

Citation: *R. v. Wright*, 2018 YKTC 49

Date: 20181122
Docket: 17-00454
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before His Honour Judge Cozens

REGINA

v.

JOHN GREGORY WRIGHT

Appearances:
Keith D. Parkkari
Richard S. Fowler

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCE

[1] COZENS J. (Oral): John Gregory Wright is before the Court, having pleaded guilty to an offence under s. 253(1)(b) of the *Criminal Code*.

[2] The circumstances of the offence are that on September 16, 2017, in Whitehorse, RCMP responded to a complaint that Mr. Wright was driving his motor vehicle while he was intoxicated. The police had prior involvement with him that morning, pursuant to a different complaint, in his residence and were aware that he was under the influence of alcohol at that time.

[3] The vehicle that was described was located by the RCMP with Mr. Wright as the driver. It was pulled over. Indicia of impairment was noted which, coupled with the officer's prior observations, resulted in him forming the grounds to believe that Mr.

Wright had committed offences under ss. 253(1)(a) and 253(1)(b) of the *Criminal Code*, and he was arrested. He subsequently provided breath samples of 190 mg%. He has no prior criminal history and is 42 years of age.

[4] Defence counsel is seeking that Mr. Wright be granted a curative discharge, an option still currently available under the *Criminal Code*.

[5] Crown counsel, while conceding that based on the materials before the Court that Mr. Wright is certainly in need of curative treatment, has concerns about whether a discharge, given the circumstances of this case, would not be contrary to the public interest.

[6] A number of materials have been filed that outline the history of Mr. Wright, his spouse, and his children in family law proceedings that are directly related, in large part, to Mr. Wright's consumption of alcohol and the impact that has had on the family, including, supervised access, no access, and such. Notwithstanding that he has had no prior drinking and driving offences, his alcohol consumption is clearly such that curative treatment is required.

[7] The question of whether it is not contrary to the public interest really turns on a couple of things.

[8] One, we do not have, in this case, a track record of blood sampling for the consumption of alcohol that would deal with regular checks to ensure that there has been no drinking for a substantial period of time. I have some medical evidence from a

test but, of course, unless they are regular tests they do not deal with binge drinking. A person could drink and then have it out of their system by the time they go for a test.

[9] When I look at the information in support of the discharge, I am looking at less than I sometimes see. I agree that the real issue on the prospect of success of the treatment is motivation. I do take Crown's point as being well made that certainly the destruction of his family that has been going on for a substantial period of time should have been motivating and was not as motivating as it could have been, because he was drinking as recently as May of this year, and the first letter of agreement from the family proceedings was in October 2016.

[10] Motivation can vary through time. I accept that. Maybe the fact that he was charged and faces the prospect of a criminal conviction provided him additional motivation. I note that not guilty pleas were originally entered in November 2017 and a guilty plea was entered on August 9, 2018. He is a little late to the table on the discharge application and we are dealing with this about six months after his last drink.

[11] What I have in support is certainly information related to some treatment that he is taking. He has been bound by a court order to attend Alcoholics Anonymous three times a week and also to attend, I believe, a mental health counsellor twice a week. He has been doing that as far as I know. It is court-ordered in order for him to have any access to his children and that seems to be working.

[12] Would he do that if he did not have this court order? I do not know. It depends how motivated he is to actually quit drinking. He says he is motivated. He says that the

relationship with his children and what has been going on has reached the point where he finally acknowledged that he has a drinking problem and he is trying to deal with it.

[13] I have a letter dated March 16, 2017, which shows that he had been attending sessions back then. Since then, it obviously was not having the impact it should have had because there still continued to be some episodes of drinking.

[14] We move then into 2018.

[15] Mr. Wright has attended and participated in an in-patient treatment program at Alcohol and Drug Services. I have a certificate of completion from this program dated June 29, 2018.

[16] I have a letter dated June 18, 2018, that talks about the work that he has done within intensive treatment starting May 23, and that he had participated fully in all aspects of the program since he had arrived in the program.

[17] I have a letter dated June 19, 2018, talking about his counselling sessions with Ms. Zedda, an addiction and mental health counsellor, that he had been in treatment for five weeks, and had been diligently working on getting to the root cause of his problematic behaviours and trying to make changes.

[18] I have a letter dated July 19, 2018, from Ms. Reidy indicating that he continues to attend weekly counselling sessions with her. I have a subsequent letter dated October 3, 2018, that says he is attending bi-weekly sessions with her.

[19] These letters do not say how he is doing. They do not say he is doing well. They do not say he is not doing well. They do not say he is having problems or that he is not having problems. It would have been of some assistance to have something more than just "he's here". It would have been nice to have "he's here and he's continuing to do well" or "he's here and he's struggling." I take the Crown's point there. These letters are pretty perfunctory and could have used a little bit more fleshing out. However, we have what we have.

[20] Then I have the November 20 letter from Ms. Puize at Addictions and Mental Health Counselling. This refers back to what he had done before and the steps that he had taken there. It says that he is working on living a healthy lifestyle, planning for a relapse, he always appears sober, and it is said that he has been sober since he left treatment.

[21] We also have the letter from Dr. Ahmed, who has seen Mr. Wright. It indicates that since November 16, 2018, he has been obtaining regular blood tests to confirm compliance. There are no concerns but certainly the regularity of these tests is not as typical as what we have sometimes seen.

[22] I do have August 21, November 7, April 23 — and we know that there was drinking after March 26 and April 23 of this year.

[23] I am familiar with the case law that was filed. This does not mean I know them perfectly but I understand the basic principles here. This issue comes down to what is the best way to achieve the public interest, and certainly not contrary to it.

[24] I have the option today of imposing a fine and a driving prohibition for a first offender with 190 mg% readings, which is statutorily aggravating but is still a fine, and a driving prohibition. Mr. Wright has been driving for a while now and his licence would be taken away for at least a period of one year.

[25] I have the option of placing him on a curative discharge that would allow supervision of him for a period of time, which would be a minimum of two years, to provide some monitoring to what he is doing with respect to avoiding the consumption of alcohol.

[26] Certainly the public interest is best protected if Mr. Wright does not ever drink alcohol again — I am going to take that a step further — it protects the interest beyond simply consuming alcohol and driving. If he consumes alcohol and does not drive but it helps destroy his family's lives, well, then there is a ripple effect on his family, and we do not know what those consequences would be.

[27] But certainly, with respect to drinking and driving, this is the primary action that we need to ensure that there is deterrence considered. The imposition of a fine today and a driving prohibition serves the benefits of general deterrence. People know that you are going to have a criminal record if you drink and drive and are convicted of doing that.

[28] It can provide specific deterrence in that Mr. Wright will have had the significant consequence of getting a criminal record at this point in his life. That keeps with it, of course, the fact that if he drinks and drives again, he is facing a greater punitive

sentence, besides whatever other problems may come with a drinking and driving conviction on his record.

[29] If he is given a discharge and placed on a period of probation and he drinks while on that period of probation, even if the drinking is not accompanied with driving, he can face a revocation of this order and he can be resentenced in the normal course and get the same sentence that he would otherwise have had today.

[30] I certainly, again, appreciate what the Crown has said, that the longer the period of sobriety, the greater confidence the Court can have that there will be sobriety going forward in the future. There is a tipping point, in my mind, with respect to what an individual has done and whether it is sufficient to take the risk going forward of imposing a sentence that will not result in a criminal conviction — assuming Mr. Wright is successful in completing it.

[31] Do I have the best evidence before me? I do not.

[32] Do I have sufficient evidence? In my opinion, given his history, given that this is a first conviction, and given that I see that the public interest in this case — notwithstanding the benefits of perhaps general deterrence, specific deterrence, and a criminal record with respect to deterrence and the ability to sanction further on — I have enough evidence that I am prepared to grant the discharge in this case, knowing that if Mr. Wright does not comply, he will be back before this Court in all likelihood because he is being monitored through the family as well. He will be caught if he drinks. And if he is caught, I expect that he would likely find himself in a situation where he is back before this Court and he has lost the opportunity.

[33] I believe that the additional motivation the avoidance of a criminal record gives to him over a lengthy period of supervision will better accord with the public interest, and that it is not contrary to the public interest.

[34] This is not a case where I am saying because it is a first offence we can take a chance. I believe there is enough evidence before me — not the best evidence, not everything — to allow me to do it in the circumstances of this case.

[35] I also believe, given the track record of no prior drinking and driving offences, the risk that he will drink and then drive and then put the public at risk is less than it would be than if he had prior drinking and driving offences where the historical records show he has a proclivity to do that. I do not have that, and that allows me to look at the evidence that is before me and say that it is sufficient. It would not necessarily be sufficient in other cases with other offenders.

[36] In doing this, I am accepting, being well aware of the legitimacy of the Crown's concerns as to motivation, that he is sufficiently motivated to make this work. That is a motivation he is going to have to remind himself of everyday. If he does not, the lesser of everything is that he will end up back before the Court and have a criminal record. The more significant is that he will cause harm to his family and his children. I agree with the Crown. That should be the greatest motivating factor. I am hopeful that will be the greatest motivating factor.

[37] Mr. Wright, you will be discharged. It will be for a period of two years. I am going to suggest some terms. I will take counsels' comments on any terms after I go through them. These are tentative terms, subject to the submissions of counsel. You will:

1. Keep the peace and be of good behaviour;
2. Appear before the court when required to do so by the court;
3. Notify your Probation Officer in advance of any change of name or address, and promptly of any change of employment or occupation;
4. Report to your Probation Officer immediately, and thereafter, when and in the manner directed by your Probation Officer;
5. Not possess or consume alcohol and/or controlled drugs or substances that have not been prescribed for you by a medical doctor — unless otherwise authorized by law. Adding "authorized by law" draws the distinction between alcohol and between any drugs, including marijuana;
6. Not attend any premises whose primary purpose is the sale of alcohol, including any liquor store, off sales, bar, pub, tavern, lounge or nightclub, except with the prior written permission of your Probation Officer;
7. Attend and actively participate in all assessment and counselling programs as directed by your Probation Officer, and complete them to the satisfaction of your Probation Officer, for the following issues:

alcohol abuse,

any other issues identified by your Probation Officer,

and provide consents to release information to your Probation Officer regarding your participation in any program you have been directed to do pursuant to this condition;

8. Continue to meet with Alcoholics Anonymous three times per week and your mental health counsellor two times per month, unless otherwise directed by your Probation Officer.

[38] You will be prohibited from operating a motor vehicle on any street, road, highway, or public place for a period of one year. A registered fail of 190 mg% is statutorily aggravating but, given that you have been driving, I do not see a need to extend that at this point beyond the minimum of one year. I took this into consideration when making my decision. I am not saying anything to prevent you from seeking to get an interlock through Motor Vehicles.

[39] A victim surcharge of \$100 is applicable. You will have two weeks' time to pay.

COZENS T.C.J.