

Citation: *R. v. Andre*, 2010 YKTC 37

Date: 20100319
Docket: 00-00667
00-00667A
Registry: Whitehorse

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

REGINA

v.

RUSSELL WAYNE ANDRE

Appearances:
Kevin Komosky
Kimberly Hawkins

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCING

[1] LUTHER T.C.J. (Oral): I think, actually, given the fact that the maximum sentence here is 18 months by summary conviction, the Court feels that the Crown's suggestion here of four months is quite generous. I know, having read this report, that Mr. Andre comes from a difficult background. I understand that, and I understand concerns about aboriginal offenders; been at this for a long time in many jurisdictions, including Labrador, the N.W.T. and here, so I understand these issues quite well.

[2] Nonetheless, the potential harm caused by impaired drivers is substantial and the Supreme Court has talked about this in several cases. The courts cannot be seen as being unduly light on impaired drivers for sure, and in this particular situation, I am

inclined to agree with the Crown's position as set out in their argument pertaining to the Yukon Court of Appeal case of *R. v. Jansons*, 2008 YKCA 15. So we cannot seem to be rewarding people for absconding and then showing up afterwards and saying that things have gone well.

[3] I would have thought that an appropriate sentence here would probably have been in the eight to 12 month range, but I am not going to go beyond what the Crown has suggested in this case. Certainly, there is not going to be a conditional sentence order in a situation where we have so many priors on his convictions record and a number of failing to attend court, failing to appear, and so on. This is a risk I am not prepared to take in terms of imposing a conditional sentence order. I think it is really in the best interest of Mr. Andre to get this sentence over and move on with his life.

[4] What I am going to do, then, is impose, on the s. 253(a) from the 16th of December, a sentence of four months. On the s. 259 charge, I will impose a sentence of one month consecutive. On the remaining charge, a sentence of one month consecutive as recommended by the Crown. As I indicated, I think this is a very generous submission by the Crown, and I certainly would have gone a lot higher than that, considering the way most courts are going with impaired drivers.

[5] I certainly do not think that this is the end here for Mr. Andre. I really think it is the beginning. You are looking at six months here. You will likely be out within three or four months and then you can move on and go ahead with your life. In terms of any drinking and driving, if you get picked up again and the Crown responsibly served you with a notice, as I believe they should have in this case, you would be looking at at

least a year, if not more. The Court's tolerance of impaired drivers with lengthy records is really drawing to an end and, therefore, will only be met with increasing sentences as time goes by.

[6] As to the s. 259 application, in the particular situation here, I am going to impose a period of three years as recommended by the Crown.

[7] Given his present circumstances, I am going to waive the imposition of any victim fine surcharges in this case.

[8] Are there any questions, then, for the Crown or the defence here?

[9] MS. HAWKINS: No, Your Honour.

[10] THE COURT: Okay.

[11] MR. KOMOSKY: We'd seek to withdraw the remaining count.

[12] THE COURT: Okay. That is withdrawn.

LUTHER T.C.J.