

Citation: *R. v. Peter*, 2009 YKTC 19

Date: 20090213
Docket: 08-00404
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Judge Lilles

REGINA

v.

EDWIN JOHNSON PETER

Appearances:
Jennifer Grandy
Malcolm Campbell

Counsel for Crown
Counsel for Defence

REASONS FOR SENTENCING

[1] LILLES T.C.J. (Oral): This is the matter of Edwin Johnson Peter. Mr. Peter is a 42-year-old aboriginal man who lives in Mayo.

[2] The incident that brings him before the Court occurred on September 16, 2008. It would be an understatement to describe this as a frightening incident for the community of Mayo.

[3] By way of summary, what occurred on that day was that around 3:00 p.m. Mr. Peter appeared on the front porch of his residence, yelling and pointing a rifle, initially at himself. This obviously attracted the attention of neighbours and community members. The police were almost immediately involved.

[4] When confronted by the police, he swore at them and swung the barrel of the gun that he was carrying in the direction of the RCMP. The RCMP wisely backed off and took steps to protect the immediate neighbours and to ensure that the school bus that normally comes by in the afternoon would not drop off any children in that area.

[5] His conduct created a confrontation that resulted in other police being brought in, including the ERT from Prince George. A number of officers were involved.

[6] During the time period of 3:00 p.m. to 8:15 p.m. he conducted himself in a threatening manner, at times retreating into his residence, coming back out, discharging his firearm outside, but also discharging it two times inside the residence. On one occasion a shot was discharged at a police vehicle, on other occasions in directions where no individuals were apparently located.

[7] At approximately 8:20 he surrendered himself to the police. When the police searched his residence they found the rifle, some live rounds of ammunition, some empty shell casings, some empty liquor bottles, and they noted a couple of bullet holes in the ceiling, consistent with Mr. Peter discharging the firearm in the residence.

[8] It is apparent from these circumstances that Mr. Peter was undergoing a very significant emotional episode, an episode reflecting his own history of mental health issues, exacerbated by alcohol or drug consumption. After approximately five hours, in all likelihood the alcohol or drugs began to wear off and his emotional state settled down significantly. When he was being flown out of Mayo to Whitehorse in custody, he apologized to the police officer who was accompanying him.

[9] No psychiatric or psychological assessments were filed with the Court. I had the benefit of reviewing the bail supervision report with respect to a court proceeding that took place on October 2, 2008, in relation to these charges. That bail supervision report sets out some relevant information. He has had, over a period of time, significant mental health issues or concerns, and substance abuse issues as well.

[10] The material filed with the Court indicates that as a young person he was a victim of sexual abuse by a drug and alcohol counsellor in his community. When he finally disclosed this abuse, neither his family or community members believed him. Rather than supporting him, they supported the offender. Eventually, the offender was charged, convicted and sentenced to a penitentiary term.

[11] It is evident from the information provided in the bail supervision report that Mr. Peter has a significant substance abuse problem, in addition to his mental health or emotional concerns.

[12] It is evident that the community is concerned about its safety should he be released. The report suggests that they are concerned about his episodic violent behaviour, his presenting emotional and mental health issues, including depression, as well as his over-consumption of alcohol and drugs.

[13] I think Mr. Campbell is probably correct in observing that the incident started with Mr. Peter considering suicide, harming himself, and when the police intervened it became a standoff where community safety was threatened.

[14] I mentioned to Crown counsel that I am very concerned that Mr. Peter has been

in custody for some five months, and there is no indication that any resources have been brought to bear to either assess or deal with the mental health concerns identified in the bail supervision report. It is not as if these things were unknown. They are described in that bail supervision report that was presented to the Court prior to his detention. Obviously, the probation officer who prepared that report was fully aware of these issues and concerns. His lawyer would also have been aware of his mental health problems.

[15] I agree with Crown counsel that the main concern that I should have is the highly dangerous situation that occurred in the community, where the safety of other individuals was threatened. My concern is that something like this should not happen again. Yes, a high degree of police resources were expended, but that is not my primary concern in sentencing.

[16] By way of mitigation, Mr. Peter has entered an early guilty plea and has accepted responsibility for what he has done. I am also advised by Mr. Campbell that while in custody he has been a very good if not model prisoner and has participated in the work regime in place in the correctional institution.

[17] This is a dangerous situation involving a firearm. It is apparent from the two cases filed in this matter, one being my own decision in *R. v. Titus*, [1993] Y.J. No. 128, and the other being *R. v. Jones*, [2005] O.J. 2662, a decision of the Court of Appeal for Ontario, that these kinds of incidents can be dealt with utilizing significant periods of incarceration or, at the other end, even a community disposition.

[18] I note that Mr. Peter has been in custody for five months, for which he should get

credit at the rate of 1.5, for a total of 7.5 months custody.

[19] There continues to be significant safety concerns with respect to Mr. Peter's release to his community.

[20] In my view, an appropriate disposition in this case would be a period of custody of 10 months, reduced by 7.5 months pre-trial custody. The result is that I sentence him to a further two and a half months custody.

[21] I am going to make it clear, again, in a moment, that it would be my expectation that in the remaining month or so of custody that he be assessed psychiatrically and psychologically, and that, if appropriate, a treatment plan or medication plan be put in place by the appropriate authorities.

[22] Upon release from custody he will be placed on probation for a period of 24 months. The terms of that probation order include the statutory terms.

1. He is to remain within the Yukon Territory unless he receives the permission from his probation officer or the Court.
2. He is to report within two working days to his probation officer and thereafter when and in the manner directed by the probation officer.
3. He is to reside at such place as is approved in advance by his probation officer and not change that residence without the prior written permission of his probation officer.
4. For the first 30 days of this probation order he is to abide by a curfew by remaining within his residence between the hours of 8:00 p.m. and 7:00 a.m. daily, unless he has the prior written permission of his probation

officer. He must present himself at the door or answer the telephone during reasonable hours for curfew checks. Failure to do so will be a presumptive breach of this condition.

5. He is to abstain absolutely from the possession and consumption of alcohol and controlled drugs and substances except in accordance with a prescription given by a qualified medical practitioner. He is to provide samples of breath and urine for purposes of analysis upon demand by a peace officer who has reason to believe that he may have failed to comply with this condition.
6. He is not to attend any bar, tavern, off-sales or other commercial premises whose primary purpose is the sale of alcohol.
7. He is to take such alcohol and drug assessment, counselling and programming as directed by his probation officer.
8. He is to take such psychological and psychiatric assessment and, if merited, such further counselling and programming as may be directed by his probation officer.

I strongly recommend that these psychological and psychiatric assessments be conducted while he is in custody serving the remainder of his sentence.

9. He is to perform 50 hours of community service as and when directed by his probation officer or such other person as the probation officer may designate. This community service is to be completed during the first nine months of this probation order.
10. He is to make reasonable efforts to find and maintain suitable

employment, and to provide his probation officer with all necessary details concerning his efforts.

11. He is to provide his probation officer with consents to release information with regard to his participation in any assessment, counselling, programming, employment or educational activities that he may be directed to do pursuant to this probation order.

[23] There was a request by the Crown for a s. 110 firearms prohibition order. She advises that it is discretionary. In my view, in light of the circumstances of this case, and in light of the unresolved substance abuse and mental health issues, that order should go as requested for a period of ten years in the usual form.

[24] I am also prepared to make an order forfeiting the 30-30 rifle that was seized after this particular incident. That rifle will be forfeited to the Crown and destroyed at the discretion of the RCMP, provided that the police retain the weapon for the first 30 days, take reasonable steps to identify its lawful owner and, if that lawful owner is in a position to receive that weapon lawfully, to turn it over to that lawful owner.

[25] Is there anything else, Madam Crown, that you consider should be part of my order?

(Discussions re forfeiture order)

[26] MR. CAMPBELL: I'd ask for a waiving of the victim fine surcharge

[27] THE COURT: Victim fine surcharge will be waived.

[28] MR. CAMPBELL: And I believe my friend is prepared to stay Count 1.

[29] MS. GRANDY: If I could ask for the other count to be withdrawn,
please.

[30] THE COURT: I will note it withdrawn.

LILLES T.C.J.