

Citation: *R. v. McPhee*, 2012 YKTC 113

Date: 20121116
Docket: 12-10062
12-10146
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before: His Honour Chief Judge Cozens

REGINA

v.

JOHN LEWIS MCPHEE

Appearances:
Terri Nguyen
Brook Land-Murphy

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCING

[1] COZENS C.J.T.C (Oral): John McPhee has entered guilty pleas to having committed offences under s. 5(2) of the CDSA and s. 88 of the Criminal Code of Canada. The circumstances are set out in an Agreed Statement of Facts, which I will not repeat in detail. RCMP, based on source information, executed a warrant at Mr. McPhee's house. His son had been living there for a few days. His son was trafficking in cocaine and marihuana out of the house, but Mr. McPhee was well aware of this and was well aware of the fact that these drugs were in his house. He also had in the house, in his possession, an expandable baton or extendable baton, which he had for improper purposes and unlawful purposes.

[2] As I stated, he has entered guilty pleas. Crown notes he has been quite cooperative. A joint submission is before me. The submission is nine months custody and a period of 12 months' probation. He has pre-trial custody, which, if given one and a half to one, could amount to eight months credit. Crown has no position on that. Defence is requesting the one and a half to one.

[3] Mr. McPhee is a 57-year-old member of the Tahltan First Nation. His home life was characterized by, again, many of the negative impacts attributable to his First Nation status. Substance abuse was rampant in his home and community. There was domestic violence in his home, with his father one time setting his mother on fire. His father died, at least in large part due to alcohol abuse. He began to drink at the age of 14 and was sent off to a boys school in Nanaimo at the age of 15 with his brother, who I understood was abused at the school. He has managed to abstain from alcohol for six years. He has a criminal history which is dated, with the last conviction being 20 years ago, but he does have a related offence in 1977, and also related in 1981. He has support letters from the community. It is acknowledged that his involvement was on the lesser end but certainly sufficient for criminal culpability.

[4] There is a wide range of sentences available. The courts have repeatedly stated in the Yukon the need for general deterrence when it comes to trafficking and drugs, and that continues to this day. Illegal drugs are exceedingly harmful everywhere and particularly so in northern communities.

[5] The sentences proposed falls within the range of sentences available and I will not deviate from the joint submission. It will be nine months custody. Based on the

information I have been provided, I am satisfied that, in accordance with *R. v. Vittrekwa*, 2011 YKTC 64, he should be given one and half to one credit. Therefore, he will get eight months credit, leaving one month remaining to serve.

[6] That will be followed by a period of probation of 12 months. You will:

1. Keep the peace and be of good behaviour; appear before the Court when required to do so by the court;
2. 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;
3. Remain with the Yukon Territory unless you obtain written permission from your Probation Officer or the Court;
4. Report to a Probation Officer immediately upon your release from custody and thereafter when and in the manner directed by the Probation Officer;
5. Reside as approved by your Probation Officer and not change that residence with the prior written permission of your Probation Officer;
6. Abstain absolutely from the possession or consumption of alcohol and controlled drugs or substances except in accordance with a prescription given you by a qualified medical practitioner;
7. Take such assessment, counselling and programming as directed by your Probation Officer;
8. Not to have in your possession any firearms, ammunition, explosive substance or weapon;
9. Not to have in your possession any cellular telephones or pagers.

[6] There will be the mandatory s. 109 firearm prohibition, prohibiting you for a period of ten years from possessing any firearm, crossbow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition and explosive substance. It is a secondary designed offence for DNA, but I will make the order that he provide a sample of his DNA.

[7] He has indicated that he has no interest in any of the items that are seized, and insofar as these items purportedly could have been claimed to have been owned by him, there will be a forfeiture order against him of any interest he may have in these items.

[8] I am going to waive the victim fine surcharges in the circumstances.

[9] MS. NGUYEN: That's fine. Information 062 will be withdrawn as against Mr. McPhee only.

[10] THE COURT: Okay, noted. Withdrawn.

[11] THE CLERK: Your Honour, with respect to the jail, how much custody [indiscernible] count?

[12] MS. NGUYEN: I would suggest, sir, we can make it nine months on the trafficking charge and 30 days concurrent on the baton.

[13] THE COURT: Yes. Nine months on the trafficking charge, 30 days time served concurrent on the s. 88 charge. Ms. Land-Murphy, I happened to find the two letters, so if you need copies back for your file you can have these.

[14] THE CLERK: And the firearms were attached to?

[15] THE COURT: The 5(2).

[16] THE CLERK: Thank you.

COZENS C.J.T.C.