

Citation: *R. v. Reeves*, 2012 YKTC 9

Date: 20120106
Docket:10-00518
10-00518A
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before: His Honour Chief Judge Cozens

REGINA

v.

JOHN MICHAEL REEVES

Appearances:
Ludovic Gouaillier
André Roothman

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCING

[1] COZENS C.J.T.C (Oral): John Reeves has entered guilty pleas to five offences: one offence under s. 249.1(1); one offence under s. 249(1)(a); one offence under s. 253(1)(b); one offence under s. 129(a); and one offence under s. 145(3).

[2] With respect to the first four charges, leaving the breach aside, on October 16, 2010, at about 1:30 a.m., RCMP in downtown Whitehorse observed a 4-wheeler speeding in the downtown area. They activated their emergency equipment and followed the vehicle through a downtown alley. An ongoing evasive action was taken by the operator of the 4-wheeler. He failed to stop at Shipyards when directed to do so. He was crossing roads through the downtown area. They would locate him, lose him, and locate him again; a number of unsafe manoeuvres were observed. Constable

Greer then located the vehicle on the top of the clay cliffs and took up a position on the trail.

[3] As the quad approached him, Constable Greer shone the light on himself to identify himself as an RCMP officer and directed the driver of the vehicle to stop and turn off the engine. The vehicle accelerated towards Constable Greer and swerved around him and sped off. At that point in time, Constable Greer recognized the driver as John Reeves. As a result, the RCMP attended at the residence of Mr. Reeves and observed him drive up on the quad. He was approached by Constable Greer, who identified himself as an RCMP officer. Constable Greer advised Mr. Reeves that he was arrested. Mr. Reeves began to dig into his pockets, at which point in time the RCMP drew their weapon and Mr. Reeves ran into his residence and locked the door. A forced entry was made by the RCMP and Mr. Reeves was arrested.

[4] There was a strong odour of liquor on his breath, and he failed the ASD. Samples of 150 and 140 milligram percentile were subsequently obtained at the RCMP Detachment on the breathalyzer. He was released on a recognizance, which included curfew and abstention clauses.

[5] On April 2, 2011, he was noted to be out past his curfew and arrived back at his house shortly after the time he was expected to be there. He was under the influence of alcohol. The breach charge was for a contravention of the abstention clause, although it is to be noted he was also out past curfew.

[6] We are dealing with guilty pleas in this case. Crown has filed notice. Mr. Reeves, for a young man, has a fairly unenviable criminal record, going back into Youth

Court and continuing on as an adult, without too many substantive breaks. Of particular significance in his record is that in 2005 there is a s. 249.1(1) conviction for which he received two for one credit for three months in remand, and received a six month sentence. He also had a s. 253(b) on that date for which he received one day in jail and a two-year driving prohibition. He subsequently was convicted in October, 2008 for another driving with over 80 milligrams of alcohol in blood under s. 253(b) and received a 14 day sentence. With the Crown's filing of notice today, the minimum sentence that can be imposed is 120 days, given that these other charges are also going to result in a further period of custody being imposed.

[7] The sentence I am going to impose on the s. 253(b) is the minimum of four months. Now, with respect to the remaining charges, the Crown's position is that six to nine months custody is appropriate. The Crown, recognizing the many positives set out in the pre-sentence report, while not supporting the imposition of a conditional sentence, is not strenuously opposed. The Crown has simply pointed out some of the concerns with respect to service of the sentence in the community that arise in the case of an individual with Mr. Reeves' criminal history of committing offences such as these, which are quite dangerous and significant offences for dangerous operation of a vehicle, and for evading arrest. The Crown has recognized, as I indicated, the positives in the pre-sentence report and the fact that Mr. Reeves has been on strict bail conditions since April 20, 2011. With the exception of the one breach charge, he has complied with these, including a restrictive curfew, requiring him to be in his residence between the hours of 9:00 p.m. and 6:00 a.m., except otherwise with permission.

[8] Defence counsel does not take any issue with the sentence Crown is proposing with respect to length, pointing out, however, that the time that Mr. Reeves has spent on bail under these strict conditions is something that could be accredited to him in one fashion or the other. Typically, in considering the case law filed and the case law that I am aware of, while there is not a formulaic approach, certainly time spent on bail on strict conditions is a factor to be taken into account with all the remaining circumstances when deciding what an appropriate sentence is for an individual.

[9] Going back and looking at the pre-sentence report, it is important to understand why, in light of his record and these convictions last year, Mr. Reeves would find himself in a situation where his counsel's submission for a conditional sentence would actually be considered by the Court. Mr. Reeves is noted to have a moderate problem with respect to alcohol. He is considered a moderate risk for re-offending. He has no indication of a problem with respect to drugs, having stopped on his own accord several years ago from the use of drugs he was into at that point in time, which I expect largely contributed to the criminal convictions he gained around then. He has been checking in weekly at the Justice Wellness Centre. He has responded well to his supervision at the Justice Wellness Centre, in the words of the pre-sentence report. It is noted that Mr. Reeves' childhood was not normal; it exposed him to untreated childhood traumas that may have contributed to his legal troubles and he would obtain some benefit from trauma counselling. He has not engaged in any denial or minimization of his charges before the Court. In other words, it seems that with that one breach exception, that Mr. Reeves has cooperated with the court supervision over him and taken steps to engage himself positively in society, and this needs to be recognized.

[10] I am satisfied that any further sentence that needs to be imposed can be imposed such that Mr. Reeves will serve his sentence in the community and will not compromise the safety of the community. Had this matter been coming before the Court shortly after these events took place, a conditional sentence would not, in all likelihood, have been imposed or available or even sought by counsel, but Mr. Reeves has shown over the last number of months that he has the ability to comply with the terms that would be on the conditional sentence I am going to impose in a manner that does not put the safety of the community at risk.

[11] I am also looking at, globally, the impact of real jail on the other charges. Firstly, with respect to the principles of denunciation and deterrence, which are always at the forefront when you are sentencing individuals for impaired driving offences and, frankly, with respect to dangerous driving offences and fleeing from officers, in some respects an individual who is still mired in the criminal thought processes may not appreciate the impacts of denunciation and deterrence so much while they are still of a criminal mindset. Someone in Mr. Reeve's situation, who has taken steps to extricate himself from that, will likely feel the impact of four months in custody, less whatever remission credit he gets, more than those individuals still in the criminal mindset and, in fact, I am quite satisfied that the denunciation and deterrence that he will receive from these four months in custody will be something that lessens the need to make the conditional sentence as denunciatory and as deterring as it would otherwise need to be. I couple that with the fact that his positive steps towards rehabilitation allow me to emphasize rehabilitation in the conditional sentence, both in the imposition of it and in the terms that I will put on it, than they would otherwise.

[12] The conditional sentence, which will be consecutive and follow the period of custody, will be for a total period of nine months. For the s. 249.1(1), being a second such conviction, it will be a period of six months; for the s. 249(1)(a), it will be three months conditionally consecutive; for the s. 129(a), it will be 45 days conditional concurrent to the s. 249.1(1); and for the s. 145(3), it will be 30 days conditionally concurrent to the s. 249(1)(a).

[13] The terms of the conditional sentence will not be as restrictive as is often seen in conditional sentences in the Yukon, and, in particular, I am referring to the normally imposed house arrest condition. The house arrest condition will be a curfew in this case for two reasons: One is that Mr. Reeves has done well and become a positive member of the community while on the strict terms of a curfew on bail; and I, in this case, do not feel that the benefits of a house arrest in deterrence and denunciation would be so great as to interfere with what has been a positive rehabilitative process, in conjunction with the fact that the credit that I am going to give him for having, with the one early exception, complied with these terms is going to be not in the reduction of the length of the conditional sentence but in the lessening of the severity of the house arrest condition.

[14] These terms will apply to both conditional sentences:

1. You are to keep the peace and be of good behaviour;
2. Appear before the Court when required to do so by the Court;
3. You are to 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. You are to remain within the Yukon Territory unless you obtain written permission from your Supervisor;
5. You are to notify the Supervisor in advance of any change of name, address, and promptly notify the Supervisor of any change of employment or occupation;
6. You are to reside as directed by your Supervisor and not change that residence without the prior written permission of your Supervisor;
7. You are to 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;
8. You are to 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;

[15] I do not understand the *Shoker* amendments to the *Criminal Code* as having come into force yet, so based on my current understanding, unless persuaded otherwise, I am not going to impose the sampling clause until that Legislation is in effect.

9. You are not to attend any bar, tavern, off-sales or other commercial premises whose primary purpose is the sale of alcohol, except for the purposes of employment;

[16] MR. ROTHMAN: Okay. No, that's -- that's fine. My client just raised the issue, but you've qualified it for the purpose of employment because he does deliveries to those places.

[17] THE COURT: Right.

10. You are to take such alcohol assessment, counselling or programming as directed by your Supervisor;
11. You are to take such other assessment, counselling and programming as directed by your Supervisor;
12. You are to make reasonable efforts to find and maintain suitable employment and provide your Supervisor with all necessary details concerning your efforts;
13. You are to provide your Supervisor with consents to release information with regard to your participation in any programming, counselling or employment activities that you have been directed to do pursuant to this conditional sentence order.

[18] Those are all the terms I intend to put on the conditional sentence orders. Anything from anyone?

[19] MR. ROTHMAN: Nothing from me.

[20] THE COURT: These conditional sentence orders will be followed by a period of probation. The period of probation will be for a period of six months and will be geared solely at encouraging any further counselling if counselling is required. The

terms of the probation order, and the probation order will attach itself to the s. 249.1(1), the s. 249(1)(a) offence, and the s. 129(a) offence only, are as follows:

1. You are to 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. Remain within the Yukon Territory unless you obtain written permission from your Probation Officer or the Court;
5. Report to a Probation Officer immediately upon completion of your conditional sentence and thereafter, when and in the manner directed by the Probation Officer;
6. Take such assessment, counselling and programming as directed by your Probation Officer.

[21] Those are the only terms I am going to put on the six month probation order.

[22] There will be a driving prohibition. Crown has, in this case, without argument being made on the issue, conceded that the notice that was served does not necessarily suffice as notice with respect to an increased driving prohibition, but nonetheless seeks a period of prohibition from two to four years. I am going to take the somewhat unusual step in this case, given that his last two prohibitions were two years, in limiting the driving prohibition to a further two years instead of what would otherwise normally be at least three or four years. So for a period of two years you are prohibited

from operating a motor vehicle on any street, road, highway, or other public place.

Again, I am doing that due to the fact that, in these circumstances, many of the principles of denunciation and deterrence are being served by the custodial sentence that is being imposed, and based upon my understanding that Mr. Reeves has a lot of hurdles to go through with the Motor Vehicles Branch of the Yukon before he would be allowed to operate a vehicle in any event. That may well take this past the two years, but if the Motor Vehicles Branch decides that Mr. Reeves is in a situation where he could be given a licence earlier under some restrictions or not, I do not, given the rehabilitative track Mr. Reeves has successfully been pursuing to date, and any consideration by the Motor Vehicles Branch that he would be allowed to have a licence, want to unduly restrict beyond what is needed. A minimum of, in this case, two years would be about as low as I could possibly go, and that is why I have imposed two years.

[23] As he is going into custody, notwithstanding, he has been employed, I am going to waive the victim fine surcharges. I expect the Crown is entering a stay of proceedings on the remaining counts, and so I will direct the counts to which guilty pleas have not been entered, that there will be stays on those counts, correct? Stay of proceedings on all remaining counts to which guilty pleas were not entered would be what the Crown is doing, I expect, yes?

[24] UNIDENTIFIED SPEAKER: Yes, sorry.

[25] THE COURT: That is what I will do. I do not believe there is anything further on this case from anyone?

[26] MR. ROOTHMAN: Nothing from me, Your Honour.

[27] THE COURT: All right.

COZENS C.J.T.C.