

Citation: *R. v. Hodgins*, 2008 YKTC 5

Date: 20071130  
Docket: T.C. 07-00476  
Registry: Whitehorse

**IN THE TERRITORIAL COURT OF YUKON**

Before: Her Honour Judge Ruddy

**REGINA**

v.

**RYAN MICHAEL HODGINS**

Appearances:  
Noel Sinclair  
Andre Roothman

Counsel for Crown  
Counsel for defence

**REASONS FOR SENTENCING**

[1] RUDDY T.C.J. (Oral): Ryan Hodgins is before me in relation to a single count of driving while the concentration of alcohol in his blood exceeded the legal limit. The circumstances arise on the 22<sup>nd</sup> of September in the early morning hours when Mr. Hodgins was observed driving his vehicle in an odd manner, which included varying his speed and crossing the centre line on several occasions. He also parked crookedly after the RCMP officer put on his lights, indicating that he should stop. He got out and began to walk away from his vehicle. When he was told to get back in the vehicle, he stumbled.

[2] In addition to difficulties with balance, the officer noted other indicia of impairment, including a strong odour of alcohol and slurred speech. Mr. Hodgins was, however, noted to be polite and cooperative. The officer searched the vehicle and found empty beer cans, as well as an open case in the back seat of the vehicle. Ultimately, a breath demand was made and Mr. Hodgins provided two samples, both 150 milligrams per cent.

[3] He comes before the Court with a prior criminal record, which includes a single conviction for the same offence in 2002, so essentially five years and one month before this offence. He received a fine and a one-year driving prohibition for that matter. Crown has not filed a notice of intention to seek greater punishment, but primarily, as I understand it, to leave the option of a conditional sentence open in all of the circumstances. Mr. Hodgins is seeking that any sentence he be given be one that he is entitled to serve conditionally within the community.

[4] He is 26 years of age, currently working for the City of Whitehorse. He has worked for them for three years, both as a labourer and an operator-in-training. It is my understanding that his employment does require him to be able to drive. However, it appears that he has been able to negotiate an agreement with his employer that would allow him to use a private vehicle equipped with an interlock system and would thereby be able to keep his employment, for which, I must say, he is incredibly lucky. It is not unusual for us to see people coming before the Court that lose their employment as a result of getting behind the wheel of a vehicle while under the influence.

[5] In all of the circumstances, I am satisfied that what is being suggested is appropriate. I am also satisfied that, if I am going to make the sentence conditional, it ought to be somewhat greater than I would have given him were it to be a straight custodial or even an intermittent custodial sentence. So instead of a 14-day sentence, I am going to make it a 45-day conditional sentence on the following terms and conditions:

1. Keep the peace and be of good behaviour;
2. Appear before the Court when required to do so by the Court;
3. Report to a supervisor immediately and thereafter when required by the supervisor and in the matter directed by the supervisor. He will have to get over to the probation office today to report. Okay?
4. Remain within the Yukon Territory unless you have written permission from your supervisor;
5. Notify the supervisor in advance of any change of name or address and promptly notify the supervisor of any change of employment or occupation;
6. Reside as approved by your supervisor and not change that residence without the prior written permission of your supervisor;
7. You are to remain within your place of residence at all times except with the prior written permission of your supervisor.

[6] Do you wish an exception for employment or do you -- that can be done through the supervisor, giving him permission. The simplest thing --

[7] MR. ROOTHMAN: Yeah, (indiscernible).

[8] THE COURT: -- would be for him to sit down and talk with them about what he needs to be out for, but he has got to understand that he has to get the permission first. That means even if you want to go out to the store, you have got to get permission first. So at all times you are to remain within your place of residence except with the prior written permission of your supervisor.

8. You are to present yourself at the door, answer the telephone during reasonable hours for curfew checks. Failure to do so will be a presumptive breach of this condition;

9. You are to abstain absolutely from the possession or consumption of alcohol and controlled drugs or substances except in accordance with a prescription given to you by a qualified medical practitioner;

10. You are not to attend any bar, tavern, off-sales or other commercial premises whose primary purpose is the sale of alcohol.

[9] Anything further required in terms of conditions?

[10] MR. SINCLAIR: I don't -- no.

[11] THE COURT: Okay. I mean the primary thing is he is not to leave his house and he is not to be drinking.

[12] MR. SINCLAIR: Yes. The only thing that occurs to me, and I'm not suggesting a probation order to follow this, but if there is any way that he can get some sort of counselling to address what seems to be a recurring problem in his life, I think that would serve him well, but given the length of the sentence, that doesn't really permit a lot, but I would certainly urge it upon Mr. Hodgins to take a look.

[13] THE COURT: No, I think Mr. Hodgins might want to seriously consider the role of alcohol in his life after this. Next time around, you would not be looking at a conditional; you are going up the hill and for considerably longer. Okay? So you might want to consider talking to somebody. I do not have enough before me, I do not think, to indicate that he has got a long-standing alcohol problem and that it is appropriate to direct him into treatment. It may simply be two isolated incidents, but I think it is well worth your while to consider exploring your treatment options, or at least your assessment options, about whether or not you have a problem that requires some assistance.

[14] Okay. There is going to be a two-year driving prohibition, but I will make the recommendation that you be entitled to apply for the interlock program six months from today's date. That is a recommendation that you can make the application, okay? Somebody else decides whether or not the application is going to be granted, but you can make it six months from today. There will be victim fine surcharge of \$50; you have two weeks to pay that. Sorry, it was one month, was it not?

[15] MR. ROTHMAN: Yeah, asked for one.

[16] THE COURT: One month time to pay. Anything further?

[17] MR. ROTHMAN: Nothing from me, Your Honour.

[18] MR. SINCLAIR: I take it Mr. Hodgins has surrendered his driver's licence?

[19] THE COURT: Yes, okay. There is an order that you are going to need to sign at the court registry, your conditional sentence order. You will need to go directly from there over to probation services to be connected with your supervisor, and directly from there, to home, where you will stay unless you have written permission from your supervisor to be out. Okay? So you are going to have to talk to them today about what permissions you might need.

[20] THE CLERK: Count 1?

[21] THE COURT: Mr. Sinclair, Count 1?

[22] MR. SINCLAIR: Stayed.

[23] THE COURT: Thank you.

[24] MR. ROTHMAN: Thank you, Your Honour.

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RUDDY T.C.J.