

IN THE TERRITORIAL COURT OF YUKON
(Before His Honour Judge Faulkner)

REGINA

v.

MICHAEL KENNETH SAM

Kevin Drolet

Appearing for Crown

Nils Clarke

Appearing for Defence

REASONS FOR SENTENCING

[1] FAULKNER T.C.J. (Oral): The Court is today sitting on circuit in Carmacks to decide the matter of Michael Kenneth Sam.

[2] Given the nature of the offences of which he stands convicted, and the volume of precedent material, pre-sentence reports and other material filed, I would have preferred to reserve judgment and to provide more complete reasons for sentencing. However, the matter has already been delayed for some time since the entry of the guilty plea, and the matter is today proceeding in the community with those most affected present. It is, therefore, important for these reasons that the matter be concluded here and concluded now.

[3] I also want to say at the outset that while I take full account of the principles of sentencing, generally, as enumerated in s. 718 of the *Criminal Code* and elsewhere, I will not attempt to restate them. Nor do I propose to deal at any length with the sentencing principles specifically referable to the present charges as these are adequately stated in the precedents that have been referred to by counsel.

[4] Mr. Sam has entered pleas of guilty to charges of impaired driving causing death and, on a separate and subsequent occasion, of driving a motor vehicle having consumed alcohol such that the quantity thereof in his body exceeded 80 milligrams of alcohol in 100 milliliters of blood.

[5] The s. 255(3) offence occurred on November 2, 2002. The offender and his friends had been partying for an extended period of time at various locations around Carmacks. During this period of time, considerable alcohol was consumed by all involved. Ultimately, the accused decided to set off in his vehicle to drive toward Whitehorse in search of yet more alcohol.

[6] I pause to note here that Mr. Clarke took some exception, or expressed some reservation, as to whether or not that was the reason for the trip towards Whitehorse, but, in my view, it is not particularly material why he set out to go to Whitehorse. It was, obviously, very foolish and ill-advised in the circumstances.

[7] One of the people who was on the scene, after the accused announced his intention to set off in the vehicle, actually attempted to take the accused's keys away as he was in no condition to drive. However, Mr. Sam succeeded in retrieving his keys and headed off towards Whitehorse with his tires spinning.

[8] There were three other people in the vehicle with the offender. Mr. Sam headed south on the Klondike Highway at excessive speed, passing other vehicles as he overtook them. On the date in question, the road was very icy and there were areas of thick, dense fog so that the driving conditions were about as bad as could be imagined. Mr. Sam was told by his passengers to slow down, but he paid them no heed, continuing to drive too fast and to pass other vehicles.

[9] Ultimately, at a point approximately halfway between Carmacks and Whitehorse, the accused lost control of his vehicle. It left the road and rolled over and one of the passengers, Larry Blackjack, was killed. The other passengers and the driver, the offender Mr. Sam, while taken to hospital, in fact suffered only minor injuries.

[10] When other motorists and emergency vehicles arrived at the scene the accused was obviously impaired by alcohol. He told people at the scene that he had fallen asleep at the wheel. Ultimately, following Mr. Sam's hospitalization, blood samples were obtained. An extrapolation of the readings obtained after analysis of these samples suggested that at the time of driving the accused had a blood alcohol level in the order of 188 milligrams of alcohol per 100 milliliters of blood.

[11] Matters did not end there, because Mr. Sam was released from custody following the tragic events of November 2, 2002, when, on March 6, 2003, the accused, impaired and belligerent, was arrested for operating a motor vehicle, in this case a snowmobile, while impaired.

[12] Ultimately, with respect to that matter, a guilty plea was entered to a charge contrary to s. 253(b) of the *Criminal Code*. The blood-alcohol levels obtained in that

case were 200 milligrams per 100 millilitres of alcohol. It should also be noted, and is an aggravating circumstance in that matter, that at the time of the March incident, the accused was on release with conditions, amongst others, that he not possess or consume alcohol.

[13] The matter is now before me for sentencing. I have heard from several members of Larry Blackjack's immediate family who orally and in writing gave voice to the devastating impact that Larry Blackjack's death had upon the family. It must also be noted, as the Chief of the Little Salmon Carmacks First Nation said when he spoke to the court, that the impact, of course, reverberates throughout the entire community, affecting not only the victim's family but the accused's family, and, indeed, the whole village.

[14] It is obvious, and some of Mr. Blackjack's family members acknowledged in what they said to me, that no sentence that I pass could undo what has been done. It is also obvious that no sentence, however long or harsh, can be equal to or be adequate compensation for a life senselessly lost. There is simply no way that the two can be equated in any satisfactory fashion.

[15] I think I am also bound to say that this case is yet another example, as if any were needed, of the devastation, hurt and sorrow that alcohol abuse has brought to this community and to the whole Yukon community.

[16] Mr. Sam is now 33 years of age. He has an extensive criminal record including one prior drinking and driving conviction, albeit from some years ago. He is clearly an alcoholic. His problems with alcohol abuse are longstanding and are, perhaps, not terribly surprising when one looks at his upbringing, which can only be

described as a horror of abuse, violence and neglect. Mr. Sam has twice in the past tried, and twice failed, at alcohol abuse treatment.

[17] In fixing the sentence in this case, I am of the view that the decision in *R. v. Jones*, [1995] Y.J. No. 118, a decision of Judge Lilles of this court, is most in point of the present circumstances. The aggravating factors there included a high level of intoxication, poor, reckless, or dangerous driving, previous drinking and driving offences, a serious and longstanding alcohol problem, and an offender who had been told that he was intoxicated, and twice refused service before setting out to drive.

[18] All of these aggravating circumstances are present here in one form or another. Indeed, the accused's situation might be said to be even worse in two respects. First, the accused disregarded attempts of others to prevent him from driving, and further, disregarded the pleas of his passengers to slow down. It must also be noted that the accused persisted in driving over a considerable period, both of time and distance.

[19] The second matter which distinguishes this matter from *Jones, supra*, and not in a way which is favourable to the accused, is that after the tragic events which led to Mr. Blackjack's death, and which would have given anyone cause to stop and take stock of the situation, Mr. Sam again took control of a motor vehicle while drunk; this being the occasion in March.

[20] Now, I take Mr. Clarke's point that on this occasion the vehicle was a snowmobile, but it seems to me that the incident suggests a rather stunning failure by Mr. Sam to make the connection between his consumption of alcohol, his driving, and the possibility of unpleasant or even lethal consequences from that combination. Or,

to put the matter another way, an equally breathtaking failure to be deterred by the tragic death of Mr. Blackjack from again attempting to operate a motor vehicle while impaired.

[21] There are also matters in mitigation. Firstly, Mr. Sam has entered guilty pleas and it must be noted that those were offered prior to trial or preliminary inquiry. Mr. Sam has expressed remorse, both in the pre-sentence report and what he said to the Court today, and I accept that he is genuine in what he says.

[22] I have already mentioned Mr. Sam's extremely unfortunate antecedents. There is also the additional matter in mitigation that, since his incarceration, Mr. Sam has taken alcohol and other counselling and has been able to produce evidence that he has participated meaningfully in these rehabilitative efforts.

[23] In the case of *R. v. Jones, supra*, Judge Lilles imposed a sentence of three years. In this case, the Crown seeks what at first blush might seem to be a lesser sentence. On the charge contrary to s. 255(3), they seek a sentence of two years less a day, plus two years probation. On the s. 253(b) charge, Mr. Drolet submitted that a six-month conditional sentence with strict terms would meet the ends of justice.

[24] Mr. Clarke, on behalf of the offender, came close to joining in this submission, save and except that he thought a range of 18 to 24 months would be adequate, and that the curfew conditions proposed by the Crown in respect of the conditional sentence could be slightly less onerous.

[25] Having adjourned over the lunch hour to consider the matter, I have been persuaded to accept the proposed disposition for the following reasons. First, while I

see little distinction from the *Jones, supra*, case which would inure to the benefit of Mr. Sam, Mr. Sam has served four and a half months of pre-trial custody and he is, of course, entitled to credit for that. Second, the present proposal, which involves custody, followed by a conditional sentence, followed by probation, allows for a staged re-integration of the offender into the community. Third, the combination of sanctions proposed produces a longer period of control over the offender than a straight penitentiary term of three years could do.

[26] Accordingly, Mr. Sam, with respect to the charge of impaired driving causing death, I sentence you to a period of imprisonment of two years less one day. That will be followed by a probationary term of two years on terms that I will return to.

[27] On the charge contrary to s. 253(b) of the *Criminal Code*, you are sentenced to a period of six months. That sentence is to be served after the first sentence, but is to be served conditionally in the community.

[28] The terms of that order will be as follows:

- 1) You will keep the peace and be of good behaviour and appear before the Court when required to do so by the Court.
- 2) You will report to the conditional sentence supervisor within two working days after the making of the order, and thereafter when required by the supervisor and in the manner the supervisor directs.
- 3) You will remain within the jurisdiction of the court unless written permission to go outside that jurisdiction is obtained from the conditional sentence supervisor.
- 4) You will notify the supervisor in advance of any change of name or

address, promptly notify the supervisor of any change of employment or occupation.

- 5) You will reside where directed by the sentence supervisor.
- 6) You will observe a curfew by remaining in your place of residence between the hours of 7:00 p.m. and 7:00 a.m., Monday through Friday of each week, and continuously on Saturdays, Sundays and holidays, except for medical emergencies, or with the prior permission of the conditional sentence supervisor, to accommodate employment, treatment, counselling, or other matters that the sentence supervisor will consider appropriate.
- 7) You will answer your telephone and present yourself at the door of residence during the hours of your curfew as requested by a peace officer or conditional sentence supervisor.
- 8) You will abstain absolutely from the consumption of alcohol or controlled substances except in accordance with a medical prescription.
- 9) You will not attend at any place where alcohol is kept for sale, except a restaurant, which may be incidentally licensed to serve alcoholic beverages.
- 10) You will provide such samples of your breath or bodily fluids as may be demanded by a peace officer or the conditional sentence supervisor, if either has a reasonable suspicion that you are in breach of the order.
- 11) You will attend for alcohol and substance abuse assessment, treatment or counselling, including residential programming, as directed by the conditional sentence supervisor.
- 12) You will attend for such other assessment, treatment or

counselling as may be directed by the conditional sentence supervisor.

[29] The terms of the probation order will be:

- 1) That you will keep the peace and be of good behaviour.
- 2) You will appear before the Court when required to do so by the Court.
- 3) You will report to a probation officer within two working days after the order comes into force and thereafter in the manner directed by the probation officer.
- 4) You will notify the probation officer in advance of any change of name or address, and promptly notify him of any change of employment or occupation.
- 5) You will reside where directed by the probation officer.
- 6) You will abstain absolutely from the consumption of alcohol or controlled substances except in accordance with a medical prescription.
- 7) You will not attend at any place where alcohol is kept for sale except a restaurant.
- 8) You will provide such samples of your breath or bodily fluids as may be demanded by a peace officer or your probation officer, if either has a reasonable suspicion that you are in breach of the order.
- 9) You will attend for alcohol and substance abuse assessment, treatment or counselling, including residential programming, as directed by your probation officer, and you will attend for such other assessment, treatment and counselling as the probation

officer may direct.

[30] Further, you are prohibited from operating a motor vehicle anywhere in Canada for a period of five years following your release from imprisonment.

[31] In the circumstances the surcharges are waived.

FAULKNER T.C.J.