

RE: ROYAL CANADIAN MOUNTED POLICE, 2014 NWTTC 25

Date: 2014 09 29

*File: T3-CR-2013-000347
T3-CR-2014-000102
T3-CR-2014-000103
T3-CR-2014-000220*

RE: ROYAL CANADIAN MOUNTED POLICE No. 2

Having been cited in contempt by the Honourable B.E. Schmaltz
on July 30, 2014, in Fort McPherson, Northwest Territories.

**REASONS FOR DECISION
of the
HONOURABLE JUDGE B. E. SCHMALTZ**

Heard at: Yellowknife, Northwest Territories
August 22, 2014

Reasons Filed: September 29, 2014

Counsel for the Royal
Canadian Mounted Police: Marcus Dirnberger

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IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

RE: Royal Canadian Mounted Police No. 2

Having been cited in contempt by the Honourable B.E. Schmaltz
on July 30, 2014 in Fort McPherson, Northwest Territories

I. INTRODUCTION

[1] On July 30, 2014, in Fort McPherson, I cited the Royal Canadian Mounted Police (RCMP) in contempt as three court orders had not been complied with, and set the matter for hearing to determine whether or not the RCMP should be found in contempt of court for failing to have both Mr. Wilson and Mr. Vittrekwa before the Territorial Court at 10:00 a.m. in Fort McPherson. The hearing was held on August 22, 2014, after which I reserved my decision.

[2] James Wilson is charged with sexual assault and escaping lawful custody. On March 14, 2014, Mr. Wilson consented to remaining in custody until these matters were dealt with, reserving his right to a show-cause hearing. On March 18, 2014, the Crown elected to proceed by indictment on the charges; on June 3, 2014, Mr. Wilson elected to be tried by Judge and Jury, and requested a preliminary inquiry be held; on July 2, 2014, a preliminary inquiry date of July 30,

2014, at 10:00 a.m. in Fort McPherson was set, and a Form 19 issued to ensure that Mr. Wilson would be taken to Fort McPherson for his preliminary inquiry. Crown estimated the preliminary inquiry would take a full day. Mr. Wilson was not brought to Fort McPherson until 3:45 p.m. on July 30, 2014.

[3] Alan Vittrekwa was charged with assault (offence date: January 26, 2014), breach of undertaking (offence date: February 25, 2014), and a further 4 counts of breach of undertaking (offence date: June 10, 2014). The Crown proceeded summarily on all of Mr. Vittrekwa's matters, and the charge of assault was set for trial on July 30, 2014, at 10:00 a.m. in Fort McPherson. On June 17, 2014, Mr. Vittrekwa consented to remain in custody on all matters, reserving his right to a show-cause hearing, and on that date, a Form 19 issued to ensure that Mr. Vittrekwa would be in Fort McPherson at 10:00 a.m. on July 30, 2014 for his trial, and for facts and sentencing on matters to which Mr. Vittrekwa had entered guilty pleas. Further on July 10, 2014, the Crown applied for a Removal Order for Mr. Vittrekwa; the application was granted, and there was *also* an Order for Removal for Mr. Vittrekwa to have him brought before the Territorial Court on July 30, 2014 at 10:00 a.m. in Fort McPherson. Mr. Vittrekwa was not brought to Fort McPherson until 3:45 p.m. on July 30, 2014.

II. THE CIRCUMSTANCES

[4] Three Affidavits were filed on behalf of the RCMP prior to the Hearing. None of the Affiants appeared at the hearing. Sergeant Kent Pike appeared at the hearing and apologized to the Court on behalf of the RCMP for failing to comply with the orders of the Court, i.e. both Form 19 Remand warrants, and the Order for Removal.

[5] The Affidavits of Dianne Pagonis, Staff Sergeant Bruce McGregor, and Sergeant Grant Thom set out the following circumstances:

- At all times the RCMP were aware that James Wilson and Alan Vittrekwa were ordered to be in Territorial Court in Fort McPherson on July 30, 2014, at 10:00 a.m.
- Arrangements had been made to have both accused transported to Fort McPherson from Yellowknife on July 29, 2014, via RCMP Air Services. On July 23, 2014, the plane that was to take both accused to Fort McPherson had mechanical problems, but there was “no reason to anticipate” that the plane would not be repaired prior to July 29, 2014.
- On July 28, 2014, the part necessary to repair the plane had been received, but was unserviceable.
- On July 28, 2014, at 1:33 p.m. Sergeant Thom of the Fort McPherson Detachment was informed that James Wilson and Alan Vittrekwa would have to be transported on a commercial flight. At 2:58 p.m. Sergeant Thom sent an email to Staff Sergeant McGregor requesting a prisoner escort from Yellowknife to Inuvik on the July 29, 2014 flight. Sergeant Thom stated in his Affidavit that he received an “automatic reply” to this email; Counsel at the hearing advised that the “automatic reply” was an “out of office” reply, and Staff Sergeant McGregor’s Affidavit further states that he was out of his office on Monday, July 28, 2014, and the “automatic reply” was on; Staff Sergeant McGregor’s “automatic reply” did not direct inquiries to anyone else.
- Having received the “automatic reply” indicating that Staff Sergeant McGregor was not in the office on July 28, 2014, Sergeant Thom waited two hours, and then contacted Sergeant Kent Pike in Fort Good Hope who told Sergeant Thom to contact Sergeant Young in Inuvik.
- Sergeant Young agreed to arrange for a member from Inuvik to go to Yellowknife on July 29, 2014, and bring Mr. Wilson and Mr. Vittrekwa to Inuvik on July 30, 2014. There is no Affidavit from Sergeant Young, nor does Sergeant Thom indicate what he told Sergeant Young.
- Sergeant Thom “acknowledges” that in order to comply with the Court Orders a member of the Yellowknife Detachment would have to escort Mr. Wilson and Mr. Vittrekwa on the July 29, 2014 flight from Yellowknife to Inuvik. Sergeant Thom states in his Affidavit that he “sincerely believed” that bringing an escort from Inuvik to transport Mr. Wilson and Mr. Vittrekwa was the “only available option”. Sergeant Thom gives no reason or explanation for this belief.
- On July 30, 2014, Sergeant Thom picked up Mr. Wilson and Mr. Vittrekwa from the Inuvik Airport at 1:15 p.m. and drove them to Fort McPherson arriving at 3:45 p.m.

[6] I take judicial notice that flights from Inuvik to Yellowknife are scheduled Monday to Friday leaving Inuvik at approximately 1:45 p.m. arriving in Yellowknife at approximately 4:15 p.m., and flights from Yellowknife to Inuvik are scheduled Monday to Friday leaving Yellowknife at approximately 10:30 a.m. arriving in Inuvik at approximately 1:00 p.m.

[7] On July 2, 2014, Judge G.E. Malakoe issued a Form 19 remand warrant for James Wilson. The Form 19 stated in part:

To the Peace Officers in the Northwest Territories

You are hereby commanded forthwith to convey to any common gaol ... in the Northwest Territories the persons named ... each of whom has been remanded to the time mentioned in the schedule.

James William Wilson ... remanded to July 30, 2014

And I hereby command you, the keeper of the said prison ... to receive ... the said person into your custody in the prison and keep him safely until the day when his remand expires and then to have him before ... any ... justice at Fort McPherson at 10:00 o'clock in the forenoon of the said day, there to answer to the charge and to be dealt with according to law, unless you are otherwise ordered before that time.

[signed July 2, 2014, Judge G.E. Malakoe]

[8] On June 17, 2014, Chief Judge R.D. Gorin issued a Form 19 remand warrant for Alan Randy Vittrekwa. The Form 19 stated in part:

To the Peace Officers in the Northwest Territories

You are hereby commanded forthwith to convey to any common gaol ... in the Northwest Territories the persons named ... each of whom has been remanded to the time mentioned in the schedule.

Alan Randy Vittrekwa ... remanded to July 30, 2014

And I hereby command you, the keeper of the said prison ... to receive ... the said person into your custody in the prison and keep him safely until the day when his remand expires and then to have him before ... any ... justice at Fort McPherson at 10:00 o'clock in the forenoon of the said day, there to answer to the charge and to be dealt with according to law, unless you are otherwise ordered before that time.

[signed June 17, 2014, Chief Judge R.D. Gorin]

[9] On July 16, 2014, Chief Judge Gorin further issued an Order for Removal (From Day to Day) for Alan Randy Vittrekwa. The Order for Removal stated in part:

Upon it appearing that Alan Randy Vittrekwa is in custody of the North Slave Correctional Centre at Yellowknife in the Northwest Territories;

And upon it appearing that this matter is to be heard before the Territorial Court of the Northwest Territories commencing at 10:00 o'clock in the forenoon on the 30th day of July, 2014, at Fort McPherson in the Northwest Territories, ...

It is hereby ordered that the Warden of the North Slave Correctional Centre surrender Alan Randy Vittrekwa to the Royal Canadian Mounted Police escort bearing this Order so that ... Alan Randy Vittrekwa may be brought under such escort before the Territorial Court ... sitting at Fort McPherson ... on the 30th of July, 2014, at the hour of 10:00 o'clock in the forenoon...

[signed Chief Judge R.D. Gorin]

[10] On July 30, 2014 in Fort McPherson, I was presiding and neither James Wilson nor Alan Vittrekwa was present when their matters were called. Crown Counsel advised that both accused should be in Fort McPherson later in the afternoon as they were being picked up at the airport in Inuvik and being driven to Fort McPherson. I know that on July 30, 2014, the complainant who testified on Mr. Wilson's preliminary inquiry was at the complex where Court is held in Fort McPherson. I also know that the Sheriff helped the complainant attend at the Nursing Station over the noon hour. I do not know whether or not there were any witnesses present for Mr. Vittrekwa's trial.

[11] When Mr. Vittrekwa was brought before the Court, the Crown directed a Stay of Proceedings on Mr. Vittrekwa's matter that had been set for trial, and his matters set for facts and sentencing were adjourned to July 31, 2014; when Mr. Wilson was brought before the Court, Mr. Wilson's preliminary inquiry was adjourned to July 31, 2014.

[12] Both Form 19s and the Order for Removal were not complied with. I directed that the matter be put over to August 22, 2014 in Yellowknife, to allow the RCMP to show cause why it should not be held in contempt. To be clear, the party cited in contempt was the Peace Officers of the Northwest Territories, that being the RCMP, whose responsibility it is in this jurisdiction to ensure that the Form 19s and the Order for Removal were complied with.

III. POSITION OF THE RCMP

[13] Counsel on behalf of the RCMP filed a letter to the attention of the Clerk of the Court setting out the circumstances, the Issues, and "Discussion" on this matter. The position of the RCMP is that the RCMP have provided an explanation for not complying with the court orders, that the contemptuous act has been terminated, and the RCMP "truly regrets this situation and sincerely apologizes to the Court for "failing to comply with one of its orders". To be perfectly clear, the RCMP failed to comply with three orders of this Court. Counsel on behalf of the RCMP requests that the RCMP not be found in contempt.

IV. CONTEMPT

[14] This is the second time that I have cited the RCMP in contempt for not complying with court orders. Much of what I said in my earlier decision, *Re:*

*Royal Canadian Mounted Police*¹, is applicable to this case, and some of it I will repeat.

[15] Actions calculated to obstruct or interfere with justice or the lawful process of the courts, or an act that diminishes the authority of the court, or an act calculated to hinder the course of justice, or show disrespect for the court's authority, or interfere with the business of the court without justification can all amount to contempt of court. To find a person in contempt of court it is not necessary that the person have an aversion or abhorrence or disdain of the judicial system².

[16] For a person to be found in contempt of court it is only necessary that an action calculated to result in an interference with the judicial process or the authority of the court was done knowingly or willfully or deliberately. Behaviour that negligently or recklessly inevitably results in disrespect for the court can be contemptuous³.

[17] When Mr. Wilson and Mr. Vittrekwa were not before the court in Fort McPherson on July 30 at 10:00 a.m., three court orders had not been complied with. Had Mr. Wilson or Mr. Vittrekwa not been in custody, and simply not attended court of their own accord, I expect warrants would have issued for their arrest, and quite likely criminal charges laid for failing to attend court. The Crown, and the Court, stress almost daily in our courts the importance of complying with court orders, and often fines and/or jail sentences are sought and imposed for non-compliance.

¹ *Re: Royal Canadian Mounted Police*, [2008] N.W.T.J. No. 18

² *R. v. Gray*, [1900] 2 Q.B. 36; *British Columbia Government Employees Union v. Attorney General of British Columbia*, [1988] 2 S.C.R. 214

³ *MacMillan Bloedel Ltd. v. Simpson* (1994), 113 D.L.R.(4th) 368 (BCCA), aff'd [1995] 4 S.C.R. 725

[18] A court should not countenance flagrant disobedience of its orders or its process. And the court should act on its own motion if it becomes necessary to do so in order to maintain the authority of the court. Law and order must be maintained in the courts; the course of justice must not be deflected or interfered with.

[19] In *Re: Royal Canadian Mounted Police, supra*, Cpl. Rorison deliberately decided that an accused would not be brought to a community for his trial. In that case I held that:

Whether or not Cpl. Rorison's [actions were] reasonable, or more efficient, is irrelevant, i.e. her motive for not making arrangements to have Mr. Manuel before the court for his trial is irrelevant. Cpl. Rorison decided that ... Arnold Manuel would not be brought to Norman Wells in accordance with the order of the court. Cpl. Rorison's action ... did amount to contempt of court in both denying Arnold Manuel access to the court, and in hindering the course of justice, specifically preventing the conduct of Arnold Manuel's trial.

[20] When it was decided that a member would travel from Inuvik to Yellowknife on July 29, Sergeant Thom knew that this would result in non-compliance with three court orders, and yet that is the course he chose. Sergeant Thom knew that in order to comply with the Court's orders, arrangements had to be made to have a member from Yellowknife escort Mr. Wilson and Mr. Vittrekwa to Inuvik on July 29. There is no basis or rationale for Sergeant Thom's assertion that he "sincerely believed" that having a member from Inuvik fly to Yellowknife to transport Mr. Wilson and Mr. Vittrekwa back to Inuvik was the "only available option" and his belief is unreasonable. He knew that an escort from Yellowknife would be needed to transport the two prisoners; this was the request he sent to Staff Sergeant McGregor. Sergeant Thom decided on a course of action knowing that such would be in breach of three court orders.

[21] As I have said before, whether or not Sergeant Thom's actions were reasonable, or more efficient, is irrelevant. Further there is absolutely no

evidence that his actions were reasonable or more efficient, and no evidence *why* he chose this course of action. But his motive for not making arrangements to have Mr. Wilson and Mr. Vittrekwa before the court for their matters is irrelevant. Sergeant Thom knew that his actions would be in defiance of the court orders. Sergeant Thom's actions in this case are parallel with Cpl. Rorison's actions in *Re: Royal Canadian Mounted Police, supra*.

[22] This is not a case of inadvertence, of confusion, of forgetfulness – this is a situation where Sergeant Thom knew when Mr. Wilson and Mr. Vittrekwa were ordered to be in Court, and it is clear from paragraphs 7 and 11 of his Affidavit that he knew what arrangements were necessary to have them in Court, but chose to make arrangements that could not possibly comply with the court orders. Sergeant Thom states he “sincerely believed” that his arrangement was the “only available option”. There was no basis for that belief, and no evidence that he made any attempt to arrange to have Mr. Wilson and Mr. Vittrekwa before the Court as required after learning that Staff Sergeant McGregor was not in the office. Sergeant Thom's “belief” that the arrangement made was the “only available option” was not reasonable, and he was either reckless or willfully blind when he decided to make arrangements in defiance of three court orders.

V. THE RULE OF LAW

[23] The court's criminal contempt power is the only procedure by which the court can address the seriousness of this situation. The court should only invoke contempt proceedings when it is necessary to prevent justice from being obstructed or undermined. The contempt power is not used “because judges, jurors, witness and officers of the court take themselves seriously: it is because justice, whose servants they are, must be taken seriously in a civilized society if the rule of law is to be maintained.”⁴

⁴ *Balogh v. Crown Court at St. Albans*, [1974] 3 All E.R. 283 (C.A.)

[24] The importance of the rule of law cannot be overemphasized. The words of McLachlin, J. (as she then was) in *United Nurses of Alberta v. A.G. of Alberta* underline this⁵:

The rule of law is the heart of our society; without it there can be neither peace, nor order nor good government. The rule of law is directly dependent on the ability of the courts to enforce their process and maintain their dignity and respect. To maintain their process and respect, courts since the 12th century have exercised the power to punish for contempt of court.

[25] Criminal proceedings in the Territorial Court are scheduled by the judiciary, whether it is by court process issued or confirmed by a judicial officer, or by order of the court after there has been a court appearance. The independence of the judiciary is enshrined in section 11(d) of the *Charter*, and respect for the role and authority of the judiciary is fundamental to the rule of law. Non-compliance with an order to have an accused person before the court amounts to disrespect for, and a challenge to, the independent authority of the court⁶.

[26] The actions of Sergeant Thom compromised the rule of law, by undermining the authority of the court. The circumstances in this case are similar to the circumstances in *R. v. Peel Regional Police Service*. In that case, in-custody accuseds were consistently being brought before the courts late for their appearances delaying in-custody accuseds' access to the court. Hill, J. stated that such conduct "severely compromised" the rule of law, in terms of "both the independence of the judiciary and access to the courts."⁷

⁵ *United Nurses of Alberta v. Attorney-General of Alberta et al.* (1992), 71 C.C.C. (3d) 225 (S.C.C.) at 252

⁶ *R. v. Peel Regional Police Service*, *supra*, at para. 102

⁷ *R. v. Peel Regional Police Service*, [2000] O.J. No. 4446 (Ont. S.C.J.)

[27] Sergeant Thom in his Affidavit has apologized to the court, not for his actions, but “that he was unable to bring ... the two accused before the Court on July 30, 2014, at 10:00 a.m.” Sergeant Thom further states that he “made every effort to transport the accused to Fort McPherson for Court on July 30, 2014, at 10:00 a.m.” Other than sending an e-mail and finding out that the recipient was not in the office, there is no evidence of any further effort made by Sergeant Thom to transport Mr. Wilson and Mr. Vittrekwa to Court in Fort McPherson in compliance with the Remand Warrants and the Removal Order.

[28] On July 30, 2014, the court’s process and the business of the court was interfered with without justification; the course of justice was delayed; the court’s authority was diminished. All of that amounts to contempt of court.

[29] The matter of disposition is adjourned to 1:30 p.m., October 17, 2014, in Yellowknife Territorial Court, to hear submissions from counsel on that issue, or in the event that Counsel is not available that day, to set a date for disposition.

Bernadette E. Schmaltz
Territorial Court Judge

Dated at Yellowknife, Northwest Territories,
this 29th day of September, 2014

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