

Citation: *R. v. Hunziker*, 2013 YKTC 88

Date: 20131101

Docket: 11-0706B

12-07130

12-07131

12-07132

12-00831

12-00831A

12-00831B

12-07123

Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Judge Chisholm

REGINA

v.

JAMES ALLEN HUNZIKER
aka JAMES ALLEN HALLETT

Appearances:

Ludovic Gouaillier

Tracy Anne McPhee

Melissa Atkinson

Counsel for the Crown

Counsel for the Territorial Crown

Counsel for the defence

REASONS FOR SENTENCING

[1] CHISHOLM T.C.J. (Oral): James Hunziker comes before the Court having pled guilty to a number of offences: a theft charge, an impaired driving charge, driving without a licence pursuant to the *Motor Vehicle Act*, RSY 2002, c. 153, a curfew breach, a fail to report to his Bail Supervisor, and a fail to attend court.

[2] In brief, in terms of facts, on September 2, 2011, Mr. Hunziker was with a friend at a local hotel. The friend lent Mr. Hunziker \$140; however, when this individual was

not looking, Mr. Hunziker took another \$500 from him. The victim later confronted the offender, who said that he would pay back the money, but he did not do so.

[3] On November 10, 2012, at 10:45 in the evening, the Whitehorse RCMP ended up pulling over a vehicle for a vehicle check. This was in the City of Whitehorse. They noted that there were some problems with the registration of the vehicle. They observed that there was a strong smell of liquor coming from the accused. He had unsteady balance. An ASD demand was made and the offender refused. He admits that his ability to operate a motor vehicle was impaired by alcohol. He was disruptive with the police. It was also noted that he was bound by a recognizance and he had a curfew of 9:00 p.m., and he was out past that curfew. He also was prohibited from driving a motor vehicle under the *Motor Vehicle Act, supra*, and has been so since 2003. He was the driver and lone occupant of the vehicle.

[4] Mr. Hunziker was released on conditions. One of his conditions was that he report to a Bail Supervisor as directed by the Bail Supervisor, and between the 10th and 12th day of June 2013, he failed to do so. He was to appear on June 17, 2013, and he failed to do so.

[5] Mr. Hunziker comes before the Court with a substantial criminal record for someone of his age, including two prior adult convictions for impaired driving, or driving over the legal limit, and one as a youth. He has, I note as well, a break and enter conviction, which should be considered in terms of the s. 334(b) matter before me.

[6] He is 30 years of age; he has three children, two of whom are quite young and who live in the community of Teslin. He has an employment history. It has been

pointed out to me, and there are exhibits filed to confirm, that he participated in the Community Wellness Court here in Whitehorse for a period of approximately five months, and by all accounts did very well. In fact, he completed residential alcohol treatment while in that program. Mr. Hunziker transitioned out of the Yukon Adult Resource Centre after a number of months of residency there, and unfortunately, subsequent to that change of residence, he commenced to drink again and ultimately failed to report and failed to attend court.

[7] As has been pointed out by the Crown, the principal factors in sentencing in this matter are denunciation and deterrence, although the principle of rehabilitation cannot be overlooked, considering his age.

[8] Mr. Hunziker has been in custody for 66 days. The respective Crown prosecutors have filed notice with respect to two of the offences before me. The Federal Crown has filed a notice of intention to seek greater punishment on the impaired charge, and the Territorial Crown has filed notice with respect to the driving while disqualified charge. The minimum penalty that could be imposed with respect to the impaired charge is four months, plus a three year driving prohibition, and for the driving without a licence, the minimum amount of custody is six months.

[9] I have to be cognizant of the issue of totality in this matter as a principle of sentencing. Having said that, based on the factors already outlined, I sentence the offender to the following: For the s. 253(1)(a) charge, you are to serve a period of custody of six months, plus you will be subject to a three year driving prohibition; for the offence contrary to s. 266 of the *Motor Vehicle Act*, *supra*, six months concurrent; for the

s. 334(b) charge, which involves an element of what one could call breach of trust, two months consecutive; for the breach of the curfew charge, 30 days concurrent; for the reporting breach, 30 days consecutive; and for the fail to attend court, 30 days concurrent. That is nine months in total. He will receive pre-trial credit of three months, so he will have a remanet of six months' time to serve.

[10] In terms of the driving prohibition, I have to inform you that should you be found driving while under suspension and prohibition from driving you will be subject, potentially, to another *Criminal Code* charge, and if you are convicted of that you could face serious consequences.

[11] In terms of the Victim Fine Surcharges?

[12] MS. ATKINSON: I ask that it be waived as he will be in custody.

[13] THE COURT: Any issue?

[14] MR. GOUAILLIER: Well, certainly it's not a case where it would be mandatory.

[15] THE COURT: The Victim Fine Surcharges are waived.

[16] In terms of the outstanding charges?

[17] MR. GOUAILLER: There will be a stay of proceedings on the remaining federal charges. Perhaps - I'm sorry, Your Honour, just before -- if I can ask you to clarify what his credit is -- being given for remand, and to what charges it's attached? I suspect the --

[18] THE COURT: The remand credit is three months, and it can be applied against the s. 253(1)(a) charge.

[19] MR. GOUAILLIER: Thank you.

[20] MS. MCPHEE: I'd like to withdraw the three tickets issued pursuant to the *Motor Vehicle Act*.

[21] THE COURT: Thank you. Those matters are withdrawn, and the Crown has stayed the other remaining matters that it has before the Court.

CHISHOLM T.C.J.