R. v. Peterson, 2018 NWTSC 2

 S-1-CR2017-000048

 IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

 IN THE MATTER OF:

 HER MAJESTY THE QUEEN

 - vs. -

 BILLY FRED TOMMY PETERSON

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 Transcript of the Reasons for Sentence by The Honourable

 Justice A. M. Mahar, at Yellowknife in the Northwest

 Territories, on November 3rd A.D., 2017.

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 APPEARANCES:

 Mr. B. MacPherson: Counsel for the Crown

 Mr. T. Boyd: Counsel for the Accused

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 Charge under s. 95(2) Criminal Code

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 1 THE COURT: This was a difficult case

 2 from a couple of perspectives. On the one

 3 hand, Mr. Peterson, at the time of the offence

 4 was approximately 35 years old. He had been

 5 working consistently throughout his adult

 6 life. He had recently been laid off but laid

 7 off in circumstances that led him to believe

 8 that he would very soon have employment.

 9 There is no indication that he was relying on

 10 crime for his living. He was supporting his

 11 spouse at the time who was pregnant with his

 12 child. And the firearm in question was a

 13 particularly bizarre firearm to be found in

 14 Inuvik. It is not only a pistol but it is a

 15 fairly sinister street weapon with a magazine

 16 that would allow it to carry I believe it was

 17 30 bullets. At the time in question, it would

 18 be strange enough to find a firearm in Inuvik

 19 and even stranger to find one configured the

 20 way this one was.

 21 While I was not convinced by the testimony

 22 of the accused, I was left with a reasonable

 23 doubt about the circumstances in which the

 24 weapon came to be in his possession and he has

 25 to get the credit of that doubt. That is the

 26 way that the law works. I gave him that

 27 credit, and those are the facts on which he is

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 1 going to have to be sentenced.

 2 He indicated that he was out that morning,

 3 going to get some smokes I believe, and he

 4 ended up finding the firearm hidden underneath

 5 a platform in a local park. The firearm was

 6 in two pieces - the magazine and the pistol

 7 itself. He put it in his pockets in two

 8 different pieces and went about his business.

 9 He was heading in the opposite direction

 10 from the RCMP detachment when he was arrested.

 11 He was arrested in relation to a completely

 12 different offence that had taken place about

 13 four days before. Certainly circumstances

 14 were not rolling along in Mr. Peterson's favor

 15 that morning.

 16 He has a significant criminal record with

 17 approximately 12 convictions for violence.

 18 None of those convictions involve the use of a

 19 firearm.

 20 He was on a firearms prohibition at the

 21 time in question, which is a significantly

 22 aggravating factor. I intend to do as the

 23 Crown has asked me and apply the time

 24 concurrently because of the way in which the

 25 offences occurred, but the fact that he was on

 26 a prohibition is significantly aggravating.

 27 I have accepted his version to the extent

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 1 that it raises a reasonable doubt and those

 2 are the facts that he will be sentenced on.

 3 It falls at the low end of the spectrum

 4 but the nature of his circumstances places him

 5 somewhere in the middle, if not closer to the

 6 higher end. It is a significant criminal

 7 record that he is dealing with, and he was

 8 well aware of the fact that he should not be

 9 in possession of firearms let alone what was

 10 obviously a prohibited firearm to anyone with

 11 any sense, and Mr. Peterson is obviously

 12 somebody with some sense. And I find that at

 13 the time in question his intention was to keep

 14 the firearm, because that is what he was

 15 doing. He wasn't heading towards the RCMP

 16 detachment. I cannot find that he had any

 17 criminal purpose in keeping it at that point

 18 other than the mere fact of keeping it. This

 19 does place him in the middle of the spectrum

 20 as opposed to farther towards the low end.

 21 This was not a purely regulatory offence.

 22 A few words about firearms in general and

 23 handguns in particular.

 24 The laws of Canada are structured in such

 25 a way to protect the population from the

 26 scourge of handgun violence. The events that

 27 make the news south of the border are

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 1 typically events involving assault weapons or

 2 weapons that are not handguns, but the vast

 3 majority of unlawful deaths and accidental

 4 deaths south of the border, which are a

 5 national crisis for the United States and a

 6 tragedy, are as a result of handguns.

 7 Handguns are significantly dangerous weapons.

 8 As Mr. MacPherson has pointed out, there is

 9 really no legitimate reason for a citizen to

 10 have a handgun apart from crime. There could

 11 be an argument made about self-defence but

 12 those arguments can be made about various

 13 other options. The fact of handguns in our

 14 streets is something that the legislature of

 15 Canada, and the judiciary, has taken a very

 16 firm stance on. We have to keep handguns off

 17 our streets.

 18 This is one of the only times this Court

 19 has had to deal with a handgun offence, and I

 20 suppose that that means this has some

 21 precedential value.

 22 Every circumstance is unique, every

 23 offender is unique, and, as Mr. Boyd has

 24 pointed out, there is a large spectrum of

 25 possible sentences available to the Court now

 26 when considering the circumstance of each

 27 individual offence. What I am taking into

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 1 account in this case is the low-end way in

 2 which Mr. Peterson came into possession of the

 3 firearm as well as the fact, which argues in

 4 favor of a longer sentence, that he was on a

 5 prohibition at the time in question, and that

 6 he has a significant criminal record including

 7 roughly 12 offences of violence.

 8 If Mr. Peterson had not come forward in

 9 court with an explanation of how he came into

 10 possession of the firearm, if I was simply

 11 dealing with somebody with this criminal

 12 record in possession of this firearm without

 13 any excuse being offered, I think a period of

 14 incarceration in the range of three years

 15 would be entirely appropriate. But that is

 16 not the circumstance that I am dealing with.

 17 Under these circumstances, accepting for

 18 the purpose of sentencing that Mr. Peterson

 19 accidentally found the firearm and that he had

 20 not been in possession of it for very long, I

 21 feel that an appropriate sentence in totality

 22 is 18 months.

 23 I will give him credit for 10 months,

 24 which is roughly 312 days, for a remaining

 25 sentence of eight months.

 26 Mr. MacPherson, were you seeking any

 27 probation as a result of this? It doesn't

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 1 immediately appear to me that it would be

 2 helpful but I am in your hands. I am prepared

 3 to apply some if you deem it appropriate.

 4 MR. MacPHERSON: That wasn't part of the

 5 discussions between counsel so we are not

 6 making that request at this time.

 7 THE COURT: I think, Mr. Peterson, at

 8 your age and with your skills and your

 9 responsibilities now with your daughter, I am

 10 not going to put you on probation.

 11 THE ACCUSED: I have three years probation

 12 from the assault causing.

 13 THE COURT: Three years?

 14 THE ACCUSED: Yes.

 15 THE COURT: In that case, you don't need

 16 another probation order.

 17 I am going to make a recommendation on

 18 your warrant of committal that you be

 19 considered for early release for work

 20 purposes.

 21 The sentence is 18 months for the firearm

 22 offence and 12 months concurrent on the

 23 possession while on a prohibition order.

 24 I don't believe that you need any

 25 particular counselling while you are in

 26 counselling but if there is anything that they

 27 can do to assist you in transition, I am

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 1 encouraging you to do that.

 2 There will be a DNA order. I am sure that

 3 you are already on record but there will be a

 4 DNA order.

 5 There will be a section 109 order for

 6 life. I won't make any exemption for

 7 subsistence purposes. The offences just don't

 8 warrant that. Unless, were you seeking to

 9 argue that, Mr. Boyd?

 10 MR. BOYD: No, sir.

 11 THE COURT: There will also be a

 12 forfeiture order with respect to the firearm.

 13 Mr. MacPherson, you had some orders for me

 14 to sign?

 15 The orders will go.

 16 I want to, again, make very clear that but

 17 for the very particular and odd facts, the way

 18 in which this firearm came to be in Mr.

 19 Peterson's possession, but for the lack of

 20 firearm offences on his record and but for the

 21 inability of the Crown to establish a longer

 22 timeline of possession, Mr. Peterson would

 23 have been looking at a significantly longer

 24 period of time in custody.

 25 Thank you both. Mr. Peterson.

 26 Anything arising?

 27 MR. BOYD: Not from the defence, Your

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 1 Honour.

 2 THE COURT: Close court.

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 5 Certified correct to the

 best of my skill and

 6 ability,

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 11 Lois Hewitt,

 Court Reporter

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