

ONTARIO COURT OF JUSTICE

HER MAJESTY THE QUEEN

v.

LLOYD MOFFATT

REASONS ON SENTENCING

BEFORE THE HONOURABLE MR. JUSTICE D. MAUND,  
on April 14, 2005, at ORANGEVILLE, Ontario.

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CHARGES: s.86(1)C.C.C. x's 2  
s.91 C.C.C.  
s. 95(1) C.C.C. x's 2

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APPEARANCES

M. Balogh  
C. Martin

Counsel for the Crown  
Counsel for Lloyd Moffatt

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Regina v. Moffatt  
Thursday, April 14, 2005

R E A S O N S   O N   S E N T E N C I N G

MAUND, J. (orally):

5 I convicted Mr. Moffatt today with respect to the  
five weapons offences and they come in two broad  
categories. One was in relation to unsafe storage  
and the other was in relation to not renewing his  
firearms acquisition certificate.

10 With respect to those offences, suffice it to say the  
court finds itself in a position where I am imposing  
a sentence and I found him guilty pursuant to my  
perception of the will of Parliament in terms of  
15 those sections. And I am not unmindful of the fact  
that there has been a great deal of political  
controversy in the land with respect to those  
particular weapons offences and the type of  
regulation. But I feel that the interpretation and  
20 the findings that I made and the evidence flow from  
the law. Having said that I have to deal with Mr.  
Moffatt and the type of person that I find before me,  
having convicted him. And I would agree with  
counsel's characteristic of Mr. Moffatt in a general  
25 sense. But for my convictions today he is not the  
sort of criminal person that is the worst offender  
with respect to weapons offences. They were not  
found in connection with any criminal activity or any  
unlawful use. He never took the weapons off the  
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property. And he found himself in a situation where I think, as I have said in my reasons, he was willfully negligent. He clearly should have adhered to the regulations of very serious and significant prohibited and restricted weapons. But it did not have the sort of heinous quality that one is concerned about in the sentencing case law that I have reviewed.

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With respect to the unsafe storage, the comments I have made stand. I think that the danger is that these weapons including a Thomson submachine gun might get into the worst of all possible hands. So there is that public interest.

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I do note that Mr. Moffatt lived all of his life to this point where he does not have a criminal record. He made the decisions he did based on his understanding of the fact that he was not likely to have a break-in at his home. He has seen many changes in the Town of Mono in his 67 years, and there was a time, some of us may even remember it, when basically you did certain things within your home and you thought that was enough. It is no longer enough and you cannot have serious dangerous weapons, whether they are registered or not is a different matter, but you cannot leave them lying about in this sort of state. It is a public hazard.

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I am not going to send Mr. Moffatt to jail in the circumstances. If there were aggravating facts with respect to the use of the guns I would certainly strongly consider the Crown's submission that jail is the proper result, but I do not think that it is in this case. I also recognize, and I agree with Mr. Martin's submission, that there have been penalties here by virtue of this trial, this man's arrest, his conviction, the fact that all of his firearms worth, I am told, approximately \$15,000.00 are now going to be forfeited and I believe destroyed. And I am also going to make serious orders with respect to prohibiting Mr. Martin for a lengthy period from possessing any firearms.

MR. MARTIN: Could that be Mr. Moffatt, sir?

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THE COURT: Mr. Moffatt. Yes, that is an important distinction, counsel. Mr. Moffatt, of course. All of that indicates that I have considered that these things are a sanction. I do not wish these comments to be taken as condoning the element that I identified in my reasons, that is the public danger. Without getting engaged in a philosophic debate, there is a growing concern about firearms in Canadian society and a concern that despite these regulations, in some urban centres, we are on the way to the same type of dangerous and frightening situation in some cities as our American counterparts face every day. But, I am more concerned that this 67 year old first offender be dealt with properly and I think that jail

is not the only option.

5 He has taken steps to move on in his life and he now lives in the Province of Saskatchewan. This is what I am going to do, sir, all things considered. Now you can stand up, Mr. Moffatt, if you would.

10 First of all I am making a s. 491 forfeiture order and if the Crown could assist with a draft with respect to the specific weapons. Mr. Taylor said he would do that, Ms. Balogh. I will sign that order when it is available.

15 Under s. 109 of the *Criminal Code* there is a mandatory minimum provision that I must consider in terms of prohibition. I am going to prohibit you, sir, for a period of ten years from the possession of all weapons defined by the *Criminal Code*. That includes firearms and s. 109 includes a lifetime prohibition for prohibited or restricted weapons and firearms.

25 In addition the prohibition order under s. 111 will be signed. That runs, of course, concurrently with the s. 109 order. I mentioned that in my reasons this morning.

30 Sir, in terms of the sentence for the offences before the court I am going to deal with them this way: I

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am going to fine you. You do not have unlimited financial means but I think a fine is the appropriate disposition. I am not going to consider, in view of the other orders, probation as a term as well because I think the other orders that I am making cover your conduct as far as weapons and firearms are concerned. So in the result I am going to do this; on Count One there will be a fine. The fine will be \$250.00. And there will also be a finding on Counts Two, Three, Four and Five for \$250.00 each. The total fine therefore, and it is of course consecutive, is \$1,250.00 total on those five counts. The Victim Fine Surcharge will be waived given the financial circumstances of Mr. Moffatt. I am sure that your client is asking for time to pay, Mr. Martin. How much time would he require?

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MR. MARTIN: Could Mr. Moffatt have two months for that?

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THE COURT: That is certainly in order, sir. Is that enough time?

MR. MARTIN: All right. Make it three.

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THE COURT: I think three months is more than reasonable, Mr. Martin.

Now sir, there will be a variety of things that you will have to sign before you leave this building in relation to these offences. The other matters have not been dealt with as yet. Make sure you sign what you need to sign before you leave.

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MR. MOFFATT: Very good.

5 MS. BALOGH: Your Honour, in relation to that matter, and I know that Mr. Lundy is dealing with it, but in relation to this matter there was also a fail to appear and a breach. I am prepared to mark them withdrawn at this point in time because I think they are really attached to this matter.

10 THE COURT: Indeed, yes. Then Mr. Lundy was going to take carriage of those two but that is now dealt with, so the two count Information, the fail to appear and breach of not giving the address, those are now withdrawn by the Crown. So, those are dealt with.

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C E R T I F I C A T I O N

FORM 2

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Date: May 26, 2005

Ruth Wilson

Ruth Wilson,  
Certified Court Reporter.