

Citation: *R. v. Moses*, 2007 YKTC 78

Date: 20071106
Docket: T.C. 06-00706
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: Her Honour Judge Ruddy

REGINA

v.

JOHN MARTIN MOSES

Appearances:
Michael Cozens
Malcolm Campbell

Counsel for Crown
Counsel for defence

REASONS FOR SENTENCING

[1] RUDDY T.C.J. (Oral): John Martin Moses is before me in relation to a plea of guilty to an offence of driving while the concentration of alcohol in his blood exceeded the legal limit.

[2] The circumstances arise on the 10th of February of this year, at which point, Carmacks RCMP received a complaint of a possible impaired driver. They located and stopped the vehicle. Mr. Moses was, at that time driving, and demonstrated indicia of impairment. Ultimately, he provided two breath samples at 110 and 130 milligrams percent.

[3] They are relatively low readings; however, Mr. Moses comes before the Court with a lengthy related record. There are 12 prior convictions for either impaired driving or driving over 80. There are two impaired driving convictions for which he received curative discharges in the early to mid 90s and he does have two driving while disqualifieds and one driving while suspended.

[4] Counsel are before me, essentially, with a joint submission with respect to this matter, both having clearly considered that the case law in this jurisdiction, most notably the *R. v. Donnessey*, [1995] Y.J. No. 5 (QL), and *R. v. Pearson*, [2006] Y.J. No. 120 (QL), cases.

[5] The difficulty with respect to this matter is that Mr. Moses is now 68 years of age, a member of the Kwanlin Dun First Nation. He is a widower with only grandchildren left in his family, but the difficulties relate to his current medical condition. I understand there are some fairly significant medical issues in relation both to Parkinson's disease, but also to some ongoing heart conditions, which may well require him to have open heart surgery in the not too distant future.

[6] There were apparently efforts to seek an additional curative discharge. I do have a letter from Mr. Moses' doctor indicating that some work was done in that regard; however, I am advised that the impact of his other medical conditions are such that it simply was not something that he was able to further pursue.

[7] At this point, the joint submission put before me is for a sentence of two years. It is clear, based on what I have, that there has to be a jail term. Counsel are of the view

that a federal term may well put him into a system where he might have better access to both programming and the medical care that he needs.

[8] For those reasons, and the fact that the sentence as proposed is well within the range for the nature of the circumstances of this particular offence, I am prepared to accede to the joint submission. Accordingly, Mr. Moses, there will be a sentence of two years. There will be no probation or anything to follow it at this point. It will simply be a straight two-year sentence. There will, however, be a driving prohibition of 10 years, although, as you have heard counsel say, quite fairly, whatever I give you, it may well be that motor vehicles is not going to permit you to have a licence again, in any event, but the prohibition I will order will be one of 10 years.

[9] I am assuming that it is not a large pension that he is on and he is likely to lose that once he goes into --

[10] MR. CAMPBELL: He earned it all his life; he should keep getting it, but with respect to a victim fine surcharge?

[11] THE COURT: Yes. I do not know if they suspend it if someone is in custody if it is a government pension. I am not sure.

[12] MR. CAMPBELL: I would not think so. I have never run into the problem.

[13] MR. COZENS: I would be -- I would be surprised. It is not like E.I., but I don't actually know.

[14] MR. CAMPBELL: But no victim fine surcharge.

[15] THE COURT: Okay. Out of an abundance of caution, if nobody has any issue, I am going to waive the victim fine surcharge, in the circumstances.

[16] MR. CAMPBELL: Yes.

[17] MR. COZENS: Stay of proceedings on Count 2.

[18] THE COURT: Okay. Thank you. So Mr. Moses, you will need to go with the sheriff here. He will take you downstairs to the cells, okay?

RUDDY T.C.J.