SUPREME COURT OF YUKON

Citation: *R. v. Keobke,* 2019 YKSC 63

Date: 20191104
S.C. Nos.: 18-01518A
18-01518
T.C. No.: 18-00827A
Registry: Whitehorse

BETWEEN:

HER MAJESTY THE QUEEN

AND

SHELDON LAWRENCE KEOBKE

Before Madam Justice S.M. Duncan

Appearances:
Benjamin Eberhard — Counsel for the Crown
Vincent Larochelle — Counsel for the Defence

REASONS FOR SENTENCE

[1] DUNCAN J. (Oral): This is the sentencing of Sheldon Keobke, after findings of guilt were made on counts 5, 9, and 15 (as amended) on the Indictment; and 1, 9, and 10 on the Information.

[2] On the Indictment, those counts are:

- Count #5: Mr. Keobke was in possession of a loaded restricted firearm without being a holder of a registration certificate for that firearm, contrary to s. 95(1)(b) of the *Criminal Code*;

- Count #9: Mr. Keobke did possess a loaded prohibited firearm, to wit: a short-barrelled shotgun without having an authorization to possess it, contrary to s. 95(2) of the *Criminal Code*; and
- Count #15: (as amended), Mr. Keobke did possess for the purpose of trafficking substances included in Schedule I, to wit: Fentanyl and cocaine, contrary to s. 5(2) of the *Controlled Drugs and Substances Act*.

[3] On the Information the counts are:

- Count #1: Mr. Keobke did possess a substance included in Schedule I of the *Controlled Drugs and Substances Act*, to wit: crack cocaine for the purpose of trafficking, contrary to s. 5(2) of the *Controlled Drugs and Substances Act*;
- Count #9: Mr. Keobke did fail to comply with a condition of his recognizance dated December 7, 2018, which was, in particular, residing with his surety Gerald Keobke and not leaving his residence except in the company of Mr. Gerald Keobke except to attend place of employment and Narcotics Anonymous meetings or other counselling, contrary to s. 145(3) of the *Criminal Code*; and
- Count #10: Mr. Keobke failed to comply with a condition of his recognizance dated December 7, 2018, that he was not to have in his possession a cell phone except at his place of employment and used only for employment purposes, contrary to s. 145(3) of the *Criminal Code*.

[4] Mr. Keobke pled guilty to each of these offences on the first day of his trial before any evidence was called. Two agreed statements of fact — one for the Indictment

counts and one for the Information counts — were filed with the Court, after being signed by Mr. Keobke, counsel for Mr. Keobke, and Crown counsel. They are Exhibits 1 and 2 in this matter.

[5] Crown and defence counsel made joint submissions on sentence.

[6] The Supreme Court of Canada has said that the test on sentencing for departing from a joint submission is whether the proposed sentence would be viewed by reasonable and informed persons as a breakdown in the proper functioning of the justice system. I am also mindful of the case law that emphasizes the need for judicial deference to joint submissions where there have been significant negotiations between counsel and a guilty plea, just as there has been in this case.

[7] I have reviewed the agreed statements of fact in this case and I have also considered the purpose and principles of sentencing, including the fundamental principle that a sentence must be proportionate to the gravity of offence and the degree of responsibility of the offender.

[8] I recognize the principle of restraint in sentencing, which means that the Court should seek the least intrusive sentence and the least quantum, or amount, that will achieve the overall purpose of being an appropriate and just sanction.

[9] In this case, the objectives of denunciation of the unlawful conduct, the deterrence of Mr. Keobke and others from committing similar offences, the rehabilitation of Mr. Keobke, and the promotion of a sense of responsibility in Mr. Keobke are especially relevant.

[10] I have considered the mitigating factors of Mr. Keobke's guilty pleas. Even though it is the first day of trial, his guilty pleas were entered before any evidence was

called and it has saved resources of the Court and the Crown. It is also indicative of Mr. Keobke's remorse, as was noted by the Crown.

[11] Another mitigating factor is Mr. Keobke's drug addiction, as evidenced by Mr. Keobke's overdose occurring in March 2019, described in the agreed statements of fact.

[12] There are aggravating factors that exist here. One is the fact that three of the offences occurred while Mr. Keobke was released on recognizance. Another is that the offence of possession of drugs for the purpose of trafficking — Fentanyl and cocaine, which are serious drugs with harmful and addictive properties — forms part of Mr. Keobke's convictions.

[13] Applying all of these principles and factors, I do accept the joint submission of counsel as appropriate in these circumstances. The total sentence is therefore three years and five months with time for each count as follows.

[14] On the Indictment:

- Count #5: has a mandatory minimum of three years' imprisonment;
- Count #9: under s. 95(2) 12 months concurrent to Count #5; and
- Count #15: (as amended), three years' imprisonment concurrent with Count #5.

[15] Turning to the Information:

- Count #1: five months consecutive to the three years' imprisonment under the previous counts;
- Count #9: 30 days concurrent; and
- Count #10: 30 days concurrent.

[16] Mr. Keobke is to be given credit for remand time spent in custody from June 22, 2018 to December 7, 2018 and from March 14, 2019 to November 4, 2019. This will be enhanced credit at 1.5:1. I accept this enhanced credit based on the joint submissions of counsel and I also note the limits on programming for persons on remand at the Whitehorse Correctional Centre.

[17] The total of the pre-plea custody is 648 days, or 21 months, but defence and Crown counsel have agreed that those 21 months of enhanced credit be reduced to 17 months making Mr. Keobke's sentence two years in addition to his time already served. The reason for this is to allow Mr. Keobke access to available resources in the federal penitentiary system so that he will have more help in fighting his drug addiction and underlying issues.

[18] Part of the joint submission also includes three types of ancillary orders.

[19] The first is an order for a DNA warrant under s. 487.051(3)(b) of the *Criminal Code*, based on Mr. Keobke's conviction on secondary designated offences, the definition of which includes offences prosecuted by Indictment for which a maximum punishment of imprisonment is five years or more. This applies to counts 5, 9, and 15 (as amended) on the Indictment and count 1 on the Information. This is a discretionary order and I have considered Mr. Keobke's previous criminal record and, in particular, his two convictions for possession of controlled substances. I have also considered the nature of the current offences, especially the possession of restricted firearms, and I find it is in the best interests of the administration of justice to make this ancillary order for all of these four counts. The orders will be in effect until executed.

[20] The second ancillary order requested is a prohibition on the possession of firearms under s. 109 of the *Criminal Code*. This order is mandatory on conviction of offences as set out in counts 5, 9, 15 (as amended) of the Indictment and count 1 of the Information. The request is for a 10-year prohibition for each of these counts, and I so order.

[21] The third ancillary order consists of two orders for forfeiture of seized property under s. 490 of the *Criminal Code* and ss. 2 and 16 of the *Controlled Drugs and Substances Act*. Defence has consented to the order as drafted in Court file #18-00827/A, and so I will endorse that order.

[22] Defence has consented to the order drafted in Court file #18-01518A on condition that the following items in Schedule A are removed:

- Under 1: charger cable; empty Telus SIM card; lighter; key ring having four keys attached, one of which was the key to 156 Dalton Trail;
- Under 2: keys to a Dodge vehicle, the domicile at 156 Dalton Trail, and a safe;
- Under 5: $600 Canadian currency;
- Under 6: $3,480 Canadian currency and $95 U.S. currency; and
- Under 17: two packages of testosterone.

[23] On condition that these items are removed, defence has consented to this order. Once I have a clean copy of this order, I will endorse that one as well.

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DUNCAN J.