

Citation: *R. v. Casey*, 2009 YKTC 26

Date: 20090316
Docket: 08-00495A
08-00496
08-00496A
08-00496B
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: Her Honour Chief Judge Ruddy

REGINA

v.

DANIEL ROBERT CASEY

Appearances:
Jennifer Grandy
Elaine Cairns

Counsel for Crown
Counsel for Defence

REASONS FOR SENTENCING

[1] RUDDY C.J.T.C. (Oral): Daniel Casey is before me in relation to four counts to which he has entered pleas of guilty.

[2] The first in time is a break and enter in February of 2008. It involved Mr. Casey smashing the front door of a local business and essentially ransacking the place and removing some items, which included some cash, less than \$200 is my understanding, and a \$300 digital camera. Damage to the door was in the amount of \$250.

[3] Mr. Casey has accepted responsibility based on his fingerprints being found on the cash box inside the business. He has no recollection of the particular event. I take

it that was due to his state of intoxication.

[4] The next offences in time arise on the 20th of October, 2008. They include an offence of possession for the purpose of trafficking in marihuana and a keep the peace breach.

[5] Circumstances of the drug charge are that he was observed by the RCMP in a local alley here in Whitehorse with another individual in what appeared to them to be a drug exchange. Mr. Casey was observed with a green bag in his hand with what appeared to be marihuana in it. It was subsequently learned that it did indeed contain 1.7 grams of marihuana. Also in his possession were two additional bags with a total of 1.6 grams and two additional joints at .9 grams. The other individual in the alley advised the police that an agreement had been made with respect to the purchase and sale of marihuana but the transaction had not been completed at the time that the police came upon them.

[6] At the time of that particular offence, Mr. Casey was on probation for some offences that arose in Toronto in between the February and October offences before me today. The probation order included a condition that he keep the peace and be of good behaviour, and he was in breach of that particular condition as a result of his behaviour on the 20th of October, 2008.

[7] Mr. Casey spent some time in custody but was ultimately released on November 24th on a recognizance to allow him to participate in the community wellness court. As a result he was placed on strict conditions, including conditions that he reside at the YARC and abide by a curfew. He was brought back into custody on the 24th of

December, and re-released on January 13th on the same conditions. On February 1st he left the YARC and failed to return for his 10:00 o'clock curfew; however, he did turn himself into the court the next day at which point he indicated to the court his desire to remove himself from the Wellness Court process and proceed to disposition with respect to the matters before me. There is one count of breach of his release conditions for failing to reside at the YARC, which arises on February 1st, and that is the fourth count to which he has entered a plea of guilty today.

[8] He comes before the Court with an extensive criminal record. There are a number of related property offences and a number of related breach offences. I do not believe there are related drug charges, however. The majority of his record, it should be noted, is a youth record. There are some minimal adult offences on the record, but by and large, it is primarily a youth record.

[9] The Crown is suggesting this matter is appropriately resolved by way of a global sentence of 12 months reduced by credit for time in custody. Defence is suggesting something that would be more along the lines of time served. It should be noted in terms of remand time, with appropriate credit, Mr. Casey has done approximately five months. Defence counsel has also noted that he spent some 47 days on restrictive conditions, including conditions that required him to reside at the YARC and submit to random testing, and is suggesting that he receive some credit for that time as well.

[10] I also have before me some additional information in the form of a Gladue Report that was completed for the matters which arose in between the February and October offences. It provides a significant amount of information about Mr. Casey and

his background. It is not my intention to review all of it for the purposes of this sentencing, but I have found it very helpful in providing insight into Mr. Casey and his behaviour.

[11] Some of the highlights, which I do think are important, are that Mr. Casey is now just 20 years of age. He is still a young man. He is of First Nation descent, with his mother being a member of the Sechelt First Nation in British Columbia and his father, I believe, is Métis with a connection to the Cree.

[12] Of particular note to me is the fact that Mr. Casey, raised primarily in his mother's care, had what can only be described as an extremely unfortunate upbringing, marked by a significant degree of exposure to substance abuse and to the drug culture. Particularly disturbing to me, quite frankly, is the fact that his mother actively used and allowed others to actively use both drugs and alcohol in the family home while the children were present. Mr. Casey, not surprisingly, developed problems with both alcohol and drugs at an extremely early age, and these, over time, developed into his becoming involved in the local drug culture and actually becoming involved in dealing to support his habit. Quite sadly, it appears that his mother was instrumental in his education as it relates to the drug culture, and I understand that she continues to have ongoing problems with drugs herself.

[13] As a result of the circumstances in the home which included not just exposure to abuse of substances but also physical abuse as well, Mr. Casey, as I said, began to develop issues with drugs and alcohol and also began, at an early age, to get into trouble which led to him spending almost three of his teenage years in custody as a

result of a number of offences that brought him to the attention of the courts.

[14] In summary, I think it is fair to say that Mr. Casey's background was entirely lacking in stability, supervision and structure. Somewhat surprisingly, when one considers his background, Mr. Casey has nonetheless persevered and obtained his Grade 12 diploma, often pursuing some of his necessary courses while in custody. So he clearly has a commitment to education. He is described by his teacher as someone who is bright and who is resilient and hardworking. On the education side that has certainly paid off for him.

[15] Additional information I have before me supports that interpretation as well. The Gladue Report before me notes the support of Officer Smith, who has worked extensively with Mr. Casey over the years here in Whitehorse. He also has support of family on his father's side, his father's adoptive mother, Mr. Casey's grandmother, who I believe is noted to be a part-time university professor; is that right?

[16] MS. CAIRNS: I think she's semi-retired --

[17] THE COURT: Semi-retired?

[18] MS. CAIRNS: -- from York University.

[19] THE COURT: Okay. She has become actively involved in his life since he turned 16; is that right?

[20] THE ACCUSED: Sixteen, yeah.

[21] THE COURT: Okay. And she is an active supporter of him,

describes him as a caring young man with a great deal of potential to change, notes that he is a hard worker, which she has observed during the time he spent in Toronto, and also notes that he is an individual with goals and a great deal of potential. His father is supportive of him and has indicated that he loves and cares for him and is there for him as well. His father has had similar issues in his life, historically, related to some of his own background. He appears to be doing well now, and his mother, Mr. Casey's grandmother, has remained in support of him. So it would be fair to say that his grandmother, Joy Cohnstaedt, has a fair amount of knowledge and knows whereof she speaks as it relates to individuals that are involved in the criminal justice system, having spent the years that she did supporting first Mr. Casey's father and now him.

[22] He also has the support of an aunt, Ms. Cohnstaedt's daughter, who has provided a letter to the Court which similarly speaks about his potential and affirms the support of the family for him as he attempts to deal with the issues that bring him into conflict with the law.

[23] He is a young man with serious issues as they relate to substance abuse, which are not surprising, given his background, but who also has a great deal of support and potential. The difficulty for him now is how to translate that support and potential into real action as it relates to his struggles to manage his addiction and to pursue his goals. He has steadfastly maintained a goal to attend college with the ultimate plan of becoming a chef. He has done some preliminary work in that regard, which I understand requires him to complete a couple of additional courses before he will be allowed to enter the program. Has he been pursuing those in custody?

[24] THE ACCUSED: Well, I was trying to go to school, but I can't work in the kitchen and do educational programming there at the same time, so I thought I'd just wait and stayed in the kitchen.

[25] THE COURT: Okay, so it is his plan upon his release, then, to pursue the required courses to allow for his entry into college.

[26] In terms of appropriate disposition, I have considered in great detail Mr. Casey's background. I have considered his addiction issues and his plans and goals. I also need to be mindful, as a result of those, of the importance of rehabilitation as it relates to this particular disposition. I am mindful as well of his young age, the fact that he has entered guilty pleas, the fact that he has a limited adult record, the fact that neither of the substantive offences before me are sophisticated in nature; both appeared to be -- the break and enter, relatively impulsive, and the possession for the purpose of trafficking definitely appears to be on the lower end with a view to supporting his own addiction.

[27] Having considered all of that information, however, I also need to be mindful of the fact that the nature of the offences are such that denunciation and deterrence are similarly important factors that need to be incorporated in the sentence that I pass today. In all of the circumstances, I am satisfied that the following sentences are appropriate.

[28] With respect to the break and enter, I have been provided with cases which put a range of about three to six months for similar offenders, that being young individuals with significant property offence records. I am satisfied that with respect to the break

and enter there ought to be a sentence of four months on the facts before me and considering his record. What I am going to do is sentence him on that offence to one day deemed served by his attendance in court today, and ask that the record reflect that I am crediting him for four months of the time that he has spent in remand.

[29] With respect to the breach for failing to reside as directed, I am satisfied that 30 days is appropriate with respect to that matter, so the sentence is going to be one day deemed served by his attendance in court today. I would ask that the record reflect he is being credited for the remaining one month spent in remand.

[30] With respect to the remaining two counts, that being the possession for the purpose of trafficking -- and I want you to understand, Mr. Casey, in all of the sentences that we are talking about today, both the position the Crown has taken, the position your counsel has taken and the position I am taking in terms of ultimate sentence, is considerably lower than what you could have been looking at. The reason that you are not is the circumstances that bring you here, your background, your history, your struggles with addictions, but also the effort that you put into trying the Wellness Court, your recognition that you need help, the support you have; all of those are things that allow us to consider rehabilitation as important as well, so that reduces it. With respect to the remaining counts, I am satisfied that an appropriate disposition for the possession for the purposes of trafficking is one of three months, but what I am going to do is reduce that by one month, because I am going to give you 30 days credit for the time that you spent on strict conditions with respect to the YARC, living in the YARC, submitting to drug testing, participating in the Wellness Court, attending for all of the appointments; I am aware of what it involves in terms of what it requires of you.

So I am going to reduce it by an additional month because of that effort. So the actual sentence will read that it is a two month sentence, but I would ask that the record reflect you are being credited for a month of behaviour equivalent to remand.

[31] With respect to the keep the peace breach, there will be a sentence of one month concurrent. I am satisfied it arises out of the same circumstances and there is no need for it to be consecutive.

[32] By my calculations, that you leave you with an additional two months. That gives you some time to do some planning, to make sure you are stable, to make sure you are clean and make sure that you are talking to probation about where you go once you are out so that you are well prepared for the transition once you go out. You have got to put some thought into that or you are going to slip right back to where you were. So do some planning with them to make sure that you are ready.

[33] In terms of probation to follow, there is a probation order until August of 2010. As Crown pointed out, it does not include a reside clause which would be nice and it does not include an abstain clause. I would not be inclined to add an abstain clause at this point in time because I think Mr. Casey has got a little bit of time and work to do before he becomes stable in dealing with his addiction, so I do not want to set him up. Is it important enough to add another probation order to put him on a reside clause? At this particular point in time, given the fact that he is going to do some additional time in custody that would allow for some planning, some transitional planning, I am going to decline to add any additional probation at this point in time in the hopes that the Toronto order will be sufficient. But again it is my expectation, Mr. Casey, that you

spend some time now, in the remaining time that you have in custody, planning and preparing for your release so that you have the supports in place, you have some of those treatment options set up, so that you can have a better chance of managing your addiction once you are released.

[34] In terms of restitution, I think the Crown has quite fairly taken the position, on the circumstances before me, that it is not realistic, so I would decline to make a restitution order.

[35] Similarly, I would waive the victim fine surcharges for the same reasons.

[36] There does, however, have to be the s. 109, the firearms prohibition.

[37] MS. CAIRNS: No issue.

[38] THE COURT: Okay. By virtue of s. 109, there is a mandatory firearms prohibition, so you are hereby prohibited from having in your possession any firearms, ammunitions or explosive substances for a period of ten years from today's date. Anything further?

[39] MS. GRANDY: If I can ask for the remaining counts to be marked as withdrawn, please?

[40] THE COURT: Okay. Thank you.

RUDDY C.T.C.J.