

Citation: *R. v. Friesen*, 2005 YKTC 53

Date: 20050624
Docket: T.C. 05-00012
T.C. 05-00066
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Judge Lilles

Regina

v.

Kellin Richard Friesen

Appearances:
Michael Cozens
Gordon Coffin

Counsel for Crown
Counsel for Defence

REASONS FOR SENTENCING

[1] LILLES T.C.J. (Oral): Dealing with the matter of Kellin Friesen. Kellin Friesen is a 22-year-old First Nations man who has pled guilty to several charges. I will deal with these charges in the order that the Crown dealt with them.

[2] On March 26, 2005, the police received a complaint with respect to a possible impaired driver. They were able to follow the vehicle and observed erratic driving. The vehicle was pulled over. Mr. Friesen was driving. He exhibited symptoms of intoxication. Demands were made and he ultimately gave breath samples with readings of 160-150 milligrams percent. He was kept in cells until sober.

[3] With respect to the over .08 charge, I am imposing a period of incarceration of 5 days. I note that this is a first conviction for Mr. Friesen in the drinking and driving area, although it is very clear that substance abuse is a long term problem for him.

[4] On March 30th, the police responded to a complaint of a break and enter on Range Road. They had dealings with Mr. Friesen's father. As a result of speaking to his father, being invited into the home and subsequent investigations, a number of electronic items were located in his residence and in his backpack. These were items stolen from the Thompson Centre. He was charged with possession of property under \$5,000, an offence contrary to s. 354(1). I have heard the Crown fairly describe potential difficulties with their prosecution in that case. I am imposing a period of incarceration of 30 days only consecutive to the earlier sentence.

[5] On April 23rd, the police received a complaint about a suspicious vehicle. They considered it suspicious because it was damaged. The police investigated, found Mr. Friesen driving the vehicle and also determined that there was an outstanding warrant for him. He was arrested. It was later determined that the vehicle was stolen and damaged. As I said, Mr. Friesen was the driver. He was charged with the offence of possession of stolen property over \$5,000. There are a number of what I would call related property offences in his record. With respect to that matter, I am imposing a period of incarceration of six months consecutive to the earlier sentences.

[6] At this time, April 23rd, he was on a recognizance. There are several terms to that recognizance. One was to reside at the ARC. He admitted that he had not been at the ARC for a week. He accepted responsibility for the offence pursuant to s. 145(3),

breach of recognizance. I am imposing a period of incarceration of 30 days consecutive.

[7] Perhaps to explain these sentences, I should indicate that Mr. Friesen has an extensive criminal record consisting of 26 convictions as a youth, beginning at age 12. These convictions include property offences, some offences of violence and several process offences. His adult record began when he was 18. He has eight convictions for property and drug offences. Two conditional sentences of imprisonment were collapsed. This speaks to the fact that he does have significant difficulty trying to abide by court orders when he is out in the community on his own. He has been sentenced to prison on nine previous occasions.

[8] Counsel have addressed, and I have also heard from Mr. Friesen with respect to his youth. As a youth, he experienced violence in his home. He has been in care of his Band and Family and Children Services, I inferred, for most of the time between age 12 and 18. He spent some time in the Woods Treatment Home in Calgary, as well.

[9] Education: he has limited schooling abbreviated by his early involvement with the criminal justice system. He managed to complete Grade 10 while at various youth facilities and the Whitehorse Correctional Centre. He has attempted college upgrading on several occasions, but dropped out due to drug abuse, specifically as referred to by Mr. Coffin, a particular drug, crack cocaine, which we all know to be quite dangerous, quite addictive and quite destructive.

[10] With respect to his personal and family matters, he has had one serious relationship in the last four years and he has a child aged one and a half years that I

understand is being cared for elsewhere. He admits, his counsel admits, we all understand that Mr. Friesen has a serious drug problem and commits many, most, maybe even almost all of his criminal offences in part to support this addiction.

[11] An earlier psychological assessment placed him in the mid-average intelligence range. His offending behaviour is primarily related to mal-adaptive modeling and anti-social personality traits. While he recognizes that he has a serious addiction, there is some concern about whether or not he is ready to seriously address this problem, and secondly, whether he is capable of doing it. Having heard from him and from his counsel, I am satisfied that he wants to. We cannot do it for you. You have got to do it yourself, and I think you pointed out, Kellin, quite adequately, that there are a lot of resources available. Professional resources, but also people in your community, sober people in your community that you can talk to and who will be glad to talk to you. You have got to reach out to them. Hard to do, particularly for a young adult like you, I know, but it is important that you do that.

[12] The report indicates that until his risk factors are addressed, he is at high risk to offend. His risk factors are alcohol and drugs, minimal education and lack of employment and life skills. These clearly have to be addressed.

[13] In addition to the period of incarceration I have ordered, there will also be a period of probation of 12 months. Before we go there, specifically into those terms, Kellin, you understand obviously that there is going to be a strict term with respect to substance abuse; that is to say, drug abuse, marijuana and hard drugs. And I gathered

from what you said and your counsel said that you would welcome that structure, that it might help you.

[14] I do want to talk to you a little bit about the alcohol -- whether there should be a prohibition against consuming alcohol. I wanted to get your sense of that. My concern is that from where I sit, very often people have a few drinks, and that impairs their judgement and pretty soon they are doing things like hard drugs that they have been successfully resisting when they were sober, and so the alcohol can facilitate or be a bridge to doing the other stuff, the other stupid stuff, because your judgement is impaired, right? At the same time, I recognize that some people have great difficulty in staying away from alcohol because of their addiction, and I am accused sometimes of setting people up. So that is the conundrum that I am in. That is the problem that I am facing and what do you think I should do with the alcohol?

[15] THE ACCUSED: I understand what you are saying how it leads you in and same with the bars. That is where most of it hangs out.

[16] THE COURT: Yes, I know.

[17] THE ACCUSED: I would agree with it.

[18] THE COURT: Okay. I think -- I am persuaded that there should be an alcohol consumption bar. You should know that our probation officers are usually very good about that. We recognize that there will be slips. They recognize there will be slips. It is very important that when you do have a slip that you report it to the probation officer. They will not lay a charge then. If you report it to them and you are back on

track after that, you will find them very supportive. Who have you been dealing with most recently as a probation officer? Was it Colleen Geddes?

[19] THE ACCUSED: Yes.

[20] THE COURT: Okay. And you know she is First Nations and she certainly understands a lot of these issues. I have done a lot of work with her and she is one of our best probation officers, and I know that if you are really open with her, she is going to be very flexible with you.

[21] The terms of the probation order, then, will include the statutory terms:

1. Report within 48 hours of your release to a probation officer and thereafter as and when directed.
2. You are to abstain absolutely from the possession and consumption of alcohol, non-prescribed drugs and other intoxicating substances as outlined in Schedules I to VIII of the *Controlled Drugs and Substances Act*. Kellin, that means basically all the hard, illegal drugs that are set out in that *Act*, and submit to a breath test or urine test upon demand by a peace officer or probation officer who has reason to believe that you have failed to comply with this condition.
3. You are to reside at such place as is approved by the probation officer in advance and not change that residence without first seeking approval from your probation officer with respect to your new residence.

4. You are to take such alcohol and drug assessment, counselling and programming including residential programming as and when directed by your probation officer, and when attending residential programming abide by the rules of that residence.
5. You are to participate in such other assessment, counselling and programming including a psychological assessment and counselling as directed.
6. You are not to attend any bars or taverns or any other premise whose primary purpose is the sale of alcoholic beverages.
7. You are not to attend at any known drug houses.
8. You are not to permit any known drug abusers to remain in your place of residence.
9. You are not to associate with individuals who regularly abuse alcohol or non-prescription drugs. In discussion with your probation officer, you are to identify a list of individuals that you should not associate with and the probation officer will provide you with a copy of that written list.
10. That you use reasonable efforts to improve your schooling, work skills, life skills and pursue other employment opportunities as directed by the probation officer.

[22] THE COURT: Is there anything here that you disagree with? These are all things that you would like to do?

[23] THE ACCUSED: Yes.

[24] THE COURT: Again, I want to repeat to you, it is not possible to do everything overnight. What is important is you develop and maintain a good working relationship with your probation officer, keep in close contact with her and when there are slips or are problems, talk to her about them, tell her about them. She can help you develop strategies to avoid the same thing again. The worse thing you can do is to try to hide your head in the sand, because then I will see you again. Okay? That is the kind of relationship you need to develop. I know there is some programming in the Whitehorse Correctional Centre, but I think you are probably right, probably less in the summer, but try to take advantage of anything you can while you are there.

[25] Victim fine surcharges will be waived. With respect to -- was there a request for a DNA order?

[26] MR. COZENS: I have not made a request for a DNA order on this one.

[27] THE COURT: I did not hear one.

[28] MR. COZENS: But there was a driving prohibition requested on the impaired.

[29] THE COURT: Pursuant to s. 259 of the *Criminal Code*, Mr. Friesen is prohibited from operating a motor vehicle on any road, highway or public place

anywhere in Canada for a period of 12 months. Mr. Friesen, that is the minimum prohibition for drinking and driving.

[30] MR. COZENS: And the probation order, which charges does that attach to?

[31] THE COURT: Well, that is a good question. Let us take a look. Well, there is some custody with respect to all of them. Is there any reason why a probation order cannot attach to them all?

[32] MR. COZENS: No issue.

[33] MR. COFFIN: I don't believe so. And with respect to the custody, is --

[34] THE COURT: Yes, let me speak to the custody. I did not make myself clear and thank you, because what I indicated here was what the appropriate sentence would be, but I am also giving him 120 days credit, which is four months credit and perhaps the easiest way to deal with that, Madam Clerk, is with respect to the s. 354, possession of property over \$5,000, that what you should indicate there is actual sentence of two months' custody, that 68 days in remand custody for which the court gave credit for 120 days, and so that leaves two months of actual time to be served and the other sentences as I have indicated are as indicated. Just for clarification, all sentences are consecutive.

[35] MR. COZENS: There will be stays of proceedings on the remaining Information or charges on the 05-00012 Information and those on the 05-00066 Information.

[36] THE COURT: Thank you.

LILLES T.C.J.