

Citation: *R. v. Garrett*, 2009 YKTC 134

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09-05495A
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: Her Honour Chief Judge Ruddy

REGINA

v.

SHANNON MARY GARRETT

Appearances:
Nicola Pfeifer
Mark Pindera
Malcolm Campbell

Counsel for the Crown
Counsel for the Territorial Crown
Counsel for the Defence

REASONS FOR SENTENCING

[1] RUDDY C.J.T.C. (Oral): Shannon Garrett is before me with respect to a number of matters to which she has entered pleas of guilty. These include two counts of refusal to provide breath samples following a demand, one count of impaired driving, one breach of probation and two offences under the *Motor Vehicles Act*, R.S.Y. 2002, c. 153, one driving without a valid licence and one for driving an uninsured vehicle.

[2] The charges relate to three separate incidents occurring over the last year. The first is December 4, 2008, at which point the police were operating a check stop. Ms.

Garrett was stopped. The RCMP noted a smell of alcohol and slurred speech. They entered into an impaired driving investigation. When Ms. Garrett exited the vehicle there were balance issues that were evident. She was provided a demand to provide a breath sample into an approved screening device, which registered as a fail. She was then taken to the detachment to provide a breath sample, but refused on a number of occasions, and even attempted to grab the officer's gun, saying to him, "Wouldn't it make it easier; you could just shoot me?" At the time she was on a probation order requiring her to abstain absolutely from the possession or consumption of alcohol.

[3] On March 28th, Ms. Garrett was again behind the wheel of a vehicle while intoxicated. The RCMP noted erratic driving and, indeed, noted that the window of the vehicle was frosted over and Ms. Garrett had her head out the window while she was driving. There were no lights on. The vehicle was pursued. The erratic driving continued, including hitting the median, over-correcting and cutting off another vehicle.

[4] Ultimately, the vehicle was stopped at Lewes and Alsek. One of the RCMP officers noted Ms. Garrett move from the driver's seat into the passenger seat, and it appears that when the other officer arrived at the driver-side window there was a dog in the driver's seat. There was also a passenger in the rear of the vehicle with another dog; a factor which is important, as it turns out that this particular passenger had been sleeping in the vehicle and woke to find Ms. Garrett driving the vehicle without her permission.

[5] Ms. Garrett was asked to exit the vehicle by the RCMP. She refused and was ultimately pulled from the vehicle. The RCMP noted indicia of impairment. Ms. Garrett

continued to be quite uncooperative, including refusing to give her name and attempting to walk away on a number of occasions.

[6] Then again, on November 17th of this year, the RCMP attended to a report of an accident. The owner of the vehicle which had been struck did indicate the vehicle had been struck by a nearby truck and that the driver had been passed out in the driver's seat. Ms. Garrett was located nearby, knocking on a door. It was determined that she had been the driver, both by tracing her footprints back to the vehicle and also through the identification by the owner of the other vehicle. She refused to provide a sample of her breath following a valid demand.

[7] With respect to the November 17th date, it was also learned that Ms. Garrett did not have a valid driver's licence and was driving a vehicle that was not properly insured. As an aggravating factor, I also have information that, with respect to the March 28th incident, she was driving while her licence was suspended as well.

[8] Counsel are suggesting a sentence of one year, to be followed by a four-year driving prohibition and a one-year probation order. The only real issue for me is whether or not there ought to be an abstain condition with respect to that probation order.

[9] Ms. Garrett comes before the Court with a prior history, including two related offences in 1993 and 1995. It is evident from the information before me today that she suffers from a serious substance abuse issue. I am advised that efforts were underway for Ms. Garrett to pursue a curative discharge when the most recent of the charges arose. But she has, to her credit, taken some steps towards addressing what is clearly

a serious problem for her. She has been seeing Dale Gordon from ADS since June. She has also completed the ADS 28-day residential treatment program on two occasions, in January of 2008 and again in May of 2009.

[10] It appears that her substance abuse issues are related, to some extent, to an underlying mental health disorder, and she has been pursuing treatment for that as well. She has been meeting weekly, since 2006, with a mental health counsellor, and she has recently been referred to the dialectical behavioural therapy program, which has just started. It is my understanding, through her counsel, that she can continue that program as a serving prisoner, although on remand status she is unable to access it, which is part of her concern about getting this matter resolved today.

[11] I am also required to take into account the fact that Ms. Garret has spent some 20 days in remand and is entitled to credit for those days. Defence counsel is suggesting that I consider credit somewhat greater than the normal credit of one and a half to one, given the fact that Ms. Garrett has experienced some difficulties on remand, in relation to assaults from other inmates, that have led to her being removed and placed in a more isolated area wherein she has not been able to access services.

[12] I also need to take note of the fact that notice has been filed in this case, which, quite frankly, would trigger a mandatory minimum of four months on each of the three counts, which adds to the year that is being suggested by counsel, in any event.

[13] In all of the circumstances, I am satisfied that it is appropriate to resolve the matters as follows. With respect to the refusal arising on December 4, 2008, there will be a sentence of 80 days, and I am going to credit her 40 days for the time spent in

remand, because of the difficulties arising. So the sentence will be 80 days and the record will reflect that she is also being credited for that 40 days in remand. With respect to the breach of probation that relates to that matter, there will be a concurrent sentence of 30 days.

[14] With respect to the impaired driving count arising March 28, 2009, there will be a sentence of four months, consecutive to any other sentence being served.

[15] With respect to the refusal arising November 17, 2009, there will also be a sentence of four months on that count, consecutive to any other sentence being served.

[16] With respect to the offence for driving without insurance, there will be a sentence of \$400, a surcharge of \$60, payable forthwith. On the driving without a valid licence, a fine of \$125, \$18 surcharge, again payable forthwith. It appears that Ms. Garrett has little means to pay, such that it is likely more appropriate for her to serve the time in default.

[17] I am satisfied that it is appropriate, particularly given the number of charges before me, that there be a driving prohibition of four years.

[18] There will be a probationary term of one year on the following terms and conditions, Ms. Garrett:

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 notify the Probation Officer in advance of any change of name or address, and promptly notify the Probation Officer of any change of employment or occupation;
4. That you report to a Probation Officer immediately upon your release from custody, and thereafter when and in the manner directed by the Probation Officer;

[19] There was an issue with respect to the abstain clause. There is concern expressed by Ms. Garrett, through her counsel, with respect to her ability to comply with that condition. She will have a fairly lengthy period of enforced sobriety. It is clear that she has a significant addiction and that it will be a struggle for her to maintain sobriety. I am, nonetheless, satisfied that it is necessary, from a public safety standpoint, that there be an abstention term on the probation order, and I trust to our able Probation Officers to manage that condition judiciously, in light of her addiction. So there will be a condition requiring, Ms. Garrett:

5. That you abstain absolutely from the possession or consumption of alcohol and controlled drugs or substances except in accordance with a prescription given to you by a qualified medical practitioner;
6. That you not attend any bar, tavern, off-sales or other commercial premises whose primary purpose is the sale of alcohol;
7. That you take such alcohol assessment, counselling or programming as directed by your Probation Officer; and
8. That you take such psychological assessment, counselling and programming as directed by your Probation Officer.

[20] I would waive the victim fine surcharges in the circumstances.

[21] There is also the issue of restitution. I have information before me indicating that the damage to the vehicle, on the November 17th incident, amounts to \$6,791.56. I have a couple of concerns with respect to the issue of restitution. I would like to make a restitution order but, on the one hand, there is considerable concern about Ms. Garrett's ability to pay and, secondly, were I to make that order, I would want to know, in particular, given her circumstances, I would want to know issues such as whether there was insurance coverage and whether there was a deductible, because were I to make an order, I would likely only be inclined to make it to cover whatever money Mr. Coss (phonetic) himself was out, as opposed to the full amount. So absent that information, I am not in a position to make that order and would decline to do so.

[22] I believe that simply leaves the remaining counts.

[23] MS. PFEIFER: The Crown stays, Your Honour.

[24] THE COURT: Okay. You as well, Mr. Pindera? Thank you. Okay.
The remaining counts will then be stayed. Is there anything further?

[25] THE CLERK: Your Honour, just with regards to the driving order, is on all the driving offences and the probation order is on all of the criminal matters?

[26] THE COURT: Yes.

[27] THE CLERK: Thank you.

[28] THE COURT: So long as it is evident that it would be concurrent.

RUDDY C.J.T.C.