

Citation: *R. v. Carlick*, 2009 YKTC 22

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Docket: 08-00405
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08-04952A
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Judge Barnett

REGINA

v.

CALVIN JAMES CARLICK

Appearances:
David McWhinnie
Gordon Coffin

Counsel for Crown
Counsel for Defence

REASONS FOR SENTENCING

[1] BARNETT T.C.J. (Oral): Mr. Carlick, I have listened to what Crown counsel and your counsel have said this morning. I read the pre-sentence report with some care yesterday. I am of course aware of the fact that you are an Aboriginal man and, as is sadly too often the case, your younger years were less than ideal. But it was not all bad. Your grandparents, who you were very attached to and fond of, raised you in a traditional manner. They drank at times and fought, and your mother had a less than ideal situation. I am aware of those facts and I do not discount them; I do take them into account. But too much can be made of background facts sometimes, and

there are persons who perhaps tend to blame others for too many of their own failings.

[2] Your criminal record, Mr. Carlick, is absolutely shocking. I am not going to tell you that it is the worst record I have ever seen because that would not be true, but in terms of numbers of offences, and in other senses also, it is getting right up there in the sense that not many judges see many criminal records which are longer or more troublesome than yours.

[3] Your record contains seven previous drinking driving offences. Mr. Coffin very properly points out that the last of those offences was back in 1998, in Lower Post. There are two previous convictions for driving when you had been ordered not to drive. While your history of so-called related offences does end in 1998, there have been quite a number of offences since then. I believe that the longest sentence that you ever received for any criminal activity was in 1994 in Lower Post; a one-year sentence for an impaired driving offence.

[4] Your record also contains an extraordinary number of offences which indicate, to my mind, the futility of a judge making an order, even hoping that you will obey that order, if it restricts you in some way. There are a great many breach of probation entries in your record and other related sorts of entries. You have been pretty forthright with the probation officer who prepared this report in telling her about, as you perceive it, your inability to comply with certain restrictions.

[5] I do want to say that my understanding is that Ms. Harpe, who prepared this pre-sentence report, I believe that she is a trainee. It is a very comprehensive and well-written, and very helpful, report.

[6] Mr. Carlick, I often think that while members of the general public are understandably upset on occasion about the circumstances of drinking driving, generally, and in particular with what they may read about here, about with repeat offenders and extreme cases, and by that I mean the cases where the circumstances are extreme; while that is all very understandable and true, it often seems to me that members of the general public, if they understood that persons like yourself, Mr. Carlick, are sometimes out there driving around, they would be shocked. I think that most people are not as aware as they might be of the fact that there are persons with histories, like yourself, Mr. Carlick, that are out there driving around, court orders or no court orders.

[7] The Court of Appeal for the Yukon Territory has made it clear, more than once, that trial judges must deal seriously with cases such as yours. The *R. v. Donnessey* case, (Y.T.C.A.), [1990] Y.J. No. 138, that Crown counsel has given to me goes back to 1990, but the Court of Appeal did not address this issue for the very first time in the *Donnessey* case, and unhappily it has had to address this issue since then. Mr. Donnessey had a bad history such as yours, but when the Court of the Appeal increased his sentence from three months to two years less a day there was not the aggravating fact in Donnessey's case that he had been driving while disqualified.

[8] Crown counsel has fairly and properly pointed out - Mr. Coffin also - that you, Mr. Carlick, were in custody for 86 days before you managed to secure your release in December. It did not last for very long, and you have been in custody 55 days since being re-arrested on the 4th of January.

[9] Taking all of this into account, Mr. Carlick, on the charge of wilful damage to the RCMP car after you were arrested back on the 16th of September, and on the charge of driving while disqualified under the Yukon legislation, you did 86 days in custody. Taking those 86 days into account, that in my view is a proper period of custody for those two matters, concurrently.

[10] You have been in custody 55 days since the 4th of January. You entered a plea of guilty to a charge that between the 30th of December 2008, and the 3rd of January 2009, you were, I am going to say, kind of continuously in breach of the undertaking on which you had been released. You have done your time on that, those 55 days, so there will be no additional time there.

[11] That leaves, and I think properly so, freestanding the indictable charge that you pled guilty to, that on the 16th of September 2008, here in Whitehorse, you were in care or control of a motor vehicle when your blood alcohol was over .08. It was about double the so-called legal limit. On that offence there will be a sentence of 20 months, which is additional to the other sentences that have run their course, consecutive if you will, but that is 20 months starting today.

[12] THE ACCUSED: Why couldn't you have just given me more, so I can get more counselling and more therapy?

[13] THE COURT: Mr. Carlick, I am sorry, I cannot hear you, sir.

[14] THE ACCUSED: Why don't you just give me more time? I'll get more help outside than I do here in this jail. I mean I've been in this jail here, you don't get no

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[15] THE COURT: Mr. Coffin, I am pretty sure I understand what he is saying, but I am not hearing all of the words. Would you just --

[16] MR. COFFIN: I think what --

[17] THE COURT: I think I am hearing, but would you go and ask him, please?

[18] MR. COFFIN: Mr. Carlick feels that he would receive more assistance for his addictions in the federal system --

[19] THE COURT: That is what I thought I heard.

[20] MR. COFFIN: -- than he is receiving at -- and, in fairness, he's probably correct. There is very little, in terms of counselling or treatment, that goes on at this particular facility. They run an AA group once a week. They have ADS counsellors that attend there once a week. There's really nothing of a formal nature that goes on there.

[21] THE COURT: If I were to impose a sentence of two years -- my understanding is that it does happen in the Yukon that people who receive sentences that are just marginally longer than the two year minimum may wind up serving that sentence in the Yukon on occasion; am I correct or am I not correct on that?

[22] MR. COFFIN: I know that that has occurred in the past. I can't say with any certainty what the present situation would be in that regard.

[23] THE COURT: But you are telling me, Mr. Coffin, that Mr. Carlick wants to receive a sentence of two years that will take him to a federal institution, perhaps in British Columbia, perhaps in another province, but that he wishes to serve that sentence in a federal institution outside the Yukon?

[24] MR. COFFIN: That's my understanding. That's my understanding of what he says.

[25] THE COURT: Mr. Carlick, have I got it right, sir?

[26] THE ACCUSED: Yes, sir.

[27] THE COURT: And you are very certain of that?

[28] THE ACCUSED: Yes, sir, I am.

[29] THE COURT: I would stand this matter down so that you could talk to Mr. Coffin, if you wanted to do that, but I think you do not need to do that; you know your mind.

[30] THE ACCUSED: Yes.

[31] THE COURT: Crown counsel have anything to say about that?

[32] MR. MCWHINNIE: Well, we'd asked for a sentence in the 18 to 24 month range. And I have to agree with my friend's comments that it isn't commonly seen here, but occasionally we do see people do exactly as Mr. Carlick is, say that when they're that close to two years, they do sometimes ask to be sent to the penitentiary to access programming. I understand that the population at the WCC is high enough that they do,

even on the two-year sentences, send them down if they can.

[33] THE COURT: Mr. Carlick, when I read this pre-sentence report yesterday it did occur to me, and I had not heard the circumstances of the offence and I had not seen your record but it did occur to me that your situation might be one where a sentence of two years or more would be appropriate. Crown counsel was not pushing for that. I understand from you that you have probably got too many friends at the Whitehorse Correctional Centre, that is what I read in that pre-sentence report, and that you have given the matter some thought. The sentence on the over .08 charge will be two years.

[34] It would be legally possible to attach a probation order to that two-year sentence, but in Mr. Carlick's circumstances I think it would not only be futile but in a sense it would be unfair. There will be no probation order.

[35] There will be a driving prohibition order. Mr. Carlick, my understanding is that you have never had a driver's licence anywhere, either in British Columbia or the Yukon. Judges have made orders that you not drive in the past. You have not been able, or you have not been willing, to comply with those orders. But I am making an order, Mr. Carlick, that prohibits you from operating any motor vehicle on any road, street, highway or public place for a period of ten years commencing today. Mr. Carlick, that order, I need to tell you, involves cars, trucks, motorcycles, motorbikes, trail bikes; it also includes ATVs and snowmobiles, although ATVs and snowmobiles can be operated in places where an order of this nature does not apply. But before you get into or onto any motor vehicle, if you have any thought of driving it or operating it, you need

to talk to somebody who can give you proper legal advice, because if you get convicted of driving while disqualified under the *Criminal Code*, I think that any judge that you appear before is likely to take a very severe view of that and sentence you to a significant term of imprisonment.

[36] Thank you, Mr. Coffin. Thank you.

[37] MR. MCWHINNIE: The outstanding charges should be stayed, Your Honour.

[38] THE CLERK: Thank you. Surcharges, Your Honour?

[39] THE COURT: The victim fine surcharges are waived.

[40] MR. MCWHINNIE: Thank you, sir.

BARNETT T.C.J.