

Citation: *R. v. Pembleton*, 2019 YKTC 15

Date: 20190201
Docket: 18-10026A
Registry: Watson Lake
Heard: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before His Honour Chief Judge Chisholm

REGINA

v.

CALVIN WAYNE PEMBLETON

Appearances:
Amy Porteous
Malcolm E.J. Campbell

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCE

[1] CHISHOLM C.J. (Oral): Mr. Calvin Pembleton has entered guilty pleas to three offences. Firstly, he has entered a plea to possession for the purpose of trafficking cocaine, contrary to s. 5(2) of the *Controlled Drugs and Substances Act*, S.C. 1996, c. 19 (“CDSA”). Secondly, he has entered a guilty plea to having possessed a firearm knowing that he was not the holder of a licence entitling him to possess such a firearm, contrary to s. 92(3)(a) of the *Criminal Code*. Finally, he has entered a guilty plea to having possessed a prohibited weapon, a taser, contrary to s. 91(3) of the *Criminal Code*.

[2] These matters stem back to a search warrant that was executed by the police in Watson Lake, Yukon, on September 19, 2018. As a result of this search, the police

located a number of items that were seized. Specifically, in relation to the charges that are before the Court and to which Mr. Pembleton has pleaded guilty, there were 47 grams of powdered cocaine; .02 grams of crack cocaine; a .45 Ruger pistol; and, as mentioned, a taser, which is a prohibited weapon.

[3] Mr. Pembleton admits that he was on a lifetime firearms prohibition at the time that he was in possession of the items that I have described.

[4] There was other drug paraphernalia that the police seized, as well as \$3,174.60 in cash, \$1,374.60 of which Mr. Pembleton agrees is property related to the s. 5(2) CDSA charge.

[5] Mr. Pembleton has been in custody for the equivalent of 203 days. It is agreed that this equals six months and three weeks in custody.

[6] Mr. Pembleton, you come before the Court with a persistent and serious criminal record, although, as has been pointed out by Mr. Campbell, since you moved to the Yukon, it appears that you have been able to live a much more prosocial lifestyle. From what I am told, you have completed coursework at Yukon College in the culinary area and you have done very well. You have been employed much of the time that you have been in the Yukon, as I understand it.

[7] That is all positive but, as you know, with offences of this type, the Court has to deter you from doing it again and denounce it for others as well. You understand that illicit drugs not only wreak havoc on members of the community but they also lead to violence in the community, which, unfortunately, we see in the Yukon more and more.

[8] There is a joint submission, which I will accept. It is for a total sentence of 17 months' incarceration.

[9] With respect to Count 2, which is the offence involving the Ruger pistol, there will be a period of custody of six months and three weeks. That will be effectively time served because of the time that you have been in custody.

[10] With respect to Count 5, there will be a period of three months concurrent. Again, that will be a time-served sentence, based on the time that you have been in custody.

[11] With respect to Count 1, possession for the purpose of trafficking cocaine, there will be a sentence of 10 months and 1 week imprisonment. By my calculation, that equals the 17-month total sentence that was sought by counsel.

[12] There are a number of other matters to be dealt with. Pursuant to ss. 109(1)(c) and 109(1)(d) of the *Criminal Code*, I impose a lifetime firearms prohibition. You are prohibited for life from possessing any firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition, and explosive substance.

[13] With respect to the cash that was seized and that is admitted to be proceeds of crime, \$1,374.60 will be forfeited to the Crown.

[14] The drugs that were seized will be forfeited to the Crown, pursuant to s. 27 of the *CDSA*.

[15] The Ruger pistol, the ammunition, and the taser are forfeited, pursuant to s. 491(1)(b) of the *Criminal Code*.

[16] As listed in Exhibit 3 that is before me, a number of other items were seized. Dealing with the first four pages of that exhibit, all items except those which I will enumerate will be forfeited to the Crown as offence-related property. The items that are excepted from this order are: 3, 4, 12, 13, 15, 49, 51, 52, and 63. These can be found on pages 1 to 4.

[17] With respect to page 5, it appears to me that the offence-related property would include items 64, 75, and 80. Those items are forfeited to the Crown. Regarding the items on page 5 in which Mr. Pembleton does not assert any interest, as they are illegal substances, I am ordering them forfeited.

[DISCUSSIONS]

[18] Regarding the other matters on page 5, the police may deal with those as they see fit, as I appreciate, as Mr. Pembleton has just indicated, those are items that were seized from another residence. The police will seek the lawful owners of those items and return the items to them.

[DISCUSSIONS]

[19] Based on Mr. Pembleton's criminal history and the fact that, as has been conceded by the Crown, samples of his DNA are already in the DNA data bank, I have

considered, due to Count 1 being a secondary offence, the necessity to impose a further order. In all of the circumstances, I decline to do so.

CHISHOLM C.J.T.C.