

Citation: *R. v. Rousselle*, 2012 YKTC 6

Date: 20111216
Docket: 11-00002
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Chief Judge Cozens

REGINA

v.

JODY ROBERT ROUSSELLE

Appearances:

David McWhinnie
Jennifer Cunningham

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCING

[1] COZENS C.J.T.C. (Oral): Jody Robert Rousselle has entered a guilty plea to three offences.

[2] On the 31st day of March, 2011, Mr. Rousselle was drinking alcohol; he was at various places, including the Kopper King bar. He drank until he became quite intoxicated and belligerent, at which point in time the bouncers escorted him out of the bar. He was angry. At the time, he was making threatening comments, including a threat to the patrons of the bar that he was going to get a gun and either shoot or kill them, clearly, to cause them some bodily harm at least, thus constituting the offence under s. 264.1(1)(a) as it is particularized. He then got into his vehicle, drove only a matter of several houses down into the trailer court that is nearby, went into the house where he had been staying, got a handgun from the house, and put it into a body

holster that he had, as I understood it, on his back. At some point, it appears he was moving the gun around in the air and placing it to his head. He was clearly handling it in a manner that was of some concern. He then drove back to the bar.

[3] The RCMP were called when he was back at the bar. The driving, while grossly impaired as he was, thus made out the offence of s. 253(1)(a) of the *Criminal Code*.

The patrons of the bar surrounded the truck that Mr. Rousselle was in. He wisely chose to stay in the truck. The RCMP attended and conducted a high-risk takedown, without incident, however. They searched Mr. Rousselle, found some ammunition in his pocket, and he told them they could look in his truck, which they did and they found a loaded 357 Magnum handgun. It was loaded with 38 calibre ammunition, which is capable of being discharged in that firearm. However, this was a short-barrelled 357 and thus made it a prohibited weapon rather than a restricted weapon, thus constituting the offence under the s. 95(a) of the *Criminal Code*.

[4] There is a joint submission before me. Mr. Rousselle has no prior criminal history. At the time of the offence, he was 37 years of age. Counsel are agreed that he should be credited one year plus one day for his pre-trial custody, and the minimum sentence of three years should apply to the 95(a) offence, thus leaving him two years less a day to serve on that offence, to be followed by a period of probation. That is the sentence that will be imposed for the 95(a) offence, taking into account one year plus one day credit for time spent in remand. He shall receive a further sentence of two years less one day, to be followed by one year of probation.

[5] With respect to the s. 264.1(1)(a) offence, in the circumstances, I will suspend the passing of sentence and sentence him to a period of one year probation. This will be on the same probation order as the 95(a) order.

[6] With respect to the 253(1)(a) offence, there should be the minimum fine of \$1,000 and a driving prohibition, prohibiting Mr. Rousselle from operating a motor vehicle on any street, road, highway or other public place for a period of one year. That driving prohibition will commence from today's date and will run for one year from today's date. For clarity, counsel have researched and looked into the matter and are satisfied that that is the appropriate way to deal with it, and Crown is not taking the position that it would be in addition to the jail sentence that he is receiving on the 95(a) offence.

[7] The probation order will go for the period of one year. It will be:

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. Report to a Probation Officer immediately upon your release from custody, and thereafter when and in the manner directed by the Probation Officer;
4. Take such assessment, counselling, and programming as directed by your Probation Officer;
5. Take such psychological assessment, counselling and programming as

directed by your Probation Officer;

I will break it into two terms rather than incorporating it into one. As I understood, the psychological assessment was to form part of the assessment he would be required to take if directed to do so by his Probation Officer. He is to:

6. Not attend the premises of the Kopper King --

[8] MR. MCWHINNIE: I think it's known as the Kopper King community pub, Your Honour.

[9] THE COURT: Yes, I was just wondering about -- because much of this took place in the parking lot area as well, whether that entire complex should be off limits. That would include the Kopper King, the restaurant, the gas station. I am just not sure what would be appropriate.

[10] MS. CUNNINGHAM: We don't take a position on that, Your Honour.

[11] THE COURT: Any thoughts, Mr. McWhinnie, or is it enough that he just not go into the Kopper King?

[12] MR. MCWHINNIE: I suspect if he stays out of the Kopper King, we won't see him again.

[13] THE COURT:

6. Not attend inside the premises of the Kopper King community tavern on the Alaska Highway in Whitehorse, Yukon;

7. Provide your Probation Officer with consents to release information with

regard to your attendance at any programming or counselling that you have been directed to do pursuant to this probation order.

[14] The victim fine surcharges? I mean, he is paying a fine as it is.

[15] MR. MCWHINNIE: Yeah, he's going to need time to pay on the fines, in any event, and he will not have any income for a period of time, as far as I'm aware.

[16] MS. CUNNINGHAM: Six months after his release he'd probably be able to pay his fines. So two years from today, perhaps?

[17] THE COURT: Well, and then there is going to be statutory release on the two years less a day, in any event, so it would be less than that, right?

[18] MS. CUNNINGHAM: Mm-hmm.

[19] THE COURT: I am going to say two years time to pay the fine on the impaired. With respect to the victim fine surcharges, I will waive the fine surcharge on the impaired. There will be a \$100 fine surcharge on the 95(b) a \$100 fine surcharge on the 264.1(1)(a), and there will be time to pay those for two years from today's date.

[20] MS. CUNNINGHAM: That's satisfactory.

[21] THE COURT: There is the mandatory s. 109 firearms prohibition that will take place, and you will be prohibited for a period of ten years from possessing any firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition, and explosive substance. You are also prohibited from possessing any prohibited firearm, restricted firearm.

[22] MR. MCWHINNIE: It should be "Or other prohibited device," I think.

[23] THE COURT: Prohibited firearm, prohibited device and prohibited ammunition for life. Where my concern comes in is that the two need to be separated out. Any prohibited firearm, restricted firearm, prohibited weapon, prohibited device and prohibited ammunition for life; and any firearm, cross-bow, restricted weapon, ammunition and explosive substance for a period of ten years. That is properly separating the two.

[24] In the circumstances, I am going to make a DNA order, a secondary designated offence, and the firearm and the ammunition seized shall be forfeited.

[25] MS. CUNNINGHAM: I think that's everything.

[26] MR. MCWHINNIE: Yes, Your Honour, the other outstanding charges should be stayed.

[27] THE COURT: Stay of proceedings.

COZENS C.J.T.C.