

Citation: *R. v. Eriksen*, 2012 YKTC 21

Date: 20120217
Docket: 07-00685B
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: Her Honour Judge Ruddy

REGINA

v.

JOHN ABRAHAM ERIKSEN

Appearances:
Ludovic Gouaillier
Melissa Atkinson

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCING

[1] RUDDY T.C.J. (Oral): John Eriksen is before me for sentencing on a single count of having a firearm in his possession contrary to his firearms prohibition. I am not going to recite all of the facts because there is quite a lengthy recitation as to how it was that the police ended up searching the residence that Mr. Eriksen was, at that point in time, staying in. Suffice it to say, they were given permission by the owner. When they searched the residence, in particular, the bedroom in which Mr. Eriksen was staying, they located an unloaded rifle.

[2] There have been a number of documents filed in terms of establishing what was located, including the certificate of the analyst confirming that it was a firearm within the definition, et cetera. Mr. Eriksen does admit for the purposes of this sentencing that he

was in possession of that unloaded firearm that was found in the bedroom, and was in breach of his prohibition.

[3] In terms of disposition, Mr. Eriksen comes before the Court with a prior record. It is a lengthy one. There is a lengthy history of weapons-related offences and offences of violence. Of particular note to me, he has two prior convictions for being in breach of his firearms prohibition, one in 2000 for which he received 34 days, and one in 2005 for which he received seven months plus two years probation.

[4] Crown is suggesting a sentence in the range of 12 to 15 months plus a lifetime firearms prohibition, primarily on the basis of the need for denunciation and deterrence to be met in this case when one considers the prior related record.

[5] Mr. Eriksen is now 37 years of age, a member of the Ross River Dena Council. He has indicated to me, through both his own words and through his counsel and through materials filed, that he has made a significant change in his life over the last couple of years. He has been clean and sober for two and a half years. He is currently on the Methadone program, which requires him to submit to a bi-weekly urinalysis, and he advises that he has had no positive tests as a result of that ongoing testing.

[6] He was able to sustain 18 months of employment with Evergreen Homes, before being taken into custody, and since coming into custody, he has taken steps to secure employment that would start at any time upon his release and continue until March 31st. Subsequent to that, he has done the prerequisites for acceptance into the heavy equipment operator's course, I believe, on Vancouver Island, which would begin

following his employment and which will be funded, I understand, through his First Nation.

[7] While in custody he has also, it appears, been taking numerous courses towards his GED. The papers filed indicate that he has obtained some pretty impressive marks. So it is obvious that Mr. Eriksen has some potential if he continues to make efforts to address his issues to become a much more productive and contributing member of society. I am satisfied that he has made some steps towards that and that he, as he says, is not the same person today that he was when he committed all of the offences between his youth and 2007 that are on his criminal record.

[8] In terms of sentencing range, at the end of the day, I am satisfied what we are talking about here is time served. Crown is suggesting 12 to 15 months; defence is suggesting six months, which is less than what he received on his last offence, on the basis that the actual circumstances of the possession in this case were somewhat more innocuous. But Mr. Eriksen has done some ten months in pre-trial custody, roughly two and a half months of which are available for enhanced credit at one and a half to one, which puts me into the lower range of the Crown's position. Though I am certain Mr. Eriksen is happy to get time served, as defence counsel points out there is also the question of the impact of the disposition as reflected on his record.

[9] In this particular case, I do not find the argument that the circumstances of the previous breach of prohibition were more aggravating to be particularly persuasive, because the reality is it is extremely aggravating, in my mind, for Mr. Eriksen to have two prior breaches of his firearms prohibition. So he knows full well he is not entitled to

have firearms in his possession. I am happy to hear that the facts in this particular case are not more aggravated than it being a repeat offence of something that he knows full well he should not be doing, and by that I mean, we do not have a circumstance here where he was using it in any inappropriate manner, but, nonetheless, he is once again in breach of his firearms prohibition.

[10] When I weigh that off against some of the more positive information that is before me today, which I do consider to be mitigating, the future plans, the Methadone program, the fact that you are clean and sober, the heavy equipment course, the marks that you have managed to achieve in education while at Yukon College, are all positives that speak to the fact that you may well, if you are fortunate and we are fortunate, be going down a road that means we will not see you back, which is what I would like to ultimately see.

[11] When I weigh all of the positive factors in terms of what you have done, and the negative factors in terms of your history, and, in particular, the related offences that cause me particular concern, I am satisfied that a sentence of time served is appropriate. The actual sentence that I would impose will be ten months. So what I am going to do is sentence you to one day deemed served by your attendance in court today, and ask that your record reflect that you are being credited for ten months spent in pre-trial custody. So it can be recorded as a one-to-one credit for the time that he has done. I am satisfied that that is a sufficient step up from your last conviction, but not so much of a step up that it does not take into account the positive steps that you have taken as well.

[12] There will be, however, a lifetime firearms prohibition as a result, and I think that is appropriate. You need to know the numbers go up from here if you are caught with firearms again, even when the circumstances are innocuous. You cannot have them; you cannot be around them. That is one more positive step you need to take, by respecting that prohibition, because it is going to be for life.

[13] I waive the victim fine surcharge, given his current custodial status.

RUDDY T.C.J.