

Citation: *R. v. Enns*, 2017 YKTC 70

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Docket: 15-00017  
16-00428  
17-00148  
Registry: Whitehorse

**IN THE TERRITORIAL COURT OF YUKON**  
Before His Honour Judge Cozens

REGINA

v.

JAMES ROBERT ENNS

Appearances:  
Ludovic Gouaillier  
Richard Fowler

Counsel for the Crown  
Counsel for the Defence

**REASONS FOR SENTENCE**

[1] James Robert Enns has entered guilty pleas to having committed offences contrary to ss. 255(2), 253(1)(a) and 259(4) of the *Criminal Code*.

[2] Sentencing submissions were made on December 6, 2017 and judgment was reserved until December 11, 2017. Sentence was imposed on that date with Reasons to follow. These are those Reasons.

**Sections 255(2), 259(4)**

[3] On October 8, 2014 Mr. Enns was driving south on the North Klondike Highway near Braeburn. He crossed the centre line on a curve, went into the ditch and came

back onto the highway, striking the northbound vehicle being driven by Monica Van Bibber.

[4] Ms. Van Bibber was taken to the hospital with, fortunately, relatively minor injuries. She incurred a lump on her head. The accident also resulted in significant bruising to her head, arms, legs, back, and torso where the seat belt had restrained her. She sustained a cut to her hand and a whiplash injury. It took several weeks for the physical injuries to be resolved, although the emotional/psychological impacts are ongoing.

[5] In her Victim Impact Statement, Ms. Van Bibber states how difficult the long healing process has been on her strength and stamina. She has become more passive when driving and suffers from anxiety, both when driving and in her general life. She has had sleepless nights from the stress and anxiety caused by the accident.

[6] Ms. Van Bibber also disclosed some inconvenience caused by the loss of her vehicle and her need to travel to Whitehorse to deal with issues arising from the accident. She also had some associated financial impact, although the only quantifiable figure provided was for \$500.

[7] Mr. Enns suffered a compound fracture of his femur as a result of the accident. He admits to having been impaired by the consumption of alcohol at the time he was driving.

[8] At that time Mr. Enns was prohibited from operating a motor vehicle as a result of February 28, 2014 convictions for having committed ss. 253(1)(b) and 259(4) offences.

**Section 253(1)(a)**

[9] On June 1, 2017, Mr. Enns was operating his vehicle in Whitehorse when he rear-ended a tow truck. His vehicle had been noted to have been swerving all over the road prior to the accident. Mr. Enns then tried unsuccessfully to re-start his vehicle. Unable to do so, he fled the scene on foot.

[10] Mr. Enns was arrested shortly afterwards. He was belligerent and combative at the time of his arrest, kicking at the police officers, striking Cst. Tillman in the groin area. He had to be forcibly subdued. Mr. Enns admits to having been impaired by alcohol while operating his vehicle.

[11] There was no damage to the tow truck. Mr. Enns suffered a significant laceration over his right eye.

[12] Pursuant to s. 725 of the *Code*, the facts in relation to the assault of Cst. Tillman and the resisting arrest have been read in as aggravating features of the offence.

[13] Mr. Enns has prior convictions as follows:

- 2006: s. 253(a) in Surrey, B.C.;
- 2012: s. 254(5) and 249(1)(a) in Calgary, A.B.;
- 2013: ss. 253(1)(b) and 249.1(1) in Drumheller, A.B.; and
- 2014: 253(1)(b) and 259(4) in Calgary, A.B.

[14] A Notice of Intention to Seek Greater Punishment has been filed for the s. 253(1)(a) offence.

[15] The longest period of custody Mr. Enns has served appears to be 90 days.

[16] Mr. Enns has been in custody since the June 1, 2017 offence and counsel agree that he is entitled to a time-served credit of nine and one-half months.

### **Positions of Counsel**

[17] Crown counsel submits that, taking into account the primary sentencing principles of deterrence and denunciation, the aggravating and mitigating factors, as well as principle of totality, Mr. Enns should be sentenced to a global sentence of 15 months' custody, less credit for time served, as well as a 10-year driving prohibition.

[18] Within these 15 months, noting in particular the prior convictions, counsel suggests that the s. 255(2) sentence should be in the range of six to eight months' custody at a minimum, followed by consecutive sentences for the remaining two offences, in order to arrive at a total of 15 months' custody.

[19] Counsel for Mr. Enns submits that, in addition to the nine and one-half months' credit for time served, Mr. Enns should serve a further nine to 12 months conditionally in the community, therefore resulting in an effective sentence of 18 and one-half to 21 and one-half months. The conditional sentence should be imposed for the s. 259 offence, as it is not legally available for the ss. 255(2) and the 253(1)a) offences.

[20] I note that while Crown counsel is not necessarily opposed to the sentence proposed by counsel for Mr. Enns, he, however, simply raises the following concerns for the Court to consider:

- the serious nature of the offences committed by Mr. Enns;
- the gravity of the harm associated with impaired driving offences;
- Mr. Enns' historical struggle with alcohol, in particular his abuse of alcohol when he encounters difficulties in his life;
- the perhaps limited extent to which Mr. Enns has shown that he has insight into his struggles with alcohol; and
- the lack of a clearly defined plan and structure moving forward to assist Mr. Enns in addressing his alcohol dependence, as well as any underlying reasons that contribute to this dependence.

### **Aggravating and Mitigating Factors**

[21] The aggravating factors in this case are:

- Mr. Enns' criminal record;
- the fact that he committed the further impaired driving offence on June 1, 2017 at a time that he was part-way through a trial that commenced May 25, 2017 for the October 8, 2014 ss. 255(2) and 259(4) offences;
- the June 1, 2017 impaired driving offence resulted in an accident; and
- Mr. Enns fleeing the scene of the accident, and the assaultive and resistant behaviour he exhibited when he was arrested following this offence.

[22] The mitigating factors are Mr. Enns' guilty pleas, although I note that in respect of the ss. 255(2) and 259 offences, these pleas were entered well into the trial and only after he was further charged with the June 1, 2017 impaired driving offence.

### **Circumstances of Mr. Enns**

[23] Much of the information about Mr. Enns was provided through the submissions of counsel, and in the form of a letter and an additional document Mr. Enns wrote, portions of which his counsel read in Court.

[24] Mr. Enns is 33 years old.

[25] He had an unstable childhood, in which his mother would disappear for months, become involved with other men, and then return, promise to make changes, and then leave again. Mr. Enns believes that his father accepted his mother's behaviour for the children's sake. His mother left for good when Mr. Enns was in high school.

[26] Mr. Enns' behavioural problems started by Grade 6. He was skipping school, and involved with negative peer associations.

[27] At the age of 12, he was drinking alcohol, including hard liquor, to the point of blacking out and throwing up.

[28] He began to use drugs, selling his possessions in order to buy them.

[29] At the age of 14, he was involved in robbery and stealing activity to buy drugs and alcohol. He was involved in a serious car accident with a friend at the age of 15 in which he crashed a truck. Alcohol was a factor in the accident.

[30] Mr. Enns suffered a serious hand injury from a mitre saw when he was 16 years old that required significant medical intervention and has resulted in several surgeries.

He has a permanent disability as a result. He was hungover at the time this incident occurred.

[31] He has incurred other significant injuries related to drinking, including three broken arms and being stabbed.

[32] Mr. Enns was expelled at the age of 17 from his fourth high school. He describes his life as being out-of-control when he was 20. He developed a serious cocaine addiction in his 20's.

[33] He has an admittedly long-standing and "shockingly serious" drinking problem, punctuated only occasionally by very brief periods of sobriety. Mr. Enns acknowledges that his drinking has cost him relationships and employment. He says that he is not a nice person when he drinks; in fact he is an "asshole".

[34] He states that he was involved in many alcohol-related incidents for which he narrowly escaped legal consequences.

[35] Mr. Enns has struggled to maintain relationships, in part as a result of a deep-seated distrust that he has for women. As his alcohol use continued to contribute to the derailment of his relationships, Mr. Enns would deal with the loneliness he felt by drinking more. He was able to maintain only brief periods of sobriety until after the October 2014 accident when, at the age of 30, he realized that he had no money, family and career. He says that he then took steps to begin the process of becoming sober, although admittedly not consistently being able to do so. This included involvement in physical activities and education. His periods of sobriety increased, and his physical

activity included participation in the Yukon River Quest, the Klondike Road Relay, and running a marathon.

[36] It appears from the file that a public interest warrant was issued for the s. 255(2) offence on April 7, 2015, the same day that the information was sworn. This warrant was never executed, however. Subsequently, on October 26, 2015, an information was sworn in respect of the same October 8, 2014 incident, alleging only s. 253(1)(a) and (b) offences, as well as a s. 259(4) offence. Mr. Enns was not served a Promise to Appear on this information until June 23, 2016, 20 months after the date of the offence.

[37] It was not until August 31, 2016, which was the first appearance in court on the ss. 253(1)(a)(b) and 259(4) information, that Mr. Enns was made aware that he had also been charged with the s. 255(2) offence.

[38] At that time, Mr. Enns was working and attending Yukon College in Whitehorse and doing well. He had been sober for six months, and continuing his involvement in physical activities.

[39] Counsel for Mr. Enns submitted that from this point on Mr. Enns, unfortunately, let things fall apart. He began drinking again. His education suffered, his involvement in positive physical activity ceased and his relationship deteriorated, subsequently ending as a result of the June 1, 2017 offence.

[40] I was advised that Mr. Enns was in the third year of a Yukon College Resource Management Program when he was arrested and remanded into custody for the June 1, 2017 offence. The information provided by Whitehorse Correctional Centre indicates



that while in custody on remand, Mr. Enns continued to take the Resource Management Program courses.

[41] It is clear that Mr. Enns requires not only a motivation on his part to overcome his alcohol addiction; he also requires strong external support.

[42] A support letter was filed from Justin Munro, who was also present in court at the sentencing hearing. Mr. Munro met Mr. Enns in 2015 and has provided him with support since then. He states that in this time he has observed Mr. Enns make many positive changes in his attempts to involve himself in a pro-social lifestyle, including participation in several outdoor and physical activities, as well as enrollment in Yukon College to work towards obtaining a degree as a Conservation Officer.

[43] Mr. Munro says that he is committed to continue to work with Mr. Enns upon his release from custody to help him to participate in support programs for his alcohol addiction, as well as being able to offer Mr. Enns employment.

[44] Mr. Enns has been involved in Alcoholics Anonymous (“AA”) meetings while in custody on remand and, if released, will continue to work with his AA counselor who is prepared to carry on as a temporary sponsor for Mr. Enns. Mr. Enns intends to continue to attend AA meetings once released and to find a full-time sponsor.

[45] Mr. Enns has the reminder of the physical injuries incurred in the two impaired driving offences, as well as the end of his one-year relationship after the commission of the June 1, 2017 offence. In addition, he has the other negative consequences of his alcohol addiction throughout the years, to remind him of the consequences of his abuse

of alcohol. As of June 1, 2017, it would appear that the deterrent impact on him had not been enough to cause him to take the steps required to change his life and, in particular, maintain that change.

[46] In his written statement, Mr. Enns stated: “I can’t believe I’m still here at this stage in my life. I truly want this to end”. Mr. Enns wrote about the positive things in his life that he misses as a result of his incarceration following the June 1, 2017 offences, and the pro-social hopes he has for his future.

[47] Counsel submits that change happens when a person hits rock bottom. This, he submits, is Mr. Enns’ rock bottom. He has been in custody for six months and has had to complete his semester of schooling while in custody. He is at risk of not being able to continue his education if he remains in custody for the next semester, as a significant amount of practical course work is required.

[48] He submits that Mr. Enns has reached a place in his life where he recognizes that he has reached the age of 33 with little to show for it but a trail of loss and destruction. Mr. Enns is at a watershed point in his life where he is motivated to change, has continued to take some steps, perhaps faltering at times, in the direction of change, and has a sufficiently realistic pathway before him to continue to move forward towards a substance-free and positive life.

### **Analysis**

[49] The global sentence of 15 months of custody proposed by Crown counsel is well within the appropriate range of sentence for these offences, taking into account the

circumstances of the offences and of Mr. Enns, in particular his criminal conviction history of related offences.

[50] If I accede to the Crown's submission and sentence Mr. Enns to a further five and one-months' custody, he will be likely be released after approximately three and two-thirds months on statutory release. The public will be protected from the possibility of the commission of further impaired driving offences during the period of time that Mr. Enns is in custody, but that protection will significantly diminish after he is released, because, at best, he will be subject to the supervision of a probation order.

[51] Mr. Enns, by this point in time, may have lost his opportunity to continue the educational opportunity he has continued to pursue while in custody, after having previously derailed himself somewhat.

[52] Alternatively, I can use what discretion is available to me to craft a sentence that allows Mr. Enns to continue his education under supervision in the community subject to the restrictive terms of a conditional sentence order. If Mr. Enns fails to comply with the terms of a conditional sentence order, he will likely find himself back in custody. If the conditional sentence order is in the range suggested by counsel, Mr. Enns could potentially serve more time in custody than he would under a 15-month custodial disposition.

[53] In order for a conditional sentence to be imposed, I must be satisfied under s. 742.1 of the *Code* that "...the service of the sentence in the community would not endanger the safety of the community and would be consistent with the fundamental purpose and principles of sentencing set out in sections 718 to 718.2".

[54] In my opinion, taking into account the present circumstances of Mr. Enns, the insight he appears to currently have, the educational opportunity that continues to be available to him, and the support that he has in the community, I am satisfied that a conditional sentence order that results in a total custodial disposition substantially longer than the 15 months' incarceration suggested by Crown counsel, best protects the public, and best accords with the purpose and principles of sentencing.

[55] There is considerable incentive in such a sentence for Mr. Enns to continue to pursue positive and pro-social activity and avoid driving at all, and in particular after consuming alcohol, because, if he does not, the consequences will be significant. I am satisfied that Mr. Enns is in a position where he is best able to pursue and adhere to positive rehabilitative prospects. There is some indication that Mr. Enns has more insight at this point in his life into the impacts of his alcohol-dependent lifestyle than previously, although he still has much to learn.

[56] If Mr. Enns is able to continue to make progress towards an alcohol-free lifestyle, then society is best protected in the long-term, and potentially could also benefit from the positive contributions Mr. Enns is capable of providing. Foregoing the protection offered for, in reality, the likely three and three-quarter months of further actual custody that would be served by Mr. Enns through the imposition of an additional five and one-half month period of incarceration, for the supervision offered by a longer custodial disposition in the form of a conditional sentence order is, in my opinion, a much more effective sentence, taking into account the requirements and considerations set out in ss. 718 – 718.2 and 742.1.

[57] As a result, I am prepared to structure the sentences to be imposed in a manner that allows for the imposition of a conditional sentence.

### **Sentence**

[58] For the s. 255(2) offence the sentence will be nine and one-half months' time served.

[59] For the s. 253(1(a) offence the sentence will be seven months' time served concurrent.

[60] For the s. 259(4) offence the sentence will be 10 months to be served conditionally in the community on the following terms:

1. Keep the peace and be of good behaviour;
2. Appear before the court when required to do so by the court;
3. Report to a Supervisor immediately upon your release from custody and thereafter, when required by the Supervisor and in the manner directed by the Supervisor;
4. Remain within the Yukon unless you have written permission from your Supervisor;
5. Notify the Supervisor, in advance, of any change of name or address and, promptly, of any change of employment or occupation;

6. Reside as approved by your Supervisor and do not change that residence without the prior written permission of your Supervisor;
7. For the first six months of this order, at all times, you are to remain inside your residence or on your property, except with the prior written permission of your Supervisor; except for the purposes of employment and/or education, and/or counselling, including travel directly to and directly from your place of employment and/or education, and/or counselling, you are to provide your Supervisor with information in respect to all travel for such occasions; and except for two hours per day at such times as approved by your Supervisor in writing. You must answer the door or the telephone to ensure you are in compliance with this condition. Failure to do so during reasonable hours will be a presumptive breach of this condition;
8. For the last four months of this order, abide by a curfew by being inside your residence or on your property between 9:00 p.m. and 4:00 a.m. daily except with the prior written permission of your Supervisor;
9. Not possess or consume alcohol and/or controlled drugs or substances that have not been prescribed for you by a medical doctor. Provide a sample of your breath or urine for the purpose of analysis upon demand by a peace officer who has reason to believe that you may have failed to comply with this condition;

10. Not attend any premises whose primary purpose is the sale of alcohol including any liquor store, off sales, bar, pub, tavern, lounge or nightclub;
11. Attend and actively participate in all assessment and counselling programs as directed by your Supervisor, and complete them to the satisfaction of your Supervisor, for the following issues; alcohol abuse, and any other issues identified by your Supervisor, and provide consents to release information to your Supervisor regarding your participation in any program you have been directed to do pursuant to this condition;
12. Make restitution by paying into court the amount of \$500 in trust for Monica Jean Van Bibber by the end of the 7<sup>th</sup> month of this order;
13. Participate in such educational or life skills programming as directed by your Supervisor and provide your Supervisor with consents to release information in relation to your participation in any programs you have been directed to do pursuant to this condition.
14. Make reasonable efforts to find and maintain suitable employment and provide your Supervisor with all necessary details concerning your efforts.
15. Not drive a motor vehicle at any time.

[61] There will be a further nine months of probation attached to the s. 259(4) offence on the following terms:

1. Keep the peace and be of good behaviour;
2. Appear before the court when required to do so by the court;
3. Notify the Probation Officer, in advance, of any change of name or address, and promptly, of any change in employment or occupation;
4. Report to a Probation Officer immediately upon completion of your conditional sentence and thereafter, when and in the manner directed by the Probation Officer;
5. Reside as approved by your Probation Officer and not change that residence without the prior written permission of your Probation Officer;
6. Not possess or consume alcohol and/or controlled drugs or substances that have not been prescribed for you by a medical doctor;
7. Not attend any premises whose primary purpose is the sale of alcohol including any liquor store, off sales, bar, pub, tavern, lounge or nightclub;
8. Attend and actively participate in all assessment and counselling programs as directed by your Probation Officer, and complete them to the satisfaction of your Probation Officer, for the following issues; alcohol abuse, and any other issues identified by your Probation Officer, and provide consents to release



- information to your Probation Officer regarding your participation in any program you have been directed to do pursuant to this condition;
9. Participate in such educational or life skills programming as directed by your Probation Officer and provide your Probation Officer with consents to release information in relation to your participation in any programs you have been directed to do pursuant to this condition;
  10. Make reasonable efforts to find and maintain suitable employment and provide your Probation Officer with all necessary details concerning your efforts;
  11. Not drive a motor vehicle at any time.

[62] With respect to the each offence, Mr. Enns is prohibited from operating a motor vehicle on any street, road, highway or public place for a period of five years. The driving prohibitions are to run concurrently.

[63] There is a total of \$500 payable in Victim Surcharges. There will be 12 months time to pay.

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COZENS T.C.J.