

Citation: *R. v. Monkman*, 2009 YKTC 115

Date: 20050224
Docket: 03-07164
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Judge Barnett

REGINA

v.

JEFFRY JOHN MONKMAN

Appearances:

Tracy-Anne McPhee
Edward Horembala, Q.C.

Counsel for Crown
Counsel for Defence

REASONS FOR SENTENCING

[1] BARNETT T.C.J. (Oral): When I wrote my decision in this matter, the decision I read a short time ago, I said there that:

I am told that Cst. Monkman is a hardworking and conscientious police officer, and I am sure that he is.

Of course, when I wrote that I had no knowledge of any of the information that Mr. Horembala has just carefully made known to me. I knew that Constable Monkman had been posted at God's Lake. I knew what Constable Turner had to say. But I know a great deal more now.

[2] In these courtrooms, when it comes time for a judge to impose sentence, counsel often get up and tell the judge what a fine person he or she represents. They do not

often back up those submissions with the sort of material that Mr. Horembala has made known to the Court this morning. Some of this material, of course, is material that might well have been treated as confidential. Mr. Horembala, I think very correctly, says that Constable Monkman is not just your average police officer.

[3] While I have not heard from, and did not expect to hear from, Constable Monkman himself this morning, I certainly have come to understand, even more clearly than I did before, that Constable Monkman has contributed a great deal to the communities where he has worked as a police officer. I may surprise some people here when I say that God's Lake is a community not entirely unknown to me; not as a judge, but as a judge I have worked in many communities which would have a lot of similarity with God's Lake and I know that it is not easy. It is not an easy sort of posting to work in a place like that and it is not easy to earn the sort of reputation that Constable Monkman earned there; and I use the word "earn" advisedly.

[4] And Carcross; when I am told that Constable Monkman still enjoys respect among the residents of Carcross, I do not doubt that. Some persons would, I am going to say, give up after an event such as the one that happened on the 27th of September, 2003, but that is not Constable Monkman's way, and that is a measure of the man also, I believe.

[5] Corporal Putnam observed, and the officer who wrote concerning Constable Monkman's service in God's Lake wrote to the effect, that Constable Monkman works on his files tirelessly. I think it would not be wrong to observe that sometimes one can work too hard, in this case, 19 and a half hours. My belief is that Constable Monkman

was overworking himself and overworking this file. I know we heard during the course of the trial that it is not uncommon in the Yukon for RCMP officers to be required to work very long hours, but sometimes when one works too hard one starts to make mistakes.

[6] This applies not just to police officers. It can happen to judges also. There was a case in 2004 which attracted a very great deal of adverse publicity here in the Yukon about the sentence a judge imposed. That judge, like Constable Monkman, is a judge who works extremely hard and is hugely concerned about the work that he does. He made a mistake. It was a bad mistake. He suffered some consequences; not similar to those which have affected Constable Monkman, but the point is similar. I think everybody knows what case I am talking about.

[7] Constable Monkman, I have no doubt that everything that Mr. Horembala has placed before me and said is right. This is not just fancy lawyer talk. Mr. Horembala represents a man who truly is a dedicated, hardworking, able police officer. This was a tragic incident, but Constable Monkman is going to continue, I am sure, to be not just your average police officer but a member who will make a real contribution and be remembered for events other than this one; for positive events.

[8] Having said all that, he made a serious mistake on the 27th of September. There is no penalty that I can impose that will make things right. I have said that. Ms. McPhee has said that. Mr. Horembala has said that. If I thought that the mistakes made by Constable Monkman approached the level of dangerous driving - because there is a continuum, and driving without due care and attention can come very close to dangerous driving, which is a criminal offence; in the same manner, perhaps, as

manslaughter, is sometimes said by sentencing judges to approach murder - if I thought that Constable Monkman's mistakes in this matter approached that level, I would not be thinking in terms of a fine, despite whatever Ms. McPhee might say. But the fact is this is not the sort of case where this offence should attract a jail term, for Constable Monkman or for any other person, but neither is it a case for a fine, which reasonable persons might properly think constituted a sentence that bent too far in favour of Constable Monkman.

[9] A wise judge in Alberta long ago said that when sentencing judges impose sentences which, viewed objectively, are inadequate, they really do the sentenced person, the accused person, no favour at all. They invite public scorn. They invite, sometimes inevitably, successful Crown appeals.

[10] My best judgment in this matter is that this, as Ms. McPhee says, is a case for a maximum fine under the *Motor Vehicle Act*, R.S.Y. 2002, c. 153, and that is \$1,000. However, Ms. McPhee talks in terms of a victim surcharge, and unless that is mandatory, and I do not believe that it is, I am not inclined to think that a victim surcharge is appropriate.

[11] I could also impose a driving prohibition. Ms. McPhee is not suggesting that I should, and I have made it clear that I am not inclined to do that. Not just because Ms. McPhee is not asking for it, but because I simply do not think that it is demanded, or even appropriate, in the circumstances here. I think the fine that Constable Monkman will have to pay, inadequate as it is, but that is the proper penalty as allowed by law.

[12] Mr. Horembala, time to pay?

[13] MR. HOREMBALA: Two weeks.

[14] THE COURT: Two weeks.

BARNETT T.C.J.