

Citation: *R. v. Brown*, 2019 YKTC 26

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Docket: 16-10052  
16-10052B  
16-10052C  
18-10055  
Registry: Watson Lake

**IN THE TERRITORIAL COURT OF YUKON**  
Before His Honour Chief Judge Chisholm

REGINA

v.

JASON ELMER BROWN

Appearances:  
Paul Battin  
Norah Mooney

Counsel for the Crown  
Counsel for the Defence

**REASONS FOR SENTENCE**

[1] CHISHOLM C.J.T.C. (Oral): Jason Brown has entered guilty pleas to a number of *Criminal Code* offences, five in total.

[2] The most serious of the five stems back to an incident on September 30, 2016, where at that time he was pulled over while driving a motor vehicle. Mr. Brown was disqualified at the time from operating a motor vehicle. In fact, he was on more than one prohibition order at that period of time. He was also noted to have consumed alcohol. Ultimately, he completed a breath test by providing breath samples. The results showed that he was just over the legal limit. He pleaded guilty with respect to

that incident to impaired operation of a motor vehicle, as well as to driving while disqualified.

[3] Subsequent to that, as I understand it, he did attend Whitehorse and made an attempt to engage in the Community Wellness Court. I think it is agreed that he did well in that Court for a relatively short period of time; he was staying at the Yukon Adult Resource Centre (“Resource Centre”) and he was given permission to leave for a weekend but did not return. It was a fair length of time later that he was actually arrested with respect to that absence from the Resource Centre. He was charged on April 21, 2018, for not following the term of his release to stay at the Resource Centre.

[4] I understand that he then was placed on another recognizance and, ultimately, again was unable to reside as directed. Mr. Brown did not advise the bail supervisor of the fact that he could no longer reside at the residence he was supposed to stay at. He was again arrested on December 19, 2018, and charged with that breach.

[5] He also has waived in a charge from British Columbia for having breached a condition of his probation order to not drive a motor vehicle at any time.

[6] Those are the facts with respect to the matters before me.

[7] The Crown and defence are a fair ways apart in terms of what each thinks is an appropriate response to these offences. The Crown is suggesting 18 to 24 months of imprisonment plus a probation order and a driving prohibition. Defence is suggesting a range of 9 to 12 months as a global sentence, plus probation, and a driving prohibition.

The Crown, I believe, has indicated that they were seeking a three-year probation order. Defence counters with a two-year order.

[8] Of course, in dealing with this matter I have to consider a number of factors.

[9] One is the fact that there are *Gladue* factors that are present with respect to Mr. Brown. As was indicated in one of the reports that I have referred to, which was a Pre-Sentence Report prepared by Robin Treusch back in 2015, she, in her summary and recommendations, stated, "Jason comes from a very dysfunctional upbringing fraught with alcohol abuse, physical abuse, and neglect."

[10] And at that time she goes on to indicate that he believes that he may suffer from Fetal Alcohol Spectrum Disorder and, in fact, approximately a year later, he was, after extensive testing, diagnosed with that disorder. It is noteworthy that in one of the psychological assessments that he underwent, this one in 2014, he ranks extremely low in areas of verbal comprehension, perceptual reasoning, working memory, processing speed, and, ultimately, full-scale IQ. So there is an issue in this case not only that there are *Gladue* factors, as I have mentioned, but there is also the issue of moral culpability.

[11] I am not going to review in detail the reports that I have had a chance to read but they have told me a lot with respect to Mr. Brown.

[12] The other issue that is of importance, of course, is his criminal record. As I have indicated to him today, over a ten-year period he has developed an unenviable criminal record, a serious criminal record, and one that has many offences for drinking and driving, and for driving while disqualified. In total, the numbers are that he has five prior

drinking and driving convictions, eight prior driving while disqualified convictions, and numerous process offences, amongst others.

[13] Mr. Brown's most recent impaired conviction was in 2016, at which time he was also sentenced on two offences of driving while disqualified, and it appears that that was in early January 2016. The substantive offences before me are from only nine months after that, that being the end of September 2016.

[14] I do note that he has pleaded guilty to these offences and should receive credit for that. It is true that the sentencing principle of denunciation and deterrence is an important one in this case because, as I have indicated to Mr. Brown, every time that he is out in a motor vehicle on the road while intoxicated, while under the influence of alcohol, he is a danger to the community and to himself. In fact, he turns the motor vehicle into a potential weapon by his actions.

[15] I have been provided with case law. The decision in *R. v. Hunziker*, 2016 YKTC 28, where the individual in that case had numerous convictions with respect to driving while disqualified, the issue in that case, as I recall, was that the driving while disqualified was not necessarily when the offender was impaired but he just did not want to abide by the court order and, as I say, accumulated a large number of offences. He received a 20-month jail sentence as a result.

[16] Mr. Brown's criminal record is not as serious in terms of the number of prior convictions, although, as I have indicated, it is becoming quite serious.

[17] The other decision is the Court of Appeal decision from *R. v. Joe*, 2017 YKCA 13, where, again, Mr. Joe had more convictions of drinking and driving offences than Mr. Brown but also had, to his credit, attempted sobriety on a number of occasions. There were also *Gladue* factors present in that case.

[18] The Crown has suggested that the penalty in this case, of course, is a global one, including the three breach charges before me and that the breach charges were serious, especially in terms of the one from April 2018 where earlier he had walked away from Community Wellness Court and then was on the lam for a significant period of time. It is true that that aggravates the breach of undertaking, but I think I also have to be mindful throughout all of this of his cognitive defects and deficiencies that I have outlined.

[19] Of course, sentencing with this type of a case is not a mechanical process. It is an individual process and each individual is different. The sentence that I am going to impose is one that will try to combine the principles of denunciation and deterrence.

[20] Mr. Brown, what that means is to try to stop you from doing this again, as well as trying to help you going forward, you have to be engaged. You have to be involved in that. You have to want to seek out help. Those are easy words to say but they are much more difficult to put into practice at times. I am happy to hear that there are a lot more resources here in Watson Lake than there have been in the past. Really, there is no excuse for you not to be able to make the effort to do what I am going to ask you to do. You know from what you have experienced already that if you cannot follow the conditions, then you will probably be back before the Court.

[21] With respect to the charges from September 2016 for the impaired driving, the substantive Information, I am sentencing you to a period of incarceration of 11 months.

[22] With respect to the driving while disqualified, there will be a period of incarceration of jail of six months concurrent.

[23] Taking into account the principle of totality, with respect to the breach charge from April 2018, there will be a sentence of one month consecutive.

[24] With respect to the breach charge from December 19, 2018; one month consecutive.

[25] The charge that has been waived in from British Columbia, the breach of probation, 15 days consecutive.

[26] All of the breach charges, including the breach of probation, are consecutive to the 11-month sentence and are consecutive to each other. This is how I end up with a total of 13.5 months. I will give you credit for the four and one-half months that you spent in jail on remand, so there will be nine months remaining to be served.

[27] In addition, there will be a period of probation that will be attached to Information 16-10052, the charges from September 2016. The probation period will be for two years.

[28] The conditions will be that you:

1. Keep the peace and be of good behaviour;
2. Come to court when the judge tells you to;

3. Tell your Probation Officer or the court if you are moving. Tell your Probation Officer if you are changing your name, if you change jobs or if you stop going to school;
4. Go see your Probation Officer as soon as you get out of jail and go see your Probation Officer whenever your Probation Officer tells you to;
5. Go to and participate in programs your Probation Officer tells you to go to for the following issues: alcohol abuse, or any other issues identified by your Probation Officer. Give your Probation Officer consent to get information about your attendance and participation;
6. Tell your Probation Officer what you are doing to find a job and where you are working. Give your Probation Officer consent to get information about your job;
7. Do not drive a motor vehicle at any time.

[29] In terms of a driving prohibition, which will attach to both of the driving offences, the driving prohibition will be for a period of seven years.

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CHISHOLM C.J.T.C.