

Citation: *R. v. Tom*, 2025 YKTC 21

Date: 20250318
Docket: 23-00482
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before His Honour Judge Phelps

REX

v.

DAVID ALEX TOM

Appearances:
William McDiarmid
Amy Steele

Counsel for the Crown
Counsel for the Defence

**This decision was delivered from the Bench in the form of Oral Reasons.
The Reasons have since been edited without changing the substance.**

REASONS FOR SENTENCE

[1] PHELPS T.C.J. (Oral): Mr. Tom, you have been found guilty of two offences that took place on September 27, 2023, the first being contrary to s. 320.14(1)(b) of the *Criminal Code*, an offence that you did operate a conveyance, having consumed alcohol in such a quantity that the concentration of his blood was equal to or exceeding 80 milligrams of alcohol in 100 millilitres of blood (“mg%”), and an offence contrary to s. 320.18(1)(a) of the *Criminal Code* for operating a conveyance while prohibited from doing so pursuant to the *Criminal Code*.

[2] The facts of the offences quite briefly are as follows. The investigation of Mr. Tom began with a call on September 27, 2023, at approximately 8:30 a.m., to the Village of Carmacks RCMP from a Ms. Belanger, who reported that Mr. Tom was intoxicated and sleeping in his car which was parked in her driveway. While on route to Ms. Belanger's residence, RCMP located Mr. Tom driving his vehicle and he was arrested for impaired operation at that point in time.

[3] The background being that on September 27, 2023, at approximately 3:00 a.m., Mr. Tom attended at Ms. Belanger's home, knocked on the door, which was answered by her son. He was asking for her husband and was advised by her son that her husband would not come to the door as he had gone to bed.

[4] Mr. Tom left and returned at 4:00 a.m. again asking for Ms. Belanger's husband and was again advised that he could not speak to her husband and that if he came back the RCMP would be called. Ms. Belanger stated that Mr. Tom had done this previously, showing up in the middle of the night in an intoxicated state looking for a ride home. She did not personally interact with him on this occasion but believed him to be intoxicated. When she got up in the morning and left for work, Mr. Tom was sleeping in his vehicle in their driveway. She proceeded to call the RCMP, when she arrived at work at approximately 8:30 a.m.

[5] RCMP responded to the call from Ms. Belanger regarding Mr. Tom. Cpl. MacNeil drove towards Ms. Belanger's residence. He turned on his emergency lights to pass a vehicle and noticed a car he believed to be driven by Mr. Tom turn off the road into a driveway. He followed the car into the driveway and confirmed it was the correct

vehicle, locating Mr. Tom in the driver seat. An impaired driving investigation followed and Mr. Tom provided samples of his breath reading 130 mg%. He was subject to a driving prohibition due to a *Criminal Code* prohibition of five years imposed in 2021.

[6] Crown filed notice of intention to seek greater punishment pursuant to s. 727 of the *Criminal Code*, therefore the mandatory minimum sentence provision applies as set out in s. 320.19(1)(b)(iii) of the *Criminal Code*, where there is a minimum sentence of 120 days' imprisonment for a third or subsequent offence.

[7] There is a criminal record that was filed with the Court. It dates back to 1981 and is rather lengthy. It includes priors for impaired driving offences in 1990, 1995, 1996, 1997, 2005, two convictions in 2010, two convictions in 2012, and one conviction in 2021. Therefore, there are nine priors with respect to impaired driving. There are entries for driving while disqualified: two in 2012 and one in 2021.

[8] I note in 2021, Mr. Tom received 10 months' custody concurrent on one of the impaired driving offences and one of the disqualified offences, plus a five-year driving prohibition on that occasion.

[9] Crown did proceed in this matter by summary conviction, limiting the sentence available to the Court of not more than two years on each count. Crown also pointed out s. 320.22 of the *Criminal Code*, which codifies aggravating circumstances for impaired driving to include in s. 320.22(e) if the readings exceeded 120 mg% — which is the case here, Mr. Tom is dealing with 130 mg% — and s. 320.22(g), which is a situation if the offender was prohibited from driving at the time of the offence — which is the case here.

[10] Additionally, the Crown points out that Mr. Tom was driving at approximately 8:30 a.m. when people are expected to be going to work and children are expected to be going to school, indicating that is an aggravating factor.

[11] Crown counsel filed a previous decision involving Mr. Tom, indexed as *R. v. Tom*, 2012 YKTC 55, at that point in time for a multitude of impaired driving offences, the ones indicated from 2010 and the ones from 2012. There was a circle sentencing and there were positive comments made to the Court on behalf of Mr. Tom. There was positive support from Bill Stewart, a psychologist working with Little Salmon/Carmacks First Nation. There was a cognitive assessment prepared and spoken to by psychologist Nicole Bringsli. There was also a *Gladue* report before the Court, which was considered in detail. The cognitive assessment included borderline intellectual functioning and set out a plan for a future Fetal Alcohol Spectrum Disorder (“FASD”) assessment.

[12] I note from the decision one significant difference, being that Mr. Tom was not open about his life circumstances to the author of the *Gladue* report. This is set out in para. 37 of the decision as follows:

The Gladue Report makes a critical observation regarding Mr. Tom as follows:

Furthermore, Mr. Tom has made it clear that there are certain aspects of his life that he does not want to discuss. His reluctance to provide full disclosure regarding his life circumstances will undoubtedly make the Court’s job more difficult.

[13] As will be discussed, Mr. Tom's attitude towards treatment and assistance has changed since that time.

[14] The Court goes on to note circumstances quite similar to that we are experiencing today, at para. 38, as follows:

Mr. Tom is considered to be very helpful and an asset to his community. It is very apparent that there is strong support for Mr. Tom from his First Nation. Many individuals have traveled from Carmacks to Whitehorse for Mr. Tom's court appearances. According to the *Gladue* Report Mr. Tom states that: "He hopes that his sentencing circle will give him the opportunity to make amends with his community by accepting responsibility for what he did."

[15] As indicated, this case involved very complex sentencing: two offences for 2010, that he had received a conditional discharge which was collapsed on each of the two offences — he was sentenced on those, and he was sentenced on two additional offences. Ultimately on the additional offences, he received a 20-month conditional sentence order followed by three years' probation.

[16] Crown position before the Court today is for a period of incarceration of 21 months on the s. 320.14(1)(a) and three months concurrent on the 320.18(1)(a), plus a period of probation.

[17] There was a *Gladue* report filed before the Court today. It is a very thorough report. It outlines that Mr. Tom is 60 years old; a member of the Little Salmon/Carmacks First Nation, which is Northern Tutchone; and has been married to his wife, Dolores, for almost 40 years. She herself is a residential school survivor. Chief of Little Salmon/Carmacks First Nation, Russell Blackjack, contributed to the

Gladue report with respect to history as well as with respect to his knowledge of Mr. Tom specifically. It outlines that his parents went to residential school, which had an impact on his childhood. Despite not attending himself, the effects of residential school and the generational trauma were all around him. Mr. Tom and his wife were both heavy drinkers from a young age and the report outlines significant loss witnessed and suffered by Mr. Tom in his life with the following in the report, which is noted under “Present Circumstances” on page 14:

David and Delores completed a three-month alcohol treatment program (Red Road Rise Treatment Centre) on February 33 [*sic*], 2025. David said he’s been sober now for over a year. “On my own I stopped drinking. Since this (his current charges) I haven’t drank. I don’t want to drink – I got my baby (Jace) here.” David said since he and Delores came back from treatment, “Jace is more clingy. He tells me about 20 times a day, ‘I love you, I love you Dada’.

David has reconnected with LS/CFN Jesse Globensky, LS/CFN Support Worker and Nathan Schultz, a Clinical Counsellor with YG Mental Wellness and Substance Use Services (MWSUS). David has counselling sessions with Nathan over the phone. Nathan has been working with David since 2017 and works out of the Whitehorse. Since leaving treatment, David has been working with counsellors from the Red Road Rise Treatment Centre, LS/CFM and YG MWSUS to implement an aftercare plan. The plan will include an emphasis on grief, trauma and sexual abuse.

[18] There is information from Brendan Egan, who also provided comments to the Court today. It states as follows in Brendan’s words:

We have seen immense growth, dedication, and perseverance from David while he continues to demonstrate great commitment to his recover. During David’s stay here the program is for Couples which he attended with his wife. Both Completed all homework assignments on time and fully

participated in the couple's program. The programs focus is building mutual support as a recovery team.

Following discharge, I recommend that David be referred to a Trauma therapist. David stated a long history of Trauma including Sexual Abuse. David stated he witnessed the Accidental Deaths of family members close to him. I speculate David would merit a Diagnosis of Complex PTSD. David stated he had never experienced a Treatment Center like ours before. He stated he wish he had experienced it much sooner.

David should continue a daily attendance to online and in person 12 step meetings. Attend weekly on a Wednesday evening the Online Alumni meeting with Red Road Rise. I note that David arranged to have internet installed for there [sic] return home to facilitate access to there [sic] recovery.

...

[19] As I stated, Mr. Egan did speak in the sentencing proceeding. He confirmed that both Mr. Tom and Dolores attended together and that the approach at the recovery centre was focused on them being a team in their sobriety.

[20] The *Gladue* report states at page 17 the following with respect to Mr. Tom's grandchild:

David says that he does not want his grandson to be the fifth generation to experience the results of intergenerational trauma and he is committed to making changes in his life in order to support Jace grow into a strong, healthy adult. Jace is 5 years old; the same age when many First Nations children were taken away from their families and placed in residential school to be brutally beaten and abused and sometimes killed by who replaced their loving families – the same age Delores was when she was taken from her family. Delores [does] not want Jace to experience that. She wants to break the cycle of intergenerational trauma. "I want him to grow up not like I did – what happened to me in residential school. I don't want that holding Jace back."

[21] And finally, from the *Gladue* report, I note at page 18 the following:

Nathan Schultz, Clinical Counsellor, MWSUS Forensic Complex Care Team believes David would meet the criteria for PTSD and has discussed treatment options with him. David is interested in proceeding with Cognitive Processing Therapy (CPT). Nathan is willing to provide CPT to David on an outpatient basis or custodially in the event he is incarcerated in Yukon. Nathan noted he would await the outcome of David's sentencing before proceeding with CPT.

[22] A pamphlet for the cognitive processing therapy was attached to the *Gladue* report along with numerous letters. There was a letter from Nathan Schultz and a letter from Brendan Egan.

[23] There is a letter from Jesse Globensky, Little Salmon/Carmacks First Nation wellness worker. I quote from his letter as follows:

...Brendan shared with me some very uplifting information with me during one conversation, saying that he had never seen such a transformation in someone in his entire time working at Red Road Recovery. One story Brendan shared with me that really stuck with me and made me so happy to hear was simply the transformation Brendan saw over the course of David's time with him. David went from being very shy, anxious and guarded, always wearing his sunglasses, not really wanting to open up to anyone, to being comfortable having his sunglasses off all the time, being able to hold eye contact with people and being happy, smiling, and engaging with people. That was very touching to hear.

[24] There is also a letter from Lily and Vernon Evans. And I note from their letter the following:

...Have seen two sides to David. "When alcohol is made available to him he becomes someone we don't even know"! We have seen him in his family environment be a loving, caring, productive person; very helpful and full of hope and desire to live a productive life. ...

[25] There is also a letter from the Chief of Little Salmon/Carmacks First Nation Russell Blackjack, and a letter from Vera Charlie.

[26] In addition to those letters of support, Mr. Tom wrote his own letter to the Court. He wrote in that letter about treatment and what he learned:

...I learned a lot about myself. I can cry, talk, laugh, be happy, showing my true feelings and emotions instead of being mean, angry, lonely and sad,. Before I came to the treatment centre I was dealing with all these feelings, trauma, and losses in my life by using alcohol and getting into trouble and going to jail. I feel I need more work on trauma and grief. After 3 months of treatment, working on myself, I and other people have noticed I changed a lot and I know I have. ... I want to be there for my grandson Jayce and my wife Dolores to take care of them and to be happy. I want to break the generational cycle with my grandson who is 5 years old. I don't want him to grow up to be like me. I want him to have a productive life and be a productive member of society. ...

[27] I also heard directly from Mr. Tom's wife, who spoke to the Court, echoing pretty much what Mr. Tom said about the changes in Mr. Tom. She has seen them firsthand, indicating the significant changes and improvements in their relationship and in their homelife.

[28] Defence filed a couple of cases with the Court, the first being *R v Hotomanie*, 2022 SKCA 119. Mr. Hotomanie had relevant *Gladue* factors. He also took notable steps towards rehabilitation. The Court, on that point, says:

52 In contrast, by the time he was sentenced in this case, Mr. Hotomanie was 55 years old. The judge found, as fact, that Mr. Hotomanie "has made some important and decisive steps towards rehabilitation". (*Sentencing Decision* at para 33). He noted that Mr. Hotomanie expressed a desire to

quit drinking and become an alcohol counsellor himself, and that he was “in a good and supportive relationship” and had developed long-term career goals for himself (at para 32). Mr. Hotomanie had taken responsibility for his actions and did not attempt to blame them upon others. ...

53 These significant differences in Mr. Hotomanie’s circumstances, and in the assessment of his moral culpability for the present offences, as well as his amenability to rehabilitation, resulted in a different sentence than that applied to him 20 years ago. Ultimately, the judge determined that he should “seize upon those [rehabilitative] steps and attempt to encourage Mr. Hotomanie to continue down that road” (at para 33).

[29] The Court further states the following:

[58] Just as the objective of rehabilitation should not overwhelm the need for deterrence and denunciation, neither should those objectives be given greater prominence than is necessary to achieve the overall purpose of public protection and the maintenance of a just, peaceful and safe society. ... (citations omitted)

[30] Defence also filed the decision of R. v. Joe, 2017 YKCA 13. Mr. Joe was 65 years old, was being sentenced for his 13th and 14th offences of impaired driving. He also had significant *Gladue* factors. He did have an eight-year gap in offending before the matter considered before the Court — which is not the case before me today. The Court of Appeal did give considerable and significant weight to the *Gladue* factors before the Court and ultimately reduced the sentence before them to 12 months on the refusal and 11 months consecutive on an over-08 offence followed by three years’ probation.

[31] As I have indicated, there is no gap in Mr. Tom’s record with priors in 2021, but I find the steps that he has taken regarding rehabilitation to be significant. I agree with

his counsel; past failures do not derail from the significance of recent efforts. The references to his breakthroughs at treatment and noted on his return are very compelling. The fact that he attended together with his wife of 40 years gives hope that they will succeed.

[32] On the circumstances before me of Mr. Tom, his record, and the offence, I agree with defence counsel that 12 months' jail is appropriate on the 320.14(1)(b) offence.

[33] I agree with Crown counsel that three months concurrent on the 320.18(1)(a) is appropriate, specifically because this was considered in the sentencing on the s. 320.14(1)(b) offence as an aggravating factor.

[34] Mr. Tom, on the offence being Count 2 on the Information before me contrary to s. 320.14(1)(b) of the *Criminal Code*, I sentence you to a period of custody of 12 months.

[35] On Count 3, the offence contrary to s. 320.18(1)(a) of the *Criminal Code*, I sentence you to a period of custody of three months to be served concurrent to Count 2.

[36] What that means is there is a total sentence of 12 months today being imposed.

[37] The 12-month sentence will be followed by a period of probation of three years. The terms of the probation order will be as follows. You will be required to:

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 your Probation Officer of any change in employment or occupation;
4. Remain within the Yukon Territory unless you obtain written permission from your Probation Officer;
5. Report to your Probation Officer immediately upon your release from custody, and thereafter, when and in the manner directed by your Probation Officer;
6. Reside as approved by your Probation Officer and not change that residence without the prior written permission of your Bail Supervisor;
7. Not possess or consume alcohol;
8. Not attend any premises whose primary purpose is the sale of alcohol, including any liquor store, off sales, bar, pub, tavern, lounge or nightclub;
9. 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, and any other issue 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;

10. Perform 75 hours of community service as directed by your Probation Officer or such other person as your Probation Officer may designate. This community service is to be completed no later than 45 days before the end of this order. Any hours spent in programming may be applied to your community service at the discretion of your Probation Officer; and
11. Not drive a motor vehicle at any time.

[38] Finally, there will be a driving prohibition as follows. You are prohibited from operating a motor vehicle pursuant to s. 320.14 of the *Criminal Code* on any street, road, highway, or any other public place for a period of eight years.

[39] Remaining counts on the Information?

[40] Mr. McDIARMID: If that could please be marked as withdrawn?

[41] THE COURT: Withdrawn. Thank you.

PHELPS T.C.J.