

IN THE TERRITORIAL COURT OF YUKON
Before His Honour Judge Faulkner

REGINA

v.

KEITH MARTIN RAMAGE

Appearances:
Lee. L. Kirkpatrick
David J. Christie

Counsel for the Territorial Crown
Counsel for the Defence

REASONS FOR SENTENCING

[1] FAULKNER T.C.J. (Oral): The Defendant, Keith Martin Ramage, has entered pleas of guilty to charges of failing to yield the right of way to a pedestrian in a crosswalk and driving without due care and attention, contrary to s. 169(1) and 186(a) of the *Motor Vehicles Act*, RSY 2002, c.153.

[2] On February 26, 2014, at approximately 11:19 a.m., Mr. Ramage was driving north on Fourth Avenue in downtown Whitehorse. It was daylight; the weather was clear; and the road was bare and dry.

[3] At a point between Ray and Baxter Streets along Fourth Avenue is a pedestrian crossing. This crossing is marked by painted lines on the roadway, although these lines

were somewhat worn. However, there are also elevated crosswalk signs mounted on poles adjacent to each side of the roadway. Around these pedestrian crosswalk signs are flashing lights which are activated when a pedestrian wishing to cross the road pushes a button mounted on the poles.

[4] On the date in question, the sun was shining from the south and would have made it more difficult to see the lights. As Mr. Ramage drove north, a pedestrian, 69-year-old William Lagimodiere, was walking on the sidewalk on the west side of Fourth Avenue. He stopped at the pedestrian crosswalk in question, pressed the button, and after waiting for the traffic to clear, proceeded across Fourth Avenue in the crosswalk. Fourth Avenue is a four-lane roadway. When Mr. Lagimodiere had reached the outside or easternmost northbound lane, he was struck by Mr. Ramage's vehicle. Mr. Lagimodiere suffered catastrophic injuries and died soon afterward.

[5] There is no evidence that Mr. Ramage slowed his vehicle, applied the brakes, or took any evasive action whatever before striking Mr. Lagimodiere.

[6] The normal speed limit on this portion of Fourth Avenue is 50 kilometres per hour, but at this time, the area was a construction zone and signs placed in close proximity to the crosswalk not only advised of the construction and lane closures but imposed a reduced speed limit of 30 kilometres per hour.

[7] Accident reconstruction revealed that at the time of the collision Mr. Ramage was travelling 41 to 42 kilometres per hour. The reconstruction has also found that the roadway was straight and that there were no obstructions that would have prevented Mr. Ramage from seeing the pedestrian. Indeed, the pedestrian was in the crosswalk

for some 10 seconds before he was struck, and Mr. Ramage had more than ample time to see the deceased, react, and stop.

[8] Afterward, Mr. Ramage told the police that he had been looking to the side, and when he looked back at the road, the pedestrian was right in front of him.

[9] It is beyond doubt that the Defendant failed to yield the right of way to a pedestrian in a crosswalk and also without doubt that he was driving without due care and attention.

[10] It was revealed afterwards that Mr. Ramage has significant medical issues which undoubtedly affected his ability to safely operate a motor vehicle. Mr. Ramage, now aged 57, has a long medical history dating back to surgery for cancer of the spine at age 12. Since then there have been recurrences of the cancer as well as numerous other issues and operations. Some of the issues, in fact, impact on his hearing and vision and would undoubtedly have consequences with respect to his operation of a vehicle. As well, the pain medications that he is currently on may, as well, affect his ability to concentrate and react to situations when he's driving.

[11] Indeed, in the mid-1990s, Mr. Ramage was medically disqualified from holding an operator's licence for a period of time. However, his licence was eventually reinstated.

[12] It also develops that around 2005, Mr. Ramage's employer became concerned about Mr. Ramage's ability to operate machinery and drive a motor vehicle as his job required. Apparently there had been a number of what were termed "near misses."

[13] An assessment of Mr. Ramage's abilities to drive was done, and that revealed, in the course of testing, that Mr. Ramage was making what were termed "attention-related errors" in his driving. Nevertheless, Mr. Ramage did not lose his licence but ultimately did lose his job in 2007 due to these and perhaps other difficulties.

[14] Mr. Ramage has not worked since and lives on a modest disability pension.

[15] Mr. Ramage also has a driving record with three entries which are of some significance in this matter. They show convictions for failing to yield, following too close, and unsafe backing. All of these are suggestive of a lack of attention and care in Mr. Ramage's driving.

[16] Moreover, it appears that in the month prior to the fatality, Mr. Ramage was involved in two other motor vehicle accidents, at least one of which was clearly his fault. In hindsight, it is clear that there were issues and that Mr. Ramage should not have been driving a motor vehicle.

[17] Now, with respect to disposition, the Crown and defence have put before me what they describe as a near-joint submission. They contended for a conditional sentence order of two to three months to be followed by 12 to 18 months of probation. They did not seek a fine, given Mr. Ramage's meagre financial circumstances.

[18] In light of the cases in this jurisdiction involving careless driving resulting in fatalities, the proposed sentence is certainly squarely within the range and the only real issue before me is whether it should be at the bottom or the upper end of the range suggested by counsel.

[19] Since the Defendant did not actually intend any harm, cases of careless driving are certainly not comparable to those where a death is caused by a murderer or even a reckless driver. Nevertheless, in fixing the sentence in cases such as this, the Court is entitled and, indeed, required to consider the consequences of the Defendant's driving.

[20] In this case, it goes without saying, the consequences were severe.

Mr. Lagimodiere is dead and his loss has taken a heavy toll on his family, as the deceased's son Randy's victim impact statement so clearly shows. Therefore, such egregious inattention coupled with such a devastating result calls for significant sanction of the kind both counsel submitted was appropriate.

[21] In this case, it is my view that the sentence should be at the upper end of the range intended for, and I say this for several reasons.

[22] First and foremost, Mr. Ramage clearly should not drive a motor vehicle and, indeed, should not have been driving when this accident occurred. So, to the extent the Court can impose orders preventing him from driving, those should be in effect for the longest possible period.

[23] Secondly, unlike the situation in cases such as *R. v. Biondelli*, 2006 YKSC 16 and *R. v. Matta*, 2010 YKTC 128, Mr. Ramage does have a significant history of bad driving.

[24] Third, and not losing sight of the fact that Mr. Ramage has entered a guilty plea and expresses remorse, it is in my view telling that, when in speaking to his doctor

shortly after the accident, Mr. Ramage's main concern seems to have been the loss of his vehicle and the inconvenience to him.

[25] Finally, the degree of carelessness exhibited in this case was toward the upper end of the scale, in my view, given the amount of time the Defendant had to see and avoid the deceased.

[26] In the result, with respect to the charge of careless driving, Mr. Ramage, you are sentenced to a period of imprisonment of three months, and on the failing to yield charge, three months concurrent. Those sentences, however, will be served in the community pursuant to the terms of a conditional sentence order.

[27] The terms will be:

1. You shall keep the peace and be of good behaviour;
2. You will report to the Court as and when required;
3. You will report to a conditional sentence supervisor within two working days and thereafter as, when, and in the manner directed by the conditional sentence supervisor;
4. You will advise the conditional sentence supervisor in advance of any change of name or address and promptly in the event of any change of occupation or employment;
5. You will remain within the Yukon Territory unless given written permission by your conditional sentence supervisor to go elsewhere;

6. You will not under any circumstances operate a motor vehicle or any mobile equipment.
7. You will reside where your conditional sentence supervisor will approve and not change your residence without advanced permission in writing;
8. You will be in your place of residence between the hours of 8 p.m. and 6 a.m. daily except with the prior permission of your conditional sentence supervisor. Your failure to answer the phone or the door in the event of curfew checks will be a presumptive breach of the order.

[28] Following the completion of the custodial sentence, you will be subject to a probation order for a further period of 18 months. That will contain the statutory terms as set out in the *Summary Convictions Act*, RSY 2002, c. 210, together with the following terms: You will report within two working days to an adult probation officer and thereafter as, when, and in the manner directed. You will not under any circumstances operate a motor vehicle or any mobile equipment.

FAULKNER T.C.J.