

IN THE TERRITORIAL COURT OF YUKON
(Before His Honour Judge Faulkner)

REGINA

v.

STANLEY JAMES FORDYCE

Michael Cozens

Appearing for Crown

Robert Dick

Appearing for Defence

REASONS FOR SENTENCING

[1] FAULKNER T.C.J. (Oral): Mr. Fordyce has entered a plea of guilty to a charge of operating a motor vehicle having consumed alcohol in such a quantity that the concentration thereof in his blood exceeded 80 milligrams of alcohol in 100 millilitres of blood, contrary to s. 253(b) of the *Criminal Code*.

[2] The offence occurred back in July. Mr. Fordyce was operating a tow-truck and, without going into all of the details, he was obviously extremely intoxicated both judging from the manner in which he was operating the tow-truck and from the symptoms observed by the police upon Mr. Fordyce being stopped.

[3] In addition, of course, when he ultimately provided blood samples, they were

extremely high, 220 milligrams per cent.

[4] Mr. Fordyce has five prior related convictions going back a good number of years. The only good thing that can be said on Mr. Fordyce's behalf is that there has been a gap between 1990 and the present.

[5] The Crown seeks a period of four to six months in custody. In my view, that range of sentence is fit given the circumstances of the offence to which I have already alluded. It is, of course, an aggravating factor mandated by law where the readings are in excess of 160 milligrams.

[6] The mitigating factors are that the accused entered an early guilty plea and has taken some steps to deal with his alcohol addiction in the period between July and the present.

[7] The only real issue in the case is whether or not it would appropriate that the custodial sentence be actually in custody or conditionally in the community.

[8] I was presented with three sentencing precedents which obviously make it clear that a conditional sentence is not foreclosed in cases of impaired driving where there is a substantial prior record. I find myself unable to accept that it is appropriate in the circumstance of the present case. In my view, impaired drivers make unusually poor candidates for conditional sentences. Impaired drivers are difficult to supervise because alcohol consumption is something that is difficult to monitor. Of course, when they do drink and get into automobiles, they do pose a very high risk to public safety.

[9] There is also the matter that alcohol-related driving offences are prevalent in this jurisdiction. There is, in my view, an over-arching need to maintain an effective deterrent with respect to such matters, particularly with repeat or serial offenders.

[10] There is also the factor, with respect to drinking and driving offences, that there is an alternative to custody in the curative discharge provisions of the *Criminal Code*. In those cases, it may be appropriate to consider a non-custodial disposition, because it is almost an inevitable feature of those cases that there is medical intervention to monitor the accused and make sure that the accused is not consuming alcohol at all. Additionally, there is very close supervision of the accused both by probation and, as I say, medical staff. Those dispositions are granted sparingly and on significant evidence being produced that satisfies the court that there will not be an undue risk in proceeding in that fashion.

[11] So while I accept that a conditional sentence is not foreclosed in the case of an impaired driver, it seems to me that such a disposition must be rare and I have not been persuaded that it is an appropriate disposition in the instant case.

[12] With respect to this matter, Mr. Fordyce, you are sentenced to a period of imprisonment of four months.

[13] You are prohibited from operating a motor vehicle anywhere in Canada for a period of three years following your release from imprisonment.

[14] The Crown having proceeded summarily the victim fine surcharge is \$50.

[15] Mr. Dick, does the accused have an operator's licence or has that been

previously surrendered?

[16] MR. DICK: Your Honour, in the circumstances, is there any opportunity, perhaps, that his sentence be intermittent in that -- to the extent that he be given two days to arrange his affairs?

[17] THE COURT: Well, the sentence that I have imposed is out of the intermittent range.

[18] Is there a required time to pay the surcharge?

[19] MR. DICK: Forthwith.

[20] THE COURT: Payable forthwith, and you are staying Count 2?

[21] MR. COZENS: Yes, Your Honour.

FAULKNER T.C.J.