

Citation: *R. v. Hoeschele*, 2009 YKTC 16

Date: 20090204
Docket: 08-00225
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before: His Worship Justice of the Peace Cameron

REGINA

v.

MICAH RAPHAEL HOESCHELE
and TOBIAS GABRIEL HOESCHELE

Appearances:
Jennifer Grandy
Michael Reynolds

Counsel for Crown
Counsel for Defence
(Agent for André Roothman)

REASONS FOR SENTENCING
(Re Micah Raphael Hoeschele)

[1] CAMERON J.P.T.C. (Oral): Mr. Hoeschele has pled guilty to one count under s. 5 of the *Controlled Drugs and Substances Act* on June 5th, 2008.

[2] Mr. Hoeschele was stopped in a routine check stop which was being operated out by the City landfill site. Mr. Hoeschele was driving the vehicle, and occupying the passenger seat was his brother.

[3] As the police approached and the window came down, a strong odour of fresh marihuana emanated from the vehicle. During questioning, Mr. Hoeschele denied that there were any drugs in the vehicle.

[4] The police conducted a search which involved a backpack. In the backpack there was \$2,615, several packages of marihuana, electronic scales, 122 grams of hash, a total of 61 grams of marihuana, a mobile phone, and other packaging materials.

[5] Mr. Hoeschele has no prior criminal history. I am presented with a joint submission from Crown and defence agreeing that a conditional sentence in the four to six month range, followed by eight to 12 months probation, would not be inappropriate.

[6] A pre-sentence report has been tendered and it certainly outlines Mr. Hoeschele generally in a very positive light. He certainly is a good worker, and he certainly is well liked. There are a number of letters of support. It also indicates that Mr. Hoeschele was certainly fully cooperative, and volunteered information in the pre-sentence report that shows that he takes responsibility for his actions in regards to drug trafficking.

[7] It is a slippery slope, Mr. Hoeschele, and it is probably very much to your advantage that you got caught when you did. It is easy money and the draw of easy money is usually what draws people into it in a big way. It is also not always the easiest thing to stop doing. You may be able to because you operated a relatively small operation. It would appear you did not involve a lot of people in it. However, there will ultimately still be people that are going to want to try to drag you back into it. I hope that this particular lesson is going to be well-learned for you.

[8] You will wind up with a record for trafficking and you should recognize that in the future, anything involving trafficking in illicit drugs is likely going to land you serious jail time.

[9] Given the number of mitigating circumstances that are presented, the Court is of the view that the joint submission is appropriate. I am going to sentence you to six months of jail; however, pursuant to s. 742.3, I am going to allow that that jail sentence be served within the community under the following conditions:

1. You must keep the peace and be of good behaviour.
2. You must appear before the court when required to do so by the court.
3. You must report to your conditional sentence supervisor within two working days of today's date and thereafter as often and in the manner directed by your conditional sentence supervisor.
4. You must remain within the jurisdiction of the court. That means you have got to stay in the Yukon unless you have written permission to go outside Yukon, and that may be obtained from the court or from your conditional sentence supervisor.
5. You must notify the court or your supervisor in advance of any change in your name or address and promptly notify the court or your supervisor of any change of employment or occupation.

You must abide by the following conditions during the period of that conditional sentence:

6. You must abstain absolutely from the possession or consumption of alcohol and the non-prescription use of drugs except for drugs that are prescribed to you by a qualified medical practitioner.

[10] You are to abide by a curfew. What are your work days? Do you work five days a week?

[11] THE ACCUSED: Yes.

[12] THE COURT: Weekends off?

[13] THE ACCUSED: It just depends on, like, sometimes there's overtime, but mostly it's just five days a week.

[14] THE COURT: Okay.

7. Well, work days, your curfew is to be 7:00 p.m. to 7:00 a.m. except with the prior written permission of the bail supervisor (sic). Do not be out otherwise. On non-work days your curfew is 2:00 p.m. to 10:00 a.m.

[15] So the first thing you are going to want to do is get your work schedule to your conditional sentence supervisor, so that they can say, "Okay, here's your permission slips for these days to be out." If something comes up where on a non-work day you get called in or something, you have got to somehow get a hold of your conditional sentence supervisor and get permission; otherwise you cannot go unless you can fit it in to the 2:00 p.m. to 10:00 a.m. (sic). So there is a four-hour period on your non-work days that you are not confined to your residence.

8. You are to provide your conditional sentence supervisor with your residence and not change that residence without the prior approval of your conditional sentence supervisor.
9. You are not to be in possession of any cell phones except as permitted by your conditional sentence supervisor.

[16] Now, for clarification purposes, this is in fact a jail sentence. It means that you must adhere to every letter of the conditions. Failure to do so will result in an automatic warrant going out for your arrest and the possibility that you could find the remainder of that sentence collapsed, and you would be serving it then at WCC.

[17] Upon the completion of your conditional sentence you will be placed on probation. You will be placed on probation for a period of eight months. The terms and conditions of that probation are going to be as follows. What will likely happen for you is that your probation officer will be the same individual that was your conditional sentence supervisor, so you are not likely to run into a complication there. It should be a fairly smooth transition.

1. You must keep the peace and be of good behaviour.
2. You must appear before the court when required to do so by the court.
3. You must notify your probation officer in advance of any change in your name or address, and promptly notify your probation officer of any change of employment or occupation.

4. You are to report to a probation officer immediately upon the finishing and completion of your conditional sentence and thereafter as often and in the manner directed.
5. You must continue to reside as directed by your probation officer --

Now the indication is 7 Baranov. Is that your residence?

[18] THE ACCUSED: Six, actually.

[19] THE COURT: Number six? Okay, the residence will be number 6 Baranov, Whitehorse, Yukon.

-- or as otherwise directed by your probation officer and not change that residence without the prior written permission of your probation officer.

In the probation portion there will not be a curfew placed on you.

6. You must take such alcohol and/or drug assessment, counselling or programming as directed by your probation officer.
7. You are to provide your probation officer with consents to release information with regards to your participation in any programming, counselling, employment or educational activities that you have been directed to do so pursuant to this probation order.
8. You are to perform 50 hours of community work service as directed by your probation officer and complete those community work service hours within the first six months of your probation order.

[20] Are there any of the conditions, then, that you don't understand, Mr. Hoeschele?

[21] THE ACCUSED: No.

[22] THE COURT: You understand them all? You understand that once you are on probation, that the probation officer then has some leeway as to whether or not they wish to breach you. But before then, when you are on the jail sentence, they do not have any leeway. So you make sure if they say, "Get here at four o'clock," that you are there at four o'clock, that type of thing.

[23] There will be a forfeiture of the following articles: \$2,615 in Canadian currency, the mobile telephone, drug packaging materials including the scale and the baggies, and of course the drugs are forfeit.

[24] In addition there will be a firearms prohibition. Now I understand the prohibition, as it is attached here, has a minimum period, is that correct?

[25] MS. GRANDY: Yes, for the first offence it's ten years.

[26] THE COURT: So you are prohibited for a period of ten years from owning or possessing any firearms, ammunition, explosive devices or weapons.

[27] MS. GRANDY: Your Worship, could I ask one question about the curfew on the conditional sentence? Just perhaps for clarity, would it make sense to have a condition that he provide the conditional sentence supervisor with his schedule so that we're aware of which days are work days and which days are non-work days?

[28] THE COURT: It would make sense. That will be a condition, then, of the conditional sentence. Any objections?

[29] MR. REYNOLDS: Yes, if we're going to go that far, we may as well provide the work schedule and perhaps education schedule to tie it all up.

[30] THE COURT: Well, specifically, I think the work schedule is important to outline because it is dependent on whether or not it is a work day. In regards to education schedule, of course, he can get the written permission to be out for any educational ventures. So, yes, one of the conditions of your conditional sentence is that you must, when you first meet with your conditional sentence supervisor, provide him or her with a schedule of your regular schedule workdays. As I say, if it turns out that you have to work different days, then you must get that changed very quickly with the conditional sentence supervisor. Anything else?

[31] MS. GRANDY: I would just -- sorry, Madam Clerk, do you have something else?

[32] THE COURT: The curfew should have a knock-and-talk clause. So that would mean that for the period of time that you are under curfew, that you must be able to present yourself in person at the door or on telephone for random curfew checks that may take place.

[33] MS. GRANDY: And in light of the situation, I would ask for the Information against Mr. Tobias Hoeschele to be withdrawn, please.

[34] THE COURT: The charges against Tobias Hoeschele are withdrawn.

[35] The victim fine surcharge would be applied, and it would be a \$50 surcharge.
How long would you need to come up with \$50?

[36] THE ACCUSED: I have it actually right now.

[37] THE COURT: It will be payable forthwith, then. The Clerk
has mentioned in an indictable charge the surcharge is higher? I was not aware of that.

[38] MS. GRANDY: I think that it is, but I honestly couldn't tell you
what it is.

[39] THE COURT: Well, we'll make it fifty bucks.

[40] MS. GRANDY: I think you can make it up.

[41] THE COURT: It is payable forthwith, so that can be paid here
at the Registry when you are signing your documents.

CAMERON J.P.T.C.