

Citation: *R. v. Wolfe*, 2012 YKTC 104

Date: 20121015
Docket: 12-00416
12-00635
12-00691
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Judge Faulkner

REGINA

v.

STEVEN OWEN WOLFE

Appearances:

Keith Parkkari
Lynn MacDiarmid

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCING

[1] FAULKNER T.C.J. (Oral): In this case, Steven Owen Wolfe has entered pleas of guilty to a number of charges. Three of them arise on the 9th of July of 2012. Police were called to a local hotel where there was a complaint of an assault having been committed by Mr. Wolfe on a woman named Beverly Kerluke.

[2] It appears that Mr. Wolfe, who had been drinking, was engaged, as is often the case after bouts of drinking, in an argument which ultimately resulted in Ms. Kerluke being pushed to the floor. When the police came, Mr. Wolfe was arrested. He was obviously intoxicated by alcohol. This was in breach of a probation order which he was on at the time. It should be noted that the probation order had arisen from an earlier

conviction where the circumstances were somewhat remarkably similar to those of July 12th.

[3] Once Mr. Wolfe had been taken to the lock-up he became very belligerent and combative and was attempting to kick one of the constables whilst swearing and threatening to fight them and kill them, calling them racists, so on and so on. Ultimately, he was subdued, but I gather it was a considerable performance on Mr. Wolfe's behalf. Some of the activities of July 12th resulted in charges of resisting Constable Horbachewsky, a peace officer, engaged in the execution of his duty: that related to the events in the cellblock. There is also a charge of assaulting Ms. Kerluke and a charge of breach of probation. Mr. Wolfe has entered guilty pleas to those charges.

[4] Subsequently, I gather, he was released from custody on a recognizance. Amongst the conditions of that recognizance were that he reside at the ARC. To make a long story short, Mr. Wolfe eventually went AWOL from the ARC and that has resulted in a charge of a breach of recognizance, which Mr. Wolfe has also entered a guilty plea to. After he went AWOL from the ARC, he was eventually located some days later at a local watering hole where he proved to be substantially under the influence of alcohol, and led to a further charge of breach of probation order for failing to abstain from the consumption of alcohol. Mr. Wolfe has also entered a guilty plea to that charge.

[5] Mr. Wolfe comes before the Court with what can only be described as a substantial criminal record. It now runs to some seven pages. Much of it is related to the current circumstances. It appears that Mr. Wolfe, for various reasons, has had a struggle with addiction to alcohol and drugs, and most recently with alcohol, and that

much of his criminality is related to that. The unfortunate part of that, from Mr. Wolfe's point of view, is that when he is intoxicated he is inclined to act out violently, and I think the Court has to not lose sight of the fact that the public is entitled to some degree of protection from his activities when he is intoxicated.

[6] Mr. Wolfe has made some attempts to deal with his difficulties with addictions and with other matters, such as depression. To date, he has not been successful, but there may come a time when he will realize that carrying on as per usual is perhaps not the road to take. Probably the chief difficulty in fixing the quantum of sentence here is that there is an allegation by the defence that Mr. Wolfe suffers from the effects of pre-natal alcohol exposure. However, there is, in fact, no evidence before the Court of that and, indeed, the Reasons for Judgment of Judge Ruddy which were provided to the Court, this being a decision from 2009, in fact say that Mr. Wolfe appears to be a bright young man who did well in school and has obtained his GED. So I am not quite sure what to make of the allegation. Judge Ruddy at that time had the benefit of an extensive PSR, as it is described there, and I have not been provided with that document. I think I can assume that if that report had included suggestions that Mr. Wolfe suffered from FASD, that that would have found its way into the Reasons for Judgment.

[7] In my view, having regard to what occurred and having regard to this man's criminal record, the sentence contended for by the Crown is eminently reasonable. However, I do agree with the defence that perhaps some account should be taken of the fact that one of the breaches of probation coincided with the commission of the two

principle index offences. But, in my view, the Crown has already taken that into account in the range of sentence it has sought.

[8] Rather than fix a period of six months less pre-trial custody, as contended for by the Crown, simply for the ease of doing the math, I am going to impose a sentence of a number of days so that the pre-trial custody can be more conveniently deducted therefrom. With respect to the charge of resisting a peace officer, Mr. Wolfe will be sentenced to a period of imprisonment of 120 days. On the charge of assault, 60 days concurrent. On the charge of breach of probation arising on the same date, 30 days concurrent. On the charge of breach of recognizance arising on the 1st through the 3rd day of September 2012, 30 days consecutive. On the charge of breach of probation from the 14th of September, 30 days consecutive. That is a total of 180 days. Mr. Wolfe has 49 days of pre-trial custody which should be deducted therefrom, leaving a remanet of 131 days.

[9] Given that there are probation orders already extant which have a significant period of time left to run, I am not going to make any further probation orders. In the circumstances, the surcharges will be waived. The remaining counts?

[10] MR. PARKKARI: Stay of proceedings.

FAULKNER T.C.J.