

R. v. Rolfe, 2007 NWTSC 05

S-1-CR2006000009

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- vs. -

JASON ROLFE

Transcript of the Reasons for Sentence by The Honourable
Justice V.A. Schuler, at Yellowknife in the Northwest
Territories, on January 19th A.D., 2007.

APPEARANCES:

Mr. S. Hinkley:

Counsel for the Crown

Mr. H. Latimer:

Counsel for the Accused

Charge under s. 344, s. 354(1) Criminal Code of Canada

1 THE COURT: Mr. Rolfe has been convicted
2 after trial on a charge of robbery.

3 The facts are that on November 5th, 2005,
4 here in Yellowknife, Mr. Rolfe got in the
5 victim's taxicab and after being driven to and
6 from an address, he hit the victim in the eye
7 with something. The victim's glasses came off
8 and he was bleeding. Mr. Rolfe asked him where
9 his money was and the victim said it was in the
10 cab. The victim was able to leave the cab and
11 ran off but then was approached by a vehicle
12 which was occupied by Mr. Rolfe and another man.
13 They asked the victim where his money was, and he
14 gave some money, he said in his testimony I
15 believe almost \$200 to Mr. Rolfe. The victim was
16 subsequently assisted by some other motorists who
17 came upon him out on the road. Mr. Rolfe was
18 located by the police elsewhere in Yellowknife.
19 The taxi driver received five stitches over his
20 eye in the emergency department of the local
21 hospital.

22 The sole issue at trial was the identity of
23 the robber and I convicted Mr. Rolfe as set out
24 in reasons at 2006 NWTSC 72. The robbery is
25 Count 1 in the Indictment. Mr. Rolfe also pled
26 guilty to Count 2, a charge of possession of
27 stolen property.

1 The facts on that are that on October 28th,
2 2005, the owner of the vehicle, that Mr. Rolfe
3 was referred to as being in as part of the
4 robbery, reported it stolen in Calgary. He had
5 apparently lent the vehicle for half an hour and
6 never got it back. On November 5th, Mr. Rolfe
7 was found in Yellowknife getting into the car.
8 He had no permission to have the vehicle. The
9 irresistible inference, including because of the
10 fact that the person the vehicle was lent to was
11 referred to as "Jay", and I notice Mr. Rolfe's
12 first name is Jason, is that it was Mr. Rolfe to
13 whom the vehicle was lent. However, I do note
14 that he is charged, pleaded guilty to, and
15 convicted of possession of stolen property only,
16 not theft.

17 The pre-sentence report indicates that Mr.
18 Rolfe is 24 years old. After growing up mainly
19 in Ontario, he moved to Yellowknife at the age of
20 19 to live with his father who was separated from
21 his mother. In 2004, he relocated to Calgary but
22 came back to Yellowknife to work in November
23 2005. He was arrested on these charges the day
24 he was to begin work.

25 According to the pre-sentence report, he has
26 a steady girlfriend who is supportive of him. He
27 also has a supportive family and from reviewing

1 the pre-sentence report as a whole, this is
2 certainly not the kind of situation where Mr.
3 Rolfe lacked good role models or had a difficult
4 or a negative family life so it is somewhat
5 difficult to understand why and how he has become
6 involved in crime as he has. Sometimes it is
7 easier when one is dealing with someone who has a
8 less advantageous background to understand how
9 they have ended up where they have, not that it
10 necessarily excuses what they have done but in
11 this case it seems that Mr. Rolfe did have the
12 advantages of a supportive family and a good
13 background so it is surprising to my mind that he
14 is in the situation that he is now in.

15 He apparently did not graduate from high
16 school but has obtained his general equivalency
17 diploma while in custody. He reported in the
18 pre-sentence report that he would like to attend
19 university in the area of geophysics and it
20 appears that he has had past employment with
21 trucking and drilling companies. Obviously if
22 Mr. Rolfe does have intentions of attending
23 university and pursuing a career, he is going to
24 have to change his lifestyle because this type of
25 behaviour is not going to help get him there.

26 Mr. Rolfe has a criminal record and it is a
27 criminal record that is not among the most

1 serious that I have seen but it is certainly not
2 an insignificant record for a young man. It
3 begins in 1998 with a conviction in Youth Court
4 for theft under \$5000 and continues with
5 primarily offences of property such as mischief,
6 break and enter, theft. There is one offence
7 from Youth Court of impaired driving. I do note
8 that there are no previous offences of violence
9 on the record.

10 Mr. Rolfe, it is indicated in the
11 pre-sentence report that he does not accept
12 responsibility for the offence of robbery and
13 denies any involvement. I will not treat that as
14 an aggravating factor, I will consider that it
15 simply means that he does not get the mitigating
16 benefit of a guilty plea or an acknowledgment of
17 guilt. It is obviously somewhat troublesome that
18 he does not accept the Court's verdict but that
19 is apparently the case.

20 I do want to note, and I say this in part
21 because the same issue came up earlier this week
22 in another case, that the fact that a not guilty
23 plea is entered but the accused does not testify
24 does not necessarily equate to a denial of any
25 involvement in the offence. What it equates to
26 is insisting, as he is entitled to do, on his
27 right to require the Crown to prove his guilt, to

1 prove the case against him. But it does not
2 automatically equate to a denial of any
3 involvement. Now, I am not in this case drawing
4 any conclusions from the not guilty plea, but I
5 think it is important that counsel not overstate
6 the meaning of a not guilty plea in circumstances
7 where there has not been testimony from the
8 accused. And I say that as a general matter.

9 The victim in this case completed a Victim
10 Impact Statement and indicates in it,
11 understandably, that this incident has affected
12 his trust in his customers in that he fears being
13 hurt. He has cut down on his hours of work,
14 especially at night, which has affected him
15 financially. He also continues to have some
16 physical problems and lasting effects as a result
17 of the injury as described in the Victim Impact
18 Statement. He does not have the more extreme
19 injuries or lengthy treatment that is seen in
20 some of the cases but it is still clear to me
21 from what is said in the Victim Impact Statement
22 that he still has difficulties as a result of the
23 injury.

24 As to the submission that was made by
25 defence counsel, as I understood it, that as a
26 taxi driver the victim would experience fear in
27 any event because he is in a dangerous job, I do

1 not think that that lessens in any way the impact
2 on him. Now, of course, his fears have been
3 realized and his feelings about his job and the
4 risks in his job logically would be affected by
5 the fact that this actually happened to him.

6 The fact that Mr. Rolfe attacked a taxi
7 driver alone at night in his cab is an
8 aggravating factor. As has been said in the
9 cases that were referred to, taxi drivers are in
10 a vulnerable position. They are people who
11 provide a service to the public in circumstances
12 that puts them at risk so the sentence imposed
13 must recognize that and must have, as one of its
14 goals, deterrence of others from engaging in this
15 kind of behaviour and also denouncing this
16 behaviour.

17 The fact that a weapon, an implement of some
18 kind, although it is not clear exactly what, was
19 used is also an aggravating factor.

20 As to the issue of planning, I agree that
21 the circumstances suggests that some degree of
22 planning was involved and, in particular, I draw
23 that conclusion from the presence of the other
24 individual in the presence of Mr. Rolfe after Mr.
25 Rolfe had attacked the victim. In other words,
26 there seemed to be some setting up of this
27 situation and then a way for Mr. Rolfe to get

1 away.

2 And also approaching the victim a second
3 time after the initial attack is also an
4 aggravating feature.

5 I do not see any real mitigating factors.
6 Mr. Rolfe is still fairly young at the age of 24
7 but he has, as I have said, accumulated what is
8 not an insignificant record.

9 Robbery is an offence for which the maximum
10 sentence is life in prison which indicates how
11 seriously it is treated by Parliament. On the
12 possession of stolen property charge, the maximum
13 sentence is ten years in prison.

14 Crown and defence both agree in this case
15 that the starting-point for the sentence for
16 robbery should be four years and that the
17 sentences on both charges should be concurrent.

18 Having reviewed the cases submitted and
19 considering Mr. Rolfe's youth, his background,
20 including his record and the seriousness of the
21 offence, I would agree that a four-year
22 starting-point is appropriate to serve the goals
23 of denunciation and deterrence and reflect the
24 gravity of the offence and the other principles
25 of sentencing.

26 The main issue is the remand time.

27 I agree with Mr. Latimer that the fact that

1 Mr. Rolfe could not come up with the \$1000 for
2 bail should not adversely affect the credit to be
3 given for the time that he spent in custody as a
4 result of that. A two-for-one credit is often
5 given for remand time when the remand time is the
6 result of an individual being detained in custody
7 because of the lack of remission on that time and
8 the fact that it is generally considered "hard"
9 time. I do not think that that should change
10 just because a person cannot come up with the
11 money to get out of jail.

12 So for the initial 129 days in custody, I
13 will credit eight months. For the time in
14 custody since his rearrest on other charges on
15 October 17th, 2006, that being 94 days, I will
16 simply credit that for what it is, in other words
17 three months, and I would expect that the fact
18 that Mr. Rolfe has received that credit will be
19 relayed to the Court when and if he is sentenced
20 on the other outstanding charges. So the total
21 credit for the remand time is therefore 11
22 months.

23 I am going to impose a DNA order in the
24 usual terms because this is a primary designated
25 offence, and I would ask that counsel ensure that
26 that order is submitted.

27 There will also be a firearm prohibition

1 order in the usual terms. It will commence today
2 and it will expire ten years from Mr. Rolfe's
3 release from imprisonment and any items covered
4 by that order are to be surrendered to the RCMP
5 forthwith.

6 Stand please, Mr. Rolfe.

7 In light of the credit that I have given you
8 for the remand time, the sentence that I impose
9 on you on the robbery charge is 37 months in
10 jail. I think that I should impose a separate
11 sentence on the other charge, in other words
12 document it separately. In light of the fact
13 that the vehicle was removed to the Northwest
14 Territories, the sentence I impose on the
15 possession of stolen property charge is six
16 months concurrent.

17 You may have a seat.

18 The Victim Surcharge will be waived.

19 Now, there will also be an order that the
20 trial exhibits will be retained pending the
21 running of the appeal period or pending the
22 disposition of any appeal that may be taken
23 following which they are to be returned to the
24 lawful owner. I take it that would cover it?

25 MR. HINKLEY: Yes, Your Honour.

26 THE COURT: All right. Now, Mr. Rolfe, as
27 I have said, it's difficult to understand why

1 someone with your background is heading down this
2 path of what, to put it bluntly, looks like a
3 life of crime, and I would seriously urge you to
4 give some consideration to what you are doing and
5 to change things around. I don't have very much
6 information about your academic abilities but if
7 you are smart enough to be able to pursue a
8 career at university, then that's what you should
9 be doing instead of getting involved in the type
10 of behaviour that you have been involved in since
11 1998.

12 Is there anything further that I need to
13 address?

14 MR. HINKLEY: No, thank you, ma'am.

15 MR. LATIMER: No, thank you, Your Honour.

16 THE COURT: All right, thank you, we will
17 close Court.

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21 Certified to be a true and
22 accurate transcript pursuant
23 to Rules 723 and 724 of the
24 Supreme Court Rules,

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Lois Hewitt, CSR(A), RPR, CRR
Court Reporter