Citation: *R.* v. *Adamson*, 2010 YKTC 38

Date: 20100319
Docket: 08-00568
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before: His Honour Judge Luther

REGINA

v.

KEVIN ADAMSON

Appearances:
Noel Sinclair — Counsel for the Crown
Gordon Coffin — Counsel for the Defence

REASONS FOR SENTENCING

[1] LUTHER T.C.J. (Oral): This has been one of the most difficult cases and I have really struggled with this one, I have to confess. We have a man with a very, very significant record for drinking and driving. It gets back to something that we were considering earlier in the week with regard to evidentiary issues and not pigeon-holing things. I mean we could do that almost in a computer-like fashion with a man like Mr. Adamson and just say we are going to look towards the maximum range for this crime because of the extensive record and the concerns voiced by Parliament, and also the Supreme Court of Canada, when it comes to drinking and driving.

[2] Since the submissions were heard on the 16th of March, I had occasion to

review a decision of a former colleague of mine, Judge Gorman, who was a prolific writer of judgments, and this decision was filed January 28, 2010; it is a very recent decision, from the Newfoundland Provincial Court. He was actually well aware of decisions from this jurisdiction, including *R.* v. *Germaine*, [2009] Y.J. No. 38 (T.C.), and *R.* v. *Blanchard*, [2009] Y.J. No. 134 (C.A.); however, most of the cases he was looking at were from Newfoundland, but the principles are, of course, the same coast to coast.

[3] The case is *R.* v. *Musseau*, [2010] N.J. No. 25. In April of 2009, Mr. Musseau collided with another vehicle. There were no personal injuries; no significant damage to the other vehicle. He was well intoxicated and later on picked up by the police. He almost fell out of his vehicle while attempting to exit it. The officer concluded that he was grossly intoxicated.

[4] In that particular case, unlike this case, the Crown proceeded summarily. Here I note the Crown is proceeding by indictment; however, unlike this case, the Crown in that case did serve notice of seeking a higher punishment.

[5] Mr. Musseau was 54 years of age, also came from a large family, and he had quite an extensive record, most of which were property related, including a series of 78 convictions for forgery back in the '90s. But his criminal record did include two previous convictions for drinking and driving, one in April of 1979, and another in July of 1981, and he had been in custody briefly before being sentenced, about nine days.

[6] The Crown sought a period of eight to 12 months and a three to five year prohibition. The defence was suggesting a sentence of four to eight months.

[7] The judge reviewed, in great detail, sentencing precedents from Newfoundland and from the Supreme Court of Canada, and they are there for people to read over the course of time.

[8] At page 25 of the decision, that is, in paragraph 58, the judge summarized. He said:

> Having considered the reasons provided and the precedents referred to I will summarize the sentencing principles which can be distilled from them as regards the imposition of sentence for an offence committed, contrary to section 253(1) of the *Criminal Code* by an offender with a related record, as being the following:
>
> 1. drinking and driving is the crime which causes "the most significant social loss to the country" (see ***R. v. Beaudry***, [2007] 1 S.C.R. 190, and ***R. v. Bernshaw***, [1995] 1 S.C.R. 254);
> 2. it is not necessary for the Court to wait for someone to be killed for it to impose a sentence which seeks to protect the public (see ***Connolly***, at paragraph 18; ***Riggs***, at paragraph 37 …;
> 3. the Court must ensure that the sentence imposed is a proportionate one and that the offender is sentenced for the offence actually committed. However, a Court can consider the potential harm that could have occurred as a result of the offender's conduct …;
> 4. the Court must consider any increase in minimum and maximum penalties prescribed by Parliament …, but the Court must not place too great an emphasis on Parliament's decision to increase a minimum mandatory penalty (see W.E., at paragraph 14);
> 5. the primary sentencing principles to be applied is protection of the public through the application of the sentencing principle of general deterrence …; and
> 6. the court must consider all of the circumstances, but in particular:
>   - i. the nature of the driving involved;
>   - ii. the blood-alcohol level recorded … and other indications of the offender's degree of impairment; and
>   - iii. the nature of the offender's previous convictions, including the number; when they

> > were committed; and the effect if any of previous sentences imposed ….
>
> Finally, it is important for a Court it ask itself: what is it attempting to achieve in imposing sentence in these types of cases? I believe the answer to that question is: the prevention of injury and death. As pointed out by Judge Porter in ***Riggs***, at paragraph 37:
>
> > Protection of the public is the paramount and overriding consideration of sentencing a repeat drinking driver. Not to put too fine a point on it, [but] if the drinking driver is not stopped, he will eventually kill someone.

That's a pretty strong statement, if not kill, certainly cause an accident and injure someone for sure.

[9] Now, in this particular situation there are a whole host of mitigating factors. We have the guilty plea; we have the brief period of time in custody; we have the change in attitude, seeing things as they really are, at least for periods of time, and very positive statements by members of the community in support of this man.

[10] The pre-sentence report is certainly a document that evokes emotion. However, in balancing between the needs of the offender and the needs of the public, particularly in terms of drinking and driving, the Court has to be primarily concerned with this aspect of deterrence.

[11] Mr. Coffin has made a strong case for an imaginative, creative type of sentence. The Crown is seeking 18 to 24 months, noting that the maximum, when the Crown proceeds by indictment, is much more than that, that is, a period of five years.

[12] The Court cannot ignore the fact that there are nine previous drinking and driving offences and penalties, and this curative discharge back in 2002. Yes, he did

slip off the wagon in a marked fashion for this particular occasion, but we cannot ignore those priors. The judge in the case of *Musseau* noted that the offences went back to 1979 and to 1981, and clearly the prosecutors and the police in Newfoundland took a different view as to when to serve a notice, which of course is their right, as it is the right of the prosecution here in the Yukon.

[13] I am not persuaded, however, in this particular case, to grant a conditional sentence order. There are too many risks associated with it, as you review the record and see all the past problems. I am just not prepared to take that particular risk. The fact is that he was given the opportunity of a curative discharge in 2002 and, as far as I am concerned, when it comes to drinking and driving, that is about as far as we can go.

[14] What I do appreciate very much about Mr. Adamson is his work ethic and his strong sense, which is laudable, of not relying on the state to support him.

[15] I think the Crown has every right to demand a sentence of 18 to 24 months, but I have to say I am moved to impose a sentence a fair bit less than that for the reasons set out in the pre-sentence report, for the support that this man has and for the way that he has been for the last little while. I do note in my reasons for not imposing the conditional sentence order the fact that there is a 73 percent probability to reoffend outlined in the pre-sentence report. That is a bit high. That may be the percentage right now; maybe it will go down over time.

[16] I do think, regardless of how much time the Court gives him, that when he comes out, if he maintains this strong sense of moving ahead with his life and putting the drinking behind him, that with proper support, he will be able to achieve that goal.

He has done the 28-day residential program, the White Bison program, continues to attend sessions with Ms. White, intends to locate a sponsor and attend AA. I mean how good does it get in terms of what a person is willing to do to deal with this demon of alcoholism?

[17] So balancing all these mitigating factors with the record and the overriding concern of protecting the public from impaired drivers, I am satisfied to reduce down from the 18 to 24 month range that the Crown is seeking and impose a sentence in this case of nine months.

[18] There was some discussion as to provisions for early release and so on. I would say this, that if Mr. Adamson continues to behave in a very responsible way and continues to work well towards his rehabilitation, that the correctional authorities would be well advised to consider imposing as early a release as is possible, and I am prepared to put that recommendation on the warrant.

[19] With regard to s. 259, the Court will impose a period of three years. I do expect that to be obeyed. That would be another criminal conviction and another lengthy sentence if it were not.

[20] There will be a brief period of probation of six months once he is released. The terms will be as follows:

1. Report to the Probation Officer as required;
2. Advise the Probation Officer of all changes in address, phone number, employment;

Of course, a total abstention clause when it comes to alcoholic beverages, and

prohibition from going into any drinking establishments as per the way we normally phrase that particular term in this Territory, that:

3. You are not to attend any bar, tavern, off-sales or other commercial premises whose primary purpose is the sale of alcohol;

4. To seek any assessment, treatment or counselling recommended by the Probation Officer;

[21] Given his circumstances, the Court is going to waive the imposition of a victim fine surcharge.

[22] I do think, Mr. Adamson, it is in your best interest to get this over with and as I indicated, I am prepared to put on the warrant a recommendation that they consider releasing you as early as possible. You have proven to me, to a large degree, that you really want to turn your life around and you have done very well. I want to commend you for that, and because of that, I have reduced the sentence considerably from what the Crown has been looking for.

[23] Mr. Sinclair, any questions here from the Crown?

[24] MR. SINCLAIR: I just wonder if the counselling clause includes a requirement that Mr. Adamson consent to the release of counselling records and so forth to his Probation Officer for their review?

[25] THE COURT: We can certainly include that. I do not think that it is going to be a problem, given the nature of the way he has shown himself.

[26] MR. SINCLAIR: All right, yes, he’s been operating that way already, yes.

[27] THE COURT: Anything else?

[28] MR. SINCLAIR: No, sir, thank you.

[29] THE COURT: Okay. Mr. Coffin, anything here?

[30] MR. COFFIN: No, sir, thank you.

[31] THE COURT: That is all, then. Mr. Adamson, I certainly wish you well. You have done well, and when you come out, I hope you do even better.

LUTHER T.C.J.