

Citation: *R. v. Jacobs*, 2008 YKTC 98

Date: 20081210
Docket: 08-00335
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before: His Worship Justice of the Peace Cameron

REGINA

v.

DARREN THOMAS JACOBS

Appearances:
Noel Sinclair
Colleen Harrington

Counsel for Crown
Counsel for Defence

REASONS FOR SENTENCING

[1] CAMERON J.P.T.C. (Oral): Mr. Jacobs has pled guilty to one count of s. 259(4)(b). The facts before the Court are that on November 21, 2007, Mr. Jacobs was disqualified from driving a motor vehicle for a period of one year. On August 7, 2008, during a check-stop proceedings, Mr. Jacobs was found to be driving a motor vehicle. He had no licence at the time.

[2] His only record is his previous conviction from November 21, 2007, and the pre-sentence report is very positive. He has a lot of supports and has a lot of potential.

[3] Of course, the ruling case in these matters in this jurisdiction is *R. v. Battaja*, [1990] Y.J. No. 208, and it is a case whereupon it indicates that failure to abide by a court restriction or prohibition must be treated extremely seriously for it to have any value or effect.

[4] It is also, Mr. Jacobs, the view of the Court that, as your counsel has pointed out, this took place fairly close to the end of your prohibition. However, the Court is of the view that it would be extremely unlucky for you to have only driven once, and get caught that once. So the problem is that even though it took that long before you got caught, there is an implication that in all likelihood you just were not taking it that seriously. Maybe for the first while you took it seriously, but at some point you chose and decided, "I'll drive anyway," and, as I say, it would be extremely unfortunate if, when you finally made that decision, that is the one day you get caught.

[5] I am not trying to say that I convict you of doing it all the time; I am just saying that the reality is that it would be very unfortunate if the only time you have ever actually blown off this prohibition, you actually get caught. That is just too much coincidence.

[6] That is the other reason that *Battaja, supra*, says we have to look at jail, basically, unless there are some very extraordinary circumstances, and that that jail should start, for a first offence, at 30 days. So it truly is treated as a serious offence.

[7] In my view, in keeping with that denunciation and that approach to the denunciation, I am not convinced that that same denunciation, that that effect, is found in a conditional sentence. So, as such, I am of the view that the 30 days should apply as jail sentence. However, I am also of the view that, given your circumstances, that serving that sentence intermittently requires firstly that you go to jail so that you are reminded that this is why you are going to jail, but secondly, would allow you to continue to pursue your employment and to assist your girlfriend with the raising of her children, et cetera.

[8] It will be a 30 day sentence, served intermittently. It will be served on weekends. You will surrender yourself no later than 7:00 p.m. on Fridays. You will be released the following Monday no later than 7:00 a.m. and you will continue in that fashion, surrendering by 7:00 p.m. on Fridays to be released on Mondays at 7:00 a.m., until the completion of the sentence.

[9] At all times when you are not at WCC, you will be subject to probation, and the terms of that probation are:

1. That you will keep the peace and be of good behaviour; and,
2. That you will surrender yourself to WCC having not consumed any alcohol for a period of 48 hours prior to that surrendering.

So that means that two days prior to the Fridays, as long as you are serving the sentence, you cannot be drinking in that period. That is the Wednesday and Thursday prior to the Friday.

[10] There will be a victim fine surcharge of \$50 applied, and I do not know how long you would need to pay that.

[11] MS. HARRINGTON: He is unemployed and not collecting social insurance.

[12] THE COURT: I am sorry?

[13] MS. HARRINGTON: He's unemployed. He's not collecting any form of income, so.

[14] THE COURT: Do you anticipate you will be employed within a month?

[15] THE ACCUSED: Yes.

[16] THE COURT: Do you figure? So I will give you a month time to pay on that. In regards to a future 259, I am going to impose a further disqualification and again remind you that this disqualification is absolute and you must take it absolutely seriously.

[17] You will be disqualified from operating a motor vehicle from today forward on any highway, public property or public roadway. That is for a period of time of one year, again, from today forward. The Court, however, is content that you should be allowed to get back on the road earlier if you are employed, and so on, and can afford to do so, after four months. So from today forward, for four months, it is absolute.

[18] After four months you should be allowed to apply for the interlock program. If you are accepted in that program you could complete the remainder of that prohibition operating a motor vehicle that has an operational interlock device in it. What that means is that if you have a family car or something, you can get this device in it, and you can drive that vehicle as long as that device is in it and is operational.

[19] This prohibition, just for your clarification, is not limited to cars and trucks but includes a prohibition on operation of motorcycles, ATVs, ski-doods, et cetera, on roadways, public property, public roadways. It is Yukon legislation and *Criminal Code*, so it is effective across Canada.

CAMERON J.P.T.C.