as not to interfere with the administration of justice. I clarified for the benefit of the media present that this prohibition specifically included the residences identified in the Statement of Allegations.

[8] I add for clarification that Mr. Zanolli was not arrested in Newfoundland as he was already in custody in the Yukon. The date of his departure from Newfoundland is November 8, 2009 but the exact date of his arrival in the Yukon is not clear but certainly between November 24 and December 10, 2009.

Count #2: that he did unlawfully traffic in cocaine contrary to Section 5(1)-5(3)(a) of the *Controlled Drugs and Substances Act (CDSA)*.

[9] Mr. Zanolli was involved in the trafficking of cocaine in Newfoundland in large amounts as a mule, the description attributed by the Crown.

Count #3: that he possessed cocaine for the purpose of trafficking contrary to Section 5(2) of the *CDSA*.

[10] As I understand it, the facts admitted under this count are the same as those in the trafficking charge. It also involves supplying cocaine to local drug dealers in Newfoundland.

Count #4: that he transported or transmitted Canadian currency with the intent to conceal, knowing that it was the proceeds of crime directly resulting from the commission of a designated offence contrary to s. 462.31(1) of the *Criminal Code*.

[11] Mr. Zanolli transported a large amount of money from Newfoundland to Victoria, British Columbia that was generated from drug trafficking activities. The money was

vacuum-sealed, wrapped in black duct tape, some of which was glued to the bottom of a suitcase under the zippered lining.

Count #5: that he laundered the proceeds of crime in association with a criminal organization contrary to s. 462.31(1) and 467.12(1) of the *Criminal Code*.

[12] Mr. Zanolli admits transferring of proceeds of drug dealing with the intent to conceal or convert the proceeds knowing that they are proceeds of crime for the benefit of a criminal organization.

[13] The joint sentence submission is three years in prison for each of counts #1 and 5 (the criminal organization offences) concurrent to each other.

[14] The joint sentence submission for counts #2, 3 and 4 (trafficking, possession for the purpose of trafficking and money laundering) is two years in prison for each offence concurrent to each other but consecutive to the sentence for counts #1 and 5.

[15] Thus, the global sentence for the five Newfoundland offences is five years in prison.

### **The Yukon Offences**

[16] I have accepted Mr. Zanolli's guilty plea to the following Yukon offences committed in December 2009, from the 13-count indictment 10-01514:

- Count #2 that he had possession of a firearm while prohibited from doing so by an order made in Victoria, British Columbia, on June 5, 2008, pursuant to s. 109(1) of the *Criminal Code*, contrary to s. 117.01(1) of the *Criminal Code*.
- Count #3 that he extorted the sum of \$11,000 from Wayne Buchanan by threats contrary to s. 346(1) of the *Criminal Code*.

- Count #4 that he discharged a firearm into a place that he knew to be occupied contrary to s. 242.2(1)(a) of the *Criminal Code*. The plea to this offence is accepted by the Crown pursuant to s. 606(4) as an offence arising out of the same transaction as the charge of discharging a handgun with the intent to wound Kevin Ehret on December 24, 2009.
- Count #12 that Mr. Zanolli assaulted Scott Buchanan causing bodily harm on December 26, 2009.
- Count #13 that Mr. Zanolli knowingly uttered a threat by telephone to Wayne Buchanan, the father of Scott Buchanan, to cause the death of Scott Buchanan and his family contrary to s. 264.1(1)(a) of the *Criminal Code*.

[17] The facts admitted for these charges are that Mr. Zanolli appeared in Whitehorse to collect a drug debt apparently owed by the roommate of Scott Buchanan. When the roommate could not be located, Mr. Zanolli wished to collect the debt from Scott Buchanan.

[18] Mr. Zanolli met with Wayne Buchanan, Scott's father and made threats to extort the sum of \$11,000 which Wayne Buchanan paid into the bank account of Mr. Zanolli on December 24, 2009.

[19] The contact between Scott Buchanan and Mr. Zanolli continued and on December 26, 2009, Zanolli assaulted Scott Buchanan and poked or struck him with a knife causing bruises and poke marks, all of which the Crown describes as minor injuries. Apparently, Scott Buchanan had agreed to go with Zanolli but ran away leaving his shoes. This resulted in Zanolli telephoning Wayne Buchanan and threatening to cause the death of Scott Buchanan and his family.

[20] Count #4, the intentional discharge of Zanolli's handgun is apparently unrelated to the Buchanan's but occurred on December 24, 2009, the same day the extortion from Wayne Buchanan took place. The handgun discharge followed a verbal altercation at an apartment in Whitehorse between Kevin Ehret and Zanolli. Zanolli displayed his handgun and fired it into the apartment where Ehret and others were located. The bullet struck Ehret in the forearm and passed through it striking the wall of the apartment. Mr Ehret indicated in his Victim Impact Statement that it was a "pass through" wound leaving some resultant nerve damage. He felt lucky that he was only shot in the wrist and not murdered.

[21] On indictment 10-01512 Count #2, Mr. Zanolli pled guilty to uttering a threat to cause death to members of the Whitehorse Correctional Centre staff on January 14, 2010, and on indictment 10-01513 Count #1, damaging a jail cell by setting a fire on January 18, 2010. The threat was made when Mr. Zanolli had to be removed from one cell to another requiring pepper spray and a team of correctional officers. He threatened to put a contract on them and stab them.

[22] The fire was set in a sink and the cell became smoky. It was put out quickly and the fire department came. Mr. Zanolli explained that the correctional staff had not responded to his request to call his lawyer.

[23] The sentence for count #4, intentionally discharging his handgun under s. 244.2(1)(a), is proposed in the joint sentence submission as five years imprisonment which is the minimum sentence for a first offence of this nature.

[24] The sentence proposed for counts # 2, 3, 12 and 13 in indictment 10-01514, count # 2 in Indictment 10-01512 and count #1 in Indictment 10-01513 is two years on

each offence concurrent to each other and concurrent to the five-year sentence of imprisonment for the discharge of the handgun.

[25] In summary, the joint sentence submission is a 10-year sentence with credit of approximately four years for two years of remand time served in both Newfoundland and the Yukon. The result is that Mr. Zanolli would have approximately six years to serve in prison.

### **Mr. Zanolli's Circumstances**

[26] *Amicus* counsel provided the background on Mr. Zanolli. He indicated that the joint sentence submission is based upon intensive negotiations by Crown and defence counsel in Newfoundland and the Yukon and that the agreement is a Crown initiative as well. Mr. Zanolli has been in maximum security conditions in Newfoundland with no programs or mixing with the general prison population. He had a limited opportunity for exercise.

[27] Mr. Zanolli is 22 years old. He has not completed his high school education and would like to obtain his certification as personal trainer in a gym.

[28] His mother died when he was six years old and he was raised by his father and a stepmother. He was told to leave the family at age 12, after which he had a number of foster placements. However, he spent most of his time in detention between 2003 and 2008 for a variety of youth court offences including uttering threats, possession of stolen property and break in instruments, theft, forcible entry, obstructing a peace officer and aggravated assault. He has a family history of schizophrenia and has apparently used steroids and growth hormones. He has apparently acknowledged that his criminal



lifestyle is not working and his goal is to complete his personal training certification and take business management by correspondence.

[29] He describes his role as a minor one in the criminal organization and not the operating mind.

### **The Sentence**

[30] I am satisfied that a 10-year global sentence for this 22-year old man addresses the issues of public safety and provides the appropriate denunciation and deterrence. He is also taking responsibility for his crimes which are all very serious offences.

[31] The most contentious aspect of the joint sentence submission is the credit of 2 for 1 for his remand time. The practice in the Yukon for a number of years has been to give a credit of 1.5 to 1, which treats the remand inmate the same as a convicted offender who would receive earned remission by statute. In those cases where 1.5 to 1 has been awarded, it has not required good conduct in the remand time. See *R. v. Hockley*, 2010 YKSC 31. However, considering the conduct of Mr. Zanolli in the Whitehorse Correctional Centre, this court would normally award 1 to 1 or 1.5 to 1 credit for remand time.

[32] However, I am persuaded that the joint sentence submission of a 2 for 1 credit should be followed in this case for the following reasons:

1. Mr. Zanolli's remand time has been approximately one year in the Yukon and one year in Newfoundland. The Crown advises that in Newfoundland the 2 for 1 credit for remand time has been the practice up until the effective date of the *Truth in Sentencing Act* on February 22, 2010, which was subsequent to these offences.

2. The remand time in Newfoundland was certainly harsher than in the Whitehorse Correctional Centre.
3. The Crown in Yukon and Newfoundland have been involved in the initiating and crafting of this joint sentence submission. I consider it very significant that the Crown in Yukon has departed from its usually position of opposing a 2 for 1 credit.
4. Mr. Zanolli was seeking a plea arrangement involving guilty pleas since the spring of 2010 so it is not a last minute plea bargain but one that has been thoroughly considered by the Crown and one that saves a considerable amount of court time in both Newfoundland and the Yukon.

[33] I have concluded that this global sentence of 10 years is appropriate with the 2 for 1 credit for remand time for the reasons set out above. Mr. Zanolli's outrageous crime spree in the Yukon has impacted several victims, including officers in the Whitehorse Correctional Centre. This sentence also precludes the need for the numerous victims to testify causing further possible trauma to them.

[34] I am therefore sentencing Mr. Zanolli as follows based upon the joint sentence submission:

1. He is sentenced to three years in prison for each of the Newfoundland counts #1 and 5, in Indictment 11-01507 (the criminal organization offences), concurrent to each other.
2. He is sentenced to two years in prison for each of the Newfoundland counts #2, 3 and 4 in Indictment 11-01507 (trafficking in drugs, possession of drugs for the purpose of trafficking and money laundering), concurrent

to each other and consecutive to the three year sentence, making a total of five years for the Newfoundland offences.

3. He is sentenced to five years in prison on the Yukon count #4 of the Indictment number 10-01514 (the intentional discharge of a firearm into a place knowing it to be occupied).
4. He is sentenced to two years on each of counts #2, 3, 12 and 13 of the Indictment 10-01514 (possession of a firearm while prohibited, extortion, assault causing bodily harm and uttering death threats), count #2 in Indictment 10-01512 (threatening to cause death to members of the Whitehorse Correction Centre staff) and count #1 in Indictment 10-01513 (damaging his jail cell by setting a fire) concurrent to each other and concurrent to the five-year sentence for discharging the firearm making a total of five years for the Yukon offences, all of which is consecutive to the five-year sentence for the Newfoundland offences.
5. He shall receive a 2 for 1 credit for remand time served of 755 days since December 26, 2009, which is credited as serving 1,510 days, which means that of the total sentence of 10 years, he has 2,140 days to serve or approximately 5.86 years remaining.
6. Pursuant to s. 743.6(1.2), he shall have no eligibility for parole until he serves 18 months of the sentence of three years for the criminal organization offences.
7. Pursuant to s. 487.051, I order the taking of the number of samples of bodily substances reasonably required for the purpose of forensic DNA

analysis based upon his conviction for primary designated offences in s. 487.04(a) of the *Criminal Code*.

8. Pursuant to s. 109(1) and (3), I order that Mr. Zanolli is prohibited from possessing any firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition and explosive substance for life.
9. Pursuant to s. 490(1) of the *Criminal Code*, I order the forfeiture of anything seized from Mr. Zanolli in Newfoundland. I also order the forfeiture of the handgun and other items seized in the Yukon except for his personal clothing, jewellery, two suitcases and a backpack, which can be deposited at *amicus* counsel's office.

[35] The victim Crown surcharge will be waived.

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VEALE J.