

Citation: *R. v. Coburn*, 2011 YKTC 17

Date: 20110322
Docket: 10-00265
Registry: Whitehorse
Heard: Carcross

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Judge Lilles

REGINA

v.

GARY COBURN

Appearances:
Eric Marcoux
Emily Hill

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCING

[1] LILLES T.C.J. (Oral): Dealing with the matter of Gary Coburn. This is a very difficult and problematic sentencing. He has pled guilty at a very early stage of the proceedings to a charge contrary to s. 253(1)(a) of the *Criminal Code*.

[2] On June 3, 2010, a constable observed Mr. Coburn driving an older model pickup which was floating across the lanes, and when it made a right turn, cut that turn too sharply with the rear tires going partially into the ditch. This resulted in the constable stopping Mr. Coburn. The constable then made a number of observations which included significant symptoms of intoxication. In addition, looking into the vehicle, he located seven empty beers which appeared to have been freshly consumed. As a result, this charge was laid.

[3] So far, the circumstances are quite straightforward. The troubling aspects arise when one considers his record. He has a limited but related record. It includes four prior convictions for drinking and driving. Again, that alone would not seem to be a complicating factor, except for the fact that the last conviction was 15 years ago. The first conviction in those four convictions was in 1976. So he is before the Court with having pled guilty to impaired driving with four priors, but the last one was 15 years ago.

[4] Ms. Hill, I think, quite properly pointed out that this is an indication that for 15 years he has been able to control his sobriety, at least in relation to driving. Clearly, this was viewed by counsel as potentially problematic, and for that reason a pre-sentence report was ordered. I have had the benefit of reviewing that report, and certainly there are some issues that arise in that report, not the least of which was that Mr. Coburn appeared not to fully appreciate that he had an ongoing alcohol problem. Now, Ms. Hill on his behalf has explained some of the concerns that were raised in that report, and they go partway in alleviating my concerns.

[5] Mr. Coburn, in addition to being 60 years old, lives with a partner who is ill and has limited ability to care for herself, particularly living in the isolated location where he lives out on Annie Lake Road. She is unable, for example, to cut wood and haul wood to heat her house.

[6] Crown counsel has suggested that in the circumstances a period of incarceration of 120 days and a three-year driving prohibition would be appropriate, that being the minimum that I would be required to impose had he filed notice.

[7] There is no question in my mind that a jail term would be appropriate in this

particular case, if only to send a message to the community by way of deterrence and denunciation. I do not think it is necessary for me to observe that drinking and driving is a very significant problem in the Yukon Territory.

[8] Ms. Hill, on his behalf, has suggested that that jail sentence could be served conditionally in the community. She has also indicated that by way of supervision he would be prepared to connect the landline, which is apparently available on his property. She has also indicated that he is prepared and willing to undertake programming and counselling.

[9] Although, let me just say, that very often you will hear judges saying, "This is right on the cusp; this is case that could go one way or the other." I am going to say that yes, it is. This is a case where I could very easily send him to jail for a period of time, but I am persuaded by Ms. Hill's representations, and also by the fact that he has a caregiving role with respect to his partner, to allow him to serve a sentence conditionally in the community. Ms. Hill has pointed out, as has the Supreme Court of Canada, that the imposition of a conditional sentence of imprisonment can be for longer than the actual jail time.

[10] In my view, a conditional sentence of six months would be appropriate in these circumstances, followed by one year or 12 months of probation. The terms of the conditional sentence include the statutory terms. What is your current address, sir?

[11] THE ACCUSED: It's Box 10158.

[12] THE COURT: Sorry, say that again.

[13] THE ACCUSED: Box 10158.

[14] THE COURT: No, do you have a lot number?

[15] THE ACCUSED: Just Kilometre 13.6, Annie Lake Road.

[16] THE COURT: That is fine. That is good enough.

[17] THE ACCUSED: To find the place, there's two orange 45 gallon drums on either side of the road.

[18] THE COURT: That is okay.

1. To reside at his residence at Kilometre 13.6 Annie Lake Road, and not change that residence without the prior written permission of your Supervisor;
2. You are to remain within your residence between the hours of 6:00 p.m. and 8:00 a.m., except for the purpose of employment, and except where you have the prior permission of your Conditional Sentence Supervisor;

[19] THE ACCUSED: But -- excuse me, but for my work right now, I'm -- the generator breaks down in the middle of the night and they come and get me. So how would I work around that?

[20] THE COURT: Well, you will have to work around that with your Conditional Sentence Supervisor.

[21] THE ACCUSED: Oh, okay.

[22] THE COURT: She can give you permissions with respect to certain circumstances arising.

3. You must present yourself at the door or answer the telephone during reasonable hours for curfew checks; failure to do so will be a presumptive breach of this condition;
4. You are to abstain absolutely from the possession or consumption of alcohol;
5. You are not to attend any bar, tavern, off-sales, or other commercial premises whose primary purpose is the sale of alcohol;
6. You are to take such alcohol assessment, counselling, and programming as directed by your Supervisor;
7. You are to provide your Supervisor with consents to release information with regard to your participation in any programming, counselling, employment or educational activities that you have been directed to do pursuant to this conditional sentence order;
8. You are to attend this court on May 17th at ten o'clock for a review of your performance under this conditional sentence order.

[23] The probation order that follows the conditional sentence will include the statutory terms.

1. You will report to a Probation Officer within five working days upon the completion of your conditional sentence, and thereafter when and in the manner directed by your Probation Officer;
2. You are to abstain absolutely from the possession or consumption of

alcohol;

3. You are not to attend any bar, tavern, off-sales, or other commercial premises whose primary purpose is the sale of alcohol;
4. You are to take such alcohol assessment, counselling, and programming as and when directed by your Probation Officer;

[24] Now, with respect to the conditional sentence, any comments from either counsel?

[25] MS. HILL: I'm sure you said it, but there was a reporting condition?

[26] THE COURT: Yes.

[27] MS. HILL: Thank you.

[28] THE COURT: That is a statutory term.

[29] MS. HILL: Thank you.

[30] MR. MARCOUX: Yes, as part of the conditional sentence order, I see there was a suggestion here that a condition not to drive a motor vehicle at any time be imposed, and I'm not sure what the Court will impose as a driving prohibition, but it's on top of any jail term. So perhaps it would be a good term to have during the conditional sentence order that he not drive any vehicle.

[31] THE COURT: Okay. Because there will be a driving prohibition.

[32] MR. MARCOUX: Yes, but I think it starts after the jail sentence.

[33] THE COURT: Okay.

[34] MR. MARCOUX: That's how I read s. 259, it says here --

[35] THE COURT: Is that your understanding, Ms. Hill?

[36] MS. HILL: It's my understanding is that if it would start the day he finishes his CSO. So I have no objection to it being included.

[37] THE COURT: Okay. There will be a term that:

9. You are not to operate a motor vehicle on any road, highway, or public place anywhere in Canada.

[38] That will be part of the conditional sentence order. Thank you.

[39] Ms. Hill, the conditional sentence order, anything that is a problem, the probation order? Essentially, the purpose of the probation order is to underscore sobriety and to continue any programming that may have been started.

[40] MS. HILL: I think, just for Madam Clerk's benefit, the review should be included on the CSO, just because -- yes, thank you.

[41] THE COURT: Yes.

[42] MS. HILL: No other issues.

[43] THE COURT: Okay. Victim fine surcharge? I gather he works from time to time?

[44] MS. HILL: No issue, he might just need a bit of time to pay.

[45] THE COURT: \$50 victim fine surcharge.

[46] MS. HILL: Yeah, a month, a month time to pay.

[47] THE COURT: Thirty days to pay.

[48] Driving prohibition, I heard counsel's representations with respect to a driving prohibition. In my view, an appropriate order with respect to the driving prohibition is as follows: You are prohibited from operating a motor vehicle on any road, highway, public place in Canada for a period of two years.

[49] MR. MARCOUX: I'm not sure if Mr. Coburn has -- still has his licence.

[50] THE ACCUSED: No.

[51] MR. MARCOUX: No?

[52] THE COURT: The RCMP took it?

[53] MR. MARCOUX: Okay. Thank you.

LILLES T.C.J.