

Citation: *R. v. Vallee*, 2012 YKTC 92

Date: 20120524
Docket: 11-00565
11-00565A
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before: His Honour Judge Luther

REGINA

v.

SAMUEL VALLEE

Appearances:
Keith Parkkari
David Christie

Counsel for the Crown
Counsel for the defence

REASONS FOR JUDGMENT

[1] LUTHER T.C.J. (Oral): Samuel Vallee has pleaded guilty to two charges, the most serious one being on the 10th day of November 2011, at Whitehorse, Yukon Territory, having consumed alcohol in such a quantity that the concentration thereof in his blood exceeded 80 milligrams of alcohol in 100 millilitres of blood, did, while operating a motor vehicle, cause an accident resulting in bodily harm to Jordan Howse, contrary to s. 255(2.1) of the *Criminal Code*. Also, on or between the 11th day of November 2011, and the 23rd day of November 2011, at or near Whitehorse, Yukon Territory, being at large on his undertaking given to by a judge or justice, and being bound to comply with the condition of that recognizance directed by the said judge or justice, did fail, without lawful excuse, to comply with that condition, that is, to report to a

bail supervisor within two working days of his release after custody and thereafter when and in the manner directed by the bail supervisor, contrary to s. 145(3) of the *Criminal Code* of Canada.

[2] The facts which were read in by the Crown were agreed to by the defence and, essentially, we are dealing with a situation where, back on the 10th of November 2011, Mr. Vallee made a very irresponsible decision to drive his friend from the bar. This resulted in an accident involving his 1992 vehicle and a 2003 Grand Am. In his vehicle there was a passenger, Mr. Jordan Howse, and in the other vehicle, two females, Chandelle Frost (phonetic) and Terry Lesh (phonetic). Both vehicles were written off. This was a very serious accident.

[3] There were no significant injuries to Mr. Vallee and Ms. Frost and Ms. Lesh. Mr. Howse was hospitalized overnight in a state of unconsciousness and suffered lacerations on the right side of his head, bruises on the right side of his body, and a severe headache. The diagnosis was a severe concussion.

[4] The accident was clearly caused by the offender, Mr. Vallee. He went in the wrong lane, causing the collision. Weather was a contributing factor because it was snowing at the time; however, the main factor in this case is the impaired state of the offender, who blew 180 on both breathalyzer samples.

[5] When we look at the concept of impairment, it is not just physical impairment, but it is also judgmental impairment, and a person's ability to make sensible and safe decisions when they are driving is grossly compromised by being significantly under the influence of alcohol. In *R. v. Schmidt*, 2012 YKSC 17, decided by Mr. Justice Veale of

the Supreme Court, at paragraph 29, I wholeheartedly agree:

While all the sentencing principles set out above must be taken into consideration, there is no doubt that in drinking and driving offences the primary objectives are denunciation and deterrence. In terms of deterrence, both specific and general deterrence are relevant, as the message about the risk of impaired driving needs to be communicated to both the community as a whole and to the offender him or herself.

The judge in that decision, at paragraphs 25 and 26, also pointed specifically to the major problem of drinking and driving in this territory compared with the rest of the country.

[6] In a decision from my home province, *R. v. Wells* (2012), 319 Nfld. & P.E.I.R. 186 (P.C.), Judge Gorman quoted from *R. v. Shoker*, 2006 SCC 44, from the Supreme Court of Canada, and in that 2006 decision the Supreme Court indicated that:

... "the purpose and principles of sentencing set out in ss. 718 to 718.2 of the *Criminal Code* make it clear that sentencing is an individualized process that must take into account both the circumstances of the offence and of the offender..."

That concept is particularly important in the case before me.

[7] Also important is paragraph 20 from the *Gorman* decision:

Drinking and driving offences have been referred to as the crime which causes "the most significant social loss to the country." In *R. v. Beaudry*, [2007] S.C.J. No. 5, the Supreme Court of Canada considered the seriousness of offences involving drinking and driving and stated (at paragraph 42):

...To re-emphasize the seriousness of offences associated with drunk driving and as a caveat against trivializing them, I reproduce without reservation the comment made by Cory J. in *R. v. Bernshaw*, [1995] 1 S.C.R. 254:

Every year, drunk driving leaves a terrible trail of death, injury, heartbreak and destruction. From the point of view of numbers alone, it has a far greater impact on Canadian society than any other crime. In terms of the deaths and serious injuries resulting in hospitalization drunk driving is clearly the crime which causes the most significant social loss to the country.

The situation in Canada has improved since Cory J. made this damning observation, but only because both the authorities and society itself have made extensive efforts to raise public awareness and crack down on impaired driving. The vigilance and diligence of police forces have played a crucial role in this process ...

[8] Now, while the Supreme Court was content in *Beaudry* to make the observation that the situation in Canada has improved, based on what I have read from Mr. Justice Veale in *Schmidt*, I am not so sure the situation has improved here in this territory. But returning to the *Shoker* case, sentencing is a very individualized process. I believe that both the decisions in *Schmidt, supra*, and *Marshall*, 2010 YKTC 81, make it clear what the range is, and the minimum appears to be four months.

[9] Mr. Christie has proposed an innovative alternative for me to consider rather than going with the straight sentence of four months. And I would say, in terms of the offenders and the offending crimes that are listed there in establishing that range of four to ten months, that clearly, Mr. Vallee's situation is at the bottom end of that range. We have a young man who has no prior record, who has been cooperative from the get-go, responding immediately to the female victims in the other vehicle, and also to the police at the scene. He accepted responsibility right from the start. He entered his guilty pleas as early as practicable, and in no way tried to avoid taking responsibility for this very

serious crime under s. 255(2.1).

[10] Taking into account the principles of sentencing set out in the *Criminal Code* and the guidelines in the jurisprudence from this territory and from the other jurisdictions in Canada, I am satisfied that imposing a sentence of less than four months, while perhaps unusual and certainly not typical, would not result in an inappropriate sentence. In other words, the public of Canada, in taking a look at this in a critical way, and analyzing the other cases where people are getting sentenced from four to ten months, would not be shocked or disappointed by the approach that this Court takes in the case of Samuel Vallee.

[11] The Court is satisfied to impose an intermittent sentence of 90 days. I do not have a problem with commencing this sentence on Friday, June 1st at 6:00 p.m. until Monday morning at 6:00 a.m., and in like manner every consecutive weekend thereafter until the sentence has concluded. It will take approximately five and a half months for the sentence to conclude, and thus I am going to impose a probation period for that time of five and a half months. In addition to that, there will be a fine of \$2,000. There will be a victim surcharge of \$300.

[12] The probation conditions on this first probation order are as follows:

1. Keep the peace and be of good behaviour and appear before the Court when required to do so;
2. Remain within the Yukon Territory unless you have the written permission from the Probation Officer;
3. Notify the Probation Officer in advance of any change of name or address,

and promptly notify the Probation Officer of any change of employment or occupation;

4. Report to the Probation Officer today and thereafter as required by the Probation Officer and in the manner directed by the Probation Officer;
5. Abide by a curfew by remaining within your place of residence between the hours of 8:00 p.m. and 6:00 a.m. daily except with the prior written permission of your Probation Officer or while serving your intermittent sentence. 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;
6. 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;

For this particular probation order, I am going to make it part of this condition also that he:

7. Provide a sample of his breath or urine for the purposes of analysis made upon demand by a peace officer including a Whitehorse Correctional Officer who has reason to believe that you may have failed to comply with this condition;
8. Not attend any bar, tavern, off-sales or other commercial premises whose primary purpose is the sale of alcohol.

[13] Based on the Crown's submission, I will not make an order for a DNA sample.

However, I do need to ask the Crown about s. 109 of the *Criminal Code*.

[14] MR. PARKKARI: My understanding is that this would be a primary designated offence, and therefore s. 109 would apply.

[15] THE COURT: What timeframe are we looking at for the length?

[16] MR. PARKKARI: 109, I believe for a first offence, is ten years.

[17] THE COURT: Okay. Any issue with that, Mr. Christie?

[18] MR. CHRISTIE: No, I can't take any issue with that.

[19] THE COURT: Section 109, then, that order will be in effect for ten years.

[20] With regard to the charge under s. 145(3), taking into account that the offender complied with his bail conditions after the 23rd day of November, I am prepared to suspend the passing of sentence and place him on probation for a period of three years. That is the maximum period of probation, but the probation conditions are going to be somewhat relaxed from what defence counsel was suggesting.

[21] For this particular probation order the conditions are as follows:

1. Keep the peace and be of good behaviour and appear before the Court when required to do so;
2. Remain within the Yukon Territory unless you have the written permission from the Probation Officer;
3. Notify the Probation Officer in advance of any change of name or address,

and promptly notify the Probation Officer of any change of employment or occupation;

There will be no curfew on this one. With regard to the abstention clause, it will read as follows:

4. For the first one year, 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;
5. For the first one year, not attend any bar, tavern, off-sales or other commercial premises whose primary purpose is the sale of alcohol;
6. For the first one year, take such alcohol or drug assessment, counselling or programming as directed by the Probation Officer;
7. Make reasonable efforts to find and maintain suitable employment and provide your Probation Officer with all necessary details concerning your efforts;
8. Community service work hours will be fixed at 40. They will be completed within six months of the completion of the intermittent sentence;

The last term on the probation order is:

9. That he not operate any motor vehicle in Canada unless and until he has a valid licence, registration and insurance and all fines are paid in full.

[22] Let us revisit the fines. The fine was set at \$2,000 and the victim surcharge at \$300 for a total of \$2,300. Mr. Christie, what is the defence request in terms of time to

pay?

[23] MR. CHRISTIE: Well, would it be from today's date or the end of the sentence, or it is fixed from today's date?

[24] THE COURT: It will be from today's date.

[25] MR. CHRISTIE: I think if he could have the maximum, I think it's six months, isn't it, that he could --

[26] THE COURT: Well, no, I can go beyond that. We can go perhaps up to a year, but what I suggest is that it be at a certain rate per month, and I would say at a rate of not less than \$200 per month commencing on July 1st.

[27] MR. CHRISTIE: That sounds reasonable, Your Honour, yes.

[28] THE COURT: The s. 259, I believe, I did indicate was going to be for a period of two years.

[29] Now, what the probation order means is that when the two years is up he cannot automatically start driving. He has to make sure that he has a valid licence, registration and insurance, and he also has to make sure that the fines are paid in full. What this means is that at the end of the two years, if he follows those directives from the Court, he can resume driving if he is properly licensed to do so.

[30] The other thing that will be open to him at that two-year point, should he have his licence back and he has satisfied these other conditions of licence, registration, insurance and having paid his fines, then he can approach Adult Probation here in the

Territory with a view to an early termination of his probation order. The Court is not insistent that the three years be the conclusion here. It is quite possible that if he does well on probation and this driving business is taken care of, that he can successfully apply for a probation decrease in time. Are there any questions here from the Crown?

[31] MR. PARKKARI: A couple of points. On the probation order attached to the 145 charge, I didn't hear a reporting clause, and that would be appropriate, in my submission.

[32] THE COURT: Yes, that definitely would be. Report to the Probation Officer as required would be fine because he will already have established an important liaison with the Probation Officer during the term of the first probation order. That is correct, yes.

[33] MR. PARKKARI: Yes, and that thing's terminated, et cetera, would be appropriate. And on the probation order that attaches to the 255 charge, I'm sorry, I didn't catch the duration of that.

[34] THE COURT: That one was five and a half months.

[35] MR. PARKKARI: Five and a half months. I would just make sure the Court's aware that in all likelihood he will qualify for remission, in which case he gets credit for four days a weekend by showing up at 6:00 on Friday and getting out at 6:00 Monday.

[36] THE COURT: Right.

[37] MR. PARKKARI: So his time that he is actually going to serve would be just shy of four months, assuming he makes all his days.

[38] THE COURT: Right. I do not think that is an assumption I can make as a sentencing judge. I did actually consider that, but I think the better approach to take is to impose the 5.5 months to coincide with the actual sentence itself.

[39] MR. PARKKARI: That's fine.

[40] THE COURT: Okay. Any other questions for the Crown?

[41] MR. PARKKARI: No, Your Honour.

[42] THE COURT: And, Mr. Christie, any questions here?

[43] MR. CHRISTIE: No, thank you, Your Honour.

[44] THE COURT: Now, Mr. Samuel Vallee, would you stand, please?

The Court, without appearing unduly soft, has accepted Mr. Christie's proposal for this approach, which I think is fair both to you and to the public. In many senses, the sentence that I have imposed here will be more difficult than a person who was just doing four or five months straight in jail. This does give you the opportunity to continue your work and to make amends for your very wrongful act on the night in question. What amazes me as a judge, and I have been a judge now for a long time, is that back in the 70s and 80s, people were getting used to the idea that impaired driving was as serious as it in fact is. So the old concept of turning a blind eye to it was greatly reversed, and there was a lot of public education by the police, by community leaders,

by groups such as Mothers Against Drunk Driving, indeed, even in the schools, where presentations were made, and yet it amazes me that we have young people like yourself that will make such a stupid and criminal mistake. You are here now. You are going to be paying for this, and I do trust that this mistake will never be made again in the future.

[45] I do wish you well with your work and that you move on with your life after this and just make sure that no matter how you are tempted, no matter who is asking you for a drive or whatever the situation may be, that you will clearly say no, and you will never find yourself in this position again. All right, Madam Clerk, I will see you outside afterwards, okay?

[46] MR. PARKKARI: Thank you. Direct a stay of proceedings to Count 1 on the two-count Information.

[47] THE COURT: Thank you.

LUTHER T.C.J.