

Citation: *R. v. Ferguson*, 2015 YKTC 25

Date: 20150515
Docket: 14-10338
Registry: Watson Lake
Heard: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before His Honour Judge Chisholm

REGINA

v.

JUSTIN FERGUSON

Appearances:
Tracy-Anne McPhee
J. Robert Dick

Counsel for the Territorial Crown
Counsel for the Defence

REASONS FOR SENTENCING

[1] CHISHOLM J. (Oral): Justin Ferguson has pleaded guilty to the offence of improper parking on a highway contrary to s. 180 of the *Motor Vehicle Act*. This offence occurred in the early morning hours of February 15, 2014, near the community of Watson Lake.

[2] At the time of the incident, Mr. Ferguson was working for a Watson Lake business. He was called out to assist an individual whose tractor-trailer had broken down on the Alaska Highway while travelling from Whitehorse. The driver of the broken-down vehicle was not present when the offence occurred.

[3] The broken-down tractor-trailer was properly parked at the side of the highway when Mr. Ferguson arrived to make repairs. Mr. Ferguson parked the truck he was driving beside the tractor-trailer, but in the opposite direction to which the tractor-trailer was facing. As a result, he was parked in the wrong lane facing oncoming traffic. He also left his high beam headlights on.

[4] Mr. Robert Blue was driving another large truck and travelling from Whitehorse towards Watson Lake. As he approached Mr. Ferguson's parked vehicle, he swerved to avoid hitting it. His truck crashed into the tractor-trailer which Mr. Ferguson was repairing. Mr. Blue was killed as a result of the impact of this crash. A passenger in his vehicle was seriously injured. Mr. Ferguson, as well, suffered significant injuries.

[5] The *Motor Vehicle Act* provides that the court may impose a fine of not more than \$500 or impose a jail sentence for a term not exceeding six months for an offence of this nature. The Crown and defence have submitted that an appropriate penalty in this case would be a period of incarceration of four months to be served in the community by way of a conditional sentence order.

[6] Mr. Ferguson is 21 years of age. He was born and raised in Winnipeg. He graduated from high school in 2011. He subsequently received his Level 1 Transport Trailer Technician certification through Red River College. He has a good employment history.

[7] The disposition of matters of this nature is a difficult exercise. The offender is someone of prior good character. The offence to which he has pleaded guilty is not criminal in nature as he did not intend the harm caused; however, the result of the

offence committed includes the loss of life of another human being. This is a tragic case. The Victim Impact Statement of the deceased's wife is a testament to the devastating consequences this incident has occasioned for both her and her family.

[8] In terms of sentencing principles, I am cognizant that general and specific deterrence are applicable in matters of this nature. Although it is unlikely that Mr. Ferguson has to be deterred, deterring others from this sort of careless and dangerous action is, nonetheless, of significance.

[9] I have reviewed the sentencing decisions submitted by counsel: *R. v. Biondelli*, 2006 YKSC 16, *R. v. McBride*, 2010 YKTC 136, and *R. v. Matta*, 2010 YKTC 128. I have also considered the recent decision of *R. v. Ramage*, 2015 YKTC 14 in which a conditional sentence order of three months was imposed in a case of careless driving which resulted in the death of a pedestrian. I note the principle of parity in sentencing, that there should be similar sentences for similar offenders in the case of similar offences. Although the sentence proposed by counsel in this matter is somewhat higher than in the cases filed, the offence for which he has pleaded guilty is uncommon and the circumstances of this case are somewhat unique. Taking in account all the circumstances, including the circumstances of this offence, I am prepared to accede to the joint submission.

[10] This case was not one where there was a momentary lapse of attention. The degree of carelessness exhibited by Mr. Ferguson in this case was towards the upper end of the scale. The consequences of Mr. Ferguson's actions were objectively

foreseeable. As the Court of Appeal stated in *R. v. Martinez*, [1996] 89 O.A.C. 152 this adds to the offender's moral culpability.

[11] As a result, I sentence you to a period of incarceration of four months, which sentence is to be served in the community by way of a conditional sentence order. The conditions of the order are as follows:

1. Keep the peace and be of good behaviour;
2. Appear before the court when required to do so by the court;
3. Report to a Supervisor in Whitehorse within two working days, and thereafter, when required by the Supervisor and in the manner directed by the Supervisor;
4. Remain within the Yukon unless you have written permission from your Supervisor or the court;
5. Notify the Supervisor in advance, of any change of name or address, and, promptly of any change of employment or occupation.
6. At all times you are to remain in your residence or on your property except for emergencies, employment, Workers' Compensation Board programming, to attend medical appointments or treatment, to comply with any terms of this order or as otherwise permitted with the prior written permission of your Supervisor.

7. You must answer the door or the telephone to ensure you are in compliance with this condition. Failure to do so during reasonable hours will be a presumptive breach of this condition.

8. Attend and actively participate in all assessment and counselling programs as directed by your Supervisor, and complete them to the satisfaction of your Supervisor, and provide consents to release information to your Supervisor regarding participation in any program you have been directed to do pursuant to this condition.

9. Not drive a motor vehicle for any reason except to attend medical appointments or treatment, Workers' Compensation Board, employment programming, or to meet with your Supervisor.

CHISHOLM J.