Citation: *R.* v. *Lamarche*, 2009 YKTC 90

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Docket: 09-00112A
09-04242
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before: Her Honour Chief Judge Ruddy

REGINA

v.
PHILLIPE ANDREW LAMARCHE

Appearances:
Bonnie Macdonald — Counsel for Crown
Rachael Sewell — Agent for Territorial Crown
Elaine Cairns — Counsel for Defence

REASONS FOR SENTENCING

[1] RUDDY C.J.T.C. (Oral): Phillipe Lamarche is before me in relation to three counts to which he has entered pleas of guilty. The most serious of these is a refusal to provide a breath sample into an approved screening device following a valid demand. In addition, he is charged with breaching conditions of his release and with driving without a valid driver's licence as required by law.

[2] Circumstances all arise on the 12th of May 2009. At that point in time, the RCMP were called to a dispute at a residence in Copper Ridge, with allegations of both fighting and vehicle damage. When they attended at the residence they observed Mr. Lamarche to be driving a clearly damaged vehicle. He was stopped. He exited the

driver's seat. There was one passenger, who exited from the passenger seat. At that point in time, and I do not have any evidence in dispute, Mr. Lamarche indicated to the police that he was not driving, he was just parking the vehicle. Well, quite frankly, you have to drive it to park it. So I accept that he was in control of the vehicle, that he did drive it, but I also accept that he was driving it for the purposes of parking it. There was clearly some dispute going on in relation to the damage to the vehicle, and it is my understanding, through his counsel, that he was looking to park it to protect it.

[3] The police noted, when dealing with him, a smell of alcohol on his person. There is also some suggestion of issues with some of his motor skills, although there does not appear to have been significant indicia of impairment. There was, however, enough to give the police a suspicion that Mr. Lamarche had been drinking, and they provided him with the demand for a sample into an approved screening device. Mr. Lamarche refused to provide a sample, and it should be noted he was given a number of opportunities by the police to provide that sample and refused to do so.

[4] It also appears that drugs were an issue, as he admitted to ingesting drugs and, in fact, there was some concern as to whether or not he was overdosing on MDMA or Ecstasy. Ultimately, he was taken by ambulance to the hospital for treatment. It appears he was somewhat uncooperative, to the point of biting or attempting to bite the ambulance attendant. He did, ultimately, attend at the hospital for treatment, and was returned to the police and has been in custody since that date.

[5] The police learned that at the time he was on an undertaking to an officer in charge in relation to a theft charge, requiring him to abstain absolutely from possession

of alcohol or drugs, and as a result he was in breach of that condition on this particular date. A Motor Vehicle Branch check also indicated that he was driving without a valid driver's licence and, in fact, has not had a licence since 1994.

[6] Crown has filed notice of intention to seek greater punishment, and Mr. Lamarche does come before the Court with prior related offences. He has three prior impaired convictions in 1987, 1988 and 1993. He has one conviction for refusing to provide a sample in 1994, and he has six convictions for driving while disqualified; two in 1988, one in 1993, one in 2000 and two in 2005.

[7] The record is also unenviable in terms of his history with compliance with court orders. There is a lengthy history of breaches and failures to comply with conditions and statutory release requirements, and there are a number of other offences. The record does cover several pages, and that is a fact that the Crown has urged me to give significant weight to in determining the appropriate disposition today.

[8] Crown takes the position, following the Yukon Court of Appeal decision in *R.* v. *Donnessey*, [1990] Y.J. No. 138, back in 1990, I believe, that this is a case in which we are dealing with an intractable individual and I ought to consider a sentence in the range of two years or two years less a day, with a three-year driving prohibition, and a sentence of 90 days on the breach to be served concurrently.

[9] Defence has provided me with information as it relates to Mr. Lamarche and his circumstances. He is now 39 years of age. He is of First Nation ancestry, specifically Cree, born in Chilliwack, B.C., although there appears to have been some connection with the Yukon off-and-on since 1988 until his move here permanently in January.

[10] I have also been provided a quick overview of what defence counsel describes as, and I accept as, a horrendous upbringing characterized by violence and abuse, culminating, quite disturbingly, in Mr. Lamarche's father killing his mother and being sentenced for manslaughter. He spent a fair amount of time in and out of foster care as a result, often separated from his three siblings. He was ultimately returned to his father's care, although it appears that did not last long as his father continued to be in conflict with the law and ultimately was convicted of a second manslaughter charge.

[11] To add to those circumstances, one of Mr. Lamarche's brothers died as a result of an overdose. He does have one other brother here in Whitehorse, and a sister who, notwithstanding a very disturbing background herself, appears to be doing fairly well and is working on a doctorate in university at this point in time and is a registered nurse as well.

[12] I should point out that Mr. Lamarche did address the Court, did indicate that he recognizes that he has a serious drug and alcohol problem and that he makes no excuses for that.

[13] He did obtain his GED at one point along the way, while in custody, and has had a relatively decent employment history when not in custody, which includes the last six winters in Alberta testing wells and various other types of jobs in the labour field. He has two daughters, ages 12 and 18, with whom he remains in contact, but both of whom reside with their respective mothers. He is currently in a relationship with Sandra Charlie (phonetic), who has appeared before the Court today to speak on his behalf and is supportive of him. She notes him to be a supportive and helpful individual who

abides by the rules of her house, and she stresses that no drugs are allowed in her home. She maintains regular contact with him and has suggested to him that he attend AA. I understand from her he has attended one meeting while in custody, and it is her intention to speak with him in greater detail about pursuing treatment as it relates to his drug and alcohol issues.

[14] There is also information through an elder from Kwanlin Dun noting Mr. Lamarche to be a supportive individual who is respectful of elders.

[15] There are a number of cases that have been filed before me. Firstly, and not surprisingly, the case of *R.* v. *Donnessey*, *supra*, out of the Yukon Court of Appeal, which is a case that is routinely referred to in cases where there is an ongoing history of drinking and driving offences. *Donnessey* was a case which stressed the importance of denunciation and deterrence in offences of this nature, where there is ongoing impaired driving offences and individuals who are, for all intents and purposes, demonstrating no real potential for controlling their behaviour, both in terms of the consumption of alcohol and the tendency to get behind the wheel of a motor vehicle while under the influence of alcohol and/or drugs. It is a case, as I said, often referred to in this jurisdiction, and one in which the individual involved, I believe Mr. Donnessey had six prior impaired convictions as well as four other drinking and driving convictions, and the facts demonstrated that he was not inclined to change his behaviour. The Court determined that a significant sentence, of I believe it was two years less a day, ought to be imposed on Mr. Donnessey.

[16] In addition, the Crown has filed *R.* v. *Carlick*, 2009 YKTC 22. Again, an

individual with a lengthy related record, including seven prior impaired convictions, for whom His Honour Judge Barnett, one of our deputy judges, felt a disposition of 20 months was appropriate. It was ultimately raised to federal time at the request of Mr. Carlick.

[17] Defence has filed a number of decisions, all of which appear to fall within the six to, I believe, about nine month or ten month range, all for individuals with a number of prior convictions, most of whom have more impaired convictions than Mr. Lamarche has. What brings him into the same category appears to be his chronic history of driving when he is not entitled to, either without a licence or in contravention of a disqualification order or a prohibition order.

[18] In considering the case law, *Donnessey*, out of the Court of Appeal, clearly provides us with the framework. It makes it clear that denunciation, deterrence and, most particularly, protection of the public must be the dominant sentencing principles when we are dealing with chronic impaired drivers. I would note the Crown's submission that, as there has been a change in case law, also has there been a change in the legislation, and the seriousness with which impaired driving offences are viewed in this country is mirrored by the steady increase of mandatory minimums over the last couple of decades in the legislation as they relate to these types of offences.

[19] The principles are clear to me. I am satisfied it needs to be a lengthy custodial sentence to reflect the principles of denunciation, deterrence and protection of the public.

[20] In terms of determining where Mr. Lamarche falls within the range in all of these

circumstances, Crown is quite right that I must consider his record as a whole, although I take the position the offences which are particularly important to me are those that are related in nature and I do believe that, in determining what the length of disposition ought to be, the nature and timing of those offences is important. As indicated, there are three prior impaireds, but the last of those was in 1993. There is one prior refuse; it was in 1994. So the most recent conviction suggesting that Mr. Lamarche was combining the undesirable activities of both consuming alcohol and operating a motor vehicle is some 15 years ago.

[21] He does, however, as I indicated, have an unenviable record of convictions for driving while disqualified. Those must be considered, and I do consider them, as aggravating factors as it relates to the appropriate disposition before me today. However, I am equally of the view that they ought to be viewed somewhat differently than those six convictions for impaired driving offences. So while he appears since 1994 to have an ongoing problem with driving when he is not entitled to, there is a significant gap in his having combined both driving and alcohol; that being between 1994 and the date of the offence that is before me today.

[22] So I am not of the view that he falls quite at the extreme end of the range that Mr. Donnessey did. I do not take the position that two years, two years less a day, is the appropriate disposition in this particular case. I am satisfied it can be somewhat lower. Defence is suggesting a sentence of six months would be sufficient in all of the circumstances. In my view, that is not quite sufficient. I may have considered that as appropriate had I an indication that Mr. Lamarche was actively working to address his alcohol problem. He does concede that he has one, but I do not have any information

beyond attendance at one AA meeting to suggest that he has taken any significant steps towards addressing his alcohol issue.

[23] As a result, I am of the view that the appropriate sentence, in light of the authorities that have been filed before me and the circumstances of both the offence and the offender in this particular case, and recognizing the need that the sentence be one which protects the public and provides appropriate denunciation and deterrence, is a sentence that would be in the range of nine months.

[24] Mr. Lamarche has, however, served some time in remand, that being some 66 days. I am satisfied credit ought to be the normal one and a half to one. I am going to round it up to 100 days, just for the ease of the math. Nine months would be 270 days; less the 100 already served would leave a remaining sentence of 170 days on the refusal count, and I would ask that the record reflect that that includes credit for 100 days in pre-trial custody.

[25] With respect to the abstain, he does have a history of breaching court orders. I am satisfied that a sentence of 60 days is appropriate with respect to that charge, to be served concurrently, as it arises out of the same set of facts as the refusal.

[26] With respect to the motor vehicle offence, Crown is suggesting the minimum. Defence takes no issue. Accordingly, there will be a fine of $125, $18 surcharge. How long does he need to pay that?

[27] MS. CAIRNS: The *Motor Vehicle Act* charge; he said he could pay it upon his release, so perhaps eight months time to pay?

[28] THE COURT: Okay. Any issue? Okay, eight months time to pay, given his current custodial status.

[29] MS. CAIRNS: Thank you.

[30] THE COURT: I would waive the victim fine surcharges as a result of his custodial status.

[31] There will also be, however, the minimum driving prohibition, that being a three-year driving prohibition. Okay, anything further?

[32] MS. CAIRNS: No, thank you, Your Honour.

[33] THE COURT: Okay, thank you.

[34] MS. CAIRNS: And the remaining charge?

[35] MS. MACDONALD: Crown enters a stay of proceedings on any of the remaining charges.

[36] THE COURT: Okay, thank you.

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RUDDY C.J.T.C.