

Citation: *Re Firearms Act and Shepherd*, 2004 YKTC 23

Date: 20040116
Docket: 03-08535
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Judge Faulkner

IN THE MATTER OF THE *FIREARMS ACT*, S.C. 1995, c. 39

AND

EDWARD PHILLIP SHEPHERD
(a.k.a. EDWARD "TED" PHILLIP SHEPHERD)

Appearances:

Peter Chisholm

Edward "Ted" Phillip Sheppard

Appearing for Crown

Appearing on his own behalf

REASONS FOR DECISION

[1] FAUKLNER T.C.J. (Oral): I think I am in a position to deal with Mr. Shepherd's application today. This matter arises out of a refusal by the Firearms Officer to issue a possession only licence to the applicant, Mr. Shepherd.

[2] Mr. Shepherd, as is his right under the relevant law, has made an application to the court to review the decision of the Firearms Officer, in the hopes of overturning that decision and getting the licence that he seeks.

[3] Mr. Shepherd has made a further application that counsel be appointed to represent him for the purposes of his application to review the Firearm Officer's

decision.

[4] The Crown submits, and I agree, that some of the material that usually forms the underpinnings of such an application is not before the court. But in the interest in moving this matter along, I think I am possessed of sufficient information to deal with it.

[5] Mr. Shepherd says, and I accept, that he is on social assistance and does not have the means to hire counsel at this time. However, that is not the end of the matter. There is not in our law any absolute right to state-funded counsel, but counsel may be provided where circumstances are such that the proceedings will be rendered unfair unless the applicant has counsel's assistance.

[6] In this particular case, it must be remembered that the matter is not a matter of Mr. Shepherd's guilt or innocence of any crime. It is not a matter of finding him guilty or not guilty of any criminal offence. It is not a matter wherein he risks receiving any penalty; for example, going to jail or anything like that, which might often be the case in a criminal prosecution. The only penalty, if you will, that he would suffer would be that he would not be able to obtain a firearms licence. That licence, of course, is not, in this country, a right. It is a privilege. So it seems to me that the nature of the proceedings have a big bearing on whether there is a necessity to appoint counsel.

[7] The other matter is the matter of what is at stake in the sense of the importance of the application to Mr. Shepherd. I have not heard any evidence from him at this point. I am assuming he is not, for example, employed in some field where it is necessary for him to have a licence or anything of that nature.

[8] In terms of the complexity of the proceedings, that is another issue that has to

be looked at. It seems to me this proceeding is not a complex one. It is, in fact, a rather summary proceeding and really is a factual matter. There are not any particularly complicated issues of law or, indeed, any issues of law really that arise. The issue is simply whether or not it is desirable, in the interests of the safety of Mr. Shepherd or any other person, that Mr. Shepherd not possess firearms.

[9] That, as I say, is a factual matter, and one which I think Mr. Shepherd can deal with without the assistance of counsel. I note as well that throughout the course of the proceedings so far, both in respect of his oral presentations to the court and with respect to his pleadings he has filed, Mr. Shepherd appears to be a man of reasonable intelligence and is a reasonably articulate man. I think that he will be more able than many people would be to represent himself.

[10] Considering the nature of the proceedings and considering, as I say, that it is not a liberty at stake sort of situation, and considering what I have heard from Mr. Shepherd so far and my impression of his ability to deal with the matter, I have come to the conclusion this is not a proper case in which I would order the provision of state-funded counsel to assist Mr. Shepherd.

[11] MR. SHEPHERD: Your Honour, if I may? What would happen here, like you saying that there is no reason why or like, I need this licence for my work. I am an environmental technician, Your Honour. When I do work in that field, we go out where there are bears. I have done this before, when I was working here in the Yukon, where firearms were supplied to us when we were doing our jobs.

[12] Also the firearm involved in this I have had for 30 years. It was grandfathered to me from my father. It is a keepsake, it is an heirloom to me, regardless whether -- I have used it to supply my family with food when I lived in Old Crow. I would do so again, except without this licence, I can't buy a hunting licence. I can't buy

ammunition for my rifle. This is not a case of you don't need it, we're going to take it. I mean this is my personal property that I have had for, like I said, 30 years. That is an heirloom to me, as well as a tool that I can use to hunt with, to supply food. I mean I live with a Vuntut Gwitchin woman for like going on 12 years. I have an opportunity at any given time to fly to Old Crow and hunt if I so choose to. But I can't do that without this licence.

[13] THE COURT: Mr. Shepherd, opportunity and necessity are two different things. Nothing you have said persuades me to change my mind.

[14] Now in terms of the actual application, are we in a position to fix the date for that?

[15] MR. CHISHOLM: Yes, the date has been fixed, I understand, Your Honour, for February 23, at 2:00 p.m.

[16] THE COURT: Very well.

[17] MR. SHEPHERD: Your Honour, the only other thing I can add here is, as I said, this was brought -- this similar situation was brought before you before and I had legal counsel. I was granted legal counsel at that time. This was stamped by you, for Judge Elizabeth Thomas, it is dated July 1995. This is upon noting the application has withdrawn -- or the applicant has withdrawn his application under s. 103(4) of the *Criminal Code* and within this matter is hereby ordered pursuant to s. 103(7) of the *Criminal Code* any articles seized in relation to this application shall be returned to the respondent, being the person from whom they were seized. They can come, if I do not -- if I lose this appeal, then they can come and seize my heirloom, seize my rifle and if I don't turn it over, then it becomes a criminal matter.

[18] THE COURT: Well, that will have to get sorted out on the, what

was the date again, the 21st?

[19] MR. CHISHOLM: 23rd of February.

[20] THE COURT: 23rd.

[21] MR. SHEPHERD: How do I respond to that, Your Honour? I have to come in front of a judge and just say I don't have representation.

[22] THE COURT: You have to represent yourself.

[23] MR. SHEPHERD: Yes, but according to the Law Line, Robert at the Law Line - I assume he is a lawyer, or he wouldn't be there - under the *Charter of Rights and Freedoms*, these s. 7 and s. 11(d) states that I am allowed to have legal counsel.

[24] THE COURT: There is a difference between being allowed to have it and the state being forced to pay for it. In order for the latter to happen there has to be a case made out which, in the circumstances of this application, you have not been able to do.

[25] MR. SHEPHERD: I don't know how to proceed, this is why I am seeking counsel. I don't know what other steps I can take now.

[26] THE COURT: Well, the step you need to take is to prepare for the application by looking at what allegations the Firearms Officer has made --

[27] MR. SHEPHERD: I have.

[28] THE COURT: -- and doing the best you can to refute them. That is what you need to do. It is really a factual matter.

[29] MR. SHEPHERD: I agree, Your Honour.

[30] THE COURT: It is whether or not they can show that you are a person that shouldn't have firearms. That is basically it.

[31] MR. SHEPHERD: This fellow -- I don't know -- I disagreed -- like I said in the application itself was to go back five years, which I did, and provided the information required. This fellow is going back to 1985 with his allegations. He is also jumping ahead from 1999.

[32] THE COURT: Well, you can certainly make that point to whatever judge hears the application. The judge may or may not agree with you that was not the proper thing to do.

[33] MR. SHEPHERD: I just -- I don't know; like everyone I talk to -- I have talked to the Law Line, the Ombudsman, the courts downstairs here, Law Line, oh, and Ellen, Carlos' wife, Paul Rogan, who used to be representing responsible firearms coalition up here. They are all saying you need counsel. I am just going by people that have gone through this, people that are familiar with this sort of -- these issues here.

[34] THE COURT: There is not much more I can say to you, sir. I might even tell you myself you would be better off with a lawyer but saying that and saying that the state has to pay for it are two different things.

[35] MR. SHEPHERD: The thing is, Your Honour, I went through Legal Aid, I went through an appeal hearing with them, and they are all stating that they won't provide --

[36] THE COURT: Well, I am completely satisfied that you have done

everything you could to try and get counsel. I am not disputing that for a moment.

[37] MR. SHEPHERD: I would like to note that -- or note it that by refusing me, by Legal Services refusing me -- they said because -- that they don't fund this type of thing because it is a Federal matter, rather than Territorial. But the Federal Government provides the Territory with funds to supply them, Legal Aid, with funds. Yet Legal Aid will not supply me with a lawyer with their funding, which they got indirectly through the Federal Government, to defend myself.

[38] THE COURT: Well, Legal Aid has limited funds and they make decisions on how they spend it. You can disagree with their decision but that is their decision to make.

[39] MR. SHEPHERD: This is why I am here, Your Honour.

[40] THE COURT: I understand that.

[41] MR. SHEPHERD: I don't know what else to tell you. I just don't think it is just that I should have to defend myself against a Crown and another government officer without proper counsel. I think that is unjust, Your Honour.

[42] THE COURT: You have made your point and I have made my ruling.

[43] MR. SHEPHERD: Very good, Your Honour.