Citation: *R. v. Beer*, 2013 YKTC 121

Date: 20130731
Docket: 11-00081
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before His Honour Judge Faulkner

REGINA

v.

CALVIN BENJAMIN BEER

Appearances:
Kevin W. MacGillivray — Counsel for the Crown
Calvin Beer — Appearing on his own behalf

REASONS FOR SENTENCE

[1] FAULKNER J. (Oral): Calvin Benjamin Beer was convicted after trial on a charge of operating a motor vehicle, having consumed alcohol in such a quantity that the concentration thereof in his blood exceeded 80 milligrams of alcohol in 100 millilitres of blood, contrary to s. 253(1)(b) of the *Criminal Code*.

[2] Following Mr. Beer's conviction, the Crown served notice of intention to seek greater punishment. Having regard to Mr. Beer's record, the minimum sentence which may lawfully be imposed on him is one of four months' imprisonment. The Crown, however, seeks one year's imprisonment in addition to a lengthy probation order and a lengthy driving prohibition.

[3] In seeking such a sentence, the Crown points to several salient facts.

[4] First, Mr. Beer has a significant criminal record, including three prior related impaired driving convictions and, as well, has an extremely checkered driving history replete with traffic tickets as well as two convictions for driving while disqualified.

[5] Mr. Beer has amassed this record, although he is only 35 years of age, and he is now getting to the point where, with this further conviction, if he is back before the Court again, the Crown will not be talking about 12 months; it will be talking about years.

[6] The accused points to the fact that his readings were moderate. Indeed, they were, as matters of this kind go in this jurisdiction, and he blew 120 mg%.

[7] There was some evidence of aggressive driving. It might well be inferred that Mr. Beer was responsible for that; however, he denies it. There is not sufficient evidence capable of establishing beyond a reasonable doubt that it was, indeed, Mr. Beer who was doing the brake stands, although, given that he was driving such a short time thereafter, as I say, the inference is strong.

[8] Mr. Beer also points out the fact that there has been some gap in his record. Roughly seven years have passed from his 2004 conviction until the date of this offence.

[9] The other issue in fixing the length of sentence is what prospects there are for dealing with Mr. Beer outside of jail. In that respect, I have to say that the prospects are not very good.

[10] There is evidence before me, in the Pre-Sentence Report (“PSR”), that Mr. Beer was extremely uncooperative in Ms. Geddes' efforts to complete that PSR.

Consequently, despite Mr. Beer's protestations that he is trying to go straight and keep out of trouble, the indications are that he would not be compliant with a community-based disposition.

[11] In the result, I am left to deal with the matter in a manner that will properly protect the public from the dangers of drinking and driving, and to do so by imposing a custodial sentence.

[12] The Crown is, I think, fully justified in seeking a year's imprisonment. However, taking account of what Mr. Beer has said, and particularly the relatively moderate readings and the lack of proof beyond doubt of bad driving on his part, I impose a sentence of 10 months' imprisonment.

[13] With respect to the suggestion that there be a probation order, I think the chances that Mr. Beer can comply with a probation order are slim to none. However, he will have to comply with a four-year prohibition order prohibiting him from operating a motor vehicle on any street, highway, or other public place in Canada. Of course, the penalty for ignoring that particular order, Mr. Beer, will be an additional substantial period of imprisonment.

[14] With respect to the new charges, those are going over to next Wednesday. As you are now a serving prisoner, although the question of your release on the other matters is still theoretically before the Court, even if you were to obtain bail on those matters, you would not be released.

[15] I think the most appropriate thing to do with respect to those matters, given that you have yet to fully consult counsel with respect to those matters, is to adjourn the matter of bail on those matters until the same time and date, which would be next Wednesday at 9:30.

[16] I will waive the victim fine surcharge.

[17] I see nothing in those circumstances that would compel me to impose a DNA order.

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FAULKNER T.C.J.