

Citation: *R. v. Coldwell*, 2010 YKTC 129

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Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: Her Honour Chief Judge Ruddy

REGINA

v.

NICHOLAS KENT COLDWELL

Appearances:
John Phelps
Nicholas Coldwell

Counsel for the Crown
Appearing on his own behalf

REASONS FOR SENTENCING

[1] RUDDY C.J.T.C. (Oral): Well, Mr. Coldwell, I would start by saying I am disappointed that we are at this point today. I know I have seen you several times over the last three or four years and I have always believed that you are a young man with a lot of potential, but you are also a young man who makes some pretty foolish choices along the way that keep getting you into trouble. So you are back before me for sentencing again. There are a number of positives that I have observed. Your second time in Wellness Court, you did do much better than you did the first time. You were

able to hang in there much longer, but, unfortunately, when things start to slide for you --

[2] THE ACCUSED: Yeah.

[3] THE COURT: -- instead of reaching out for help, you run away.

[4] THE ACCUSED: Yeah, I mean it's kind of like a screw-it stage, and then it was just like all downhill from there.

[5] THE COURT: So you have bigger problems now because you did that.

[6] THE ACCUSED: Yes.

[7] THE COURT: I can only hope, as I am sure that your mother does and your girlfriend as well, that you have learned something by the experience, that you will continue to pursue the programming that you have started, and that hopefully - hopefully - we will not see you back here again.

[8] Nonetheless, there do have to be sentences for the offences that are before me. They include two offences for driving while the concentration of alcohol in your blood exceeded the legal limit, two offences of driving while disqualified, one offence of failing to stop for the police as required, one offence of failing to comply with the abstain condition of your probation order, and one for failing to comply with the abstain conditions of your release order.

[9] As I indicated early on, there were more charges than just those seven, but in

reflection of some of the work that you did do in Wellness Court the Crown has sought, quite fairly, in my view, pleas to a fewer number of offences that really represent the bulk of your offences in terms of seriousness, the more serious ones.

[10] For the purposes of the decision, I will just quickly outline the facts. The first set of charges arise on December 10, 2009, which includes a driving with more than 80 milligrams of alcohol in your blood, failing to stop for the RCMP as required, and driving while prohibited. It started with a call to the police indicating that Mr. Coldwell had taken a motor vehicle without consent. That vehicle was located turning into Tags parking lot, and then turning into McDonald's parking lot from there and parking. The emergency equipment was activated; however, when the RCMP member approached the vehicle, Mr. Coldwell backed up and did, in fact, leave the area, driving at a fast rate of speed through the drive-through, striking a curb on the way out, continuing right onto 4th and turning right onto 2nd and looping around until Steele Street, where he was ultimately blocked in the parking lot of the Lynn Building on Steele Street by the RCMP. The RCMP were following throughout with the emergency equipment activated but Mr. Coldwell failed to stop as required.

[11] When he was ultimately stopped by the RCMP, he provided a breath sample into an Approved Screening Device which registered as a fail. He ultimately provided two samples of his breath, both registering at 140 milligrams percent. It should be noted that he was prohibited from driving as a result of a conviction for impaired driving causing bodily harm in 2008, and was also on an 18-month probation order requiring that he abstain, amongst other things. He was detained, initially, as a result of the charges, but released, ultimately, to participate in the Community Wellness Court.

[12] Then on April 3rd, the RCMP received a call of a number of suspicious males in an alley. They attended in the area, at which point, not surprisingly, the males scattered, but Mr. Coldwell was located hiding behind a dumpster; indicia of impairment were noted. He did provide an ASD sample registering at 121 milligrams percent. He was on both a probation order and a recognizance at the time with abstain conditions and also curfew conditions, and was in breach of both on this particular evening. He was then remanded in custody on consent, re-released April 8th to continue in Wellness Court. He, during the course of that process, was initially residing at the YARC until he was given permission to go to Dawson City for work. It appears that he did not follow through on that.

[13] Then, on the 29th of July, he amassed further substantive offences. He was noticed by an off-duty police officer to be in a vehicle that was being towed by another vehicle. He was in the driver's seat. The vehicle, it appears, while being towed by the front vehicle, was operational. The keys were in the ignition, although the vehicle itself was not running. There were some issues with the towing of the vehicle. It appears that the vehicle that was doing the towing was off to the right, but the vehicle that was being towed, that being the vehicle that Mr. Coldwell was in, was swerving from the left to the right and back again in the lane of traffic. It was going in the right direction but it was weaving back and forth. At least three full cans of beer were located in the vehicle as well, and the vehicle itself was neither registered, nor insured. It is accepted, by way of his plea, that he was in care and control of the vehicle, although he appeared to have not previously appreciated that you can be charged and ultimately convicted for care and control of a vehicle while under the influence when that vehicle itself is not running.

But if you are in the driver's seat and the keys are in it and you have the means to put that into motion and you are intoxicated, it amounts to the same thing.

[14] THE ACCUSED: Okay. All right.

[15] THE COURT: He was prohibited from driving at that point in time as well.

[16] Notices of Intention were served with respect to both matters. Mr. Coldwell comes before the Court with a prior related criminal record. It includes one prior offence for driving with more than 80 milligrams of alcohol in his blood in 2007, for which he received a \$600 fine. That was followed by impaired driving causing bodily harm in 2008, for which he received seven months. He was also convicted at that time of driving while disqualified and received a consecutive 30 day sentence. In addition, he does have a couple of breaches on his recent record, for which he has received 30-day sentences.

[17] Mr. Coldwell is still a young man; he is only 23 years of age. He was born and raised in Nova Scotia but moved to Whitehorse for a new start at age 17, as it appears that he had already, at that point in time, become involved in abusing both drugs and alcohol. The positive features in this case are that Mr. Coldwell has a number of supports around him if he chooses to avail himself of them, beginning with his mother, Ms. Reading, who has been at least at all of the sentencings that I have done with respect to Mr. Coldwell, and I suspect numerous additional appearances above and beyond that. He has a young woman, Cora Rissanen [phonetic], who he is in a

relationship with and has been for the last eight months, who has attended in court today in support of him.

[18] He has been working recently at Superior Roofing and it is my understanding that they consider him to be a good worker, and he was ultimately hopeful of pursuing an apprenticeship in roofing with that company. Indeed, I am advised that when things started to slide in Wellness Court, part of his rationale - although it, as I have pointed out to him, made matters worse instead of better - part of his rationale was to avoid turning himself in so that he could continue to work, as that appeared to be the one area of his life at that point that was going well.

[19] Prior to that, however, he had spent some seven months in the Wellness Court process and had managed to complete some programming, had managed to maintain some periods of sobriety. He completed the substance misuse program, the White Bison Program, he did one-to-one programming, and some AA attendance. He also had some sporadic meetings with Dr. Heredia, where there had been a diagnoses, and, ultimately, some medication prescribed. There were, however, plans for both residential treatment and college that were entertained in the Wellness Court and neither of those, unfortunately, were pursued as Mr. Coldwell then found himself in further trouble.

[20] As I indicated, the Crown has considered his performance in Wellness Court and the credit that he is entitled to for partial completion, at least, in the process of determining what pleas they required to be entered. They take the position, in terms of sentence, that Mr. Coldwell, in the normal course, would be looking at high territorial time, in the two year area, but suggest that a sentence of 15 months, to be reduced by

credit for time spent in remand, would adequately reflect credit that he is entitled to for partial completion. They are also suggesting that that be followed by two years probation and a five-year driving prohibition.

[21] Mr. Coldwell takes the position, or, at least, through his partial assistance from counsel, is suggesting that 10 to 12 months would be appropriate. He has concerns with respect to a probationary term, specifically that that would be criminalizing his alcoholism, and is not certain that probation would be effective. His counsel suggests that the risk that he presents to the public, that specifically being the risk of getting behind the wheel of a vehicle while under the influence, is one that, if it is to be managed by conditions, is most appropriately managed by way of a driving prohibition.

[22] I will tell you, Mr. Coldwell, in considering that issue, while you do not have a violent history, one of the things that concerns me is that anyone - anyone - who gets behind the wheel of a vehicle when they are under the influence of alcohol presents a significant threat to everyone that is on the road. You should know that because your last conviction was for causing bodily harm to someone when you were drinking. That is a step away from killing someone. You should also know that because of what happened to your brother, and as your mother pointed out, she does not want to lose another son in the same way.

[23] So you struggle with alcohol, and that is a problem, but that is a problem for you. When you choose to drink and get behind the wheel of a vehicle, you make it a problem for everybody else. If we are going to manage that, no, you cannot be driving, but we also need to figure out how to manage your alcohol. I am of the view that you do need

to be on probation and conditions if there is any hope at all for you to get the alcohol under control so that you do not end up killing someone, including yourself.

[24] THE ACCUSED: Yeah.

[25] THE COURT: Here is what I am going to do. I think, basically, both positions are in the range. What I am going to do, ultimately, is a 12-month sentence. There are only two changes that I am going to make from what the Crown was suggesting in terms of sentences. The first change is, I am of the view, because the breaches are abstain breaches - while he has a previous history, we are talking about somebody with an alcohol problem - while it would not change the end result, I would make each of those 30-day sentences instead of two months. The only other change I am going to make is to make the second driving while prohibited consecutive instead of concurrent, which brings us to a 12-month sentence to be reduced by credit for time in remand.

[26] The initial 46 days was spent at a time when he would have been entitled to credit at one and a half to one. What I am going to do, for the ease of the math, is I am actually going to credit him for 73 days, if I calculated it correctly. What I want is the total to be 90 days at the end of the day. So 73 days credit for the first period of time, the additional six and 11 days that were served subsequent to the amendments, for a total of 90 days credit. So what I am going to do is apply that with respect to the first impaired. So a 12-month sentence that will be reduced by three months in custody for a sentence of nine months remaining. Three months concurrent on the first drive while disqualified. Three months concurrent on the fail to stop, that being the

s. 249.1. One month concurrent on the breach of probation for failing to abstain. Three months concurrent for the s. 259 involved with the set of offences on July 29th. One month concurrent on the abstain, and I think for it to be an overall reduction, the second impaired as well would need to be reduced by the three months. So I am not certain I can credit him twice. Do you know what I will do, I will make the first one a nine month sentence, the second one a 12 month sentence, less credit for three months, which makes it nine months remaining, but then we are going in the right direction, as it was the subsequent offence, and should be the lengthier sentence. On top of which, it was the offence that had occurred after the performance in Wellness Court. So I think on the record it should read as the longer sentence. Does that make sense, Madam Clerk? Okay. Good.

[27] So that leaves us in total with a 12 month sentence, reduced by three months in pre-trial custody, for nine months left to be served. It is going to be followed by a two-year probation order, because I think that that is essential in this particular case.

[28] The terms of the probation order, Mr. Coldwell, will be largely designed to address the alcohol and other programming needs you have. The terms will be:

1. That you keep the peace and be of good behaviour;
2. That you appear before the Court when required to do so by the Court;
3. That you notify your Probation Officer in advance of any change of name or address, and promptly notify the Probation Officer of any change of employment or occupation;
4. That you report to a Probation Officer immediately upon your release from

custody, and thereafter when and in the manner directed by the Probation Officer;

[29] You are going to be required to abstain. I know that is the hard one, but Probation here is pretty good about managing that particular condition. It is not like a conditional sentence where you drink, you are back in custody. They are pretty flexible, particularly when somebody has an alcohol problem. But I think that you have to have that condition if you are going to get this under control at all.

[30] THE ACCUSED: Yes. No, that's fine.

[31] THE COURT:

5. You will be required to abstain absolutely from the possession or consumption of alcohol and controlled drugs or substances, except in accordance with a prescription given to you by a qualified medical practitioner;
6. You are not to attend any bar, tavern, off-sales or other commercial premises whose primary purpose is the sale of alcohol;
7. You are to take such alcohol and drug assessment, counselling or programming as directed by your Probation Officer;
8. You are to take such other assessment, counselling and programming as directed by your Probation Officer;
9. You are to provide your Probation Officer with consents to release information with regard to your participation in any programming or counselling that you have been directed to do pursuant to this order;

[32] Any additional conditions or any concerns with the conditions that I have listed with respect to the probation order? No. Mr. Phelps?

[33] MR. PHELPS: No, I just didn't catch whether or not you had a reside clause, which --

[34] THE COURT: I had not included one. There is probably value in terms of managing the alcohol. So I am not averse to including one.

[35] MR. PHELPS: That's the only addition that I would seek on behalf of the Crown.

[36] THE COURT: I will add a condition then:

10. That you reside as approved by your Probation Officer, and not change that residence without the prior written permission of your Probation Officer; and I am going to include in that condition as well, that you abide by the rules of the residence.

[37] So if you are back living with your mom, her home, her rules.

[38] THE ACCUSED: Yes.

[39] THE COURT: Which is only fair.

[40] There will be a five year driving prohibition to follow.

[41] THE ACCUSED: Okay.

[42] THE COURT: Which is pretty essential because you have managed to amass a number of impaired driving related offences in a fairly short period of time.

[43] I will waive the victim fine surcharges; however, given your custodial status.

[44] That leaves the remaining counts.

[45] MR. PHELPS: Direct a stay of proceedings, Your Honour.

[46] THE COURT: Thank you very much. Okay, Mr. Coldwell, good luck to you.

[47] THE ACCUSED: Thank you.

[48] THE COURT: Sorry, Madam Clerk was just asking what I wanted the probation order attached to and I have asked her to attach it to all the substantive offences but not to the breaches. At the end of the day I do not think much turns on it, but I think that those are the offences to which it should be attached.

RUDDY C.J.T.C.