

Citation: *R. v. Helm*, 2010 YKTC 36

Date: 20100323
Docket: 08-00295
09-00551
09-00552
09-05125
Registry: Whitehorse
Heard: Carcross

IN THE TERRITORIAL COURT OF YUKON
Before: Her Honour Chief Judge Ruddy

REGINA

v.

STEVEN WALTER HELM

Appearances:
Noel Sinclair
Emily Hill

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCING

[1] RUDDY C.J.T.C. (Oral): Steven Helm is before me with respect to three counts of impaired driving-related offences arising between July 23, 2008 and October 19, 2009.

[2] Specifically, on the 23rd of July 2008, the police received a report of a possible impaired driver and some erratic driving, although I understand that the initial report related to someone different. Upon patrol in the area, the police observed Mr. Helm to be backing out of a driveway and felt that the way that he moved the vehicle around to park it on the other side was somewhat erratic. He was observed to exit the vehicle and

head towards the residence across the street. He was told to stop, at which point the officer noted the smell of alcohol. The officer also observed balance issues and Mr. Helm made an admission that he had been drinking. A breath demand was made and ultimately samples were provided, registering at 170 and 160 milligrams percent. Mr. Helm was noted to be cooperative throughout.

[3] Subsequently, on September 24, 2009, the RCMP received several reports that Mr. Helm was intoxicated and driving. These included at least three separate witnesses, all of whom described him as being intoxicated and observed him driving in the area of the Montana Services store. One witness indicated that, in fact, he nearly ran into her. The police located Mr. Helm at his residence, at which point he was noted to be noticeably intoxicated, with a strong odour of alcohol on his person.

[4] With respect to that particular matter, he has entered a plea to impaired driving. The other two matters to which he has entered pleas are both driving while the concentration of alcohol in his blood exceeded the legal limit.

[5] The third offence arose on October 19, 2009. It appears Mr. Helm's mother contacted the police to indicate that he was intoxicated and driving his vehicle. He was located in a residential neighbourhood during daytime hours. There was no particularly erratic driving that was noted and he was cooperative, and in fact, pulled up next to the police officer. He was given an ASD demand, which produced a fail, and ultimately provided two breath samples of 190 and 180 milligrams percent.

[6] He has been detained since that date, that being October 19, 2009, and I think counsel are agreed, as am I, that this falls quite clearly before the amendments and he

would be entitled to a one and a half to one credit with respect to the time that he has spent in remand.

[7] Mr. Helm comes before the Court with a lengthy and related criminal record dating back to 1983. Of particular note, for the purposes of this sentencing, he has six prior impaired driving-related offences. They fall between 1986 and 2001. He also has two convictions for driving while disqualified.

[8] The Crown is suggesting a global sentence in the range of one to two years with a five-year driving prohibition, noting the high readings on two of the offences, the fact that one of the offences did take place in daytime hours in a residential neighbourhood where there were children and construction workers about, and that another offence, as well, occurred in daytime hours near the store where other individuals were about.

[9] Defence is suggesting that I consider the lower end of that range, noting the gap in his record since 2001, at least as it relates to related offences for Mr. Helm. He is now 42 years of age and a member of the Carcross/Tagish First Nation. He has a grade nine education and his employment history includes a variety of things but most recently carpentry work for the First Nation. He has three children, two teens who reside with their mother and with whom he maintains a relationship and provides support, and one nine-year-old who resides with Mr. Helm and his parents. I am advised that drinking has been a significant issue for him since childhood, which is clearly reflected in his criminal record. He was exposed to alcohol at an early age, though I am advised that his mother, to her credit, has now maintained sobriety for some 17 years and is a sober support for him.

[10] He has made efforts on his own in the past and has been able to maintain sobriety for periods of up to two years, but he continues to have ongoing problems. It had been his hope to pursue a curative discharge application with respect to these matters but his custodial status has prevented that possibility.

[11] In terms of considering all of the factors before me, as I said in the previous impaired sentencing before me, these offences are ones for which both Parliament and the courts have increasingly, over the last two decades, seen fit to focus on custodial terms with the intent of meeting the principles of denunciation and deterrence, to clearly send the message that this type of behaviour, given the danger that it presents to the community at large, is not to be tolerated and will result accordingly in significant sentences. Being mindful of the principles that apply, I am of the view, again, that the focus for this sentence needs to be denunciation and deterrence.

[12] I have considered, however, the fact that there is a gap since 2001 in Mr. Helm's record, the fact that he has entered guilty pleas and, in my view, the second offence in particular may have raised some issues for the Crown in terms of proof. So he is entitled to some enhanced credit, perhaps, at least with respect to that offence, for having entered guilty pleas. I am also mindful of the fact that he does have an interest in pursuing treatment, and I am quite hopeful that he does so.

[13] I am not, however, of the view that it is appropriate in the circumstances for there to be a rehabilitative focus to this particular sentence. It needs to be deterrent and denunciatory, in my view, and that is what the focus will be. I am not certain whether I did mention as well, but I considered the fact that in none of these three offences was

there particular egregious driving patterns. He was cooperative throughout. He made no attempt to evade the police and I think that is a factor in his favour as well.

[14] Having considered all of those factors, I am of the view that a global sentence of 18 months is appropriate. I would break it down between the three as being four months, six months and eight months, but I have to deal with the credit for remand. So what I am going to do with respect to the July 23, 2008 offence, there will be a sentence of one day deemed served by his attendance in court today, and I would ask that the record reflect he is being credited for four months in pre-trial custody.

[15] With respect to the second offence, on September 24, 2009, there will be a sentence of two months, and I would ask that the record reflect that he is being credited with the remaining four months in pre-trial custody.

[16] For the remaining offence on October 19, 2009, there will be a sentence of eight months consecutive to the sentence on the other and to any other sentence being served, which leaves a remaining sentence of ten months to be served.

[17] The driving prohibition?

[18] MS. HILL: I didn't make submissions with regard to the prohibition.

[19] THE COURT: Yes.

[20] MS. HILL: My friend is seeking five years. I would note on the record the last prohibition was 18 months, and given that, and given that Mr. Helm will,

I'm sure, have a lot of work to do with regard to the Motor Vehicles Branch, I would ask for three years driving prohibition. It's the minimum that can be imposed at this point and I would ask the Court to impose that rather than the five years.

[21] THE COURT: My difficulty is the number of them that are before me. I do have three offences before me. I am satisfied, unfortunately, that a five-year driving prohibition is appropriate in the circumstances, given the record and given the fact that there are three offences. There will be a five-year driving prohibition.

[22] I will waive the victim fine surcharges, given his custodial status. The remaining counts?

[23] MR. SINCLAIR: Stay of proceedings.

[24] THE COURT: Thank you.

[25] Mr. Helm, you have a bit more time to serve. I am hopeful that you are able to start some programming before you get out so that we do not see you back. Good luck.

[26] THE CLERK: And the ticket was being stayed?

[27] MR. SINCLAIR: Yes, please.

[28] THE COURT: Okay, thank you.

RUDDY C.J.T.C.