

Citation: *R. v. Butler*, 2009 YKTC 80

Date: 20081022
Docket: 08-00154
08-00154A
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before: Her Worship Justice of the Peace Morrison-Harvey

REGINA

v.

RANDY WADE BUTLER

Appearances:
Jennifer Grandy
James Van Wart

Counsel for Crown
Counsel for Defence

REASONS FOR SENTENCING

[1] MORRISON-HARVEY J.P.T.C. (Oral): Mr. Butler is before the Court having pled guilty to two offences, one contrary to s. 253(b) and one contrary to s. 249.1(1) of the *Criminal Code*.

[2] To start with, these offences took place before the changes took place to the *Criminal Code* in terms of minimums for impaired driving.

[3] With regard to the submissions made by counsel, firstly with the cases that were filed, the Crown has filed the case of *R. v. McLeod*, [2003] Y.J. No. 172, and highlighted similar circumstances, and the defence has pointed out that certain factors of the *MacLeod* case are much more aggravating. I agree with a lot of defence submissions

regarding that case. In the *McLeod* case there are a couple of things. In terms of the date, it was October 31st, Halloween night, where there would have been excessive amounts of pedestrians and traffic on the road.

[4] In terms of the speeds, the speeds in that matter were 117 to 123 kilometres per hour. With regard to Mr. Butler, the speeds that I have got in my notes were around 30 to 50 kilometres per hour until he crossed Fourth and Main, and then the speeds went up to 70 to 80 kilometres an hour. If one took the lower end of that, it is almost double the speed in the *McLeod* case.

[5] Mr. McLeod also had a very lengthy record. He was much older than Mr. Butler was, and in fact, he was also on a recognizance at the time of the offences. That chase did not end until he drove over a spike belt, where his tire was deflated. Although Mr. Butler had a passenger in his car, Mr. McLeod had four passengers in his car who, according to this, were all apparently pleading with him to stop.

[6] In terms of what would be an appropriate sentence, Mr. Butler comes before the Court a very young man. He has no adult criminal record. He has taken responsibility by his guilty plea.

[7] My comments with regard to *R. v. Hutton* (phonetic), as well, I would like to make those comments again. Those readings were higher than what Mr. Butler's were. There were two vehicles struck in that matter and the distance driven was a much more substantial distance than in this case.

[8] With regard to the impaired driving matter, I am going to deal with it by way of a

fine. The fine will be a \$2,000 fine. There will be a \$300 victim fine surcharge. I will deal with the driving order shortly.

[9] With regard to the s. 249.1(1) charge, an extremely aggravating charge, being impaired while driving a vehicle, the police activating their lights to have you stop and you continue to, basically, flee from them, I agree with Crown that a period of custody is warranted with regard to that matter. In terms of the length of custody, I am not in agreement that it should be for the period suggested, and I am imposing a period of 14 days.

[10] Taking into account the flight and the readings, I am of the view that a prohibition from driving should be a longer period of time, and I impose what the Crown has suggested, an 18-month prohibition from driving.

[11] Do you want to make any applications regarding Interlock, Mr. Van Wart?

[12] MR. VAN WART: Well, I'd ask that he be eligible to apply to the Motor Vehicles to see if he would -- could do that.

[13] THE COURT: I will make the recommendation that Mr. Butler be eligible to apply for the Interlock program after the expiration of the first three months of his sentence, of the prohibition from driving order.

[14] Time to pay? A total of \$1,500 (sic). He has employment that he can go back to?

[15] MR. VAN WART: Well, I'm not sure.

[16] THE COURT: Well, if he is --

[17] MR. VAN WART: If it -- it may be available. He was expected back on October 28th, so he'll have to contact his employer. Yeah, Mr. Butler will lose his employment.

[18] THE ACCUSED: I mean is that what you guys want to see? You want to see a young adult lose everything, is that --

[19] THE COURT: No, I certainly do not, Mr. Butler. I do not want to see a young person lose everything.

[20] THE ACCUSED: Well, you're shooting me with a \$2,300 fine, and you expect me to pay it but you expect me to lose my job and go to jail for 14 days. On top of which, I've been planning with my family, a very large family, Halloween, so which I would be in jail for. And to me that's losing everything.

[21] THE COURT: Mr. Butler, I was not the one who drove impaired and fled from the police, okay?

[22] THE ACCUSED: No, I understand that. I totally understand that.

[23] THE COURT: Mr. Van Wart, do you want me again to take a -- stand down for a moment and discuss an intermittent sentence?

[24] MR. VAN WART: Yeah, I could.

[25] THE COURT: Is it seasonal employment where it ends at a certain time and it can be served intermittently, arriving back in Whitehorse on November 20th,

30th, something like that?

[26] MR. VAN WART: Mr. Butler's telling me he's not. He's saying he's basically using his vacation time to come back here to Whitehorse.

[27] THE COURT: Well, I am trying to accommodate him keeping his employment.

[28] MR. VAN WART: I know.

[29] THE ACCUSED: Sorry, I didn't understand that. Did you mean that I contact them and say, "Okay, I need to take another two weeks off ASAP?"

[30] THE COURT: Here is how an intermittent sentence works, Mr. Butler. If you are going to work for three weeks and you are going to be arriving back in Whitehorse on the 30th of November, I can impose a sentence that it is one day deemed served today and you are to report to WCC on the 30th of November and serve your sentence then for 14 days, or however it can -- I am willing to try and accommodate you keeping your employment, is what I am saying.

[31] MR. VAN WART: I just don't see --

[32] MS. GRANDY: It's only going to be three weekends, probably.

[33] MR. VAN WART: Yeah, but he's not -- he doesn't work in Whitehorse. He works in Valleyview.

[34] MS. GRANDY: No, but he can't travel.

[35] THE COURT: He is in Alberta, in Valleyview. I mean if you are -- is it out in a camp, Mr. Butler? What is your job there? Where is it, exactly? You do not have a permanent residence in Valleyview, right; your home is here and you come back and forth?

[36] THE ACCUSED: Yep.

[37] THE COURT: Okay. So do you know when you are coming back?

[38] THE ACCUSED: I just have dates, yes. I mean it all really varies in when there's a gap of when the oil field isn't busy busy and they don't need a ton of labourers, is where it all really varies. And --

[39] THE COURT: So here is what I am prepared to do. Try and project a date where you are probably not going to be employed, and that is when I will impose the custody sentence to start. That can allow you to go back for the 28th and work for a period of time, come back and serve your sentence. You want a calendar down there?

[40] MS. GRANDY: There's one here.

[41] MR. VAN WART: I've got one here. What Mr. Butler has suggested to me was the 1st of December, and he would go and attempt to arrange to have that time off. The 1st of December's a Monday.

[42] THE COURT: Ms. Grandy, to be fair, I should ask you for submissions on the intermittent sentence.

[43] MS. GRANDY: I don't take any issue with that. I guess that

technically it's only intermittent in the sense that it doesn't start today.

[44] THE COURT: That is right.

[45] MS. GRANDY: It sounds like the suggestion is December 1st --

[46] THE COURT: That is right.

[47] MR. VAN WART: Yes.

[48] MS. GRANDY: Yes, I don't have issue with that.

[49] THE COURT: With regard to the 249.1(1) charge, there will be a term of imprisonment of 14 days to be served intermittently as follows: one day deemed to be served today, and the balance to be served as follows: you are to attend at the Whitehorse Correctional Centre, Whitehorse, Yukon, on Monday, the 1st day of December, 2008, at 7:00 a.m., and there be incarcerated until the sentence has been served in full.

[50] Mr. Butler, until your sentence is served in full on an intermittent sentence, you are subject to a probation order to cover that interim period of time. It is simply to:

1. Keep the peace and be of good behaviour;
2. Appear before the Court when required to do so by the Court;
3. Not consume alcohol during the 24-hour period immediately preceding the time you are to report to the Whitehorse Correctional Centre.

[51] So basically, you come back on the 1st. Between now and the 1st and until your sentence is served, keep the peace and be of good behaviour, appear before the Court

when required to do so and do not drink 24 hours prior to the 1st of December. If you do not appear on the 1st of December to serve your sentence, Mr. Butler, you will have an unlawfully at large charge, which is a very serious charge.

[52] MS. GRANDY: If I could ask for the other counts to be marked as withdrawn, please.

[53] THE COURT: Thank you. The time to pay? I am not opposed to a lengthy time of pay, given Mr. Butler's young age and --

[54] MR. VAN WART: I would suggest maybe six months time to pay, and it's a significant amount of money, so.

[55] THE COURT: It is a significant amount of money. I am prepared to even make it a little bit longer, roughly \$300 a month, eight months time to pay. Mr. Butler, if you cannot pay it in the eight months, you can make an application to extend that time to pay. You would be more likely to have that extended if there has been payments made. If you show up eight months from now and you have paid nothing, your chances of getting an extension would not be good.

MORRISON-HARVEY J.P.T.C.