

Citation: *R. v. MacFarlane*, 2007 YKTC 35

Date:20070514
Docket: T.C. 06-00297D
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before: His Worship Justice of the Peace Cameron

REGINA

v.

DONNA LEE MACFARLANE

Appearances:
Samantha Oruski
Sue Carr

Counsel for Crown
Counsel for Defence

REASONS FOR JUDGMENT

[1] CAMERON J.P.T.C. (Oral): For clarification purposes, the Court will try to explain how it is that the Court views the circumstances that Ms. MacFarlane is before the Court today. As I understand it, there was a breach allegation that occurred from April 20th, a curfew breach. That allegation resulted in a warrant, I understood. While the police were doing their thing on May 5th, they encountered Ms. MacFarlane and executed that warrant, but in doing so, found that on the 5th you were also in breach of your curfew. Is that correct?

[2] MS. ORUSKI: That is correct.

[3] THE COURT: Okay. So I would say that, technically, what we are dealing with is only one breach, and that would be the breach on the 20th of April, because, essentially, once that happened and the warrant went out, your sentence was suspended, so you were not actually serving your sentence while that warrant is outstanding. It would be hard to breach you again when they find you in breach of that because your sentence was in fact suspended at that point. Once the warrant was executed, then the sentence goes back into play.

[4] In my view, I think the Crown has put it quite correctly, and I just wanted that to be clarified as to why it would be -- it is not that we are looking at two curfew breaches. We are looking really only at one curfew breach because the one on the 5th was not a breach of a condition of your sentence because your sentence was in suspension or in limbo at that point, given the outstanding warrant from before.

[5] With that clarification, what is, I believe, necessary for the Court at this point, is that Ms. MacFarlane admit and/or decide that she wishes to proceed to a hearing in regards to the April 20th curfew breach because I understand that really the only one that she has admitted is the May 5th, which, as I say, because of the circumstances with the outstanding warrant, essentially could not have been a breach of the condition. So if you want to discuss that.

[6] Keeping in mind, Ms. MacFarlane, that you may have been home, but the wording states that failure to present yourself at the door or answer the telephone during random curfew checks will be a presumptive breach of this condition. So even if you are at home, if you do not answer the door or you do not answer the phone so they

do not see you, then you are in breach. Keeping that in mind, it is possible for you to be at home and in fact still be breached under that particular condition.

[7] MS. CARR: My instructions are that Ms. MacFarlane will admit that breach. She does want the Court to know that she was home that night. The reason she knows she was home that night and can recall it, and she would be prepared to give evidence to this, is that April 20th is her ex-husband's birthday, the father of her children; she knows she was home that night. She also knows she took some Ativan -- went to the Sally Anne for dinner, walked home, she took the Ativan and went to sleep.

[8] She has no contest to your comments that she did not answer the door. She will admit that breach. She also wants you to know that she did meet with her conditional sentence supervisor between that date and May 5th.

[9] THE COURT: Based on that then, the Court accepts the admission of the breach of April 20th, Madam Clerk.

[10] Ms. MacFarlane has been in custody from May 5th to today's date. Crown is suggesting that pursuant to s. 742.6(9)(c), there be a 10 to 14 day collapse. Essentially, Ms. MacFarlane was expecting that and was in agreement with that.

[11] In addition, seeking pursuant to s. 742.6(9)(b), some changes in the conditions of Ms. MacFarlane's conditional sentence. Deleting condition number seven and adding in that you:

1. Abstain absolutely from the possession or consumption of alcohol and the non-medical use of drugs, except for those drugs prescribed to you by a qualified medical practitioner.

[12] And also adding that you:

2. Not be found in attendance in any licensed premises whose primary purpose is the sale of liquor or alcohol.

[13] This would mean no lounges, no taverns, no pubs, no off-sales, and no liquor stores. It does not mean licensed dining areas. However, of course you would not be able to be consuming in those areas.

[14] The Court is in agreement that a partial collapse is appropriate with the first offence such as this. Under these circumstances, I will collapse the matter, essentially for 10 days, which by my tally, is the amount of time that you have been in custody since May 5th. I will allow that to be counted from May 5th, Madam Clerk.

[15] Ms. MacFarlane, I want you to understand that between April 20th and May 5th, you were not serving your sentence. So there is still that additional time still on your sentence, all right?

[16] MS. ORUSKI: Actually, I think it is May 3rd. The warrant was not issued until some time --

[17] THE COURT: When was it?

[18] MS. ORUSKI: I do not think the warrant was issued until the 3rd of May.

[19] THE COURT: Is that right?

[20] MS. ORUSKI: Yes.

[21] MS. CARR: She did meet with the conditional sentence supervisor, that was her point, between -- after April 20th three times a week.

[22] THE COURT: So in fact there is only a couple of days that your sentence was essentially suspended, okay. Just one further precaution, Ms. MacFarlane, remember that this is in fact a jail sentence. This is not probation. So the jeopardy you have is that WCC is almost immediately right there, all right?

[23] THE ACCUSED: Yes.

[24] MS. ORUSKI: Just for clarification, you did make those changes to the order?

[25] THE COURT: Yes, those changes have been made. Ms. MacFarlane can be released today with it showing that she served 10 days.