COURT OF APPEAL FOR THE YUKON TERRITORY

Citation: ***R. v. Taylor***,
2008 YKCA 001

Date: 20080118
Docket: YU586

Between:

Regina

Respondent

And

Arthur Taylor

Appellant

Before: The Honourable Madam Justice Rowles
The Honourable Mr. Justice Donald
The Honourable Madam Justice Saunders

Oral Reasons for Judgment

K.P. Wenckebach — Counsel for the Appellant

D.A. McWhinnie — Counsel for the (Crown) Respondent

Place and Date: Vancouver, British Columbia
18 January 2008

[1] **DONALD J.A.:** Arthur Taylor appeals his sentence of eight months in jail for driving while disqualified. He does not appeal a one-year driving suspension imposed as part of the sentence.

[2] His counsel submits that the sentencing judge overemphasized prior convictions and imposed a sentence unfit by comparison with like cases. Counsel proposes that the appropriate sentence is four months incarceration.

[3] I do not agree with these submissions.

[4] This is Mr. Taylor's second conviction for driving while disqualified. The first was recorded on 17 January 1997 in Whitehorse when he was also convicted of causing death while his ability to drive was impaired by alcohol. On that occasion, he was sentenced to four years for the latter offence with a ten-year driving prohibition, and one year concurrent on the former offence. His record includes four drinking and driving convictions prior to 1997.

[5] Mr. Taylor was in the final year of his ten-year prohibition when, on 25 and 26 June 2006, he drove his wife to and from the ferry near Dawson City so she could get to work. Her car had broken down and she was unable to drive Mr. Taylor's standard shift vehicle.

[6] There was no allegation of bad driving, but, as the judge noted, neither was there any evidence that Mr. Taylor had stopped drinking for a significant period of time that would lessen that concern in the court's mind.

[7] Mr. Taylor was 61 at the time of sentencing and had been steadily employed. He achieved early parole from his four-year sentence. This is his first offence since the 1997 convictions.

[8] In his reasons for sentencing, 2007 YKTC 53, the judge emphasized the seriousness of the offence because of the nature of the predicate offence which gave rise to the prohibition:

> [17] I want to get back to the issue of the seriousness of the offence that was raised by Mr. Clarke. Mr. Clarke argued that the seriousness of the predicate offence is not a proper consideration in sentencing for a breach of a driving prohibition order. I have concluded that the nature of the predicate offence can be a serious aggravating factor, particularly when combined with a record that makes this breach more serious than a typical driving prohibition breach. As I mentioned before, the predicate offence was one of the most serious offences one can find in the *Criminal Code*.
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> [18] Someone's life was terminated as a result of Mr. Taylor's drinking and driving. But when this serious offence is combined with a history of alcohol abuse, a total of five drinking and driving convictions and prohibitions, the driving prohibition that was breached and is before the Court today, has special meaning. In other words, with that history of drinking and driving, it is very clear that the Court at the time of sentencing for the predicate offence, was very concerned about public safety, because as our Court of Appeal has indicated on several occasions, once an impaired driver gets behind the wheel, whether someone gets killed or not is sometimes just a matter of luck. So it is really a very serious matter.

[9] Counsel for Mr. Taylor concedes that the previous conviction can be an aggravating factor but not to the extent of justifying a sentence roughly twice that given in other cases.

[10] I do not think the judge overemphasized this factor. The public safety concern to which the judge referred is real and pressing. Generally speaking,

driving prohibitions must be obeyed and breaches sanctioned in a meaningful way. Specific deterrence for this man is required because of his bad criminal history and somewhat casual attitude towards the driving restriction. The judge said this in his reasons:

> [5] There are a number of aggravating factors in this case. I will list them fairly briefly. First of all, the order that was breached related to a very serious predicate offence, impaired driving causing death. Indeed, in terms of offences in the *Criminal Code*, this is one of the more serious ones. I will come back to talk about the significance of the serious predicate offence, in part because Mr. Clarke, on behalf of his client, suggested that that should not be a significant or a major factor in my sentencing. It is an aggravating factor that this happened not once, but happened twice in a period of 24 hours, on two separate days. It is an aggravating factor because the evidence that was tendered indicated that he had been warned by a neighbour earlier not to drive and the evidence was that he responded to the effect of "I don't drive often," or "I drive rarely."
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> [6] Mr. Cliffe [Crown counsel] suggested that this response, and his other conduct related to this case, suggests that Mr. Taylor did not take the court order seriously. I think there is some merit in that submission.
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> [Emphasis added.]

[11] It is said that the penalty of eight months was excessive when compared with other cases.

[12] In support of a range of two to three months, Mr. Taylor's counsel referred to trial level decisions: ***R. v. Joe***, 2005 YKTC 21; ***R. v. Marada***, [1999] Y.J. No. 9 (Terr. Ct.) (QL); and ***R. v. Redies***, 2004 YKTC 88. We were also given two other cases with sentences of a similar length to the one at bar: ***R. v. Clement***, 2007 YKTC 30 (seven months); and ***R. v. Fuson***, 2005 BCPC 642 (six months), but in ***Clement***, the driving resulted in a death, and in ***Fuson*** a police chase was involved.

[13] It is useful to know the patterns of sentencing in the trial courts. But, on the question of fitness, we tend to give more weight to appellate decisions.

[14] Counsel for the respondent gave us several decisions from the British Columbia Court of Appeal on quantum, only two of which I find helpful. In ***R. v. Sinclair***, [1990] B.C.J. No. 1896 (C.A.) (QL), an 18-month sentence was reduced to nine months. The sentence was consecutive to two concurrent six-month sentences for impaired driving and refusing to give a breath sample arising from the same incident. The appellant there, like Mr. Taylor before us, had four prior drinking and driving convictions.

[15] In ***R. v. Rothenberger*** (1992), 35 M.V.R. (2d) 207 (B.C.C.A.), the court, referring to ***Sinclair***, dismissed an appeal from the sentence of nine months for driving while disqualified. The appellant in that case had a worse record than Mr. Taylor: ten drinking and driving offences and six offences of driving while prohibited. As with the present case, no related offences occurred in the course of driving, such as drinking, speeding, or careless or dangerous driving.

[16] In considering those cases, it is important to note, as respondent's counsel observed in his argument, that since they were decided, Parliament has increased the maximum sentence from two to five years.

[17] In my opinion, the key point of reference in assessing fitness in this case is the one-year sentence this offender received when he breached a driving prohibition in 1997. The sentence in issue here is four months less than that imposed for the first offence. Normally, repeat offences attract a greater penalty, although I can

appreciate why the judge did not find it necessary to go higher than eight months, given there were no aggravating factors surrounding the manner of driving and his record had been clear for almost ten years.

[18] I am not persuaded that the sentence was unreasonable. I would grant leave but dismiss the appeal.

[19] **ROWLES, J.A.:** I agree.

[20] **SAUNDERS, J.A.**: I agree.

[21] **ROWLES, J.A.**: The appeal is dismissed.

"The Honourable Mr. Justice Donald"