

Citation: *R. v. Horton*, 2005 YKTC 71

Date: 20051011
Docket: 05-00050A
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: Her Honour Judge Ruddy

REGINA

v.

STEPHEN HORTON

Appearances:
Peter Chisholm
Gordon Coffin

Counsel for Crown
Counsel for Defence

REASONS FOR SENTENCING

[1] RUDDY T.C.J. (Oral): Stephen Horton is before me having entered pleas of guilty in relation to an offence contrary to s. 244(b) for discharging a firearm with intent to endanger a life and an offence contrary to s. 267(a) for an assault with a weapon.

[2] Both offences relate to the same series of facts. On April 15th, 2005, at approximately 10:03 p.m., the RCMP received several 9-1-1 calls in relation to a firearm being discharged in the Baranov Trailer Park area. The RCMP attended at the scene and were advised that Mr. Horton had fired four shots from a rifle at occupants in one of the units in the trailer park. Upon entering the unit, the RCMP

located Mr. Au who had been shot in the pelvic area; he was taken by ambulance to hospital.

[3] It was noted that, in all, four shots had been fired. The first into the ground outside of the residence. The second, through the window, breaking the window. The third, again through the window striking Mr. Au; and the fourth from the driveway which was directed at Mr. Horton's brother, Daniel, who was standing in the doorway. The shot struck the door jam, travelled past Mr. Daniel Horton into the kitchen, striking the fridge. There were four residents in the trailer. In addition to Mr. Daniel Horton and Mr. Au, there were two females also present.

[4] Another RCMP officer proceeding to the scene noted an oncoming red pick-up truck near the KK, which was attempting to pass and did indeed pass another vehicle, notwithstanding the presence of the oncoming police vehicle. The officer had to swerve and take evasive action, following which he executed a u-turn and pursued the vehicle; having learned that the driver was involved in the shooting incident that he had been en route to. The officer activated emergency equipment, including the siren, however Mr. Horton did not stop the vehicle, but continued to drive at approximately 120 kilometres per hour past several other vehicles. Ultimately, the officer was able to catch up with the vehicle, to go wide around it and to force the vehicle into the median, thereby stopping the vehicle.

[5] Mr. Horton exited his vehicle, was arrested, chartered and warned and stated to the police officers, "I know what I did and why I did it." In his vehicle the RCMP officers located a 30-06 calibre rifle, which was learned to be the rifle used in the

shootings, as well as another rifle. In addition, there was one open and three unopened cans of beer.

[6] Mr. Horton was returned to the RCMP detachment where two and three-quarter hours after the incident he provided a breath sample, which registered at 120 milligrams percent. He also provided a statement in relation to the incident in which he accepted responsibility for what had happened.

[7] Of note, Mr. Au, the complainant in relation to the s. 244 offence, was taken to the Whitehorse General Hospital where he was taken from emergency into the OR, so that surgery could be performed. It was noted that he had an entry wound just below the right iliac crest, which is the upper border of the pelvic area. The bullet had shattered a large part of the distal sacrum, the middle part of the pelvis. Mr. Au was bleeding profusely. There was a laceration in the rectal area, causing a significant amount of bleeding. As well, there was massive damage to the sacrum with a multitude of bone fragments. A colostomy had to be performed in the left lower quadrant and Mr. Au was medivac'd to Alberta for reconstructive surgery.

[8] It appears that he will suffer some long term injuries as a result of this incident. He continues to have back problems, difficulties with physical activities and labour, problems sitting for longer than 15 minutes, leg cramps, and headaches. He is still reliant upon the use of a catheter. He has sleeping problems and continues to require Tylenol 3's for pain management.

[9] Mr. Horton accepts the facts as read in, however his counsel advises that in relation to his brother, he was not attempting to shoot or hit his brother, but rather to scare him; however, he did intend to hit Mr. Au, but his intent was not to kill him.

[10] I have had the benefit of a very thorough pre-sentence report, which provides me with a significant amount of information in relation to Mr. Horton and his circumstances.

[11] In terms of his background, his childhood is characterized by early exposure to violence and alcohol. Also of note, his mother, who was a significant support to him, died of cancer in 1993. Mr. Horton left home at the age of 16 where he lived alternately on the streets or at one of his sister's homes. He has a grade 10 education with some upgrading and some additional technical courses taken in relation to his employment.

[12] In terms of employment, he has a good work history. Since 1989 he has been employed with YTG highways. His employer relayed in the pre-sentence report a number of compliments regarding his productivity and knowledge.

[13] Of particular note in relation to the offences before the court, the pre-sentence report makes it clear that Mr. Horton has significant problems with both alcohol and drugs and has had such problems since the age of 14. He indicates that he took his first drink of alcohol at the early age of six. He began using drugs significantly at the age of 16 and began using cocaine starting in 1993. This developed into a significant addiction, which clearly took over his life in many areas.

[14] In the pre-sentence report, Mr. Horton describes the cycle of his addiction as: "use until all the money is gone, crash, recover and start again when I could get some more money." So clearly, drugs have had a significant impact on his ability to function on a day-to-day basis. Indeed, in his mind, he had hit bottom at the particular time of this incident. He blamed drugs, and he saw his brother as being in the same situation. He blamed Mr. Au for both of their situations, Mr. Au having been one of the suppliers of those drugs that he consumed. He felt he needed to take dramatic action to send a message to both, and the fact that he viewed the act of shooting as an appropriate response clearly speaks to the degree to which alcohol and drugs have affected his reasoning.

[15] There are a number of aggravating factors, as set out by the Crown, relating to this incident. They are as follows: the use of a high-powered rifle, which could clearly have led to significantly more serious consequences. The serious physical injuries suffered by Mr. Au. The others put at risk, including Mr. Horton's brother and the two women that were inside the trailer. The fact that Mr. Horton was under the influence of alcohol at the time, and that he led the police on a chase, putting other innocent people at risk. The fact that there is something of an element of vigilantism and that while he is thankful that the consequences of his actions were not more serious and he recognizes that what he did was wrong on some level, his remorse is coloured by the fact that he appears to continue to believe that the victims in this particular case "had it coming". In addition, he has a criminal record, although I would note that it is 10 years since his last conviction and he has only one prior conviction for violence.

[16] In mitigation Mr. Horton has taken responsibility for his actions. He provided a statement to the police and has entered a guilty plea. In addition, he has done extremely well under structured supervision, since his release to the ARC on June 13th of this year. He is described by the ARC as a model resident. He has maintained sobriety throughout this period of time. He has attended weekly counselling with Lynn Moylen-White who notes his insight into his addiction and the good prospects for rehabilitation. He has attended thrice weekly NA meetings, grief counselling and other programming at the ARC.

[17] Of particular importance to me, Mr. King, who prepared the pre-sentence report, addressed the court today and advised me that Mr. Horton's motivation to address his addiction issues and other underlying issues is, from his point of view, genuine motivation rather than an effort to improve his sentence and his chances before the court. It is also important, in my view, to note that Mr. Horton recognizes that he has a significant amount of work ahead of him. As noted on page 11:

It is encouraging to note that Mr. Horton is realistic and grounded about his recovery and the expectations that go along with it. He knows he has a long process ahead of him, but he seems committed to his recovery, so he is going into his recovery with realistic expectations.

[18] Overall, he has excellent prospects for rehabilitation. Nonetheless, the principles of denunciation and deterrence require that offences of such a serious and dangerous nature as those before me are deserving of a lengthy term of imprisonment. Fortunately, Mr. Horton is attempting to view this consequence in a positive light, intending to take advantage of the programming offered in the Federal system.

[19] Crown suggests that a sentence in the range of four and a half to five years is appropriate. That range is supported by the case law filed by the Crown. Defence does not take issue with the range, but suggests that after credit for remand that four and a half years total would be appropriate.

[20] If I have done the math correctly, with the additional days in custody prior to his release on June 13th, it appears that Mr. Horton served a total of 60 days on remand.

[21] I am of the view that an appropriate sentence in relation to the s. 244 charge is a period of five years. That period should be reduced by credit for the time that he has spent in remand. I am satisfied that it is appropriate to credit the 60 days that he has done at two to one, for a total credit of four months. The sentence with respect to the s. 244 will be four years and eight months. On the s. 267(a) count, there will be a sentence of 12 months to be served concurrently.

[22] I also make the mandatory orders that I am required to, in relation to the offences before me. Firstly, there will be an order requiring Mr. Horton to provide a sample of his blood suitable for DNA testing. In addition, there will be a firearms prohibition order and that prohibition will be for a period of 10 years.

[23] Counsel, is there anything further?

[24] MR. COFFIN: No, Your Honour.

[25] MR. CHISHOLM: No, Your Honour, I understand -- at least it is my understanding, Your Honour, with respect to s. 109 that under s-s. (2)(a) that,

as you indicated there would be a 10 year term and under s-s. (2)(b) that with respect to any prohibited firearm, restricted firearm, prohibited weapon and prohibited device and ammunition, it would be for life? Is that fair?

[26] THE COURT: That appears to be how it reads. Okay, so there will be a 10 year prohibition in relation to any firearm other than a prohibited firearm or restricted firearm, and any cross-bow, restricted weapon, ammunition and explosive substance, and there will be a lifetime prohibition of any prohibited firearm, restricted firearm, prohibited weapon, prohibited device or prohibited ammunition.

[27] Mr. Horton, I wish you good luck and I hope you continue on the road that you have started with the programming available to you in the Federal system.

RUDDY T.C.J.