

Citation: *R. v. Quaedvlieg*, 2009 YKTC 83

Date: 20090529
Docket: 07-00340
07-00340C
07-00593
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Judge Cozens

REGINA

v.

LINDA JEAN QUAEDVLIEG

Appearances:
David McWhinnie
Nils Clarke

Counsel for Crown
Counsel for Defence

REASONS FOR SENTENCING

[1] COZENS T.C.J. (Oral): Ms. Quaedvlieg has entered guilty pleas to two offences for driving vehicles while impaired by alcohol.

[2] The first offence arose on August 9, 2007, where RCMP in Whitehorse, at about 10:50 p.m., observed a vehicle being driven by Ms. Quaedvlieg at a slow speed on Second Avenue. The officers followed, observed the vehicle to be in the right-hand lane, signalling while it appeared to be attempting to make a left-hand turn, swerving in the lane, and crossing the centreline. The vehicle was pulled over on Second Avenue and Ms. Quaedvlieg showed symptoms of alcohol: a strong odour of liquor on her breath, glassy eyes, swaying and slurred speech. She did not comply with a demand

for a breath sample, but the Crown has proceeded on an impaired, pursuant to s. 606(4), under s. 253(1)(a), as the section currently read, at the time the plea was proffered (253(a) at the time the offence was committed).

[3] Subsequently, on December 14, 2007, at about 9:00 p.m., Ms. Quaedvlieg was driving a vehicle that was stopped at a roadside check-stop. Indicia of alcohol consumption were observed. She failed a roadside screening device demand and ultimately provided breath samples of 230 and 210 milligram percentile.

[4] Pursuant to s. 725 of the *Code*, the Crown read in circumstances of two offences for which pleas were not required, and these relate to an incident on January 19, 2009, when Ms. Quaedvlieg had been consuming alcohol while she was prohibited from doing so on an undertaking to a peace officer, and while in contact with her spouse, Rosaura Garcia-Quaedvlieg, when she was under the terms of her probation order not to have contact with her when she had been consuming alcohol.

[5] Ms. Quaedvlieg has a criminal record that consists of five prior drinking and driving related offences, going back to 1984, 1988, 1992, two on February 10th and 11th of that year, and 1994. There are approximately 13 years since her last conviction date, for which she received a 30 day intermittent sentence, to the date of the August 9th offence. She had received 14 days on the 1988 impaired. Those are the only periods of custody she has served. She was convicted also, although not on the record, of a s. 266 offence involving her partner last year, for which she received a conditional discharge and for which she currently remains on probation, I believe.

[6] Crown has foregone, by not requiring pleas or attempting to obtain a conviction

on the s. 733.1(1) offence, a potential revocation of that conditional discharge. So that option remains open to Ms. Quaedvlieg.

[7] What makes this case particularly interesting is that Ms. Quaedvlieg was initially pursuing a curative discharge, and a number of documents have been filed. We have a report from Dr. Zimmerman that is quite favourable as to the progress that Ms. Quaedvlieg has made. We have had a number of documents filed earlier on from Dr. Zimmerman. We have a pre-sentence report that is prepared, that, again, is generally favourable, and that assesses Ms. Quaedvlieg's risk at a medium risk to reoffend. We have a report and a submission from Ms. White of the Family Violence Prevention Unit that shows Ms. Quaedvlieg has engaged in counselling, and is proactive in doing that. There are a lot of positives that come out about the efforts Ms. Quaedvlieg has made to address her difficulties with alcohol. It is clear from the report of Dr. Zimmerman that Ms. Quaedvlieg has problems related to the use of alcohol.

[8] What also became equally clear to counsel, and which was brought forward to the Court today, was that the first prong of the test for obtaining a curative discharge, that Ms. Quaedvlieg is in need of curative treatment, is not quite met, that her problems related to alcohol did not amount to the kind of level of addiction or alcohol abuse that generally one finds in a curative discharge application. So as a result, Crown and defence have reached what is, in the Court's mind, quite a reasonable way to deal with this matter, that gives recognition to all the efforts Ms. Quaedvlieg has made and the positive results that have been obtained, and yet recognizes the limitations the law prescribes on a curative discharge, which requires that the individual be in need of curative treatment. That does not mean that Ms. Quaedvlieg does not need help or

assistance in dealing with the problems she has related to alcohol, because she clearly does and she has clearly been taking advantage of some of that help and assistance. It simply means that she does not meet the necessary criteria.

[9] Crown has suggested that a sentence of 45 days be imposed for one of the offences and a conditional sentence in the six to nine month range be imposed for the second impaired, with a driving prohibition in the area of three and a half years or so.

[10] Defence counsel agrees with that, other than suggesting that the disposition on the conditional sentence which will follow the 45 days jail, which it is suggested be served on an intermittent fashion, be only six months on the conditional sentence.

[11] Looking at the law in this jurisdiction at the time these offences were committed, the 13-year gap in the record, which would sometimes, quite often, have been dealt with historically by way of a high fine had been altered somewhat by cases such as *R. v. Joseph Neil Taylor*, [2003] Y.J. No. 147, and *R. v. Fordyce*, [2003] Y.J. No. 154 and [2004] Y.J. No. 66, and a number of cases which I will not mention, so that periods of custody in the area of four to six months were imposed, notwithstanding 10 to 12 year gaps in the record, if an individual had four or five priors. I believe in the *Fordyce* case, readings of over 200, there were five priors, perhaps six, and there was a four-month sentence imposed that ultimately was converted on summary conviction appeal to a four-month conditional sentence.

[12] So the 45 days sought by the Crown in this case certainly is reasonable. Because Ms. Quaedvlieg has done everything that she has done here in order to provide the Court what really would have probably been a very good foundation for a

discharge had she met the first prong of the test, I would suspect this has led the Crown to seek a sentence on the lower end of the range of what the courts have been regularly imposing. So I agree with the submission that, for the August 9th offence, that the sentence should be 45 days, and for that offence it will be one day deemed served, and then the balance of the sentence will be served by Ms. Quaedvlieg turning herself into custody at 7:00 p.m. September the 4th and completing her sentence in full. She is employed steadily and clearly meets the criteria for an intermittent sentence.

[13] While waiting to complete the balance of that intermittent sentence after today's date, she will be on a probation order that requires her to:

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 Court or the probation officer in advance of any change of name or address, and promptly notify the Court or the probation officer of any change of employment or occupation;
4. Report to a probation officer immediately, and thereafter when and in the manner directed by the probation officer.

[14] I will say at this time that Ms. Janus prepared the pre-sentence report and there has been a relationship between Ms. Janus and Ms. Quaedvlieg, but I understand Ms. Janus is going to be leaving the jurisdiction and, therefore, another probation officer will ultimately be the one that is involved with Ms. Quaedvlieg.

[15]

5. Abstain absolutely from the possession or consumption of alcohol and/or

controlled drugs or substances except in accordance with a prescription given to you by a qualified medical practitioner;

6. Take such alcohol assessment, counselling or programming as directed by your probation officer;
7. Take such other assessment, counselling or programming as directed by your probation officer.
8. Provide your probation officer with consents to release information with regard to your participation in any programming or counselling that you have been directed to do pursuant to this probation order.

[16] With respect to the proposal for the conditional sentence, certainly the six to nine month range is appropriate and a sentence anywhere within that range can be imposed. In these circumstances, I am inclined to deal with it by way of a six-month conditional sentence, on the lower end. I make it clear that is on the lower end, but it is in recognition of the efforts Ms. Quaedvlieg has made. Notwithstanding the slip in January of this year, for which Ms. Quaedvlieg was very candid, I still believe that these somewhat unique circumstances allow for a sentence on the very low end of the range for an offence of this type that was committed in December of 2007.

[17] Again, without going through it, all the documents filed that indicate the efforts Ms. Quaedvlieg has made allow for the Court to give her a sentence on the lower end of the range, and I also recognize the fact that there is going to be this additional period of probation in between while the balance of the intermittent sentence is to be served. There has been a long period of court supervision of Ms. Quaedvlieg and I believe, notwithstanding the dangers of impaired driving and the care which must be taken when

considering the appropriateness of a conditional sentence that causes so much harm and tragedy in society, that this case and these circumstances meet the threshold necessary, and that is taking into account the statutorily aggravating readings as well.

[18] So the sentence for the conditional sentence will be six months consecutive to the intermittent sentence. The terms of the conditional sentence will be:

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. Reside as approved by your supervisor;
5. For the first two months of this order, at all times remain within your place of residence except with the prior written permission of your supervisor. You must present yourself at the door or answer the telephone during reasonable hours for curfew checks. Failure to do so will be a presumptive breach of this condition.

I am leaving it as simple as that, that for the first two months this is like a jail sentence, but there is a discretion that is given to the conditional sentence supervisor and I am not going to limit the discretion to very narrow circumstances. I believe that it can be worked out what is going to be necessary for Ms. Quaedvlieg in order to take care of the basic things she needs to, and any employment.

6. For the next two months of the conditional sentence, abide by a curfew by

remaining within your place of residence between the hours of 9:00 p.m. and 7:00 a.m. daily except with the prior written permission of your supervisor. You must present yourself at the door or answer the telephone during reasonable hours for curfew checks. Failure to do so will be a presumptive breach of this condition.

7. For the last two months of the conditional sentence order, the same terms will apply except that it will be between the hours of 11:00 p.m. and 7:00 a.m. daily.
8. 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;
9. Not attend any bar, tavern, off-sales or other commercial premises whose primary purpose is the sale of alcohol;
10. Take such alcohol assessment, counselling or programming as directed by your supervisor;
11. Take such other assessment, counselling and programming as directed by your supervisor;
12. Provide your supervisor with consents to release information with regard to your participation in any programming or counselling that you have been directed to do pursuant to this conditional sentence order.

[19] Are there any terms of the conditional sentence order at this point in time that counsel wish to address?

[20] MR. MCWHINNIE: Nothing, Your Honour.

[21] MR. CLARKE: No, Your Honour.

[22] THE COURT: Upon the conclusion of the conditional sentence, there will be a period of probation. It will be for 12 months. The terms of the order will be:

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 notify the probation officer of any change of 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. Take such alcohol assessment, counselling or programming as directed by your probation officer;
6. Take such other assessment, counselling or programming as directed by your probation officer.
7. Provide your probation officer with consent to release information with regard to your participation in any programming or counselling you have been directed to do pursuant to this probation order.

[23] I am not going to put the abstain clause on in this case. It will clearly be in Ms. Quaedvlieg's best interest, likely, to abstain from the consumption of alcohol. There will be a considerable period of abstention under the order she is currently under now.

There has been a long period of abstention, except for the slip in January that has taken place, and I am satisfied that that does not need to be part of the probation order. That is not to say, Ms. Quaedvlieg, that once your conditional sentence is done that you would necessarily want to drink alcohol any more, but that is a choice you are going to have to make. You will have a lot of counselling and a lot of assistance to help you sort out what choices are going to be the best choices for you, and I am satisfied that you will make those choices.

[24] There will be a driving prohibition. It will commence from today's date. It will go for three and a half years from today's date, prohibiting you from operating any motor vehicle on any street, road, highway or other public place.

[25] I understand that the amendments respecting the automatic application of the Interlock, subject to a court order or otherwise, are in effect right now; however, I am not certain whether they are considered yet to have retrospective application. So I am going to make an Interlock recommendation. I am going to make it six months in this case, because, frankly, by the time the intermittent sentence is completed, it is going to be almost six months. So that is something, Ms. Quaedvlieg, that you and the Motor Vehicles branch will have to work out. I am satisfied that the program we have got is able to properly supervise individuals who are dealing with issues related to alcohol and driving.

[26] Victim fine surcharges. It would appear Ms. Quaedvlieg is working. She can make those payments. These offences, clearly one is by indictment; that is, the August one appears to be by indictment.

[27] MR. MCWHINNIE: They both are, I believe.

[28] THE COURT: Okay. The other one, both of my boxes are ticked, so I am not sure. I would have thought the December one likely would have been. So that is \$100 on each. How much time to pay? There was some indication on February 13, 2008, that there had been a change, re-elected to indictment.

[29] MR. CLARKE: Two months time to pay, Your Honour, please.

[30] THE COURT: Two months time to pay. Remaining counts?

[31] MR. MCWHINNIE: Should be stayed, Your Honour.

[32] THE COURT: Is that everything, counsel?

[33] THE CLERK: Which charge does the driving order attach to?

[34] MR. MCWHINNIE: Has to attach to both driving offences.

[35] THE COURT: Yes, it should.

[36] MR. MCWHINNIE: Statutory requirement.

[37] THE COURT: All right. Thank you, counsel. Wish you the best, Ms. Quaedvlieg.

[38] THE ACCUSED: Thank you.