

Citation: *R. v. Lutz*, 2011 YKTC 55

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Registry: Watson Lake
Heard: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: Her Honour Judge Ruddy

REGINA

v.

RYAN WILSON LUTZ

Appearances:
Jennifer Grandy
Lynn MacDiarmid

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCING

[1] RUDDY T.C.J. (Oral): Ryan Lutz is before me for sentencing with respect to a number of counts, including two common assaults, a mischief, an abstain breach, a fail to appear, and a breach of firearms prohibition.

[2] Beginning on December 27, 2010, Mr. Lutz was at a residence in Watson Lake drinking with two other individuals. As he became more intoxicated he was asked to leave the residence but refused to do so, and proceeded to assault those two individuals, the first, Donevon Dickson, by punching him when he was sitting playing a

computer game. When Mr. Dickson responded, Shannon Moore, who was also present, attempted to intervene between the two, and Mr. Lutz punched her in the face as well. He did ultimately leave the residence, but, once outside, used a snow shovel to break the front window of the residence, a bedroom window in the residence, and two windows in a motor vehicle that was parked outside of the residence. He was ultimately located and arrested by police after some efforts to evade. He was released on conditions including a condition requiring him to abstain absolutely from the possession or consumption of alcohol and intoxicating substances.

[3] On March 11, 2011, there was a complaint to the RCMP with respect to an intoxicated male lying in the street, screaming. When they attended in the area they located Mr. Lutz stumbling down the road heavily intoxicated. While he was initially cooperative, he became resistant, attempting to pull away from the RCMP, and some efforts had to be made to get him under control to effect the arrest and take him into custody. He was released on a promise to appear with respect to the breach, but failed to attend court as he was required on April 5, 2011. There was a bench warrant issued, but it was not executed until the final offence, which is the breach of his firearms prohibition, on July 13th of this year.

[4] The police on that date received a complaint from the Donnessey residence that Mr. Lutz was present and suicidal. They located Mr. Lutz in a back bedroom sitting on a bed with a rifle in his hands pointed towards his face. The officer drew his pistol and told him to put the rifle down. It was several minutes before he was persuaded to do so, and over that period of time it was noted that his fingers were moving in and around the trigger mechanism and that he placed the barrel of the gun in his mouth on several

occasions. It did appear to the officers to be, and was established to be, a fully functioning rifle. However, once he did put the weapon down, they were able to determine that it had not, in fact, been loaded at the time.

[5] The situation is concerning, because whether that weapon was loaded or not, the police certainly had loaded firearms and I would also note that there were children present in the home at the time. So we had a potentially dangerous situation, not just with respect to risk to Mr. Lutz, which he seemed to be courting with his behaviour, given the suicidal state that he was in, but also with respect to others in the residence.

[6] Mr. Lutz comes before the Court with a prior related criminal record. It is important to note that Mr. Lutz is only 24 years of age, a member of the Liard First Nation, but he has, since 2003, amassed some 40 convictions, including 11 for related property offences, three for weapons offences, five for offences of violence, and numerous breaches.

[7] It is somewhat easier to understand the record, and indeed the offences before me today, when one is given information with respect to his background and circumstances. He was born and raised in the Watson Lake area. His parents separated when he was 12 years of age, and while his younger siblings went with his mother, he and his older brother were left with the father, who, at that time, was an alcoholic, which left him in a situation where he was essentially left on his own at a very young age, often in situations where there was not enough food to eat. Fortunately, his father is now sober and a positive support.

[8] Mr. Lutz has a Grade 10 education but was asked to leave in Grade 11 due to

behavioural issues. He began abusing alcohol at the age of 15, drugs at the age of 17, and clearly has a significant problem with both drugs and alcohol at this point in time. Indeed he admitted to being under the influence of both alcohol and cocaine at the time the RCMP located him with the firearm.

[9] Also of importance is the fact that Mr. Lutz has been diagnosed with some significant mental health issues. He believes the diagnosis is schizophrenia. It would appear to be consistent with some of the behaviour that is described. In any event, he was diagnosed in 2006 and prescribed medication. The side effects of the medication are such that he goes through periods of time where he stops using and begins abusing other substances, and experiences periods of both depression and hallucinations, which clearly lead to behaviour that brings him before the courts.

[10] He is in a relationship and is the father of a three-year-old child, with a second child expected in October of this year. He indicates that he has an interest in dealing with his addiction. He did make application to Wellness Court, but as he was not eligible to reside at the ARC due to past behaviour, there was not an appropriate placement in Whitehorse that would allow him to participate in that process.

[11] It is clear to me that Mr. Lutz needs significant support and services to address both his mental health issues and also his addiction issues and again, his behavioural issues, which flow from both of those. The Crown is suggesting a sentence of ten to 12 months would be appropriate, less credit for time spent in remand, to be followed by an 18-month probation order. Defence does not take issue with the 18-month probation order, recognizing Mr. Lutz's need for support, supervision and access to services, but

suggests that a sentence in the four to six month range is most appropriate. There was discussion with respect to the principles that are at play in this particular case, which include, not surprisingly, denunciation and deterrence, given the nature of the offences before me, and also protection of the public and separation from the community, to some extent, given his history. Finally, given his young age and his expressed interest in addressing some of his issues, rehabilitation is a factor which also must be considered.

[12] In terms of the offences that are before me, I have considered those principles as well as the principle of totality, and I have also considered the impact of Mr. Lutz's mental health issues. It is never a comfortable thing to essentially warehouse people in jail who have mental health difficulties. It is not necessarily a good fit. In this case, however, there are issues with respect to public safety and other concerns which must be considered.

[13] So considering all of those factors, I am satisfied that the appropriate disposition with respect to sentence is as follows: With respect to each of the three offences arising on December 27, 2010, that being the two common assaults and the mischief, all of which I view quite seriously, particularly in light of Mr. Lutz's history, there will be a sentence of four months on each, which will be served concurrently to each other because they all arise out of the same set of circumstances.

[14] With respect to the abstain breach which followed, I am satisfied that a sentence of 15 days consecutive is appropriate, recognizing both Mr. Lutz's addiction issues and his mental health issues. With respect to the fail to appear, a 30-day consecutive

sentence. Finally, with respect to the breach of the firearms prohibition, there will be a consecutive 60-day sentence.

[15] That is a total sentence of seven and a half months. There is, however, remand time of 30 days. What I am going to do is credit that to the fail to appear, so it will read as one day deemed served by his attendance in court today, and he will be credited with that 30 days in remand, which leaves a remaining six and a half months to be served, to be followed by a probation order of 18 months. I am going to run through what I think are the appropriate conditions, but I am happy to hear from counsel if you have any suggestions with respect to additions or anything that you do not feel is appropriate.

[16] The terms of the probation order, Mr. Lutz, will be:

1. That you keep the peace and be of good behaviour;
2. Appear before the Court when required to do so by the Court;
3. Notify your Probation Officer in advance of any change of name or address, and promptly notify the Probation Officer of any change of employment or occupation;
4. Report to a Probation Officer immediately upon your release from custody and thereafter when and in the manner directed by the Probation Officer;
5. Reside as directed by your Probation Officer, abide by the rules of the residence and not change that residence without the prior written permission of your Probation Officer;
6. Abstain absolutely from the possession or consumption of alcohol and controlled drugs and substances except in accordance with a prescription

- given to you by a qualified medical practitioner;
7. You are not to attend any bar, tavern, off-sales or other commercial premises whose primary purpose is the sale of alcohol;
 8. You are to take such alcohol and drug assessment, counselling or programming as directed by your Probation Officer;
 9. You are to take such psychological assessment, counselling and programming as directed by your Probation Officer;
 10. You are to take such other assessment, counselling and programming as directed by your Probation Officer.
 11. You are to provide your Probation Officer with consents to release information with regard to your participation in any programming or counselling that you have been directed to do pursuant to this order.

[17] That leaves in my mind the question of no contact with respect to Mr. Dickson and Ms. Moore.

[18] MS. GRANDY: That would probably be appropriate. I don't have any information about their particular desires, but.

[19] THE COURT: Is that an issue from his perspective if he is planning to be in Whitehorse in any event?

[20] MS. MACDIARMIND: No, he is indicating it's not an issue. I do recall reading from Mr. Dickson's statement that he was not threatened by Mr. Lutz. He had been a -- they were brothers, according to his terminology, but he has no problem with him. He doesn't intend to be in Watson Lake.

[21] THE COURT: Okay. So there will be a condition that:

12. You have no contact directly or indirectly or communication with Donevon Dickson and Shannon Moore --

Is there any reason that we would want the exception for the Probation Officer to allow it, if that is appropriate?

[22] MS. GRANDY: It probably wouldn't hurt. I'm just thinking in the event -- I mean 18 months after the custodial sentence is a lengthy period of time, and I would hate for Mr. Lutz to get in difficulty, you know, for contact that's, say, initiated by the other two. So I don't think it would harm anything.

[23] THE COURT: I will include it just out of an abundance of caution. So we will add:

-- except with the prior written permission of your Probation Officer in consultation with Victim Services and the Watson Lake RCMP.

It may be that you do not need to have contact with them, and that neither party is interested in having contact, but I will put that in just in case, because it is a long period of time.

[24] Anything else with respect to conditions or concerns with respect to those conditions which I have included? They are primarily counselling and abstain provisions, which I think should be the focus.

[25] MS. MACDIARMID: Nothing further.

[26] MS. GRANDY: I'm just wondering whether a weapons condition might be appropriate. There will be a firearms --

[27] THE COURT: There will be the lifetime firearms prohibition.

[28] MS. GRANDY: -- prohibition anyway, but.

[29] THE COURT: So I think that pretty much covers it all. There will be a lifetime firearms prohibition with respect to s. 109. That is mandatory because of the nature of the offences and also because you had a prior ten-year prohibition. So, for the remainder of your life you will be prohibited from having in your possession any firearms, ammunition or explosive substances.

[30] There was an indication that the Crown was seeking forfeiture of the weapon that flows from the section. My question was do we know whose it is?

[31] MS. GRANDY: The only information that we have about whose it is comes from the complainant, Clara Donnessey. It was in her house, and she indicated it was originally sitting against a wall in the bedroom. There is no paperwork, so it's not registered to anybody, so nobody can legally take it away anyway, but there was some suggestion that it did ostensibly belong to another member of the Donnessey family. Whether that person lives in Watson Lake, I don't know. And whether that makes any difference under s. 491.

[32] THE COURT: Sometimes the order will include a provision for an owner to come forward, but I am not certain in this particular case, whether that is even possible.

[33] MS. GRANDY: So there is a subsection (2). If the Court is satisfied that the lawful owner is not a party to the offence and had no reasonable grounds to believe the thing would or might be used in the commission of an offence you can order it returned, but there is no lawful owner at this point because the weapon is not registered, and because it wasn't stored properly, I don't think it can be said that --

[34] THE COURT: There may be issues with anyone wanting to come forward --

[35] MS. GRANDY: Yes.

[36] THE COURT: -- with respect to claiming it in any event, if that may lead to charges relating to storage.

[37] MS. GRANDY: There is also the 30-day appeal period that people can come forward and --

[38] THE COURT: And the Donnesseys will be advised, in the event they want to relay to whoever wants to claim ownership of the weapon, that there is that 30-day period too?

[39] MS. GRANDY: Yes. In fact, perhaps if it's helpful, I can have an actual -- I mean the back of the information is normally just noted up, but I could have an actual order drafted and we can just forward it so that they have the paperwork.

[40] THE COURT: I think that would be helpful, so that they are aware that there are steps that can be taken. So the firearm which was seized with respect to

the breach of the firearm prohibition will be forfeit to the Crown, pursuant to s. 491(1).

[41] I would waive the victim fine surcharges.

[42] MS. GRANDY: And if the remaining counts can be marked as withdrawn.

[43] THE COURT: Okay.

[44] MS. GRANDY: And then just if Your Honour wouldn't mind clarifying which counts the probation order should attach to.

[45] THE COURT: I would like the probation order attached to the s. 266's, the s. 430, and the s. 117.01, so the substantive offences, basically, although the s. 117.01 is not a substantive offence per se, but the facts surrounding it, I think, are such that it would make sense to attach the probation order to it as well.

RUDDY T.C.J.