

Citation: *Tamber (Re)*, 2016 YKTC 64

Date: 20161212
Docket: 16-08543
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before His Honour Judge Lilles

IN THE MATTER of an application by Jaspal Singh Tamber pursuant
to s. 259(1) of the *Motor Vehicles Act*, RSY 2002, c.153

JASPAL SINGH TAMBER

Applicant

Appearances:

Jaspal Singh Tamber

Appearing on his own behalf

REASONS FOR JUDGMENT

[1] Mr. Tamber received a 90-day suspension and his vehicle was impounded for refusing a demand for a breath sample on November 14, 2015 pursuant to s. 257(1)(b) of the *Yukon Motor Vehicles Act*, RSY 2002, c. 153 (the "*Act*"). A charge was laid pursuant to s. 254(5) of the *Criminal Code*. Mr. Tamber entered a not guilty plea to that charge. This charge was stayed by the Crown prior to trial on November 4, 2016.

[2] Mr. Tamber has made an application pursuant to s. 259 of the *Act* for a review of the suspension order by way of oral hearing.

[3] I am advised that the registrar has been notified of this application pursuant to s. 259(7) of the *Act*.

[4] Section 259(8) of the Act provides as follows:

(9) The fact that no charge is laid under the *Criminal Code* (Canada) or under this Act, or that one is laid and then withdrawn or stayed or is disposed of by an acquittal or discharge, is not a ground for revoking the suspension or disqualification.

[5] In other words, the fact that the charge was stayed has no bearing on Mr. Tamber's application. The driving suspension in this case was issued pursuant to s. 257(1)(b) of the *Act*.

257(1) A peace officer may suspend the operator's licence of the driver of a motor vehicle, or disqualify the driver from driving, if

...

(b) the peace officer believes on reasonable grounds that the driver failed or refused to comply with a demand made on them to supply a sample of their breath or blood under section 254 of the *Criminal Code* (Canada); or

[6] Section 259(8) emphasises that the only issue in a review under this section is whether the peace officer had reasonable grounds to suspend the driver's operator's licence or disqualify the driver, and that is to be determined on the balance of probabilities.

[7] In considering whether reasonable ground exist, the *Motor Vehicles Act* in section 259(b) directs the review officer as follows:

(6) In a review under this section, the review officer must consider

(a) any relevant sworn or solemnly affirmed statements and any other relevant information;

(b) the report of the peace officer;

- (c) a copy of any certificate of analysis under section 258 of the *Criminal Code* (Canada) without proof of the identity and official character of the person appearing to have signed the certificate or that the copy is a true copy; and
- (d) if an oral hearing is held, in addition to matters referred to in paragraphs (a), (b), and (c), any relevant evidence and information given or representations made at the hearing.

[8] In this case, the Court has a photocopy of the Notice of 90-Day Driver's Licence Suspension or Disqualification which contains check marks in two boxes which purport to indicate that the notice was issued because Mr. Tamber refused a lawful demand for a breath/blood sample. It also indicates that his driving privileges were suspended for 24 hours. The Notice of Suspension also contains a printed form statement signed by the police officer that he, the police officer, believes on reasonable grounds that "You failed/refused a lawful demand for a breath sample".

[9] This fact situation is similar to that in *Smith (Re)*, 2013 YKTC 74, in that the suspension period for the applicant is over, but the suspension remains on his Driver's Abstract and therefore creates problems for him.

[10] The Registrar of Motor Vehicles has only filed the Notice of Suspension previously referred to and Mr. Tamber's driving abstract. No one appeared on behalf of the Registrar. Mr. Tamber, in his Application for Review, indicated that he did comply with the demand and stated the same in court. There is nothing else before the court.

[11] The Court received no information of the events leading up to the roadside suspension and what transpired between the officer and Mr. Tamber. There is no report from the peace officer other than the Notice of Suspension with several checked –off

boxes. Nothing has been provided to the Court by way of a sworn or affirmed statement. In the result, there is nothing upon which the Court can base a finding on the balance of probabilities that a peace officer had reasonable grounds that the offence was committed.

[12] It is critical to the rule of law that the review process not become a rubber stamp procedure in favour of guilt based solely on the police officer's actions or subjective conclusions as recorded on a photocopy of printed form with several boxes checked off.

[13] In conclusion, I am not satisfied that the police officer had reasonable grounds to suspend Mr. Tamber's operator's licence. I direct that the fees paid for this review be refunded pursuant to s. 259(12). I also order that the 24-hour suspension and impounded vehicle Information, dated November 14, 2015, and the 90-day suspension Information dated November 28, 2015 be removed from his Driver Abstract, licence number 159567.

LILLES T.C.J.