

Citation: *R. v. Johnson*, 2012 YKTC 47

Date: 20120423
Docket: 10-00263A
10-00263C
10-00263D
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Judge Schmidt

REGINA

v.

WILLIAM GILBERT JOHNSON

Appearances:
Terri Nguyen
Gordon Coffin

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCING

[1] SCHMIDT T.C.J. (Oral): We have an Agreed Statement of Facts put before the Court. This matter had been set for a two-week trial. The accused is charged with impaired driving causing death, and he has a number of other charges. He has pled guilty to the impaired driving causing death, guilty to driving while disqualified, and has also pled guilty to two breaches of his bail terms: one abstaining from alcohol and one obeying a curfew.

[2] The Agreed Statement of Facts has been filed, and does not have to be repeated for the purpose of sentencing. It has been repeated by the Crown and read into the record.

[3] What occurred was that Mr. Johnson borrowed his mother's car, picked up some friends, and they were drinking in the vehicle for a considerable period of time. They drove the vehicle to a location at Schwatka Lake parking lot. When they drove in, they were noted to be driving in an erratic manner and almost went into the water. They had some interaction with other people at that parking lot, and the other people at the parking lot related that the accused had symptoms of impairment. The accused then left with his two passengers from the parking lot and drove on a road that had a speed limit of 50 kilometres. There was a curve that he missed. He lost control of the vehicle and rolled over and hit a tree and the vehicle ended up on its roof. The vehicle was totalled.

[4] The accused and the front seat passenger got out of the vehicle. The accused did not have injuries. The passenger had some injuries that were dealt with later. They interacted again with two people that came upon the scene moments after it occurred. Those people saw the accused leave the driver's seat and the accused asked one of the witnesses for her cellular phone. He was apparently going to report the vehicle stolen to the RCMP, and she refused to be complicit in that. She phoned the police and he and his friend ran away into the bushes.

[5] The RCMP arrived very shortly thereafter and found Mr. Dickson in the motor vehicle, and he was no longer living. The deceased was seriously impaired to the point of alcohol toxicity. The cause of death was stated to be; the blunt force trauma of the accident, the positional asphyxiation in the way his neck was twisted in such a way that he could not breathe, and alcohol toxicity. A police dog was put on the trail of the driver

and the passenger. They were located in the bushes together with a bottle of liquor that they had taken from the vehicle when they climbed out.

[6] The accused denied being the driver of the vehicle throughout the interviews with the police, both that day and the next day. Samples of his breath were taken and they registered 170 milligrams percent alcohol and 160 milligrams percent alcohol. The deceased was a friend of the accused driver. The deceased was a person who was well-loved by his family and he is seriously missed by his family, according to the Victim Impact Statements, to the point of distraction. Mr. Johnson has expressed his sorrow for what has occurred.

[7] Mr. Johnson is a person who has worked all his life and who came from a difficult background, with his father being killed at an early age in an industrial accident. He was raised by a mother who was alcoholic. However, he became employed at an early age and has maintained himself by employment. Most of his employment has been long-term and he is a valuable employee of the various firms that he has worked for. We have letters from his employer to verify that. We also have family members expressing their support for him and saying that he is a sensitive person, but he does have this alcohol problem. They are very concerned for him and want him to continue to be a part of their family.

[8] This impaired driving causing death is the seventh conviction for drinking and driving offences for Mr. Johnson. It started in 1986 when he was charged with driving with more than 80 milligrams and fined \$600, and failing to provide a sample of his breath and fined \$300. In 1987 he was convicted of driving with more than 80

milligrams of alcohol in his blood and he had 21 days incarceration. In 1991, he was charged and convicted of refusing to provide a sample and he was given 90 days and prohibited from driving. In 1997, he was convicted of driving with more than 80 milligrams of alcohol in his blood and he was given six months and prohibited from driving for two years. In 2008, he was convicted again, and was given a four-month conditional sentence, 18 months of probation and a two-year driving prohibition.

[9] The Crown has served a notice of intention to seek greater punishment. A Pre-Sentence Report has been filed, and it does note a certain reluctance that Mr. Johnson has to deal with his alcohol problem. He does not see treatment as valuable. I expect, in the way he minimizes his problem, that he feels that he has it under control, or can have it under control. There is some reason for that belief because he has been able to maintain employment for many years, and that might be the reason that he thinks that he is able to deal with his problem and has been resistant to treatment. But the proof is in the pudding, and that is that he has six previous drink and drive offences. He has received escalating sentences for that, and these sentences have not been effective in the long term. His understanding of his problem and his desire to rehabilitate are limited. He certainly feels sorry for what has happened on this occasion but I think minimizes the role of his alcoholism as a factor. That becomes difficult when one tries to evaluate what a rehabilitative sentence might look like for him.

[10] In dealing with the principles of sentencing, the Court must, in a case of a seventh drinking and driving offence, and when it causes the death of another person, put an emphasis on deterrence and denunciation. Mr. Johnson's counsel has asked that we craft a sentence that will accomplish a rehabilitative aspect. That would require

a sentence of two years less a day so that we can prolong the supervision in the community through a conditional sentence for the more minor offences, the breach, and probation to follow for the most serious offence. Technically, that is a possibility, and it may even be wise, but it simply does not address deterrence and denunciation because the complexity of the sentence will never really reverberate in the community. What the community needs to hear is the length of the jail sentence that he has to serve for this offence. That is how we can denounce and that is how we can hopefully deter. That is the number that is going to get reported; that is the number that people are going to look at and say, "Is that just? Is that fair?" And that is the number that the people are going to look at and say, "Okay, I'm not getting myself in that position."

[11] The Crown has suggested a sentence of three and a half years on the impaired driving causing death, and they have handed up a number of cases that have similar circumstances for this offence that have a similar three and a half years to four years sentence. There is an exception to that, and that is a case of a joint submission that the Court did not interfere with.

[12] I think the Crown's suggested sentence is the correct sentence. It is the only sentence that can really be justified, given the criminal record, given the harm that has been caused and the life that has been lost. All attempts at rehabilitation in the past through sentencing options have failed, and we note as well, that even after this horrible circumstance of being responsible for the death of his friend he breached court orders. Now, it can be said that a serious alcoholic can be expected to breach court orders, but the Court's faith in rehabilitation in this case is diminished by those lapses.

[13] Therefore, on Count 1 of Information 10-00263, impaired driving causing death, there will be a sentence of three and a half years. On Count 9, driving while disqualified, there will be six months to be served concurrently. The time in custody is 157 days, and that will be credited at one for one.

[14] On Information 10-00263C, failing to abstain from alcohol, there will be a sentence of 30 days and that is to be served concurrently. In making that concurrent decision, I am taking into consideration the fact that he did spend time in custody as a result of these breaches. On Count 2, failure to abide by a curfew, another 30 days to be served concurrently.

[15] I did not hear argument or any submissions with respect to prohibition.

[16] MS. NGUYEN: I apologize, sir. The Crown is seeking a lifetime driving prohibition in all of the circumstances, this being the seventh conviction. He has had prior lengthy convictions and drove while prohibited. In all of those circumstances, a lifetime driving prohibition is appropriate.

[17] MR. COFFIN: I have no comment.

[18] THE COURT: The Court will impose a ten-year driving prohibition.

[19] MS. NGUYEN: Thank you, sir. The Crown withdraws the charges remaining and I'm content to have the victim fine surcharges waived in all of the circumstances.

[20] THE COURT: All right. The Court will adjourn.

SCHMIDT T.C.J.