

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES
IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

JOSHUA LUKE PETTEN

Transcript of the Reasons for Sentence delivered by The
Honourable Justice K. Shaner, in Yellowknife, in the
Northwest Territories, on the 9th day of May, 2014.

APPEARANCES:

Mr. B. Demone: Counsel on behalf of the Crown

Mr. T. Boyd: Counsel on behalf of the Accused

Charge under s. 95 C.C.

1 THE COURT: Joshua Luke Petten entered a
2 guilty plea to a charge of possession of a loaded
3 restricted firearm, specifically, a Colt .45
4 calibre, semi-automatic handgun (which I will
5 refer to in these reasons as "the gun") contrary
6 to section 95 of the Criminal Code. Today I am
7 going to impose a sentence for that.

8 On Tuesday, the Crown and defence presented
9 a joint submission that Mr. Petten be sentenced
10 to a term of incarceration of three years and
11 three months less the time he spent on remand
12 awaiting disposition of this matter. They also
13 agreed that Mr. Petten should receive enhanced
14 credit for this time.

15 As I indicated on Tuesday, I am in agreement
16 with the length of the sentence that is proposed
17 in the joint submission as well as with the
18 enhanced credit. It bears mentioning, however,
19 that the Court is not a rubber stamp bound to
20 accept joint submissions on sentencing, and I
21 know that counsel is well aware of that.
22 Moreover, even if the Court does accept a joint
23 submission, it is incumbent on the sentencing
24 judge to give reasons for any sentence that is
25 imposed. It is only in this way that both the
26 offender and the public have an opportunity to
27 gain insight into why a particular sentence is

1 imposed and what the goals of that sentence are.
2 This is, in my view, an integral part of the
3 criminal justice process.

4 It is always useful to begin a sentencing
5 decision by examining the goals and objectives of
6 sentencing, as well as the principles that guide
7 their application.

8 The goals and objectives of sentencing in
9 our justice system were incorporated into the
10 Criminal Code some time ago. They are:
11 denunciation; specific and general deterrence;
12 separation of offenders from society, where
13 necessary, for the purpose of public protection;
14 rehabilitation; reparation; and to promote a
15 sense of responsibility in offenders, and
16 acknowledgement of the harm that they have done
17 to victims and to the community. The emphasis
18 that is placed on any one or more of these goals
19 and objectives will vary, depending on the type
20 of the offence, the circumstances of the offence,
21 and the individual offender.

22 There are certain principles that guide the
23 Court in applying these objectives. These are:
24 proportionality, in that the punishment must
25 reflect the seriousness of the crime and the
26 moral blameworthiness of the offender; the
27 principle of restraint; and, of course, the

1 principle of parity.

2 And finally, judges must consider
3 aggravating and mitigating circumstances and
4 increase or reduce a sentence accordingly.

5 The goals and objectives, and the
6 principles, must be applied even where, as here,
7 a statutorily prescribed minimum sentence is
8 applicable, albeit in a manner that accommodates
9 those parameters.

10 The facts of this case were read in by Crown
11 counsel earlier in these proceedings and so they
12 need not be repeated verbatim; however, a brief
13 summary is required in order to give some context
14 to these reasons.

15 In the early morning hours of March 10th,
16 2013, Mr. Petten and another individual, who was
17 a youth, headed to downtown Yellowknife. Before
18 they left, Mr. Petten handed the youth a gun,
19 which he, the youth, placed in the waistband of
20 his pants. The gun was a restricted firearm and
21 it was loaded. Neither Mr. Petten nor the youth
22 had a licence or permit for the gun.

23 The two eventually wound up at the Raven
24 Pub. Mr. Petten, who had earlier ingested
25 steroids, cocaine, and alcohol, got into
26 arguments first with bar staff, and then with the
27 manager. During the argument with the manager,

1 Mr. Petten stated: "You don't know who I am. If
2 you're talking to me, you're talking to the
3 Nomads." Apparently, the "Nomads" is a criminal
4 organization or gang.

5 Mr. Petten challenged the manager to fight
6 outside. As he and the youth walked towards the
7 exit, the manager observed the youth pass Mr.
8 Petten the gun. Once Mr. Petten and the youth
9 were outside, the manager closed and locked the
10 door. Mr. Petten pounded on the door and a
11 witness heard him yell, "You want some heat? You
12 want some heat?" The witness told him to go, and
13 eventually Mr. Petten and the youth left and
14 caught a cab.

15 However, they had the taxi driver return to
16 the Raven Pub whereupon Mr. Petten alit from the
17 vehicle and pounded on the door of the Raven once
18 again, yelling for staff to come out. No one
19 did, and Mr. Petten returned to where the taxi
20 was waiting. The witness who had earlier told
21 him to go, heard him say "Who wants to get shot?"
22 before the youth pulled him into the taxi and the
23 taxi drove off.

24 Mr. Petten was sitting in the front
25 passenger seat of the taxi. He produced the gun,
26 held it to his own head and asked the driver "If
27 I shoot myself will you miss me?" The driver

1 managed to calm Mr. Petten down and convinced him
2 to hand the gun over to him, which the driver
3 then handed to the youth in the back seat. The
4 youth then placed the gun under the seat.

5 A short time later, the RCMP arrested Mr.
6 Petten and the youth in what is termed a "high
7 risk takedown". Mr. Petten subsequently gave two
8 false names and a false date of birth to the
9 RCMP, and he maintained those false identities
10 for several hours before finally revealing his
11 real identity.

12 It is very clear from these facts that what
13 Mr. Petten and the other individual created was a
14 situation that was extremely dangerous to a
15 number of innocent bystanders, to the police who
16 were involved, as well as to themselves.

17 The Court had the benefit of a presentence
18 report respecting Mr. Petten, as well as
19 information provided by his lawyer about his
20 background. Mr. Petten is a young man, 21 at the
21 time of the offence and 22 now. He grew up in
22 Langley, British Columbia, and he completed grade
23 10. He has a limited employment history,
24 although that is not surprising given his
25 relatively young age.

26 From the presentence report, it appears that
27 he was bullied as a child about being overweight.

1 This in turn led to serious self-esteem issues,
2 depression and anxiety, for which Mr. Petten was
3 treated.

4 His parents are divorced. His father is an
5 alcoholic and his mother suffers from mental
6 health issues. They reported to the author of
7 the presentence report that this had an impact on
8 their ability to parent Mr. Petten and to deal
9 with his emotional issues effectively.

10 Both the Crown and the defence submitted
11 that the difficulties in Mr. Petten's past should
12 be considered mitigating, and I accept this. It
13 is important to note, however, that this does not
14 excuse Mr. Petten's conduct on that night. There
15 is no excuse for it. It does, however, give the
16 Court some insight into what kind of person he is
17 and how his background may have led him to
18 exercise such terrible judgment that night.

19 According to the presentence report, Mr.
20 Petten has a history of cocaine and marihuana use
21 and he also uses steroids frequently. Recently,
22 it is reported that he struggled with the impact
23 of stopping steroids abruptly due to his remand
24 for this offence.

25 Mr. Petten has a criminal record, although
26 it is very short, and he has no previous
27 convictions involving firearms. I do not find

1 that the criminal record is an aggravating factor
2 in this proceeding.

3 The author of the presentence report
4 reported that Mr. Petten is affiliated with
5 organized crime in B.C.'s lower mainland,
6 although Mr. Petten himself denies this. The
7 author also had information from British Columbia
8 justice files that Mr. Petten is quick to resort
9 to violence in response to certain situations,
10 something that Mr. Petten admitted. It is also
11 reported that Mr. Petten appears to have a narrow
12 range of options for himself when he needs to
13 solve problems.

14 Mr. Petten has an interest in fitness,
15 health and nutrition and has plans to enter this
16 field on a professional basis in the future. He
17 has taken training in connection with this.

18 Unfortunately, it is evident from the
19 presentence report that Mr. Petten, at least at
20 the time he was talking with the author, had
21 little insight into the seriousness of his
22 actions and why he would be facing such a stiff
23 penalty.

24 Possession of a loaded restricted firearm
25 is, Mr. Petten, a very serious offence, and
26 indeed Parliament considers it serious enough to
27 attract a minimum penalty of three years for a

1 first offence, and five years for a second or
2 subsequent offence. The maximum penalty is ten
3 years.

4 The rationale for the seriousness with which
5 this offence is treated is obvious - guns do
6 harm. They are dangerous. They maim people.
7 They kill people. And that can happen in a
8 matter of seconds. The Alberta Court of Appeal
9 in *The Queen and Chin* stated at paragraph 10:

10 Mere possession of loaded firearms
11 is inherently dangerous. When such
12 weapons are allowed in the
13 community, death and serious injury
14 are literally at hand, only an
15 impulse and trigger-pull away.

16 The Court went on to state at paragraph 12:

17 These crimes present a particularly
18 serious threat to the safety and
19 security of the community. Like
20 drug trafficking, they require
21 forethought and planning. The
22 weapon must be obtained, which is in
23 itself a serious offence. Keeping
24 it loaded or with ammunition nearby
25 means it is to be used for more than
26 intimidation. Simply put, carrying
27 a loaded restricted or prohibited
firearm is an extremely dangerous
act for which there is absolutely no
justification.

And that is why the penalty is so stiff.

Notwithstanding the apparent lack of
understanding as to why the consequences are so
grave however, it is telling that Mr. Petten
pleaded guilty and thus accepted responsibility

1 for his actions. He also apologized in court on
2 Tuesday, and he specifically apologized to one of
3 the witnesses who was at the scene. That, in my
4 view, suggests that he has at least some insight
5 into how serious this was and just how wrong
6 things could have gone.

7 The guilty plea is also a mitigating factor.
8 Although it is not what would be considered an
9 early guilty plea, coming after the preliminary
10 inquiry, Mr. Petten's plea did nevertheless come
11 before a trial had to be organized. This case,
12 according to the Crown, would have been long and
13 relatively complex, requiring a great number of
14 court and state resources. Mr. Petten deserves
15 some credit for pleading guilty in the
16 circumstances.

17 Given what I have heard about Mr. Petten's
18 background and the circumstances of the offence,
19 and having regard to the goals and objectives and
20 principles of sentencing, it is my view that the
21 three years and three months proposed by the
22 parties is a fit and proper sentence. The
23 ancillary orders proposed by the Crown are also
24 justified.

25 Before formally imposing sentence, I am
26 going to deal with the amount of credit Mr.
27 Petten will receive for the time spent on remand.

1 There appeared to be a general consensus
2 between counsel that enhanced credit should be
3 granted save and except for the 11 days which Mr.
4 Petten would have lost for behavioural
5 difficulties, and that credit should have been
6 granted at a rate of 1.5 days for each day spent
7 in remand. The amount of that credit works out
8 to 21 months.

9 Having regard to the recent Supreme Court of
10 Canada decision in *The Queen and Summers*
11 respecting enhanced credit, as well as the
12 submissions of Mr. Boyd, I am convinced that the
13 circumstances are present that justify granting
14 enhanced credit. And so Mr. Petten will receive
15 21 months credit.

16 Mr. Petten, can you please stand up.

17 Mr. Petten, for the offence of possession of
18 a loaded restricted firearm, you are sentenced to
19 a period of incarceration of three years and
20 three months. You will receive credit of 21
21 months for the time you have spent in custody
22 already, and so you will be required to serve 18
23 months.

24 You can sit down.

25 There will also be an order for bodily
26 fluids to be taken from you for DNA analysis, and
27 an order prohibiting you from possessing a

1 firearm or other weapon listed in section 109 of
2 the Criminal Code and this will be in effect for
3 20 years from the date of your release.

4 Do you understand, Mr. Petten?

5 THE ACCUSED: Yes.

6 THE COURT: Mr. Petten, please use your
7 time wisely. Use the time that you are
8 incarcerated and the services available to you
9 there, which are readily available, to lay the
10 groundwork that will enable you to make positive
11 and lasting changes to your lifestyle, that will
12 enable you to respond to situations of conflict
13 more positively, and that will enable you to
14 enhance your self-esteem and your sense of
15 self-worth. Take advantage of what is offered to
16 you. You are a young man, you have many years
17 ahead of you. You can put this behind you and
18 move forward, or you can choose to spend more
19 time in the criminal justice system. It is all
20 up to you.

21 Mr. Petten, I do wish you the best.

22 Counsel, is there anything else?

23 MR. WALSH: I believe that's everything
24 from my perspective.

25 THE COURT: Mr. Boyd?

26 MR. BOYD: Nothing from defence, Your
27 Honour, thank you.

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THE COURT: Thank you very much.

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Certified to be a true and accurate transcript pursuant to Rule 723 and 724 of the Supreme Court Rules of Court.

Annette Wright, RPR, CSR(A)
Court Reporter