

Citation: *R. v. Firth*, 2012 YKTC 116

Date: 20121203
Docket: 11-11012
10-00794
10-00794A
11-00276
11-00276A
11-00276B
11-00276C
11-00779
12-00679
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: Her Honour Judge Ruddy

REGINA

v.

JANINE RENATA FIRTH

Appearances:
Eric Marcoux
David Christie

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCING

[1] RUDDY T.C.J (Oral): Janine Firth is before me for sentencing with respect to a number of counts to which she has entered pleas of guilty.

[2] They begin on January 11, 2011, with a theft under. Ms. Firth on that date was

observed to take \$886 worth of DVDs from Wal-Mart without paying. There was a scuffle when she was detained and refused to return to the store. During that scuffle, she kicked the worker from Wal-Mart. I do have a victim impact statement from him which speaks to his frustration and concern about the way that she responded to him as he was only trying to do his job.

[3] On May 20, 2011, the RCMP received a report of an intoxicated female. They located Ms. Firth. They also found her to be in possession of two bags from Wal-Mart with items totalling \$295.59. A video shows her leaving the store without paying. She was on release conditions at the time. When arrested and placed in the police vehicle, she began slamming her head into the window of the police vehicle. The police made numerous efforts to try and calm her but she continued to hit her head. When returned to cells, she struggled with members, and then while in the cell, tried to strangle herself with her T-shirt. Emergency Medical Services was called. Ms. Firth refused to speak to them or to let them treat her.

[4] On July 25, 2011, there was break and enter at the Eagle Plains Lodge, in which slightly over \$2,000 was taken. The investigation led the police to Ms. Firth. There was a match of a footprint to shoes that she was wearing. She later admitted the theft and returned roughly \$1000, indicating that the remaining funds had either been spent or given away.

[5] On February 2, 2012, Ms. Firth and another young woman were in a local restaurant. They left without paying for the food, leaving behind a bag of DVDs. They then stole a taxi and left in the taxi. Again, a number of DVDs and alcohol were located

along with Ms. Firth's purse containing her ID. The RCMP went to her residence, and knocked numerous times; there was no answer, notwithstanding the fact that they could see Ms. Firth and another individual inside the home. Ultimately, the door was opened, and they were advised that Ms. Firth was hiding in the residence. They located her in a back room, under a number of blankets. When the blankets were removed, she pulled out bear spray and attempted to deploy it at the members. They shut the door as the bear spray was being deployed to minimize the spread. Ms. Firth, it appears, was extremely intoxicated at the time. Swearing at members, she refused to put the bear spray down until she was herself affected by it, at which point she threw down the can, and was arrested by the police.

[6] She was able to bring her hands, which were cuffed, around to the front of her while in the rear seat of the police vehicle, and proceeded to wrap the seat belt around her neck in an effort to strangle herself. She was quite agitated and attempted to kick at the Constables and had to be carried into cells. Again, Emergency Medical Services was called.

[7] On September 11, 2012, the most serious of the offences before me, that being the robbery, occurred. Ms. Firth was noted to have been in the Wal-Mart store, and left with merchandise that she had not paid for. She could not be located at that time, but she came back a second time and took a number of additional items. Staff attempted to detain her, and at that point she pulled out bear spray. She sprayed one of the staff members twice, once in the hair and once in the face. A second staff member was sprayed, but it appears that he was hit in the shirt area. She was chased by staff but picked up by someone in a blue SUV. The RCMP attended at her residence and

arrested her. She was again very argumentative and uncooperative. There were threats in relation to taking morphine. She became unresponsive, was taken to the hospital, put in a wheelchair, but resisted efforts to keep her in the chair. Ultimately, she was returned to the detachment, where during the trip, she again tried to strangle herself with the seat belt. At the time of this offence, she was on conditions requiring that she not attend Wal-Mart and that she not have in her possession any weapons.

[8] In addition to all of these substantive offences, she also failed to attend court and failed to report as required on more than one occasion.

[9] She comes before the Court with a lengthy criminal record with some 48 adult convictions and numerous youth convictions as well, beginning at the age of 12. There are offences of violence on her record, numerous offences of theft, two offences of break and enter, and numerous offences for failing to comply with court orders.

[10] I have before me a number of reports, which have been extremely helpful to me. I have also become quite familiar with Ms. Firth over her time in Wellness Court the last year or so. It is not my intention for the purposes of this decision to repeat everything that is in there. I am certain Ms. Firth would prefer I not do so. There is a fair amount of sensitive information in there, but I have considered everything that has been put before me and have found it extremely helpful.

[11] I do want to say, just as a very brief summary, that Ms. Firth does have a very troubled background, and I am satisfied, based on everything that I have read, seen, and heard, that she is a troubled young woman with significant obstacles that she needs to overcome. I am satisfied, as I have been throughout Wellness Court, that she has

the desire to do so. Where she appears to struggle is on the follow through. She has significant difficulty right now complying with conditions, and that has landed her continually back in custody. She has numerous issues relating to past trauma that need to be addressed, and is struggling to be able to get into those areas in the amount of detail that she needs to in order to really be able to deal with them, which suggests to me she's not fully ready yet. It is my hope, however, that she will be in the not too distant future.

[12] Not surprisingly, her history of victimization, for want of a better word, has also led to a lengthy history of self-medication. Ms. Firth struggles with some significant issues in relation to the abuse of substances including prescription drugs, non-prescription drugs, and alcohol, as is evident in most of the offences that are before me and in her record as well. She does, however, as I said, appear to have a real desire to address her issues, and has a certain degree of motivation in the fact that she has three young daughters between the ages of five and ten, whom I accept she loves dearly and wants to be in a position to play a role in their lives. They are currently in care, but it appears that they are in a good placement and they are currently together, which is important to her.

[13] The big question for me, obviously, is what I do today. As indicated, Ms. Firth came into our Community Wellness Court. She did make efforts towards rehabilitation. Most of the work that was done was focused on attempting to get her in a stable situation, and unfortunately, with the resources that we had, we were never quite able to get her to a fully stable situation where she could really start addressing the issues that she needs to tackle. But I must consider the fact that she did make efforts within that

process, albeit with minimal results and significant struggle. I understand, from both counsel, that a penitentiary term is what is being suggested. Ms. Firth appears to have spent some time trying to decide, from her own perspective, where she feels that she can get assistance, and is satisfied that the federal system would have more at this time to offer her to meet her needs than we have here in the Territory. The *Gladue* report also notes that the numerous individuals spoken to all appear to believe that, at this point in time, she may find more assistance within the federal system.

[14] So, I do not have any difficulty in this case, particularly when I note the extensive history of struggling with complying with conditions, in determining that placing Ms. Firth within the federal system is probably in her best interests at this point in time, and quite frankly, is probably appropriate when I consider the number and nature of the charges before me. The big question is how long.

[15] Counsel for Ms. Firth is suggesting a penitentiary term of 30 months, less the five months she spent in remand, for an effective 25 month sentence. Counsel for the Crown is suggesting a sentence in the range of 42 to 48 months, less the 5 months in pretrial custody, a 37 to 43 month range. There are a number of principles that I have to consider in determining where I fall within the range that has been presented to me as between counsel. I am mindful of the fact that, for a number of these offences, in particular the robbery and the assault with a weapon on the police officer, that denunciation and deterrence are and must be the dominant principles, but I am also very mindful of the fact that I am dealing with a young, Aboriginal woman with a troubled history. There is a significant generational history of substance abuse, violence, abuse suffered within the residential school system, which has come down through several

generations on both sides of Ms. Firth's family and there appear to be a number of individuals in her family struggling, not the least of whom is her mother, which had a direct impact on Ms. Firth. So I am very mindful of her Aboriginal heritage and of s. 718.2(e) of the *Criminal Code*.

[16] I am also mindful of the fact that Ms. Firth is young enough that I don't believe it can be said that rehabilitation ought not to be considered at all. The question is, how do we provide her with something that is going to allow her to address the issue she needs to address, that being the substance abuse issues, the past trauma, and what is a more difficult issue for me right now, the question of her mental health. The reason I say "more difficult" is because we do not have a clear diagnosis. It is obvious to me from the behaviours, in particular the numerous instances of attempting to choke herself, as well as the reports from Ms. Bringsli and others, that there are clearly mental health issues. The difficulty is we do not have a diagnosis as to what those are or how best to treat them. I think the best that I can do is consider that they are there, that they need to be addressed, starting with a clear diagnosis. I would certainly make the recommendation to the federal system that there be a psychiatric assessment of Ms. Firth to very clearly assess what her mental health issues are. I am satisfied that the efforts that we have made in the Yukon through Wellness Court have not been sufficient to assist her in getting those issues under control and stabilized in a way that she can tackle the other issues, but I have considered them.

[17] So, those being the principles that I think are appropriate in light of the circumstances of the offences that have been provided to me, the circumstances of Ms. Firth, current and historical, as well as her progress through Wellness Court, I am

satisfied when I consider all of the appropriate and relevant factors that a sentence of three years is appropriate, which would be 36 months. I would reduce that by the five months spent in pretrial custody. Now, I am going to tell you how it is that I arrived at that figure. I did it firstly by considering the global impact of the sentence, but have also broken down the offences individually. So I am going to go through the list.

Unfortunately Madam Clerk, I do not have the Information numbers next to the notes that I made, but I will try and reference it by dates.

[18] The theft under on January 11, 2011, I am satisfied that a sentence of two months is appropriate. The next theft under on May 20, 2011, again, a sentence of two months consecutive. The fail to report, one month consecutive. The break and enter on July 25, 2011, six months consecutive. That brings us to the offences on February 2, 2012. For those offences, the assault on the peace officer with the weapon will be a sentence of six months consecutive to any other sentence being served. The s. 364 will be two months concurrent. The theft of the taxi cab will be six months concurrent, and the fail to abstain would be one month, again, concurrent. So for that group of offences, a total of six months with the remaining offences being concurrently served.

[19] The robbery, which I consider the most serious of the offences before me, I put at 18 months consecutive to any other sentence being served. The two breaches that come with that I would assign two months to each of those, but to be served concurrently, as they arise out of the same fact pattern, and then one month consecutive for the fails to appear. That gets me to 36 months. I reduce that by the five months spent in pretrial custody, which leaves the remaining sentence to be served of 31 months.

[20] In addition, there will be an order, Ms. Firth, that you provide such samples of your blood as are necessary for DNA testing and banking. There will also be a firearms prohibition. Because you have a previous one, that firearms prohibition will be for life. So, for your lifetime you will be prohibited from having in your possession any firearm, ammunition, or explosive substances.

[21] The forfeiture order with respect to the cash that was returned, I have already made but I will confirm, again, that money is to be forfeited to the Crown to be returned by them to the Eagle Plains Lodge.

[22] Now, obviously, given the nature of the sentence, there cannot be any community supervision that follows, but I suspect, Ms. Firth, depending on how well you do within the system, if early release is an option you would then be supervised through the parole system. It is my hope that there is a transition from you being in custody, perhaps to a halfway house through the parole system before you are returned fully to the community, so that you are ready, when you get back out. You will need to work with them, and you will need to work with the supports that you have here to make sure that when you get back here, you have everything in place so that you do not turn around and simply put yourself back in the system. You need to spend this next period of time working hard on your issues, but also preparing for your return.

[23] Is there anything that I have missed?

[24] MR. MARCOUX: The victim surcharge, I guess, will be waived in the circumstances?

[25] THE COURT: I think in the circumstances, I will waive it. She is not in a position to pay. I also will say, that with respect to the issue of restitution, it was not sought --

[26] MR. MARCOUX: No, that is correct.

[27] THE COURT: -- and I suspect it was not sought, again, because there is no ability to pay. So, I simply wanted to make that clear for the decision as well that, given her current means, or lack thereof, it would not be appropriate in my mind to make a restitution order.

[28] MR. MARCOUX: I will also ask Clerk to enter a stay of proceedings on all the remaining counts.

[29] THE COURT: Thank you.

[30] THE CLERK: For full clarification, could I get which Information the DNA is on and the firearm order is on?

[DISCUSSION RE: DNA ORDER]

[31] THE COURT: The s. 109 order applies to the ss. 270.01 and the 344. The DNA will apply to the ss. 344 and 348.

[32] MR. MARCOUX: Okay. Thank you.

[33] MR. CHRISTIE: Thank you, Your Honour.

[34] THE COURT: Ms. Firth, good luck. And Mr. Stevens, thank you very much for the report.

RUDDY T.C.J.