

Citation: *R. v. Moses*, 2013 YKTC 10

Date: 20130204
Docket: 12-00753
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Judge Luther

REGINA

v.

PHILLIP JAMES MOSES

Appearances:

Jennifer Grandy
Lynn MacDiarmid

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCING

[1] LUTHER T.C.J. (Oral): This is another difficult case because the circumstances of the background of Mr. Moses are so tragic. He has been subjected to abuse, disruptions in family, family deaths, and so on; the list just goes on and on. When one realizes the abuse that he was put through as a young man, certainly that causes a lot of concern; however, the time has to come when a person like Mr. Moses, and unfortunately there are too many of the First Nations people who have been mistreated in this way, but the time has to come when they must stop victimizing others.

[2] Now, in this case there were threats to the members of the First Nation office; there were threats to the RCMP; there was substantial drinking going on by both Mr. Moses and his cousin; and there was certainly a lot of anger that Mr. Moses was voicing

in his dialogue with the person that he saw as his uncle. Fortunately, we had a level-headed man in the community who was willing to take the time to try to calm Mr. Moses down. We do not know what might have happened. I accept the Crown's submission that Mr. Moses would not have been aware that the bolt for the firearm was at his cousin's house, and I am really happy that it was.

[3] This is one of the longer records that I have seen, and, sure, *R. v. Ipeelee* and *R. v. Ladue*, 2012 SCC 13, apply here. Like I said in an earlier case today, if this was a non-First Nations individual, we would be looking at a lengthy period of federal time, but we do have to take these cases into account.

[4] Having said that, given the lengthy record, this clearly has to be met with a custodial sentence, but given the background of Mr. Moses and all that he has been through, and given the fact that no one was physically harmed in this particular case, it would be clearly wrong to impose a federal sentence in this case, and the Crown wisely is not seeking that. The principles of the *Criminal Code* are well set out in terms of sentence in ss. 718, 718.2, and with particular reference to 718.2(e).

[5] The report by psychologist Stewart has been quite helpful, and it just shows the extent of the uphill struggle that Mr. Moses is facing. Yes, some progress has been made but substantially more progress needs to be made. In the middle of the last paragraph of page 11 [as read in]:

It will be important for treatment to address themes of addiction, stress management, self-calming skills, assertiveness, self-defeating avoidant, dependent and negativistic patterns of thinking and acting, and his history of trauma, because it would be even more tragic, upon his release, if he were to get in trouble again and

get drinking, if he were to enter into possession of a firearm and actually cause it to go off. That would just add to all the feelings of guilt and unworthiness that he is presently wrestling with.

[6] Mr. Moses has made some efforts to make worthwhile his time in the correctional centre. He could have done a bit more, but having said that, I think it would be wrong to just credit at one to one, and I will credit at 1.3 to one, and that would give him 165 days for the 127 days that he has been in custody prior to the sentence hearing.

[7] Considering all of this, the Court feels that the sentence should be at a period of 20 months, which, in my calculations, would come to approximately 608 days, less the 165 that we are giving him credit for. So the total sentence then will be 443 days, which is just shy of 15 months.

[8] There will be a s. 109 order for life; s. 491, forfeiture order of the weapon. There will be no victim surcharge. There will be no DNA order; it is already on file.

[9] In terms of probation; I will impose a period of probation for one year, with the statutory conditions:

1. Reporting to the Probation Officer immediately upon his release from custody;
2. An abstention clause for a limited period of three months. (I feel that that is a goal that can be attained.)
3. For the first three months, abstain absolutely from the possession or consumption of alcohol and controlled drugs and substances, except in accordance with a prescription given to you by a qualified medical

practitioner;

4. Also, for the first three months, not attend any bar, tavern, off-sales or other commercial premises whose primary purpose is the sale of alcohol;
5. To take such alcohol and drug assessment, counselling or programming as directed by the Probation Officer;
6. And having given the Court your consent, attend and complete a residential treatment program as directed by the Probation Officer;
7. To take such psychological assessment, counselling and programming as directed by your Probation Officer;
8. To provide the Probation Officer with consents to release information with regard to your participation in any programming, counselling, employment or educational activities that you have been directed to do pursuant to this probation order;

[10] The psychologist made an astute comment with regard to the fact that Mr. Moses has been institutionalized for much of his adult life and would do well in a camp setting.

I would impose a further condition:

9. That he make reasonable efforts to find and maintain suitable employment and provide your Probation Officer with all necessary details concerning your efforts.

Maybe if the mining ramps into high gear by the time Mr. Moses is released, he may be successful in obtaining a worthwhile, well-paying position in one of these camps. If that goes well for a significant period of time that would definitely assist in all the

psychological issues that the writer of the report spoke about.

[11] Are there any questions for the Crown?

[12] MS. GRANDY: Just with respect to whether you wanted the sentence to be apportioned in any particular way with the four counts?

[13] THE COURT: Yes, let us address that. So my understanding from the *Criminal Code* is that Count 1 would have a maximum of ten years; Count 5, I believe, has a maximum of ten years; Count 7 has the maximum of five years, and Count 9 a maximum of two years. So let us say that the sentence of 20 months will be on Count 1, and 20 months concurrent on Count 5; 20 months concurrent on Count 7, and eight months concurrent on Count 9. The 165 days of credit will go on Counts 1, 5, and 7. The net result from that should be that the sentence will still come out at approximately 443 days.

[14] Anything else for the Crown?

[15] MS. GRANDY: The remaining counts simply marked as withdrawn, please.

[16] THE COURT: Okay. Ms. MacDiarmid, any questions here?

[17] MS. MACDIARMID: No.

[18] THE COURT: Now, Mr. Moses, will you stand, please. I am really hoping that, given your age, and given the things that you are starting to discover about yourself, that you will be able to, at this point – I know it is a little bit late in the game –

but I do hope that at this point you will be able to turn it around. Your best option, I do think, is if you can get a job in a mining camp, because you are used to being in a confined setting. It pays well and it will give you a chance to feel better about yourself. I do wish you well in your pursuit for justice in those civil cases, as well.

LUTHER T.C.J.