

Citation: *R. v. Butler*, 2010 YKTC 126

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10-00419
10-00431
10-00254
10-00254A
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before: Her Honour Chief Judge Ruddy

REGINA

v.

BART EDWARD BUTLER

Appearances:
Ludovic Gouaillier
Malcolm Campbell

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCING

[1] RUDDY C.J.T.C. (Oral): Bart Butler is before me for sentencing with respect to a number of counts, all of which are alcohol related. There are two driving while the concentration of alcohol in his blood exceeded the limit, one impaired driving, two drive while disqualifieds, and one abstain breach of his curative discharge probation order.

[2] The first of the offences arises on June 2nd; that was the impaired driving charge. He was stopped by the police, there was indicia of impairment, he refused to

provide a sample. They learned that he was disqualified from driving with respect to a curative discharge he had received in 2009, I believe. He was also subject, as a result of a probation order, to an abstain condition. On July 8th, he was found intoxicated contrary to that condition. On August 19th, he again was found driving while under the influence, provided samples of 220 and 200 milligrams percent. On September 10th, he was again stopped and found to be under the influence, provided samples of 140 and 130 milligrams percent. It appears on that incident there was a case of beer and open liquor in the vehicle, as well as a passenger. Again, he was disqualified for driving at that time. So he has entered pleas to a number of charges.

[3] He comes before the Court with an extensive and lengthy criminal record, which includes, by my count, nine prior related offences between 1985 and 2009. He is now 51 years of age. He and his spouse have a seven-year-old son. It appears that he was doing well for an 18-month period of time prior to these offences. For that reason, he had been granted the curative discharge. He, however, appears to have gotten himself into a situation in which he was working too much and neglecting the steps that he needs to take to maintain his sobriety, and, after having taken that first drink, he spiralled down from there fairly quickly. I am satisfied from his submissions and his AA sponsor's that he, at least, has the desire and the intention of spending his time in custody working on counselling and hopefully will be better able to maintain his sobriety upon his release.

[4] There is a joint submission before me. It is on the low end. Mr. Butler, it could be a significantly higher sentence with your history and with the number of offences that

are before me. I would not say, however, that it is outside of the range, so I am prepared to adopt the joint submission.

[5] Your sentences are going to break down as follows: I am going to deal with the two drive while disqualifieds with using the credit for remand. So on the first s. 259 arising on June 2nd, your sentence will be one day deemed served by your attendance in court today. I am crediting you for 30 days of the 52 days spent in remand. On the second s. 259, on September 10, 2010, I am satisfied that should be a 30 day sentence as well. I am going to credit you the remaining 22 days, leaving a sentence of eight days to be served on that conviction. With respect to the impaired driving offence on June 2, 2010, there will be a sentence of eight months consecutive to any other sentence being served. The 08 charge on August 19th, there will be a sentence of 12 months consecutive to any other sentence being served. On the 08 charge arising on September 10th, a sentence of 14 months consecutive to any other sentence being served. On the abstain breach, with respect to your probation order, a sentence of 30 days concurrent.

[6] On each of the five offences, for which it is applicable, that being the impaired driving, the two 08s and the two drive while disqualifieds, there will on each of those be a 10-year driving prohibition concurrent to each other but consecutive to the driving prohibition from your prior offence.

[7] Given his custodial status, I will waive the victim fine surcharges.

[8] Anything further? Does that cover it all?

[9] MR. GOUAILLIER: There will be a stay of proceedings on the remaining matters.

[10] THE COURT: Okay. Thank you. Mr. Butler, good luck.

[11] THE ACCUSED: Okay, thanks.

[12] THE COURT: You have a lot of work ahead of you.

RUDDY C.J.T.C.