

SUPREME COURT OF YUKON

Citation: *R. v. Sollosy*, 2017 YKSC 12

Date: 20170214
S.C. No.: 15–01508
Registry: Whitehorse

BETWEEN:

HER MAJESTY THE QUEEN

AND

SHELDON PATRICK SOLLOSY

Before Mr. Justice T. Ducharme

Appearances:
David A. McWhinnie
Sheldon Sollosy

Counsel for the Crown
Appearing on his own behalf

REASONS FOR SENTENCE

CIRCUMSTANCES OF THE OFFENCE

[1] DUCHARME J. (Oral): Mr. Sollosy has been convicted by me of one count of arson. During a very difficult time in which his marriage was ending, Mr. Sollosy set fire to the home he shared with his wife and child. He knew they were not at home at the time. Mr. Sollosy had been drinking at the time. The house was destroyed, resulting in a financial loss of approximately \$50,000 to Mr. Sollosy and his ex-wife.

CIRCUMSTANCES OF THE OFFENDER

[2] Mr. Sollosy is 45 years of age. He has a dated and unrelated criminal record. In 1992, he was convicted of obstruct peace officer and received a fine of \$250. In 2003,

he was convicted of impaired driving and was fined \$600 and received a driving prohibition of one year.

[3] Mr. Sollosy is now living in Kamloops, BC, in an RV complex, and no longer has any connection to Dawson City, YT. His marriage to his ex-wife, Ms. Hapalo, has ended and she is living with their daughter in 100 Mile House. Mr. Sollosy last saw his daughter in August of 2016 and he is not aware of any current access order. He is paying \$722 per month in child support.

[4] Mr. Sollosy completed his Grade 12 education in the late 1980s and then subsequently attended NAIT, where he completed a four-year program, and gained certification as a Red Seal Powerline Technician in the year 2000.

[5] Mr. Sollosy has an employment history that is described in the pre-sentence report as "continuous and positive". The report says that collateral contacts describe him as "reliable, hard working, and extremely dedicated to his work".

[6] He is currently working for Highland Powerlines, an Albertan company, where his annual salary is approximately \$120,000 per year. I am told that if he is incarcerated, Mr. Sollosy may have a job waiting for him upon his release.

[7] Mr. Sollosy reports that he is more than \$90,000 in debt and that, given his financial difficulties, he is considering declaring personal bankruptcy.

[8] Mr. Sollosy denies having any problems with drugs or alcohol. He admits to drinking alcohol every day but denies that it causes any problems for him. The pre-sentence report indicates that some collateral contacts have indicated that he drinks a substantial amount of alcohol on a daily basis.

IMPACT ON THE VICTIM

[9] Ms. Hapalo, Mr. Sollosy's ex-wife, declined to prepare a full victim impact statement. However, she did describe past events as "traumatizing" and "life altering" for herself and her daughter.

POSITIONS OF THE CROWN AND DEFENCE

[10] The Crown is seeking a sentence of two years less a day, or two years. Mr. Sollosy is asking for a suspended sentence. Mr. Sollosy spent approximately two weeks in pre-trial custody.

MITIGATING AND AGGRAVATING FACTORS

[11] In determining the just and appropriate sentence, the Court must carefully assess the mitigating and aggravating factors of the individual case.

[12] The following are aggravating factors:

- (a) Mr. Sollosy destroyed his family home.
- (b) Mr. Sollosy has not shown any remorse for this offence. This is not to say that it was an aggravating factor that Mr. Sollosy pleaded not guilty and insisted upon having a trial. He was entitled to do so and I must not consider the conduct of his defence as an aggravating factor on sentence. Indeed, it is worth noting he was acquitted of two of the three charges he was facing.
- (c) The pre-sentence report says that Mr. Sollosy maintains he did not commit this arson. Again, that is his right. However, it is unfortunate that he, in the words of the author of the pre-sentence report, "has a very elaborate theory about how his home became engulfed in flames" and has

suggested that the fire may have been started by his ex-wife. Having heard the evidence at trial, I am satisfied that his ex-wife had nothing to do with this fire. By clinging to these mistaken beliefs, Mr. Sollosy is unable to gain any insight into his own actions and is demonstrating an inability to appreciate the gravity and dangerousness of this offence.

[13] The following are mitigating factors.

- (a) Mr. Sollosy committed this offence at a time of high emotional turmoil when he was disinhibited by alcohol. Based on the rest of his history, I do not consider him to be a risk to re-offend, especially since he is no longer living in the same community as his wife and child.
- (b) Besides his dated criminal record, he has otherwise maintained steady employment and has continued to work, since completing his studies at NAIT.
- (c) While these are more of a lack of aggravating factors than true mitigating factors, I note that:
 1. This arson was not committed for the purposes of financial gain or to injure or kill anyone;
 2. There is no evidence of premeditation or careful advanced planning; and
 3. The fire did not endanger any nearby structures.

THE PURPOSE AND PRINCIPLES OF SENTENCING

[14] The purpose and objectives of sentencing are set out in s. 718 of the *Criminal Code*. Generally speaking, the fundamental purpose of sentencing is to foster respect

for the law and to maintain a just, peaceful, and safe society. Section 718.1 of the *Code* requires the sentence be proportionate to the gravity of the offence and the degree of responsibility of the offender.

[15] Courts attempt to achieve these purposes by imposing just penalties that have one or more of the following objectives:

- s. 718(a) a denouncing unlawful conduct;
- s. 718(b) deterring this offender and others from committing offences;
- s. 781(c) imprisoning offenders, where necessary, to separate them from law-abiding members of society;
- s. 718(d) assisting and rehabilitating offenders and, in appropriate circumstances, encouraging their treatment;
- s. 718 (e) providing reparation for harm done to victims in the community; and
- s. 718(f) promoting in offenders a sense of responsibility for and acknowledgment of the harm they have done to victims and to the community.

[16] Section 718.2 of the *Code* also requires courts take into account other principles, including the following:

- s. 718.2(a)(i) a sentence may be increased or decreased, depending upon the presence of any relevant, aggravating, or mitigating circumstances relating to the offence or the offender;
- s. 718.2(b) a sentence should be similar to those imposed on similar offenders for similar offences committed in similar circumstances;
- s. 718.2(c) where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh;
- s. 718.2(d) an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances; and
- s. 718.2(e) all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders.

[17] Sentencing is an individualized process in which the trial judge has considerable discretion in fashioning a fit sentence. The rationale behind this approach stems from the principle of proportionality, the fundamental principle of sentencing which provides that a sentence must be proportional to the gravity of the offence and the degree of responsibility of the offender. Proportionality requires an examination of the specific circumstances of both the offender and the offence so that the "punishment fits the crime". As a by-product of such an individualized approach, there will be an inevitable variation in sentences imposed for particular crimes.

SENTENCING FOR ARSON CASES

[18] Arson is a serious offence and the maximum possible penalty is 14 years' imprisonment.

[19] The dangers of arson were nicely summarized by Gorman J. in *R. v. Fewer*, [2004] N.J. No. 433 (N.L. Prov. Ct), at para. 36:

... Arson obviously causes property damage, however, the seriousness of this offence extends well beyond any property damage that might occur. Fire is inherently dangerous and difficult to control. Setting fire to a building can have unintended and fatal consequences. There are various individuals in our society that have the unenviable task of being required to respond to fires. They risk their lives every time they do so. Arsonists recklessly place the lives and safety of such individuals at risk. Therefore, the sentences imposed for this offence must reflect this factor.

[20] I agree with Justice Gorman that the primary emphasis in sentencing for arson is deterrence and denunciation.

[21] The Crown has provided me with a number of cases relating to sentencing in arson cases. I have considered them all. I will only mention two of these cases in particular.

[22] In *R. v. Wood*, [1988] B.C.J. No. 1985 (B.C.C.A.), the facts seem to be quite similar to this case and the accused received a sentence of 22 months. However, the value of this case as a sentencing precedent is complicated somewhat by the fact that Mr. Wood failed to appear after his guilty plea for some five years.

[23] In *R. v. Wright*, [2004] O.J. No. 3321, Mr. Wright had pleaded guilty to assaulting his wife and was convicted of arson after trial. He had a previous conviction for assault causing bodily harm of a previous partner. He received a sentence of two years less a day, and three years probation.

THE APPROPRIATE SENTENCE

[24] In my view, the appropriate range for an offence of this nature is from 12 months to 3 years. After anxious and careful consideration, and taking into account the circumstances of both the offence and the offender, I am of the firm view the appropriate sentence for Mr. Sollosy, in this case, is a custodial sentence of one year, to be followed by three years of probation. This is required by the principle of proportionality, as set out in s. 718.1 of the *Criminal Code*, both with respect to the gravity of the offence and the degree of responsibility of the offender.

[25] Mr. Sollosy, I am going to sentence you to a period of incarceration of one year. In addition, I am going to impose a period of probation of three years.

[26] In addition to the statutory terms, you will take such treatment or counselling as directed by your probation officer for anger management and for alcohol abuse; and you are to have no contact with Ms. Hapalo or your daughter, except in accordance with the terms of a family court order.

[27] If these are not statutory terms, you shall:

- Within 48 hours of being released from the custodial portion of your sentence, report to a probation officer and you shall report to that probation officer thereafter as directed by the probation officer.
- When first reporting to the probation officer, inform him/her of your present residential address and phone number, and you shall not change your address or phone number at any time without first providing written notice to your probation officer.
- Notify your probation officer in advance of any change of name or address and promptly notify your probation officer of any change of employment and/or occupation.

[28] There will be a victim surcharge in the amount of \$200 to be paid within six months of your release from custody.

[29] MR. McWHINNIE: There's an outstanding charge under 145, sir. Given the circumstances, I would stay that matter so that it doesn't trouble him further.

[30] THE COURT: The charge under 145 is stayed.

DUCHARME J.