

COURT OF APPEAL FOR THE YUKON TERRITORY

Citation: ***R. v. Shepherd***
2007 YKCA 6

Date: 20070531
Docket: 05-YU537

Between:

Regina

Respondent

And

**Edward Phillip Shepherd
(a.k.a. Edward "Ted" Phillip Shepherd)**

Appellant

ORAL REASONS FOR JUDGMENT

Before: The Honourable Chief Justice Finch
The Honourable Madam Justice Huddart
The Honourable Mr. Justice Low

M. Cozens

Counsel for the Respondent

E. Shepherd

On his own behalf

Place and Date of Judgment:

Whitehorse, Yukon
May 31, 2007

Oral Reasons by:

The Honourable Chief Justice Finch

Concurred in by:

The Honourable Madam Justice Huddart

The Honourable Mr. Justice Low

Reasons for Judgment of the Honourable Chief Justice Finch:

[1] The main issue on this appeal is whether the Supreme Court of the Yukon Territory erred in its interpretation and application of s. 5 of the *Firearms Act*, S.C. 1005, c. 39. The reasons of Veale J. pronounced 30 March 2005, cited as 2005 YKSC 17, set out a concise history of the case:

[1] Mr. Shepherd applied for a firearms licence on December 30, 2000. On August 19, 2003, the Chief Firearms Officer (CFO) refused to issue Mr. Shepherd a licence. Mr. Shepherd referred his application to the Territorial Court which confirmed the decision of the CFO. Mr. Shepherd appeals to this Court. The main issues are whether it is in the best interests of public safety to issue Mr. Shepherd a licence to possess a firearm and whether the CFO is limited to a five-year period when considering the evidence about Mr. Shepherd.

[2] The broad interpretation of section 5 of the *Firearms Act*, S.C., 1995, c. 39 (the *Act*) given by the CFO would permit him to consider Mr. Shepherd's criminal record dating back to 1982 which included public mischief, two assaults, pointing a firearm and possession of a weapon up to and including the date of Mr. Shepherd's application.

[3] The narrow interpretation given by the territorial court judge would limit the matters to be considered by the CFO to those that arose between August 19, 1998 and the hearing date of August 19, 2003.

[4] Despite the different interpretations of section 5 of the *Act*, both the CFO and the territorial court judge refused to issue Mr. Shepherd a licence to possess a firearm.

[5] I will set out the decision of the CFO, the decision of the territorial court judge, the issues, the law to be applied and my analysis and decision. For the reasons that follow, I decline to issue Mr. Shepherd a licence to possess a firearm and dismiss his appeal.

[2] Mr. Shepherd represents himself on this appeal, and in addition to the factum he filed, he has, today, provided us with a further written submission. We have read and considered all of this material.

[3] Veale J.'s reasons set out in some detail the reasons of the Chief Firearms Officer, and of the Yukon Territorial Court. I do not consider it necessary to repeat those reasons here. Section 5 of the *Firearms Act* provides:

5. (1) A person is not eligible to hold a licence if it is desirable, in the interests of the safety of that or any other person, that the person not possess a firearm, a cross-bow, a prohibited weapon, a restricted weapon, a prohibited device, ammunition or prohibited ammunition.

(2) In determining whether a person is eligible to hold a licence under subsection (1), a chief firearms officer or, on a reference under section 74, a provincial court judge shall have regard to whether the person, within the previous five years,

(a) has been convicted or discharged under section 730 of the *Criminal Code* of

(i) an offence in the commission of which violence against another person was used, threatened or attempted,

(ii) an offence under this Act or Part III of the *Criminal Code*,

(iii) an offence under section 264 of the *Criminal Code* (criminal harassment), or

(iv) an offence relating to the contravention of subsection 5(1) of (2), 6(1) or (2) or 7(1) of the *Controlled Drugs and Substances Act*.

(b) has been treated for a mental illness, whether in a hospital, mental institute, psychiatric clinic or otherwise, and whether or not the person was confined to such a hospital, institute or clinic, that was associated with violence or threatened or attempted violence on the part of the person against any person or;

(c) has history of behaviour that includes violence or threatened or attempted violence on the part of the person against any person.

(3) Notwithstanding subsection (2), in determining whether a non-resident who is eighteen years old or older and by or on behalf of whom an application is made for a sixty-day licence authorizing the non-resident to possess firearms that are neither prohibited firearms nor restricted firearms is eligible to hold a licence under subsection (1), a chief firearms officer or, on a reference under section 74, a provincial court judge may but need not have regard to the criteria described in subsection (2).

1995, c. 39, ss. 5, 137; 1996, c. 19, s. 76.1; 2003 c. 8, s. 10.

[4] Veale J. differed from the Yukon Territorial Court on the interpretation to be given to s. 12 of the *Act*. He said:

[39] The trial judge interpreted section 5(2) of the *Act* as limiting the matters that could be considered under section 5 to those that occurred in the five years running back from the date of hearing, i.e. August 19, 2003.

[40] The trial judge's interpretation is incorrect. Unfortunately, the trial judge did not have the benefit of reading *British Columbia (Chief Firearms Officer) v. Fahlman*, cited above, which was decided on June 23, 2004.

[5] Veale J. then paraphrased para. 25 of *British Columbia (Chief Firearms Officer) v. Fahlman*, 2004 BCCA 343:

I read s. 5 differently. Section 5(1) creates a broad safety standard for eligibility to hold a firearms licence or to continue to hold one following a revocation inquiry. Section 5(2) requires a firearms officer or a Provincial Court judge on a reference to "having regard to" certain conduct by the application or licence holder. I do not read s. 5(2) as being exhaustive of the matters to be considered as affecting safety concerns under s. 5(1). There are many other things a firearms officer or a judge might consider that do not fit into s. 5(2) and that might logically and reasonably give rise to valid safety concerns. I agree with the appellant's submission that there is no statutory obligation to decide the safety issue in favour of the application or licence holder when none of the criteria in s. 5(2) is present; and that

there is no obligation to refuse a licence or order a revocation if one or more of those criteria are present. A plain reading of the section by itself evinces no such intention by Parliament. The firearms officer and the judge are entitled to consider anything about the background or conduct of the applicant or licence holder that is relevant to public safety.

[6] No reason has been put forward today as to why this Court should decline to follow what was said by the B.C. Court of Appeal in *Fahlman*, and I can see no reason. In my opinion, this appeal must fail insofar as it challenges the interpretation of s. 5 adopted by the Yukon Supreme Court.

[7] The appellant also contends that the Supreme Court judge applied the wrong standard of proof under s. 79 of the *Act*. I see no merit in this ground of appeal as the review in the Supreme Court turned on the correct interpretation of s. 5, as does the appeal to this Court.

[8] I can see no error in the reasons of the Supreme Court judge that would permit this Court to interfere in the result.

[9] I would dismiss the appeal

[10] HUDDART J.A.: I agree.

[11] LOW J.A.: I agree.

[12] FINCH C.J.Y.T.: The appeal is dismissed