

# SUPREME COURT OF YUKON

Citation: *R. v. Alrawashdeh*, 2021 YKSC 8

Date: 20210212  
S.C. No. 20-AP007  
Registry: Whitehorse

**BETWEEN**

**REGINA**

**RESPONDENT**

**AND**

**ABDEL ALRAWASHDEH**

**APPELLANT**

Before Chief Justice S.M. Duncan

Appearances:

Kelly McGill  
Abdel Alrawashdeh

Counsel for the Respondent  
Appearing on his own behalf

## **RULING**

### **(Extension of Time to File an Appeal)**

#### **Introduction**

[1] This is a determination of whether an extension of time to file an appeal should be granted to Abdel Alrawashdeh (incorrectly named in the Government of Yukon documents as “Alrawashden”). He seeks to appeal the refusal of the Territorial Court of Yukon (“Territorial Court”) to set aside his automatic conviction on July 3, 2020, under s. 87(2) of the *Motor Vehicles Act*, R.S.Y. 2002, c. 153 (“MVA”), of operating a vehicle without insurance. Mr. Alrawashdeh’s filing on November 17, 2020, is well beyond the

time limit of 30 days from the date the Territorial Court confirmed the automatic conviction on July 28, 2020.

[2] The issue is whether this Court should exercise its discretion to grant an extension of time to file an appeal in the circumstances. Is this an exceptional circumstance where there is a real concern that an injustice may have been incurred?

### **Facts**

[3] On June 3, 2020, at approximately 11 p.m., Mr. Alrawashdeh was served with a ticket under the *Summary Convictions Act*, R.S.Y. 2002, c. 210 (“SCA”), by an RCMP officer at the roadside. He was charged under ss. 5(1) and 87(2) of the *MVA* with operating a vehicle without a licence and without insurance. He was driving along Hamilton Boulevard in Whitehorse when the RCMP officer stopped him.

[4] Mr. Alrawashdeh’s vehicle was immediately impounded. He deposed that the RCMP officer who issued him the ticket was on leave for the following five days. On the officer’s return, Mr. Alrawashdeh phoned him to advise he had proof of insurance. The RCMP officer instructed him to attend the Department of Motor Vehicles with the insurance document to retrieve his vehicle. The Motor Vehicles employee advised Mr. Alrawashdeh to start court proceedings to contest the ticket. Mr. Alrawashdeh successfully retrieved his vehicle. It is not clear when all of this occurred.

[5] By July 3, 2020, Mr. Alrawashdeh had not responded to the ticket. As a result, a Justice of the Peace convicted him of the two offences under the *MVA* and issued fines under s. 21 of the *SCA*. Notice of the convictions and fines was sent to Mr. Alrawashdeh by the court registry.

[6] On July 6, 2020, Mr. Alrawashdeh applied to the Territorial Court to set aside the conviction of operating a vehicle without insurance. The Justice of the Peace adjourned

the matter on July 21, 2020, to July 28, 2020. On July 21<sup>st</sup>, Mr. Alrawashdeh said he showed the Crown and the Court his “pink slip” setting out insurance coverage on the relevant date. During the discussion and submissions from the Crown, the Justice of the Peace suggested that Mr. Alrawashdeh may want to obtain a letter from his insurance company, confirming his coverage.

[7] Mr. Alrawashdeh obtained a letter from his insurance company dated July 27, 2020, entitled “Automobile Insurance Confirmation” and brought it to Territorial Court on July 28, 2020. This letter was not acceptable to the Crown as proof of his insurance coverage on June 3, 2020, because it was a general letter, with information identical to the “pink slip.” There was no confirmation that there was no interruption of insurance between the operative coverage dates, which were April 23, 2020, to January 31, 2021.

[8] The Justice of the Peace refused to set aside the automatic conviction on July 28, 2020, because Mr. Alrawashdeh had received notice of the charge.

[9] Mr. Alrawashdeh received a letter dated September 21, 2020, from his insurer, confirming his coverage for the vehicle he was driving on June 3, 2020.

[10] Mr. Alrawashdeh deposed he provided that letter to the Crown prosecutor’s office, but the Crown prosecutor said their office was unaware of the letter until receiving his notice of appeal and accompanying material.

[11] Mr. Alrawashdeh filed his notice of appeal of the conviction for driving without insurance on November 17, 2020. The ground of his appeal is that he did have valid insurance coverage for the vehicle he was driving on June 3, 2020.

## **Law**

[12] The Summary Conviction Appeal Rules, 2009 (the “SCA Rules”) of the Supreme Court of Yukon provide that a notice of appeal from a decision of the Territorial Court

shall be filed no later than 30 days from the date of conviction (s. 3(1)). The Supreme Court of Yukon may extend the time required by the SCA Rules on application or on its own motion (s. 9(1)).

[13] The Crown states that case law interpreting applications for extensions of time to appeal convictions in criminal matters is applicable in the regulatory offence context.

[14] The following factors are considered by courts in requests for extensions of time:

- a) whether the applicant has shown a *bona fide* intention to appeal within the appeal period;
- b) whether the applicant has accounted for or explained the delay;
- c) whether there is merit to the proposed appeal;
- d) when the respondent was informed of the intent to appeal; and
- e) whether the respondent would be prejudiced by the extension.

*R. v. Menear* (2002), 155 O.A.C. 13; *R. v. Carlick*, 2018 YKCA 5 (“*Carlick*”).

[15] The Court of Appeal of Yukon in *Carlick* noted that an overriding factor for the court to consider is whether it is in the interests of justice to grant an extension. This is the “decisive question” and “encompasses” all the other factors (para. 34). However, the interests of justice includes a “myriad of factors, including the interests of the parties and compliance with the *Rules of Court*” (para. 35). Further, the “community’s interest in avoiding a wrongful conviction is also a consideration of the interests of justice: *R. v. Caron*, 2013 BCCA 475 at para. 26” (para. 36).

[16] The Court of Appeal of Yukon described the governing principle as “the applicant must establish special circumstances, and different factors may be accorded different weight in this analysis” (para. 37). The factors are not an exhaustive checklist, which the

applicant must meet before succeeding on their application. The Court in *Carlick* further noted that finality in criminal proceedings is another factor to be weighed.

## **Analysis**

### ***Position of the Crown***

[17] The Crown opposes the application for extension of time. Their argument rests on their adoption of the finality in criminal proceedings principle in the regulatory proceedings context. The Crown says that the timelines are important in summary conviction proceedings to ensure that prosecutions of lesser significance do not languish and constrain the court's finite resources. The Crown also argues that Mr. Alrawashdeh has not provided an adequate explanation for the lengthy delay in filing his notice of appeal and that they had no notice of his intention to appeal. The Crown acknowledges that there is "some merit" to his proposed appeal, given the documentation indicating his insured status. To their credit, the Crown acknowledged in oral submissions there is no prejudice to them if the extension of time is granted. In conclusion the Crown says this is not one of the exceptional circumstances contemplated by the interests of justice, as Mr. Alrawashdeh's conviction is a result of his own inaction. The consequences of his conviction are not unexpected or disproportionate to his failure to meet the procedural requirements.

### ***Position of Mr. Alrawashdeh***

[18] Mr. Alrawashdeh's ground of appeal as well as the basis for his application to extend time is the merits of his case. He has provided evidence that he was properly insured on June 3, 2020.

[19] He addressed the delays as follows. After the initial charge, he was pre-occupied with retrieving his impounded vehicle and obtaining his driver's licence. He was confused

by the Territorial Court appearances in July and believed if he obtained the letter required by the Crown from his insurance company he would be exonerated. It took the insurance company until September to send that letter as it was an unusual request and required more work than preparing the general letter they usually provide to clients. The appeal processes and forms were confusing to Mr. Alrawashdeh and it took some time for him to complete what was required.

### **Application of Relevant Factors**

#### ***i) Explanation of delay***

[20] I agree that Mr. Alrawashdeh did not provide a complete explanation for the delay in filing the notice of appeal. The additional requirements for the second insurance letter provides some explanation of why it took from July 28 to September 21, 2020 to obtain it. However, seven weeks is a lengthy delay for a one page letter. Mr. Alrawashdeh did not provide evidence of when he asked the insurance company for this letter. He also was vague about when he sent this letter to the Crown and the Crown said they did not receive it until the notice of appeal was served in November. Although the complexity of court filings is an understandable reason for some delay, Mr. Alrawashdeh presents as intelligent and competent. He said the Court registry was helpful and I do not accept that any confusion he experienced would have created a further delay from the end of September to November 17.

#### ***ii) and iii) Bona fide intention to appeal and informing Crown***

[21] While the Crown may not have been explicitly informed of Mr. Alrawashdeh's intent to appeal, he made his position clear at the Territorial Court proceedings in July – that he was insured at the time of the charge and was not guilty. He had, through his actions at the Territorial Court, formed the *bona fide* intention to appeal based on the

merits of his case. While he may not have explicitly informed the Crown of his intention to appeal, the Crown should not have been surprised by Mr. Alrawashdeh's pursuit of a resolution of the matter at the next level.

***iv) No prejudice to the Crown***

[22] The Crown has already conceded there is no prejudice to it of a grant of extension of time to appeal.

***v) Merit to appeal***

[23] What is most compelling in these circumstances is the clear merit to this appeal, and the timing that the information about his insured status was known by the authorities.

[24] The Crown acknowledged that Mr. Alrawashdeh had to show proof of insurance in order to retrieve his impounded vehicle. Although it is not clear when this occurred, it was likely soon after the charge was laid on June 3, 2020. Mr. Alrawashdeh said he called the RCMP to advise he had proof of insurance after the officer returned from his five-day leave. Although the officer may not have had any discretion at that stage to withdraw the charge, the information received by him could have been noted and passed on to the Crown or court.

[25] At the Territorial Court appearance on July 21, 2020, Mr. Alrawashdeh had his "pink slip" showing his insurance coverage. At this stage, this was considered to be insufficient evidence by the Crown. They took the position that his coverage could have been interrupted and the "pink slip" was insufficient to prove his vehicle was covered on June 3, 2020. The Crown noted that a letter from the insurance company would be necessary. The matter was adjourned for a week to allow Mr. Alrawashdeh to obtain such a letter.

[26] The letter produced by Mr. Alrawashdeh on July 28, 2020, and provided to the Crown and Territorial Court was also considered insufficient evidence because it did not confirm that there was no interruption of his insurance during the covered period, even though on its face it confirmed his coverage on the operative date.

[27] The Crown in any event says the discussion in July at Territorial Court about further evidence of insurance coverage was irrelevant and should not have happened. By the time this matter reached the Territorial Court, the only issue to be determined was whether or not Mr. Alrawashdeh received notice of the charge. Under s. 22(6) of the SCA, failure to receive notice of the ticket is the only basis on which an automatic conviction can be set aside. Mr. Alrawashdeh did not dispute he was served by the police officer with the ticket at the roadside when he was pulled over. Therefore, there was no basis for the conviction to be set aside, regardless of the quality of Mr. Alrawashdeh's evidence of his insurance coverage.

[28] The Crown confirmed it frequently stays proceedings where charged individuals provide the Crown with satisfactory exculpatory evidence within the required timelines set out in the SCA Rules and statute. Mr. Alrawashdeh was already out of time on the merits when he provided evidence of insurance coverage to the Crown and court. That time had expired on July 3, 2020, 30 days after his charge on June 3, 2020.

[29] The September 21, 2020 letter from the insurance company was the third piece of evidence Mr. Alrawashdeh provided showing his insurance coverage. I accept that the Crown was not aware of the September 21, 2020 letter until the November filing of the appeal materials by Mr. Alrawashdeh.

[30] Mr. Alrawashdeh has now provided evidence beyond what would have likely satisfied the roadside police officer, and likely even the Crown before the first 30 days had



expired, that he was not guilty of the charge of driving without insurance on June 3, 2020. The merit of his appeal is very strong.

***vi) Weighing the factors and the interests of justice***

[31] In determining the existence of special circumstances for an extension of time to appeal, “the matter must be approached on the basis that the weight to be given to any factor will depend on the circumstances of each case. ...[I]t must follow that in some cases the weight to be given to one or more criteria will be negligible because it is so heavily outweighed by the weight which must be given to others” *Carlick*, (para. 37), quoting from *R. v. M.A.G.*, 2002 BCCA 413.

[32] In this case, the merit of Mr. Alrawashdeh’s appeal outweighs the other factors. But for his failure to comply with the procedural timelines, he likely would not have been convicted of operating a vehicle without insurance.

[33] While the need to ensure deadlines are respected is a legitimate concern, the procedural requirements should not be interpreted so strictly that they overshadow the substantive considerations. The use of court resources to argue procedural points such as this in the face of strong merit and the absence of any prejudice to the Crown is dubious. It is at least as concerning as using court resources to pursue languishing appeals, an argument raised by the Crown in defence of its insistence that Mr. Alrawashdeh comply with the timelines.

[34] As an observation, I note that the ticket does not contain a clear warning about the likely result of an automatic conviction if the recipient does nothing within 30 days. I also note that the wording of the ticket is very dense, in small print, and potentially confusing with its many different options, and use of legalistic language such as counts, defendant, and served. It is possible that if Mr. Alrawashdeh had understood at the time of receiving

the ticket that his failure to show proof of his insurance coverage within 30 days from the charge to the appropriate person would result in an automatic conviction, this whole matter could have been prevented.

[35] The interests of justice are not served by denying Mr. Alrawashdeh's application to extend time to appeal. The Crown is appropriately relying on case law from the criminal law context to support its arguments, including that there must be finality in regulatory proceedings. Achieving finality is a worthwhile goal, but not at the expense of justice. The concern in criminal cases about ensuring that a wrongful conviction does not occur should also apply in regulatory proceedings.

### **Conclusion**

[36] I agree that Mr. Alrawashdeh was not diligent in pursuing his appeal. However, in all of the circumstances of this case, and in particular given the strong merit of his appeal, based on his evidence that his vehicle was properly insured on the date he was charged, justice demands that an extension of time to file his appeal be granted, and I so order.

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DUNCAN C.J.