

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

REGINA

v.

GASTON JOSEPH GAGNON

Michael Cozens

Appearing for Crown

Samantha Wellman

Appearing for Defence

REASONS FOR SENTENCING

[1] LILLES C.J.T.C. (Oral): We have spent quite a bit of time talking about this case. I am going to deal with the facts and circumstances fairly quickly. This is a rather straightforward, average drinking and driving case where there is evidence of some erratic driving and the breathalyzer readings were 150 milligrams percent.

[2] What makes this case exceptional is Mr. Gagnon's previous criminal record, which consists almost entirely of related offences. He has seven prior drinking and driving offences and two driving while disqualified offences. The last drinking and

driving offence was in 1989 and the one prior to that was 1984, both somewhat dated.

[3] I have reviewed the *R. v. Donnessey*, [1990] Y.J. No. 138, decision with Mr. Gagnon, so he should know by now that these kinds of offences in this jurisdiction must be treated as very serious matters.

[4] As I mentioned earlier, the sentence I impose must provide specific deterrence, general deterrence, while at the same time, hopefully, have a rehabilitative impact.

[5] I agree with Crown counsel that the primary consideration must be the protection of the public.

[6] Mr. Gagnon, in the *Donnessey, supra*, case there was no accident and no one was injured. The Yukon Court of Appeal, however, stated that every drunk driver was a potential murderer.

[7] In this case, I take into account the guilty plea entered by Mr. Gagnon, albeit at a late date. I take into account that he has travelled from Terrace, British Columbia, to Dawson City at considerable expense. I imagine that it cost him around \$2,000 to be in attendance here today. I take into account that his last criminal conviction was in 1991, a driving while disqualified; this conviction was 12 years ago.

[8] I agree with Crown counsel to a significant extent that the public can be protected by imposing a driving prohibition.

[9] In all of the circumstances, I am satisfied that an appropriate disposition would be to impose a period of imprisonment of six months to be served conditionally in the community.

[10] I am satisfied that with the appropriate terms of a conditional sentence and with a driving prohibition, the safety of the community will not be jeopardized by imposing a conditional sentence.

[11] There will be a six-month conditional sentence on the following terms; the statutory terms will apply:

- (1) That you will keep the peace and be of good behavior and appear before the court when required to do so by the court.
- (2) That you will report to a conditional sentence supervisor prior to leaving Dawson City and within three days of your arrival to your home town of Terrace, and that you continue to report thereafter and when required by the conditional sentence supervisor and in the manner directed by the conditional sentence supervisor.
- (3) That you will remain within the jurisdiction of the court unless written permission to go outside that jurisdiction is obtained from the court or the supervisor.
- (4) That you will notify your conditional sentence supervisor in advance of any change of name, or address and promptly notify the conditional sentence supervisor or any change of employment or occupation.
- (5) That you will take such alcohol assessment, counselling, programming, as and when directed by your conditional sentence supervisor.
- (6) That you will abstain absolutely from the possession, consumption or purchase of alcohol, and you will be required to submit to a

breathalyzer, urinalysis, or blood test upon demand by a peace officer who has reason to believe that you have failed to comply with this condition.

- (7) That you will abide by a curfew by remaining within your place of residence between the hours of 9:00 p.m. and 6:00 a.m. daily, unless in the actual presence of a responsible adult designated by the conditional sentence supervisor or with the prior written permission of the conditional sentence supervisor. You are to answer the phone or door during reasonable hours of the curfew for the purpose of curfew checks. Failure to do so will be a presumptive breach of this condition.

[12] Does counsel have any other suggestions or concerns with respect to the terms I have proposed?

[13] MR. COZENS: I believe that they will have to do a transfer order.

[14] THE COURT: Yes, they will have to do a transfer order.

[15] MR. COZENS: I was just making sure that he was not going to get hung up between now and when he gets transferred.

[16] THE COURT: Well, I think what they will do in the first instance is do a courtesy supervision until the transfer documents can be formalized. Ms. Wellman?

[17] MS. WELLMAN: No, that's fine.

[18] THE COURT: Pursuant to s. 259, I am prohibiting Mr. Gagnon from operating a motor vehicle on any road, highway or public place anywhere in Canada for a period of three years.

[19] MR. COZENS: Victim fine surcharge?

[20] THE COURT: In the circumstances, the victim fine surcharge will be waived; he has already gone to considerable expense to come here today.

[21] Anything further from counsel?

[22] MR. COZENS: No, that's all. Thank you, Your Honour.

LILLES C.J.T.C.