

Citation: *R. v. Trumbull*, 2005 YKTC 73

Date: 20051028
Docket: T.C. 05-00246A
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: Her Honour Judge Ruddy

REGINA

v.

CLINTON EDWARD TRUMBULL

Appearances:
Noel Sinclair
Malcolm Campbell

Counsel for Crown
Counsel for Defence

REASONS FOR SENTENCING

[1] RUDDY T.C.J. (Oral): Clinton Edward Trumbull is before me having entered pleas of guilty in relation to offences contrary to s. 342, s. 259, s. 344, s. 145(1)(a), all of the *Criminal Code*, and s. 41 of the *Controlled Drugs and Substances Act*.

[2] The facts, beginning with the s. 342(1)(c) offence and the s. 259(4) offence, are that on the 15th of July, 2005, Mr. Trumbull, who was at that time an employee of Northern Metallic Sales, took, without permission, two credit cards which belonged to the business, subsequently used those credit cards, making several purchases in the total amount of \$470.

[3] In the course of investigating those missing credit cards, Mr. Trumbull was located by the RCMP driving a vehicle. At that particular point in time he was under a two year driving prohibition in relation to an impaired driving conviction from 2004.

[4] At the time that he was arrested, the RCMP noted a bag with a number of syringes in the vehicle. Mr. Trumbull was cuffed and searched. To his credit, he advised the RCMP in advance that there was a used syringe in his pocket, which was subsequently located without any incident, and he also advised them of the location of the credit cards which were in his back pocket.

[5] The search of the vehicle revealed some drug paraphernalia, including crack pipes, further syringes, as well as some cocaine in a 20-dollar bill. Also, later in Mr. Trumbull's cell, the RCMP located more cocaine which had been hidden on his person.

[6] The remaining three offences arise on the 24th of July, 2005. At that point in time, the RCMP received a report in the evening from the Takhini Gas Bar in relation to a robbery involving a firearm. The description of the individual was provided, including a description of the white station wagon which he departed in. It appears that the individual, later identified as Mr. Trumbull, had been in the store earlier on that evening purchasing a chocolate bar and when he left on that occasion he was seen leaving in the same vehicle, which the robber ultimately left in.

[7] The police attended, they received information from Ms. Greer at the store indicating that an individual had entered with his face masked with a green t-shirt, and produced a .22 calibre air pistol. There was a struggle with Ms. Greer. The individual

ultimately was successful getting into the cash register, at which point he helped himself to some \$846. It appears that the incident itself was captured on video.

[8] The RCMP attended, setting up roadblocks throughout the area. As a result of the tip, they were able to learn that the individual had changed from the described vehicle into another. They were subsequently able to locate that vehicle but were told that the accused had gone into the bush, by the driver of that vehicle.

[9] The police dog was used to search, as well as the plane. After a significant period of time, Mr. Trumbull was noted to be approaching one of the roadblocks in a bobcat. When he was some 10 feet away he turned the bobcat around and drove away, driving the bobcat through a fence. He was pursued on foot by a couple of the police officers who made repeated demands to him to stop, indicating what they were there for and that he was under arrest. Ultimately, a taser had to be employed to stop him. He was arrested.

[10] Again, he advised the officers in advance that there were needles in his pocket and that the money from the robbery was in his back pocket. A search of the bobcat netted some additional syringes and some marijuana. Indeed, Mr. Trumbull indicated that he had been in the process of attempting to inject cocaine at the time that he was tasered.

[11] I am also advised by his counsel that he even went so far as to allow the RCMP to remove his pants at the scene so that they were able to search and remove the syringes without incident.

[12] Mr. Trumbull comes before the Court with a prior criminal record, which I must say is surprisingly minimal when one considers the seriousness of the offences before the Court today. There are a number of offences on his record. Some of those are related, but in terms of his previous sentences, he has not served more than a handful of days in custody at any time prior to this.

[13] I am advised by his counsel that he is 30 years of age, he is the father of three children, ages five, ten and eleven, who reside with his former spouse. Mr. Trumbull is from Ontario, but moved to the Yukon in June 2004 following the breakdown of his relationship.

[14] He has a grade 11 education, supplemented by a diploma from college for truck-trailer service technician. He has been consistently employed since the age of 12 in a variety of positions, including landscaper, mechanic, truck driver and various things of that nature, and has held down several positions here in Whitehorse, including having been given the responsibility to set up a branch of Northern Metallic, for whom he was working at the time, in the Yellowknife area.

[15] What appears to be the issue and concern in this particular case is that Mr. Trumbull has a significant drug problem. I am advised by his counsel it has been a problem for him for some three years. His drug of choice appears to be cocaine and it is clear to me from the circumstances before me that the use of the drug has a significant negative impact on his behaviour.

[16] It appears he has had some prior treatment in Ontario and was able to maintain sobriety for a period of six months, but relapsed following the family breakdown. While

in custody he has made a conscious choice to remain clean and it is his hope to pursue programming and treatment to address his addiction issues within the federal system.

[17] He has been in remand for some 96 days. For most of that time it appears that he has not been able to access programming. Both counsel are agreed that the 96 days should receive credit in the range of six months.

[18] What is most aggravating before me, quite frankly, are the circumstances of the offences. The first offences involve a situation in which he stole from an employer by taking the credit cards. The second offences are ones in which he used a firearm and was also masked, again to secure funds. It is clear to me that all the incidents are related to his significant drug problem.

[19] In mitigation, he has entered early guilty pleas in relation to the offences. I would also note his cooperation with law enforcement once he was ultimately taken into physical custody, particularly his efforts to advise them of the syringes located on his person.

[20] As Crown has pointed out, particularly in relation to the s. 344, the sentence that I pass today must be one that stresses general deterrence and denunciation. That is clear to me from Parliament's institution of a mandatory minimum sentence in relation to the s. 344(a).

[21] Crown is suggesting that a global sentence in the range to four to four and a half years would be appropriate in all of the circumstances. Defence is suggesting four

years, two months would be appropriate and that the sentence should be reduced by credit for six months for the time that he has done in custody.

[22] One final point that I do want to make just before passing the sentence. Mr. Trumbull addressed the Court and when I asked him if there was anything he wanted to say, the only comments he made related to his desire to make amends and to apologize to the victims of his offences, and for, as he refers to it, his drug-induced rampage.

[23] It is clear to me from his words, as well as his early guilty pleas and his expressed desire to access treatment within the facility, that he is extremely remorseful for what has happened and that it is, to some degree, out of character for him.

[24] Accordingly, the sentences are going to be as follows. I am going to use the credit for the remand to deal with the bulk of the offences and that will be done in the following fashion. With respect to the s. 342, there will be a sentence of one day deemed served with credit for two months of remand. On the s. 259(4), there will be sentence of one day deemed served, giving credit for one month in custody. There will also be a driving prohibition in relation to that offence for a period of 18 months. With respect to the s. 145(1)(a), there will be a sentence of one day deemed served, giving credit for two months in custody, and with respect to the s. 41 *Controlled Drugs and Substances Act* offence there will be a sentence of one day deemed served, giving credit for the remaining one month in remand. For the s. 344(a) count there will be a sentence of four years.

[25] In addition, as required by law, there will be a firearms prohibition, pursuant to s. 109, for a period of 10 years. I will also make a forfeiture order pursuant to s. 491 in relation to the air pistol. I am also advised that the RCMP have in their possession \$900 in cash seized at the time of the s. 344. I make the order that \$846 of that be released to the Takhini Gas Bar and that the remaining \$54 be transferred to the victim's fund in relation to victim fine surcharges. Any additional victim fine surcharges for anything beyond that required by law is waived.

[26] The remaining issue, which appeared to have been the issue that was most contentious between the two parties, is that of the discretionary DNA order. The s. 344 is a secondary designated offence. By law, in determining whether it is appropriate for there to be a DNA order, I am required to consider the nature of the offence and the circumstances surrounding its commission, as well as the impact that such an order would have on Mr. Trumbull's privacy and security of the person. I am also required to consider his prior criminal history.

[27] Defence is suggesting that the s. 344 is to some degree out of character in light of his prior record and that a DNA order would be disproportionate in all of the circumstances. However, in my view, we are dealing with an offence here that is of an extremely serious nature. It was an offence that involved attempts, at least initially, both to hide his identity and to evade capture. I would also note that Mr. Trumbull has a significant drug problem. Should he be able to successfully address that in the federal system while in custody, then there is every hope to believe that we will not be seeing him again. Should he be unsuccessful in his efforts, however, from what we have seen of these offences, it would only be a matter of time before he would return to the court.

[28] In those circumstances I am of the view that the public interest outweighs what is essentially a fairly minimal invasion of his privacy and I do make the order that he be required to provide such samples of his blood for testing and banking in relation to the DNA databank.

[29] The only other thing, I believe, that was raised, Mr. Campbell raised the issue of the interlock. Mr. Sinclair, do you have any submissions in relation to that given the nature of much of his employment. The most that I can do is essentially authorize him to apply.

[30] MR. SINCLAIRE: Yes, and that's fine, I don't see any reason to.

[31] THE COURT: Okay. Any submissions on -- the minimum being three months -- but any submissions on when he should be, in both of your views, eligible to apply for interlock, should he choose to do so?

[32] MR. CAMPBELL: Three months would be my submission.

[33] MR. SINCLAIRE: I would say it should be a relatively -- it should be a period long enough that it brings home a deterrent message to Mr. Trumbull.

[34] THE COURT: I imagine if he applies and is able to afford to put it in, that in and of itself would be a significant deterrence, so I am prepared to make the recommendation that he be authorized to apply after three months of that prohibition.

[35] MR. SINCLAIRE: With respect to Information 05246, the Crown directs a stay of proceedings on Counts 3 and 4, as well as Counts 6, 7 and 8. On Information 05248, Crown directs a stay of proceedings on Count 2 and Count 3.

[36] THE COURT: Thank you.

RUDDY T.C.J.