

Citation: *R. v. McLeod*, 2007 YKTC 39

Date: 20070522
Docket: T.C. 06-00496
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: Her Honour Judge Ruddy

REGINA

v.

GRANT EDWIN MCLEOD

Appearances:
Ludovic Gouaillier
Gordon Coffin

Counsel for the Crown
Counsel for the Defendant

REASONS FOR SENTENCING

[1] RUDDY T.C.J. (Oral): Grant McLeod is before me in relation to numerous charges. Six for, essentially, shoplifting offences, one for being in possession of stolen property, and one for breaching the terms of his release. The offences span several months, starting in early October of 2006 and ending on March 22nd of 2007 when he was taken into custody, and he has been in custody ever since.

[2] The offences break down as follows. On the 13th of October he was caught trying to steal a \$90 DVD player from Superstore. On the 6th of October he was caught attempting to return a vest which videotape indicated he had earlier been seen stealing from the Sports lodge. On the 12th of October he tried to steal a heater from Canadian

Tire. Again, he was found on tape. Shortly thereafter, an offence for which he has not entered a plea, but for which the facts have been admitted, he was noted to steal a number of items including DVD players and a number of tools from WalMart. He was released on conditions, one of which was that he not attend at WalMart. On the 1st of December he was found at WalMart trying to steal a hockey bag and a vacuum. On the 18th of January he was found in possession of \$65 of unpaid merchandise, which he was attempting to steal from Shoppers Drug Mart. On the 14th of January, investigation of a break and enter led to his having noted to be in possession of stolen property, particularly two chainsaw motors, which he apparently sold to another individual, knowing those to be stolen. And last, and perhaps the most distasteful of the offences before me, he was found to have stolen a donation box from Tim Hortons, into which, obviously, members of the community had been contributing to a specialized charity.

[3] Mr. McLeod, not surprisingly, comes before the Court with a lengthy related record. It dates back to 1987, and except for a stretch of some two and a half to three years in the late 90s, early 2000s, where he appears to have been gainfully employed and able to manage both his addiction and impulse to steal, his record is full of related offences; frauds, thefts, process offences.

[4] I have before me a pre-sentence report, which I must say is not particularly helpful in this particular case. I do not think anybody has found it to be particularly helpful. It is very limited in the information that it provides, and most notably is inaccurate, as it relates to probably the most obvious piece of information, which everybody has noted in this particular file, that being the fact that Mr. McLeod clearly has some serious drug addiction problems and is stealing, essentially, to support his

habit. That is unclear in the report. Now whether Mr. McLeod minimized that in his discussions with Mr. Netzel or whether that was not fully canvassed, I simply cannot say, but I am left with a pre-sentence report which does not particularly add much to these proceedings today.

[5] I am satisfied, based on the representations of counsel and facts before me, that this is one of those classic situations in which Mr. McLeod is stealing quite compulsively to support a habit.

[6] Crown has suggested that in response, it is necessary that there be primarily a deterrent sentence, and is suggesting a period of 12 months, less credit for time spent in remand. They are also suggesting that an 18 month probation order be added to that for the purposes of what is described to me as perhaps enforced rehabilitation.

[7] Mr. Coffin is suggesting that there may well be some hope for Mr. McLeod's rehabilitation, given that he has had at least one period in his life where he was able to work and able to manage his issues in a way that he did not present as a problem.

[8] As I indicated to counsel, my view was that there were really two ways that I could go with this. One would be a higher jail term that would simply be a matter of responding to his behaviour by separating him from the public for as long as I am reasonably able to do. The other would be to somewhat reduce that jail term in favour of attaching a probation order that would be rehabilitative in nature in the hopes that Mr. McLeod has some long-term hope of dealing with his issues.

[9] The primary question for me in assessing which way is the more appropriate to go is, quite frankly, Mr. McLeod's motivation to address his issues. He was asked about that in court. He did indicate that his enforced sobriety over the last couple of months has resulted in him feeling somewhat better, but when I asked him about his plans, he did not speak in any way, shape, or form about wanting to seek help or assistance for his addiction. He really indicated that his primary goal was to get out of jail earlier so that he could work through the seasonal work season.

[10] This suggests to me that Mr. McLeod's current focus is not on rehabilitation, that he does not have any significant motivation to address his issues. That being the case, I am of the view that the appropriate focus for this disposition is a deterrent and denunciatory one, that the use of extensive and lengthy probation would not, in this particular case, be an appropriate use of probation resources as this individual is not particularly motivated to address his underlying problems. I do feel that the sentence needs to be a deterrent and lengthy one so that the community is given a reprieve from - particularly the business community - is given a reprieve from Mr. McLeod and his actions, and he is removed from society and from the temptation of stealing for as long as I can reasonably do in the circumstances.

[11] Counsel are not particularly far apart in what that appropriate sentence would be. I am going to go somewhat in the higher end of that range for the reasons that I have discussed, namely because I do not feel this is a case where it makes sense to make use of the rehabilitative resources that are out there. So I am satisfied that, while I would not add the requested lengthy probation term at the end, the Crown's range in terms of sentence is an appropriate one. As I said, if I felt there was some motivation, I

would reduce it by several months and add a lengthy period of probation, but I do not feel it is appropriate to do both.

[12] So there will be a higher jail term. It will be a period of 12 months less the credit for remand. He has done some two months in remand, for which he will be credited at one and half to one, for a total of three months, which will leave him nine remaining months.

[13] The most difficult thing for me is the breakdown, quite frankly. Okay. If counsel could take notes to make sure that I have added this up correctly? I am going to break it down as follows. Madam Clerk, I will do it by date.

[14] For the October 13th theft there will be a sentence of one day, deemed served by his attendance in court today, and I would ask that the record reflect that he is being credited for one month of his time in remand.

[15] For the theft under on October 6th, similarly there will be a sentence of one day, deemed served by his attendance in court today, and the record will reflect that he is being credited for two months in remand.

[16] With respect to the offence date October 12th, again a theft under, there will be a sentence of one month in custody, consecutive to any other sentence that he is serving.

[17] For the December 1st theft under there will be a sentence of two months, consecutive to any sentence that he is serving. For the breach that relates to that charge, there will be a sentence of two months concurrent.

[18] For the offence date January 18th, again a theft under, there will be a sentence of two months consecutive. For the possession of stolen property on January 14th, the s. 354 offence, there will a sentence of two months as well, but for the purposes of totality, I am going to make that concurrent.

[19] For the remaining offence, which in my view, is a significantly aggravated one, that being the donation box from Tim Hortons, there will be a sentence of four months that will be consecutive to any other sentence being served.

[20] My addition with respect to those, in terms of the consecutive and concurrent assignments of those, is that that adds up to nine months. Please let me know if anybody gets a different end result.

[21] Now I am going to add a short period of probation only for supervisory purposes, not for rehabilitative ones. It is going to be for a period only of six months in the hopes that some supervision can ensure that his transition back into the community will perhaps be a more productive one. Terms and conditions will be that he keep the peace and be of good behaviour, appear before the Court when required to do so by the Court, notify the probation officer in advance of any change of name or address, and promptly notify the probation officer of any change of employment or occupation, report to a probation officer immediately upon your release from custody, and thereafter when and in the manner directed by the probation officer, reside as approved by your probation officer, and not change that residence without the prior written permission of your probation officer.

[22] The only other thing that I want to add is that he participate in the intensive supervision program if so directed by the probation officer. So primarily I want him monitored, as opposed to provided programming, because he has not given me any indication that he has any real motivation to address his drug addiction problem.

[23] Okay. So Mr. McLeod, you have an additional nine months in jail, and then six months of probation keeping tabs on you. My hope is that over the next nine months you spend some time seriously thinking about reaching out to some of the available resources and thinking about the way you want to live the rest of your life, because it is only going to be a revolving door of you coming back again and again and again if you do not start thinking about dealing with your addictions. So I wish you good luck with that.

[24] I am going to waive the victim fine surcharge in the circumstances.

RUDDY T.C.J.