

Citation: *R. v. Dickson*, 2013 YKTC 27

Date: 20130311
Docket: 10-10112B
11-00125A
11-10065
Registry: Watson Lake
Heard: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Judge Lilles

REGINA

v.

DENELLE DAWN DICKSON

Appearances:
Terri Nguyen
Gordon Coffin

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCING

[1] LILLES T.C.J. (Oral): Ms. Dickson has entered guilty pleas to three charges contrary to s. 255(2.1) of the *Criminal Code*. All three charges arise from a one vehicle motor vehicle accident that occurred on the Alaska Highway in Whitehorse, Yukon, on April 2, 2011. Three passengers, Wilbert Menacho, Benjamin Doctor, and Sheila Johnny, suffered injuries as a result of that accident. Ms. Dickson also pled guilty to one count of breaching her undertaking by consuming alcohol on August 13, 2011, contrary to s. 145(5.1) of the *Criminal Code*.

[2] On April 2, 2011 Ms. Dickson had been driving for about 13 hours and was

obviously tired. She had consumed some alcohol earlier in the day and had fallen asleep just before the vehicle left the road, hit a lamp post, and ended up in the ditch. A demand for blood samples was made at the hospital and the analysis revealed her blood alcohol concentration was 90 milligrams percent. Extrapolated back to the time of driving, a toxicologist estimated her blood alcohol concentration to be between 117 and 144 milligrams percent.

[3] Mr. Menacho received fractures to the fifth through eighth right ribs. This accounted for his respiratory distress at the time of hospital admission. Ms. Johnny suffered fractures to both arms. Metal plates and pins were inserted during surgery. Her injuries were serious, requiring a period of recovery and physiotherapy of several months. Benjamin Doctor was admitted to the hospital for monitoring. His only injuries were soft tissue injuries, perhaps best described as bruises.

[4] While Ms. Dickson pled guilty to three separate counts of s. 255(2.1) of the *Criminal Code*, one count for each passenger, those charges all arose from the same incident.

[5] Ms. Dickson was released on an undertaking to abstain from the consumption of alcohol. On May 13, 2011, the police in Watson Lake found her in an intoxicated condition outside of a residence. As a result, Ms. Dickson also entered a guilty to plea to an offence contrary to s. 145(5.1) of the *Criminal Code*.

[6] This matter has taken some time to get to this stage of disposition. Crown counsel apparently was content to allow Ms. Dickson to attend school in Alberta during the interim, possibly to give her an opportunity to improve herself. She was doing well

until her former partner arrived on the scene. That former partner was Mr. Benjamin Doctor. He was apparently a bad influence. The report from Grande Prairie indicated that beginning in late October 2012, Ms. Dickson stopped reporting and attending scheduled meetings. As a result, she was taken into custody in Whitehorse. While in custody pending this disposition, she has been participating in programming and treatment; she has been attending AA meetings; and has been taking college preparation courses. I understood that Aboriginal Elders have been teaching her how to sew. She has done very well in that controlled setting.

The Law

[7] Ms. Dickson is a 31-year-old First Nations woman who comes to court without a criminal record. She has spent 75 days in pre-trial custody. She's a Tlingit person from Teslin, Yukon. I did not have the benefit of a *Gladue* report and counsel did not provide me with any *Gladue* information. Consistent with *Gladue*, s. 718.2(e) of the *Criminal Code* requires that I consider all available sanctions, other than imprisonment, that are reasonable in the circumstances. While I must be cautious about taking judicial notice of the broad systemic and background factors impacting on Ms. Dickson, I am very familiar with the Teslin community as a result of almost 20 years of presiding there as a judge. I am aware of the impact of residential schooling on generations of Teslin citizens.

[8] In *R. v. Marshall*, 2010 YKTC 81, Ruddy J. canvassed a number of Yukon cases that considered relevant factors when imposing a sentence pursuant to s. 255(2.1) of the *Code*. She determined that the sentencing range was from four to ten months

incarceration. In determining an appropriate sentence, these decisions considered factors such as:

- (a) the previous criminal record of the accused, and in particular any previous convictions for impaired driving;
- (b) the accused's blood alcohol level at the time of driving;
- (c) the number of persons injured and the seriousness of their injuries;
- (d) the accused's remorse and acceptance of responsibility for what occurred;
- (e) the age of the accused and potential for rehabilitation;
- (f) steps taken by the accused towards rehabilitation since the accident;
- (g) the accused's personal circumstances, including family and community supports.

[9] In addition, the Court must consider the seriousness with which impaired driving offences are review by society and Parliament. In *R. v. McGinnis*, [1998] Y.J. No. 33, the Court stated:

... the offence contrary to s. 255(2) is a very serious offence. I acknowledge that the case law indicates a wide range of possible dispositions. But consistently, the dispositions imposed for drinking and driving, where bodily harm results, are today much more significant than they were a decade ago. This is primarily a result of less tolerance in our society for drinking and driving and the direction given by Courts of Appeal that general deterrence is to be considered an important sentencing principle for these kinds of offences. That is to say, I must impose a sentence today that not only will deter Mr. McGinnis, but will also send a message to others in the community who might drink and drive.

In other words, general deterrence will often be a consideration in sentencing for s. 255 offences.

Disposition

[10] In considering the appropriate sentence for Ms. Dickson, I have taken the following factors into account:

1. The offence contrary to s. 255(2.1) is considered to be serious by both society and Parliament. It is a straight indictable offence and is one for which Parliament has mandated a maximum sentence of 10 years imprisonment.
2. At age 31, Ms. Dickson comes before the Court with no prior criminal convictions, and unlike many of the cases cited by Ruddy J. in *R. v. Marshall, supra*, she has no previous convictions for impaired driving.
3. Ms. Dickson is an Aboriginal woman. She has had a difficult upbringing. Her parents separated when she was four years old. One can gain some insight into her upbringing from the dysfunctions exhibited by her siblings. One brother committed suicide 10 years ago. Her remaining three brothers have all had involvement with the justice system.
4. She identifies three aunts and an uncle as significant supports in her life.
5. Ms. Dickson's blood alcohol level at the time of the accident was estimated at being between 117 and 144 milligrams percent. The estimated reading is below the 160 milligrams percent prescribed by s. 255.1 as an aggravating factor.
6. Ms. Dickson had been driving for about 13 hours prior to the accident, was very tired, and fell asleep at the wheel. While this suggests that alcohol was not the only factor contributing to the accident, I do not consider her

fatigue to be a mitigating factor. It is incumbent on individuals who drive to take into account the impact of fatigue on their driving ability.

7. I am satisfied that Ms. Dickson is remorseful. She stated that she had already apologized to her victims.
8. While Ms. Dickson entered guilty pleas to three counts of impaired driving causing bodily harm, these injuries resulted from one incident. The injuries to two victims were serious, and, in the case of Ms. Johnny, required surgery and several months of rehabilitation.
9. Ms. Dickson has had a longstanding alcohol problem. She attended residential treatment at Tsow Tun Le Lum on Vancouver Island approximately six years ago. I understood this programming had a positive impact, and that Ms. Dickson apparently was able to control her drinking for a number of years until this incident.
10. Ms. Dickson married Mr. Benjamin Doctor in 2003. They have a son who is being raised by Ms. Dickson's mother, Ida Dickson.
11. Ms. Dickson completed Grade 12 at Watson Lake Secondary School in 2000. She attended a nursing access program during 2002 and 2003. In 2011 and 2012, she attended Grande Prairie Regional College for upgrading with a view to attending a nursing program the following year. By all reports, she was doing well, until late October 2012, when her estranged husband, Benjamin Doctor, arrived on the scene. At that point, the "wheels came off" and she crashed. She stopped reporting and missed scheduled appointments. This resulted in her arrest on December

27, 2012 in Grande Prairie while in the company of Mr. Benjamin Doctor.

12. Mr. Benjamin Doctor is a very bad influence on Ms. Dickson. Her future rehabilitation will depend, in part, on her ability to stay away from him.
13. Ms. Dickson has been in pretrial custody for 75 days and has done very well while in custody, as mentioned earlier. She has been engaged in counselling and programming, she has been attending weekly AA meetings, she has been taking college programming, and she has been learning how to sew.

[11] I have concluded that the appropriate disposition for the s. 255(2.1) offence, on the facts of this case, is a period of custody of five months. For the s. 145 charge, I impose a further period of custody of one half month consecutive. She has been in pretrial custody for 75 days, for which I am giving her credit for three and a half months. As a result, the sentence today will be a further period of custody of 1.5 months on the s. 255 offence, and 0.5 months on the s. 145 offence, for a total of two months. Pursuant to s. 259 of the *Criminal Code*, Ms. Dickson is further prohibited from operating a motor vehicle on any road, highway or public place anywhere in Canada for a period of two years from the date of her release from custody.

[12] I have considered but declined to attach a period of probation to this order. Nevertheless, I would strongly recommend that Ms. Dickson consider the following. Please listen. Continue your alcohol and drug counselling, and take residential treatment. Abstain from the consumption of alcohol. Do not go to any bar or tavern. Stay away from Mr. Benjamin Doctor. If he comes around and will not leave, call the police. Continue your education. It is your one way out of the situation that you find

yourself in; it is the most important thing you can do for yourself. Seek out support from your sober relatives and friends. I think you can do all of those things, Ms. Dickson, if you set your mind to it.

[13] In terms of what I have heard, that you have done well in custody, it is very clear to me that you do want to turn things around. Put this behind you and get on with your life in a positive way. I, for one, am confident that you can do that, but it will not be easy. You will have to focus; you will have to make some personal sacrifices, but you can do it. Good luck to you.

[14] THE ACCUSED: Thank you.

[DISCUSSION CLARIFYING DRIVING PROHIBITION]

[15] MS. NGUYEN: And the Victim Fine Surcharges?

[16] THE COURT: I think in the circumstances it will be waived, as she will continue in custody.

[17] MS. NGUYEN: Thank you. And the remaining counts on the 125A Information are withdrawn.

[18] THE COURT: Thank you.

LILLES T.C.J.