

Citation: *R. v. Doucette*, 2008 YKTC 79

Date: 20081017
Docket: 08-00079
08-00317A
Registry: Whitehorse

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

REGINA

v.

DAVID WAYNE DOUCETTE

Publication of information that could disclose the identity of the complainant, witness or justice system participant has been prohibited by court order pursuant to section 486.4 of the *Criminal Code*.

Appearances:
John Phelps
James Van Wart

Counsel for Territorial Crown
Counsel for the Defence

REASONS FOR SENTENCING

[1] FAULKNER T.C.J. (Oral): David Wayne Doucette has entered pleas of guilty to a charge of impaired driving and a charge of sexual assault.

[2] The impaired driving offence occurred on the 3rd of May of 2008. Mr. Doucette was encountered behind the wheel of a vehicle which, at that point, was parked more or less in the middle of the Alaska Highway. He exhibited advanced symptoms of impairment to the extent that he was unable to stand without aid. I also note that he refused to provide breath samples and was belligerent. It is further to be noted that he was at that time on a conditional sentence and was drinking in contravention of that

order, and was out past his curfew.

[3] With respect to the sexual assault charge, that occurred on the 24th of July of this year. The complainant, who was only 16 years of age at the time and suffers from the effects of pre-natal exposure to alcohol, went to Mr. Doucette's trailer looking for her sister. The complainant was invited in, and therein plied with a substantial quantity of vodka and eventually blacked out. The next thing the complainant remembered was waking up with a naked Mr. Doucette on top of her taking her pants off. She asked him to stop. He did so, though not immediately.

[4] It is to be noted that he was free on a recognizance at the time with respect to the impaired driving charge.

[5] Mr. Doucette has a prior record that is related to both of these matters. He has three prior drinking and driving convictions and one prior sexual assault conviction, although it is extremely dated.

[6] Probably of greater concern is the fact that his record is not only related, but it is voluminous and more or less continuous over the period from his first encounter in Youth Court in 1985 up until the present day, the longest gap being a period of some three years, from 2001 to 2004. The other gaps were because he was in the penitentiary or whatever at the time.

[7] With respect to the matters before me today, I am presented with a joint submission of counsel for disposition on both matters. The first submission is with respect to the impaired driving charge and it poses no particular degree of difficulty to

the Court. The submission is that I take account of the time that Mr. Doucette has served in relation to that charge. He has been in custody 73 days, but it appears for the whole of that time he has been in segregation and on 23-hour lock-down. In the circumstances, the Crown is not adverse to having the Court allow more than the usual 1.5 to one credit for the time already served and concedes that it could be counted at this point in time as something in the order of five months. The joint submission, I accept in this regard.

[8] He is sentenced on that matter to a period of one day in addition to the time served, which I calculate at five months. In addition, he is prohibited from operating a motor vehicle on any street, highway or other public place in Canada for a period of three years.

[9] With respect to the charge of sexual assault, the submission is that Mr. Doucette receives an additional period of imprisonment of three months, plus a period of probation of one year. Now, it will be at once obvious that this submission is significantly shy of the normal range imposed for a sentence of this kind in this jurisdiction, and I need not refer to the many cases which have set out the range; however, I am urged to take note of several factors.

[10] First, Mr. Doucette's guilty plea comes at an early date prior to preliminary inquiry. It is also to be noted that Mr. Doucette did eventually desist, as the complainant requested. It is also to be noted that a vulnerable complainant has been spared the ordeal of testifying, potentially twice, in these proceedings.

[11] Lastly, and most significantly in my view, the Crown concedes that the

prosecution would have been difficult. In all those circumstances, although it is a close call, I am prepared to accede to the joint submission of counsel.

[12] With respect to that matter, Mr. Doucette, you are sentenced to a period of imprisonment of three months to be served consecutively to any other sentence.

[13] Following your release from imprisonment you will be subject to a probation order for a period of one year. The terms of that order will be that you will:

1. Keep the peace and be of good behaviour;
2. Report to the Court as and when required;
3. Report to a probation officer within two working days after the order comes into force and thereafter as, when, and in the manner directed;
4. Reside where the probation officer will direct;
5. Abstain absolutely from the possession or consumption of alcohol or controlled drugs or substances except in accordance with a prescription given to you by a qualified medical practitioner;
6. Except with the prior written permission of your probation officer, you will not attend at any place where alcohol is sold except a restaurant which might be incidentally licensed for the sale of alcohol with meals;
7. Take such alcohol assessment counselling as directed by your probation officer;
8. Participate in the sex offender treatment program or other related programming as directed by your probation officer;
9. Take such other assessment and counselling as your probation officer

directs;

10. Have no contact, directly or indirectly, by any means whatsoever with J.W. or A.S.;
11. Not be in the company of any intoxicated female person;
12. Additionally you will make a donation in the amount of \$150 to such charity as you shall select and your probation officer will approve, and that donation is to be made within three months after the probation order comes into force.

[14] Additionally, there will be an order whereby you will provide samples of bodily substances for the purposes of DNA analysis and banking.

[15] I further direct that you comply with the provisions of the *Sex Offender Information Registration Act* for a period of 20 years.

[14] The final matter to be considered is the application by the accused to serve his sentence intermittently. I have some reluctance in that regard given Mr. Doucette's track record and his performance on the recent conditional sentence. However, it is to be noted that Mr. Doucette has employment, as evidenced by Exhibit 2, and the application is not opposed by the Crown.

[15] The sentence, therefore, will be served intermittently; one day now and the balance - well, it is Friday - commencing today to the next Monday at 7:00 a.m. and thereafter from each Friday to Monday from time to time until the sentence has been fully served.

[16] At all times when you are not actually in custody, Mr. Doucette, you will be

subject to an additional probation order, the terms of which will be identical to the terms of the probation order that I have just outlined, save and except for the donation clause, and with the additional clause that:

13. If a peace officer or correctional staff believes that you have consumed alcohol or controlled drugs or substances within a 24-hour period before going to the Correctional Centre, you must provide breath samples or samples of bodily substances for the purposes of analysis, upon demand.

[17] The remaining counts, Mr. Phelps?

[18] MR. PHELPS: I direct a stay of proceedings with respect to the remaining counts on both Informations, Your Honour.

[19] THE CLERK: The victim fine surcharge?

[20] THE COURT: The fine surcharge is waived. I have taken account of that in the probation order.

FAULKNER T.C.J.