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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