

Citation: *R. v. Craft*, 2010 YKTC 127

Date: 20101105
Docket: 10-00075
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: Her Honour Chief Judge Ruddy

REGINA

v.

RICHARD CRAFT

Appearances:
Jennifer Grandy
Chantel Genier

Counsel for the Crown
Native Court Worker

REASONS FOR SENTENCING

[1] RUDDY C.J.T.C. (Oral): Richard Craft is before me having entered a plea of guilty to a single count of impaired driving. The facts of this case, in my view, illustrate quite clearly the dangers inherent in getting behind the wheel of a vehicle when under the influence of alcohol.

[2] On the 26th of March 2010, Mr. Craft had been at a funeral and a subsequent gathering in relation to the death of a family member. He had been drinking. In fact, it would appear from the readings he had been drinking a considerable amount. He made the extremely poor choice of getting behind the wheel of his vehicle. He was driving down Hamilton Boulevard in the direction of Alaska Highway. At the same time, Ms. Evangeline Ramirez was driving up Hamilton Boulevard, was crossing the intersection

at the Canada Games Centre when Mr. Craft turned left, struck her vehicle with enough impact that the vehicles were carried across the intersection. The police attended, as did the Emergency Medical Services attendants. Ms. Ramirez was taken to hospital as a result of injuries suffered in the accident.

[3] The police dealt with Mr. Craft. They observed indicia of impairment, including the fact that he was staggering and that there was a significant smell of alcohol on his breath. He also admitted to drinking. A demand was made. At that point, Mr. Craft appears to have become aggressive and uncooperative. He ultimately had to be taken to the ground by the police. He was arrested for impaired driving and was taken to the detachment. He provided two samples of his breath, which registered at 240 and 230 milligrams percent, well in excess of the legal limit, and also well in excess of the statutorily aggravating limit set out in the *Criminal Code*.

[4] There is a Victim Impact Statement before me. Ms. Ramirez has taken the time as well to be here in court today. Her Victim Impact Statement, Mr. Craft, as you well know, clearly sets out the significant financial and emotional impacts that your actions have had on her. In many ways, they have been life altering, and they have resulted in issues which she continues to struggle with and have to deal with today, things that you cannot go back and change now because of that decision that you made in March. It is exactly that reason, because of these kinds of consequences, that we have impaired driving laws in the first place. Ms. Ramirez also took the time to be here in court today, and, when asked to speak, stressed the importance, from her perspective, that should Mr. Craft ever drink again that he not get behind the wheel of a vehicle to put someone else at risk in the way that she was put at risk in this particular case.

[5] In determining what to do with this case I have two different positions before me. The Crown is suggesting a sentence in the range of four to six months in custody, in jail, and a two-year driving prohibition. I do not believe that Mr. Craft is taking issue with the suggested length of the sentence but is asking that I consider a conditional jail sentence. Just for those of you in the community that are here watching today, a conditional sentence is a jail sentence, but it is served within the community. In deciding whether or not that is appropriate, I am basically assessing whether or not the risk presented can be managed within the community such that other people are not put at risk. It would result in a restrictive house arrest kind of situation with strict conditions, and if those conditions are breached, the individual could then be returned to jail to serve the remainder of the sentence. So that is the decision that I am making today, whether or not that is appropriate in all of the circumstances.

[6] In doing so, I have been given a great deal of information, the information that I have referred to already from Ms. Ramirez about the significant negative impacts that this accident and Mr. Craft's actions have had on her life. I have also been given a significant amount of information about Mr. Craft himself; some of that is concerning and aggravating, some of it is mitigating.

[7] To start with, Mr. Craft comes before the Court with a prior related criminal record. His criminal record includes six prior related convictions for impaired driving offences and three convictions for driving while either disqualified or prohibited. That, obviously, is extremely concerning for me, because he has a related history. I do have to note, however, that the last of those offences was 1986. So it was a significant period of time before. Mr. Craft has nothing on his criminal record between 1986 and

now.

[8] There have been cases provided to me quite fairly by the Crown, and they are cases that I have seen often and am very familiar with. They are both relating to two individuals that have similar histories in terms of the number of convictions, but I would note that both of those cases involve individuals where their history does not have as significant a gap. In *R. v. Stone*, 2002 YKTC 77, the offence itself was three years after the most previous conviction. In *R. v. Leatherbarrow*, 2004 YKTC 95, it appears to be a two-year gap in between convictions with respect to impaired driving. That is a significant difference in my mind. There is a big difference between someone who has an ongoing, continuing history of impaired driving and one for whom there is, essentially, it would be a 24-year gap in behaviour. But that does not mean that I discount the fact that he has a history of this kind of behaviour, even though dated. So the record is concerning to me.

[9] Also of concern is the Victim Impact Statement and the fact that there was an accident and that that accident had a profound effect on other people that were innocent of any blame in this particular case.

[10] In addition to Mr. Craft's criminal record, I have a Pre-Sentence Report that sets out a fair amount of information with respect to his background; information that is important, in my view, to consider as well. In sentencing I am required to consider the circumstances of both the offence and of the offender in deciding what the appropriate outcome should be.

[11] The information contained in that Pre-Sentence Report indicates to me that Mr.

Craft is a 61-year-old First Nation male. He appears to be linked both to the Kwanlin Dun First Nation and the Champagne Aishihik First Nation. His story is, unfortunately, an altogether too familiar one, and is a disturbing one. He, as many young First Nations individuals were, was removed from his home and put in residential school at a very early age.

[12] There is indication in the report that his time spent in the residential school system was an extremely difficult period of time in which he, as is described in the report, suffered from extreme violence, torture and sexual abuse within the residential school system. That, in turn, led to him abusing alcohol, which in turn led to his extensive involvement with the criminal justice system between 1961 and 1986. It appears, at that point in time, Mr. Craft took some very positive steps in trying to deal with his alcohol problem. He engaged in residential treatment, was quite successful in that treatment, and did well enough that those in the treatment facility suggested that he may himself be a very good candidate to become an alcohol and drug counsellor. He was able to maintain sobriety, it appears, between '86 and '98. He also was able to undergo the requisite training himself to become an alcohol and drug counsellor.

[13] He then did begin to work in the area of alcohol and drug counselling, became the NNADAP Director for the Champagne Aishihik First Nation, built a wilderness treatment centre out at Aishihik Lake for them. He also worked for various other First Nations in this particular area. He also spent some time working at Aspen, which is a residential placement for individuals with significant mental health and cognitive impairment issues. My understanding from this, because I have a vague recollection of the incident happening a few years back, is that the sledgehammer incident, I believe,

happened within the Aspen group home. When he was working there, he was struck over the head by a client with a sledgehammer. That, in turn, resulted in some medical issues.

[14] It appears from the information before me that Mr. Craft continued to work in the area of alcohol and drug counselling. He does, however, continue to have some struggles with managing the role that alcohol plays in his own life. He began drinking again, as I have said, in 1998, in response to some family deaths. There is nothing on his record or otherwise to indicate that his use of alcohol created problems, particularly problems in the way of impaired driving as there are no convictions. It appears he was able to manage his usage in a fairly reasonable way up until a string of additional deaths, which resulted in an increase in his usage and ultimately the offence that brings him before the Court today.

[15] There are a number of factors which I have to balance in deciding whether or not this matter ought to be resolved by way of a custodial term or a conditional term. There is no doubt in my mind that there needs to be a jail term. The only question is, should he be given the chance to serve that within the community?

[16] Factors which, in my view, would argue in favour of there being a straight jail term would be those factors like the extremely high readings, the accident, the impact on Ms. Ramirez, his behaviour with the RCMP once stopped, his record, although dated, and, of course, the importance, as is oft repeated in the case law of any sentence in relation to impaired driving, of sending a denunciatory and deterrent message to others that this type of behaviour cannot be accepted because of the

significant danger that it presents to the community at large. As pointed out by the Crown, we have evidence of the danger that it presents in what happened to Ms. Ramirez in this particular case.

[17] On the other hand, evidence which, in my view, would perhaps argue in favour of considering that Mr. Craft be entitled to serve his sentence within the community, under extremely strict conditions, would be his history within the residential school system. When I consider s. 718.2, it does say to me that I am required to consider all other possible sentences outside of jail in circumstances that warrant it, and also that I am to give particular attention to Aboriginal offenders when considering that particular section. The purpose of the section is to address historical systemic issues which have resulted in Aboriginal offenders being disproportionately represented within our jail systems, and, indeed, within our criminal system.

[18] In this particular case, I do have a circumstance in which there is a direct link between the offence and Mr. Craft's history within the residential school system, that link being, of course, that the significant and devastating abuse suffered within the system ultimately led to the alcohol addiction, which in turn has led him before the Court today.

[19] I will say, Mr. Craft, that but for the gap in your record, I would not even be considering a conditional sentence as appropriate in all of the circumstances. But I do have to be mindful of the fact that you have in the past taken significant steps to address your alcohol problem, and that you have been successful in doing so for extended periods of time. I also am mindful of the fact that you have now been sober

for six months since this offence, that you took some steps in terms of getting in touch with your former counsellors from Round Lake to meet this summer and to talk about what had happened and what it is that you do now.

[20] When I balance all of the factors, I am satisfied, as I have said, that there needs to be a custodial sentence. However, when I look at the Pre-Sentence Report, when I look at the history of Mr. Craft and the fact that the Pre-Sentence Report indicates that he would likely do well under a term of community supervision, and when I consider the significant 24-year gap in his record, I am of the view that Mr. Craft should be entitled to serve his sentence conditionally within the community, but I am of the view that it needs to be on extremely strict and restrictive conditions. In coming to that determination, I am mindful that the Supreme Court of Canada has said that conditional sentences can meet the denunciation and deterrent requirements for this type of sentence. However, I am equally of the view that if it is going to be conditional, the sentence needs to be longer.

[21] So the four to six month range presented by the Crown, I think, is an appropriate one for a straight jail sentence, but, Mr. Craft, if you are going to serve it in the community, it is going to be a longer one, it is going to be on very restrictive conditions that are going to limit your movements. If you at all step outside of those conditions, you are serving the remainder of it in custody. You need to understand that while in the community, it is still a jail sentence and you have to conduct yourself accordingly. There is no leeway. It is not like a probation order where the Probation Officer can decide yes or no about whether or not there should be consequences if you breach. The consequences are you go to jail. That being said, for this, as a conditional

sentence, to send the appropriate denunciatory and deterrent message in this case, I am satisfied it needs to be nine months in length.

[22] I am also satisfied, quite frankly, that the Crown's position as it relates to the driving prohibition being at two years is a generous one in light of both Mr. Craft's history and the fact that there was an accident and injuries in this particular case. I therefore am not satisfied a two year prohibition is sufficient, Mr. Craft, and I am going to prohibit you from driving for a period of three years. You ought not to be on the road if you are going to be under the influence of alcohol, and you need to understand that, and you should know that from your history. But I am going to give you the opportunity, because of steps you have taken to stay sober and because of your history, where I am satisfied that you know full well what you need to do to maintain sobriety, most particularly, because of the significant gap in the record.

[23] The conditional sentence of nine months is going to be on the following terms and conditions, with the statutory terms:

1. That you keep the peace and be of good behaviour;
2. That you appear before the Court when required to do so by the Court;
3. That you report to a Supervisor immediately and thereafter when required by the Supervisor and in the manner directed by the Supervisor;

There will be an order that you sign today. You will need to go from here to the Probation Office to begin your reporting.

4. You are to remain within the Yukon Territory unless you have written permission by your Supervisor;

5. You are to notify the Supervisor in advance of any change of name, address, and promptly notify the Supervisor of any change of employment or occupation;
6. You are to reside as directed by your Supervisor, abide by the rules of the residence and not change your residence without the prior written permission of your Supervisor;
7. You are to abstain absolutely from the possession or consumption of alcohol and/or controlled drugs or substances, except in accordance with a prescription given to you by a qualified medical practitioner;
8. You are not to attend any bar, tavern, liquor store, off-sales, or other commercial premises whose primary purpose is the sale of alcohol;
9. You are to take such assessment, counselling, and programming as directed by your Supervisor;

The report suggests a curfew. I am not satisfied that is sufficient. It is going to be a house arrest situation.

10. You are going to be required to remain within your place of residence at all times, except with the prior written permission of your Supervisor. You are to present yourself at the door or answer the telephone during reasonable hours for curfew checks; failure to do so will be a presumptive breach of this condition;

So you are expected to be in your home at all times. That, effectively, is your jail. If there are certain purposes for which you reasonably ought to be out of the home, you have to get written permission in advance from your Supervisor and you have to be

compliant to the letter with whatever permission that they have given you. So if they have allowed you to drive somewhere, say to get groceries and then drive home, you do not drive and get groceries and then go somewhere else to visit a friend; you go home. Do you understand that? Okay.

[24] Mr. Craft, there is a suggestion about employment. I think in light of his current health issues, I do not think it is realistic to expect that; I am not going to include that. It being a house arrest situation, I think he is limited in what he can do in terms of pursuing employment anyway. So that will not be included.

11. You will, however, be required to provide your Supervisor with consents to release information with regard to your participation in any programming, counselling, employment or educational activities that you have been directed to do pursuant to this order.

[25] Any issue as it relates to the conditions? Okay. As I said, there will also be a three-year driving prohibition which will begin running today. So you will not be able to drive, Mr. Craft.

[26] Given the limited income, however, I will waive the victim fine surcharge.

[27] The remaining counts?

[28] MS. GRANDY: If that could be marked as withdrawn, please.

[29] THE COURT: Thank you. Just before we end, I wanted to give my thanks to Ms. Ramirez for taking the time to be here today and for providing a Victim

Impact Statement, and my hopes that the issues that you are dealing with resolve in a positive way for you over the next period of time.

[30] Mr. Craft, you know what you need to do; you have been here before. So I wish you good luck as well in your ongoing struggle with alcohol. My hope is that you do take the next nine months under these strict conditions to put in place what you need to, to ensure that we do not see you back before the Court again. Thank you.

RUDDY C.J.T.C.