

**IN THE TERRITORIAL COURT OF YUKON**

Before: His Honour Judge Faulkner

Regina

v.

Donald Paul Kingshott

Appearances:  
Ludovic Gouaillier  
Lee Kirkpatrick  
Gordon Coffin

Counsel for Federal Crown  
Counsel for Territorial Crown  
Counsel for Defence

**REASONS FOR SENTENCING**

[1] FAULKNER T.C.J. (Oral): In this case, Donald Kingshott was convicted after trial on charges of arson, placing an explosive substance and supplying alcohol to minors.

[2] The facts of the case are as set out in my reasons for decision after trial and I will not repeat them. Suffice it to say that a home belonging to Ms. Bolton and Mr. Toews was totally destroyed by a wanton, senseless act of vandalism and stupidity.

[3] It appears that Ms. Bolton's grandson first came up with the idea of burning down the property as a means of getting even with Mr. Toews, with whom he had some sort of grudge.

[4] For reasons for which will perhaps forever remain obscure, Mr. Kingshott elected to become a part of this bizarre set of circumstances. Although the home was completely destroyed, it is, as Ms. Bolton pointed out, fortunate that the damage was not even worse, since the fire was set in a forested area and there were a number of other dwellings nearby.

[5] These sad circumstances are made all the more distressing because it appears that Mr. Kingshott was an acquaintance and friend of the victims and had over the years received many kindnesses from them. This incident understandably has left them angry, confused and stressed. There was a very substantial loss, which was not covered by insurance, and it has dealt a serious financial blow to Ms. Bolton and Mr. Toews.

[6] The emotional impact of the incident is perhaps even more significant and was amply illustrated by Ms. Bolton's victim impact statement, addressed to the court this morning.

[7] Mr. Kingshott has an extensive prior record, however, it must be acknowledged that there was a gap in the record from 1992 until now. He has been in custody since September 26, 2003, when he was arrested for these offences. This amounts to period of almost exactly six months to the day.

[8] It appears, as it was earlier said, that Mr. Kingshott was not the instigator of this scheme. He did not have the initial idea to vandalize property or to burn the dwelling, but I am satisfied that he did become fully involved in carrying out the plan. It must also be remembered that his actions in supplying the ride to the property and liquor to the minors were significant aspects of this matter. He was, after all, the adult member of the party and it is difficult to accept that he was simply a follower. If he was a follower, he should have lead and not followed - and lead on a different path.

[9] There was a pre-sentence report prepared and it paints a rather bleak portrait of Mr. Kingshott's future prospects. It would appear that he suffers from some degree of social adjustment problems such that his ability to function normally in society has been limited.

[10] With respect to mitigating factors, about the only factor that I can find in mitigation in these circumstances is that the crime does not appear to have been premeditated.

[11] I have indicated that Mr. Kingshott was also convicted of supplying liquor to minors under the *Territorial Liquor Act*, R.S.Y. 2002, c. 140. Supplying liquor to minors is, as the poster says, "not a minor matter." The potential results of so doing are amply illustrated by what happened in this case.

[12] While it is true, as Mr. Coffin says, that the ultimate cause of the crime was young Mr. Bolton's desire for revenge, it is unlikely that matters would have slid so far had there not been alcohol to use as a lubricant.

[13] With respect to the charge of supplying liquor to minors, one distinction can be made between that matter and the *Criminal Code* matters and that is the accused did plead guilty to that particular charge and is entitled to credit for that.

[14] With respect to the range of sentence to be imposed, given the gravity of the circumstances and the antecedents of this accused, a substantial custodial sentence is inevitable.

[15] With respect to the *Criminal Code* charges, the Crown suggested a range of two to three years. The Territorial Crown sought three months imprisonment with respect to the *Liquor Act* matter.

[16] On behalf of the accused, Mr. Coffin suggested that the Yukon cases, at least,

suggested a range of sentence more in the range of a year's imprisonment. Three cases arising from the Yukon were cited but, in my view, none are particularly in point of the present case.

[17] In *the R. v. Caesar* case, [2001] Y.J. 136 (QL), there was a guilty plea but more particularly, Mr. Caesar presented not so much as a criminal person, but a person with clear psychiatric problems, which were ongoing.

[18] With respect to the *R. v. J.A.B* case, [1998] Y.J. 84 (QL), J.A.B was a young offender and accordingly the sentence in that case is of limited precedential value in the present circumstances.

[19] With respect to the *R. v. Washpan* case, [1992] Y.J. 143 (QL), as was pointed out in argument, the resulting sentence in the Washpan case followed a extensive Circle Sentencing process. As Judge Stuart himself acknowledged at the beginning of that judgment, the sort of sentence imposed was outside of what might have been normally considered to be the range for the offences with Mr. Washpan stood convicted.

[20] In looking at the other precedents provided, as I have said, the Crown submitted that the range of sentence was in the order of two to three years. However, the precedents provided to me, even disregarding cases of multiple arsons such as *R. v. Barton*, [1993] O.J. No. 1231, which drew a double-digit sentence, suggests a range of up to five years. See, for example; *R. v. Quigley*, [1998] B.C.J. 561 (QL). As well, in fixing the appropriate range of sentence it cannot be forgotten that the maximum provided for by the *Criminal Code* is one of fourteen years imprisonment.

[21] Mr. Kingshott has expressed some degree of remorse for what occurred and, at least to the probation officer, he suggested that he would be prepared to offer

assistance to the victims of the offence. But it must be remembered that all of this comes after a situation in which the accused first fled the jurisdiction to avoid punishment, comes after he denied his involvement to Ms. Bolton and Mr. Toews and comes after his arrest, his plea of not guilty and his proceeding through trial.

[22] In the circumstances, of the factors normally considered in fixing sentence, deterrence, denunciation and protection of the public must be the primary factors to be considered. At the same time it must be acknowledged, looking through the pre-sentence report, Mr. Kingshott is a man in need of rehabilitative treatment and, accordingly, that aspect of sentencing cannot be entirely discounted.

[23] In all the circumstances, considering all of the offences in which Mr. Kingshott stands convicted, I am satisfied that a global sentence of three and one half years is warranted. Mr. Kingshott, however, is entitled to credit of one year for the time he has already served, leaving a remanet of two and one half years.

[24] A strong case could be made for imposing a sentence at the very maximum of Territorial sentences and combining that jail sentence with a lengthy probation order, thereby maximizing the supervision over this offender. However, I believe that the programs available in the Federal system are more likely to be suitable and effective in dealing with this mature offender.

[25] In the result, then, the sentence on the charge of arson is three and one half years less one year time served, leaving a remanet of two and one-half years.

[26] On Count 3, Mr. Kingshott, you are sentenced to a period of imprisonment of 18 months to be served concurrently, and on the *Liquor Act* charge, three months to be served concurrently. The surcharges are waived.

[27] Pursuant to the provisions of the *Criminal Code*, you are prohibited from having

in your possession any firearm, ammunition or explosive substance for a period of ten years following your release from imprisonment. I direct that you surrender any such items now in your possession to the RCMP at Whitehorse, Yukon, and that you do so forthwith.

[28] Again, pursuant to the provisions of the *Criminal Code*, I hereby order and direct that you provide samples of bodily substances, sufficient for the purpose of DNA analysis and banking.

[29] I should add before Mr. Kingshott stands down that I have certainly considered the matter of restitution. I think it is unlikely that Mr. Kinshott is going to be in a position to make any meaningful financial recompense. I wish it were otherwise.

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FAULKNER T.C.J.