

Citation: *R. v. Sauve*, 2013 YKTC 54

Date: 20130607  
Docket: 13-00018  
Registry: Whitehorse

**IN THE TERRITORIAL COURT OF YUKON**

Before: Her Honour Judge Ruddy

REGINA

v.

SERGE JEAN MICHEL SAUVE

Appearances:

John Cliffe, Q.C.

Counsel for the Crown via  
teleconference

Nicholas H. Weigelt

Counsel for the defence via  
teleconference

**REASONS FOR SENTENCING**

[1] RUDDY T.C.J. (Oral): Serge Jean Michel Sauve has pled guilty to a single count contrary to s. 249(2) of the *Criminal Code* for having operated an aircraft in a manner that was dangerous to the public. Constable Sauve is a member of the Royal Canadian Mounted Police. He is stationed with "M" Division Traffic Services in Whitehorse. The offence to which he has pled guilty occurred while he was off duty.

[2] The facts of the offence have been set out in detail in a document entitled "Crown Statement of Facts" filed as Exhibit 1 in these proceedings. While not an Agreed Statement of Facts, the facts as outlined by the Crown have been admitted by

Constable Sauve, with a caveat in relation to paragraphs 48 and 49. These relate to previous unrelated flights with Constable Sauve as pilot.

[3] To summarize, Constable Sauve is an experienced, licensed pilot with 14 years' experience. He has access to a single engine plane built and owned by his father, which is kept in a hangar at Whitehorse Airport.

[4] Prior to the incident, Constable Sauve had come to know individuals involved in the 2013 Fulda Challenge, an event hosted in the Yukon each January by Fulda, a German tire company. Specifically, Constable Sauve, in his capacity as a Constable in the RCMP "M" Division Traffic Services, provided a driving safety lecture to organizers of the Fulda Challenge on January 10th, 2013, the day before the offence.

[5] On January 11, 2013, Fulda held a driving event at Fish Lake as part of the Fulda Challenge. Constable Sauve decided to fly to Fish Lake with a friend and fellow pilot to see the event. Prior to departure, he installed a GPS in the plane and a camera on the left wing. Both were operating throughout the flight.

[6] Upon arriving at Fish Lake, the plane made four passes over the lake, and, more importantly, over a number of individuals involved in the Fulda Challenge who were standing on the lake. Constable Sauve's friend was the pilot for the first of the four passes, while Constable Sauve was the pilot for the remaining three.

[7] The GPS indicates the following information in relation to the four passes: for the first pass, the plane was approximately 116 feet above the lake travelling at a speed of 138 miles per hour. For the second pass, the plane was approximately 29 feet above

the lake travelling at a speed of approximately 123 miles per hour. For the third pass, the plane was approximately 36 feet above the lake travelling at a speed of 128 miles per hour. For the final pass, the plane was approximately 34 feet above the lake travelling at a speed of 124 miles per hour. On the final pass, the left wing of the plane collided with a Chevy Equinox parked on the shore, causing damage to the vehicle estimated at \$9,538.31. The vehicle was unoccupied.

[8] I have had the benefit of viewing two video clips of the incident, jointly filed as Exhibit 2, as well as photographs included in Exhibit 1 which depict damage to both the airplane and the Chevy Equinox. The first video recorded by the camera mounted on the left wing of the plane, depicts all four passes and the collision. The second, taken from a cellphone by one of the individuals on the lake, depicts part of the fourth pass and the collision.

[9] While the photographs depict significant damage to both the left wing of the plane and to the vehicle on the ground, Constable Sauve and his friend were, fortunately, able to successfully pilot the plane back to Whitehorse Airport. Upon landing, Constable Sauve did not report the collision to Aircraft Traffic Control at Whitehorse Airport, Transport Canada, or the Transportation Safety Board.

[10] The RCMP were notified of the collision at 3:54 p.m. on January 11th by Mr. Bergold, a representative of Fulda. Approximately 20 minutes later, Mr. Bergold contacted the RCMP to cancel his earlier complaint, indicating he was now aware of the identity of the pilot and they would deal with the matter privately.

[11] The facts indicate Constable Sauve travelled to Fish Lake sometime after the

incident and spoke to Fulda representatives, offering to pay for the damage to the Equinox. He also called his friend later in the evening to apologize for the day.

[12] A subsequent review of both calls from Mr. Bergold resulted in an RCMP investigation being initiated. The RCMP was assisted by two Transport Canada Aviation Enforcement Inspectors who described the damage to the plane's wing at the attachment point as 'major structural damage', and were amazed that the wing had not torn off as a result of the collision.

[13] Constable Sauve learned of the RCMP investigation while on vacation. He is described as being cooperative with the RCMP but did indicate to the investigating officer that "it was no big deal, it was property damage only" and that he had done nothing wrong.

[14] Constable Sauve comes before the Court with no prior criminal record. He is married with two small children. In terms of employment history, Constable Sauve worked as both a teaching assistant and a youth worker, working with special needs children before joining the RCMP. He has been a member for ten years, stationed exclusively in the Northern Territories.

[15] To his credit, he has been actively involved in the community, particularly working with youth. He donates his time as a hockey referee and as a wrestling coach and referee, including assisting with the organization of a major wrestling tournament here in Whitehorse.

[16] As a pilot, he has been actively involved in the flying community in the Yukon.

He was a founding member of the Yukon chapter of the Canadian Owners and Pilots Association and sits on its Board of Directors.

[17] Numerous letters of support have been filed jointly as Exhibit 3. While it is somewhat concerning that several of the letters do not make it clear whether or not the author was aware of the charge Constable Sauve has pled guilty to, they all speak highly of his character, his contribution to the community, and his reputation as a diligent and safe pilot.

[18] In terms of appropriate disposition, this is one of those extremely difficult cases in which there is an apparent disconnect between the conduct which constitutes the offence and the overall character of the offender. The primary issue to be decided, not surprisingly, is whether or not, considering the circumstances of this offence and this offender, a discharge would be appropriate. While Constable Sauve is seeking a conditional discharge, Crown takes the position that a fine in the amount of \$4,000 would be appropriate.

[19] There are few reported cases with respect to sentences for dangerous operation of an aircraft. The two which have been filed before me both tragically resulted in deaths. As a result, they are of limited assistance in determining the appropriate sentencing range. There are, however, numerous reported cases which discuss the tests to be applied in considering whether a discharge ought to be granted pursuant to s. 730(1) which reads:

- (1) Where an accused, other than an organization, pleads guilty to or is found guilty of an offence, other than an offence for which a minimum punishment is prescribed by law or an offence punishable by

imprisonment for fourteen years or for life, the court before which the accused appears may, if it considers it to be in the best interests of the accused and not contrary to the public interest, instead of convicting the accused, by order direct that the accused be discharged absolutely or on the conditions prescribed in a probation order made under subsection 731(2).

[20] The most frequently quoted decision on discharges is that of *R. v. Fallofield* (1973), 13 C.C.C. (2d) 450. In considering two of the conditions precedent to the imposition of a discharge, that it must be in the best interests of the accused and must not be contrary to the public interest, the British Columbia Court of Appeal went on to state the following at para 21:

- ...(5) Generally, the first condition would presuppose that the accused is a person of good character, without previous conviction, that it is not necessary to enter a conviction against him in order to deter him from future offences or to rehabilitate him, and that the entry of a conviction against him may have significant adverse repercussions.
- (6) In the context of the second condition, the public interest and the deterrence of others, while it must be given due weight, it does not preclude a judicious use of the discharge provisions...

[21] Turning first to the best interests of the accused, there is ample evidence before me to support the inference that Constable Sauve is a person of good character. He does not have a prior criminal record, nor is there anything to suggest he is at high risk to reoffend. Indeed, in my view, entry of a conviction is not required to deter him from committing future offences. Rather, the fact of charges having been laid, along with the resulting media coverage, embarrassment, and negative impact on his reputation within the RCMP and the local flying community, are more than sufficient to address the principle of specific deterrence.

[22] This leaves the question of whether the entry of a conviction may result in significant adverse repercussions.

[23] Defence counsel has pointed to the potential impact on Constable Sauve's employment with the RCMP and the possibility that a criminal record may cause problems with respect to the licensing of the daycare Constable Sauve's wife runs out of the family home. However, the lack of specificity makes it difficult to determine what consequences, if any, will actually flow from the imposition of a criminal conviction.

[24] Nothing was put before me to suggest that a criminal conviction, especially for an offence of this nature, would impact the daycare license. As a result, I find it difficult to conclude that the possibility of an adverse impact amounts to anything more than mere speculation. There is reason to conclude, however, that Constable Sauve's employment will be affected by the offence to which he has entered a plea of guilty. Indeed, s. 39 under Part III of the *RCMP Regulations*, 1988, SOR/88-361 does specify that:

- (1) A member shall not engage in any disgraceful or disorderly act or conduct that could bring discredit on the Force.

This includes conduct that,

- (2)...(b) results in a finding that the member is guilty of an indictable offence or an offence punishable on summary conviction...

[25] I accept there will be consequences to Constable Sauve's employment. It is unclear, however, what the actual consequences will be. I am advised only that available sanctions include dismissal. However, in *R. v. Shortt*, 2002 NWT SC 47, a decision of the Northwest Territories Supreme Court, Vertes J. made the following observations relating to the standard to be applied in considering adverse repercussions flowing from the conviction.

[32] A review of the case law reveals that in many cases a discharge was granted where a conviction would result in an accused losing his or her employment, or becoming disqualified in a pursuit of his or her livelihood, or being faced with deportation or some other significant result. These are examples of highly specific repercussions unique to the specific accused. But, such specific adverse consequences are not a prerequisite. In my opinion, it is sufficient to show that the recording of a conviction will have a prejudicial impact on the accused that is disproportionate to the offence he or she has committed. This does not mean that the accused's employment must be endangered; but it does require evidence of negative consequences which go beyond those that are incurred by every person convicted of a crime (unless the particular offence is itself harmless, trivial, or otherwise inconsequential)...

[26] Because of the nature of the position and the RCMP Code of Conduct, I have little difficulty concluding that an RCMP member will suffer employment consequences as a result of a criminal offence committed while off duty which would not be suffered by every person convicted of a crime. However, I remain unclear as to whether those consequences will differ based on whether a conviction is registered or a discharge is granted.

[27] Section 39 under Part IV of the *RCMP Act* R.S.C. 1985, c.R-10 notes that members who have contravened the Code of Conduct may be dealt with under the *RCMP Act*.

- (b) whether or not the member has been charged...or has been tried, acquitted, discharged, convicted, or sentenced by a court in respect of such an offence.

This section would seem to suggest that proceedings under the *RCMP Act*, *supra*, would not be affected by the sentence imposed by the Court.

[28] While this uncertainty makes it difficult for me to ascertain the impact, if any, a conviction may have on subsequent RCMP disciplinary proceedings; in fairness to



Constable Sauve, I accept that he is similarly not in a position to predict with any degree of certainty how his employment may be affected should a conviction be registered.

[29] For the purposes of this decision, I accept, albeit reluctantly, that it would be reasonable to conclude that there is, at least, a strong likelihood that any decision I might make with respect to whether or not a discharge should be granted will have some influence on how Constable Sauve's conduct will be viewed in disciplinary proceedings as, inherent in my decision, is an indication of how seriously the conduct has been viewed by the Court.

[30] For these reasons, I accept that a discharge would, in this instance, be in the best interests of Constable Sauve.

[31] The more difficult question, however, is whether or not a discharge would be contrary to the public interest.

[32] The public interest branch of the test for a discharge is often equated with the question of the need for general deterrence. While deterrence is clearly an element to consider in assessing the public interest, it is not the only one. As noted by Lilles J. of our Court in *R. v. C.J.D.*, [2012] Y.J. No. 21:

[33] "Public interest" is not synonymous with general deterrence. It encompasses wider considerations than the need to deter others, nor is it equated to or decided by expressions of public concern...

Lilles J. goes on to question the degree to which general deterrence is actually enhanced by a conviction:

[38] I am not prepared to go as far as stating that the entering of a conviction adds nothing in terms of deterrence, but often, its contribution to

deterrence is minor compared to the impact of other factors referred to in the *Lawry* decision. In *R. v. Moore*, [2005] Y.J. No, 14, Yukon Territorial Court cited approvingly in *R. v. Malcolm*, 2011 YKTC 25, this Court stated:

The question to ask here is would the ordinary, reasonable, fair-minded member of society, informed about the circumstances of the case and the relevant principles of sentencing, believe that the recording of a conviction is required to maintain public confidence in the administration of justice.

Similarly, in *R. v. Shortt, supra*, Vertes J. stated:

[34] ...Most of the case law identifies the "public interest" with the need for general deterrence. Yet, in my opinion, there is a further aspect to the public interest...that being the need to maintain the public's confidence in the justice system. From this perspective the knowledge that certain type of criminal behaviour will be sanctioned by way of a criminal record not only acts as a deterrent to others but also vindicates public respect for the administration of justice.

[33] In considering the question of public confidence in the justice system, it must be remembered that the offence in this case is not a trifling or inconsequential one. While it is generally accepted that the availability of a discharge as a sentencing option is not limited to offences that are trivial or technical in nature, there is, nonetheless, an element of proportionality in assessing the appropriateness of a discharge in relation to the seriousness of the offence that has been committed.

[34] Again, quoting from the *R. v. Shortt, supra*, decision:

[23] ...As a general proposition, discharges are granted in circumstances where the nature of the offence, and the age, character and circumstances of the offender, are such that the recording of a criminal record would be disproportionate and unjust in relation to the offence...

It is an inescapable conclusion that the more serious an offence the more likely a discharge will be contrary to the public interest.

[35] Applying these considerations to the case before me, I find that I simply must

conclude that a discharge would, in these circumstances, be contrary to the public interest for two main reasons.

[36] Firstly, and most importantly, the seriousness of the conduct, including piloting the airplane so dangerously close to the ground; passing directly over people standing on the ground while at such a low and unsafe altitude, doing so not once but three times; and, of course, striking a vehicle parked on the ground, causing major damage to both the vehicle and the airplane.

[37] Constable Sauve is truly fortunate that his actions did not result in the death either of someone on the ground or of both himself and his passenger. This is brought home when one views the two video clips and the photographs which had been filed as exhibits. In particular, the video clip taken from the ground with a cellphone shows the disturbing proximity of the tip of the airplane's left wing to the heads of the people standing on the ground. Indeed, one of those individuals was clearly concerned enough to duck as the plane flew over. In addition, the photographs showing damage to the wing, particularly at the attachment point, make it clear how very lucky Constable Sauve is that the wing stayed attached to the plane allowing it to be landed safely.

[38] The second reason relates to elements of what I would describe as minimization on the part of Constable Sauve. Firstly, suggesting to his passenger and to the investigating officer that his purpose in flying so low was to do a landing inspection. Though his counsel attempted to clarify this by indicating that this had been his initial intention but that his intention had changed, when one views the video such a contention is simply insupportable. I find that it amounts to little more than an attempt to

excuse his behaviour. Secondly, his concerning comments to the investigating officer that “it was no big deal, it was property damage only,” and he had done nothing wrong. I accept that Constable Sauve is remorseful for his actions. This is evident in his guilty plea, in his apology to his passenger, and at least to some extent, in his partial payment of \$1,500 towards restitution. (I should note that it is his expressed intention to pay for the whole of the damage caused. He has not yet done so, I am told, as he was exploring whether it would be covered by insurance). I accept that Constable Sauve has learned from what has clearly been a difficult and embarrassing experience for him. However, I have real concerns, when I consider the elements of minimization, about whether Constable Sauve truly appreciates the seriousness of his conduct and the dangerousness of the situation he created, putting the lives of innocent people at risk.

[39] In these circumstances and for these reasons, I find that the entering of a conviction would not be disproportionate and unjust in relation to the nature of the offence committed. I further find that the seriousness of the offence and the ensuing minimization are such that failure to enter a conviction would undermine public confidence in the administration of justice. In the result, I conclude that a discharge would be contrary to the public interest.

[40] I accept the Crown’s submission that a fine would be the appropriate sentence in this case. However, being mindful of the amount of restitution which Constable Sauve will be paying as well as the myriad of additional consequences which will result from his actions, including but not limited to disciplinary consequences to his employment with the RCMP, I am not satisfied that a fine in the amount suggested by the Crown is necessary.

[41] Instead, there will be a fine in the amount of \$2,000 with a Victim Fine Surcharge of \$300. In addition, there will be an order for restitution pursuant to s. 738(1)(a) in the amount of \$8,039.31 in favour of Driving Force Inc. Finally, while the imposition of a flying prohibition would be discretionary in this case, counsel are jointly agreed that it would be appropriate for me to impose one. I agree. There will be an order pursuant to s. 259(2) prohibiting you, Constable Sauve, from operating any aircraft for a period of two years.

[42] That leaves us with two issues to be resolved. The first, Mr. Cliffe, would be the remaining counts or had those already been spoken to?

[43] MR. CLIFFE: I can speak to that now, Your Honour. The Crown directs the Clerk of the Court to enter a stay of proceedings with respect to Counts 2, 3, and 4 of the outstanding Information.

[44] THE COURT: Wonderful. Thank you. Mr. Weigelt, the other remaining issue would be time to pay with respect to the fine and the Victim Fine Surcharge.

[45] MR. WEIGELT: In the circumstances, Your Honour is live to the issue of those other amounts that are coming out of his pocket, including the repair of the aircraft. As a result, I'm going to ask for a one year to pay.

[46] THE COURT: Is that an issue for the Crown?

[47] MR. CLIFFE: There is no objection to that, Your Honour.

[48] THE COURT: Okay. I think that is appropriate, given the amount that Constable Sauve does have to pay. There will be one year time to pay.

[49] MR. CLIFFE: Your Honour, with respect to the s. 738 Order and the fine, and the Victim Fine Surcharge, do you mean all of the amounts of money?

[50] THE COURT I am not certain that it is necessary on the s. 738 Order for me to impose a specific period, is it?

[51] MR. CLIFFE: Yeah, the more I'm thinking about, probably not. This is [indiscernible -- overlapping speakers] --

[52] THE COURT: No, it is a stand alone order and there are certain options that Driving Force Inc. would have, in terms of the enforcement of it. So I do not believe it is necessary to attach a time limit to that.

[53] MR. CLIFFE: Very well.

[54] THE COURT: There will be some Orders, Constable Sauve, that you are going to sign downstairs.

[55] THE ACCUSED: Yeah.

[56] THE COURT: It will take a little bit of time for the Registry to prepare those. So you will need to attend down there. I appreciate this is not the news that you were wanting to hear today. I spent a lot of time thinking it through, but a discharge is simply not a conclusion that I could reach based on the seriousness of the offence. Is there anything further with respect to this matter?

[57] MR. CLIFFE: Not by the Crown, Your Honour. Thank you.

[58] THE COURT: Okay. My thanks --

[59] MR. WEIGELT: Nothing from the defence, Your Honour.

[60] THE COURT: Thank you. My thanks to both counsel for their very well presented submissions. It was of great assistance to me.

[61] MR. WEIGELT: Very well. Thank you, Your Honour.

[62] THE COURT: All right. So I think we are done for today. Constable Sauve, good luck to you. Thank you.

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RUDDY T.C.J.