

Citation: *R. v. Edwards*, 2013 YKTC 89

Date: 20131101
Docket: 12-00470A
13-00061A
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Judge Chisholm

REGINA

v.

DION DELMOR EDWARDS

Appearances:
Noel Sinclair
Melissa Atkinson

Counsel for the Crown
Counsel for defence

REASONS FOR SENTENCING

[1] CHISHOLM T.C.J. (Oral): Mr. Dion Edwards is before the Court having pled guilty to four *Criminal Code* offences: that he did possess a firearm; he did use a firearm in a careless manner; that he did point a firearm at an individual in the community of Pelly Crossing; and that he did have in his possession a firearm, that being a rifle, knowing that it was obtained by the commission in Canada of an offence contrary to s. 96(2) of the *Criminal Code*. He has also entered a guilty plea to a breach of probation charge.

[2] The facts of this matter are relatively straightforward, although they led to a very serious incident. On April 24, 2013, Mr. Edwards was in an advanced state of intoxication. He was, as I say, in the community of Pelly Crossing. He went to a

neighbour's residence, and he took a rifle from the outside of that residence. The victim of the matter followed him as he left the area. There were some words exchanged and Mr. Edwards turned around, pointed the rifle towards the victim, and shot a round. The bullet that he shot hit the ground a number of feet away from the victim.

[3] This incident was reported to the RCMP, and Mr. Edwards was subsequently located by the police. He displayed signs of intoxication. The rifle in question was a .22 calibre.

[4] On April 14, 2013, Mr. Edwards was bound by a Probation Order, and one of the terms of the Order was that at all times when outside of his residence he was to abstain from the possession or consumption of alcohol. On the 14th, he was located in Pelly Crossing by the RCMP; he was grossly intoxicated, and he was held until sober.

[5] The position of the Crown and defence is as follows. The Crown submits that the proper range of sentence for these offences is 12 to 18 months incarceration, plus two years of probation. The defence is of the view that the principles of sentencing may be achieved with a 12 month sentence, which is because of the s. 96(2) charge, the mandatory minimum that he could receive, plus an 18 month period of probation.

[6] The principles of sentencing are set out in s. 718 of the *Criminal Code*, and the fundamental principle is to contribute to respect for the law and the maintenance of a just, peaceful, and safe society. By imposing certain sanctions, and they can include: denouncing unlawful conduct, deterring offenders from committing offences, separating offenders from society where necessary, assisting in rehabilitating offenders, promoting a sense of responsibility in offenders, and acknowledgement of the harm done to

victims in the community. The sentence imposed must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

[7] I am mindful of the fairly recent decision in *R. v. Ipeelee*, 2012 SCC 13, and in this case I am particularly mindful of s. 718.2(e) of the *Criminal Code*, which states that:

... all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of aboriginal offenders...

[8] The circumstances of Mr. Edwards are as follows. He is a 23-year-old individual who is a member of the Selkirk First Nation. I have the benefit of a very comprehensive *Gladue* Report, as well as a Pre-Sentence Report.

[9] Mr. Edwards has a criminal record that commenced in 2008, and since that point in time, he has been consistently before the Court and has serious offences on his adult record, including an offence of violence, namely, assault causing bodily harm.

[10] Mr. Edwards and his family's story is a tragic one. His upbringing was very dysfunctional. His father was never a part of his life, and his mother and maternal grandmother have struggled with significant substance abuse issues. His maternal grandmother attended residential school in the Yukon, where she advises that she endured physical and mental abuse.

[11] Mr. Edwards has had a very close relationship with his great-grandparents, and in fact, as a youth, he lived with them for periods of time. He was devastated by his great-grandmother's death in 2006, and he commenced drinking heavily subsequent to

her passing. He has, at times, cared for his great-grandfather, who as well, unfortunately, turned to alcohol after the death of his wife.

[12] I will turn to the seriousness of this incident. It is a very serious incident, in which the victim of the matter could have been badly hurt or killed, and I have to be mindful of that, in terms of the protection of the public and the factors of denunciation and deterrence. But at the same time, Mr. Edwards is a young man for whom rehabilitation efforts will be very important. He is very fortunate to have the community support that he does have, and that is evidenced by the number of people who have travelled from Pelly Crossing to Whitehorse today for his sentencing hearing, and as well it is evidenced by the letters of support that have been filed on his behalf.

[13] I have also been advised today that the approach of the Northern Tutchone is a rehabilitative one, and I am aware, and it has been mentioned today as well, that there is a treatment camp at Tatlain Lake that has been in operation for a number of years and has assisted a number of community members.

[14] Mr. Edwards has attended alcoholic treatment in the past, but upon completion he soon fell into his bad habits. He has indicated through his counsel that he is ready to be serious about his alcohol abuse and wishes to change his life for the better. He has also indicated his remorse today. The community is in the process of constructing a plan for Mr. Edwards, which includes finding appropriate housing, looking at education and employment, developing a program of counselling and treatment for him, as well as finding ways to support him in terms of his search for sobriety.

[15] Now, part of this plan, I am advised, will get him back onto the land, which he has done in the past, especially when he was much younger. The community's view is that a tight plan will give him sufficient supports, but also hold him accountable for his crime.

[16] In balancing all of that, I will sentence Mr. Edwards to the following: for the s. 92(2) offence, 13 months' incarceration plus two years of probation; for the s. 87(2) offence, four months concurrent; for the s. 86(1) matter, four months concurrent; and with respect to the s. 733.1 matter, one day deemed served.

[17] In terms of the time that he has already spent in custody, he has spent just over six months in custody. It appears that he has done quite well at the Correctional Centre. He has maintained employment, he has participated in some programming, but, because of his custody status, he was ineligible to attend the substance abuse program, even though he would liked to have done so. The Crown agrees in the circumstances that it would be proper to give him credit of 1.5:1. Mr. Edwards will be credited with nine months of pre-trial custody. That will be applied against the s. 96(2) charge, leaving a remnant of four months and two years' probation.

[18] In terms of the probation conditions, the statutory terms are imposed, which are that Mr. Edwards is to:

1. Keep the peace and be of good behaviour, appear before the Court when required to do so by the Court;
2. Notify the Probation Officer in advance of any change of name and address, and promptly notify the Probation Officer of any change of employment or occupation;

3. Remain within the Yukon Territory unless he has written permission from his Probation Officer;
4. Report to a Probation Officer immediately upon his release from custody, and thereafter, when and in the manner directed by the Probation Officer;
5. Reside as approved by the Probation Officer and abide by the rules of the residence, and not change that residence without the prior written permission of his Probation Officer;
6. For the first six months of his Probation, he is to abide by a curfew by remaining within his place of residence between the hours of 9:00 p.m. and 7:00 a.m. daily, except with the prior written permission of his Probation Officer, and except in the presence of a responsible adult, approved in advance by his Probation Officer;
7. He must present at the door or answer the telephone during reasonable hours for curfew checks. Failure to do so will be a presumptive breach of this condition;
8. He must abstain absolutely from the possession or consumption of alcohol;
9. He is not to attend any bar, tavern, off-sales or other commercial premises whose primary purpose is the sale of alcohol;
10. Having given the Court his consent, he is to take such alcohol assessment, counselling and programming as directed by his Probation Officer;

11. Having given the Court his consent, attend and complete a residential treatment program as directed by his Probation Officer;
12. Take psychological assessment, counselling and programming as directed by his Probation Officer, and other counselling and programming as directed by his Probation Officer;
13. Have no contact, directly or indirectly or communication in any way with Josephine Sam and Stephen Carter, except with the prior written permission of his Probation Officer in consultation with Victim Services;
14. Make reasonable efforts to find and maintain suitable employment, and provide his Probation Officer with all necessary details concerning these efforts;
15. Provide his Probation Officer with consent to release information with regard to his participation in any programming, counselling, employment or educational activities that he has been directed to do pursuant to this order.

ANCILLIARY ORDERS

[19] Mr. Edwards, you will be prohibited from possessing any firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition, and explosive substance for a period of 10 years.

[20] There was some discussion with respect to a DNA order and whether it was applicable. It is applicable, pursuant to s. 47.04, as this is a secondary designated

offence. Having considered the situation of Mr. Edwards and of this incident, I decline to impose a DNA Order.

[21] As I say, Mr. Edwards, you are very fortunate to have the support that you do from your community and the members of the community that are here today. I am very hopeful that you are going to take advantage of this opportunity and see this as a crossroads in your life so that you can make better decisions in the future. Good luck.

[22] Anything further, counsel?

[23] MS. ATKINSON: Sorry, for the record, I'm just asking for the Victim Fine Surcharge to be waived, and then the remaining counts.

[24] MR. SINCLAIR: The Crown directs a stay of proceedings on the remaining outstanding counts before the Court.

[25] THE COURT: Thank you. The Victim Fine Surcharge is waived.

CHISHOLM T.C.J.