

Citation: *R. v. MacLeod*, 2014 YKTC 45

Date: 20140825
Docket: 14-00066
14-00041
Registry: Whitehorse

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

REGINA

v.

EARL JOHN MACLEOD

Appearances:
John W. Phelps
David J. Christie

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCING

[1] RUDDY C.J.T.C. (Oral): Earl MacLeod is before me for sentencing with respect to two incidents of driving while impaired.

[2] The first of those occurred on April 17, 2014. Mr. MacLeod was driving a vehicle with a missing headlight. The police initiated a traffic stop. They also learned that the licence plate on the vehicle was expired. As a result of the smell of alcohol, an ASD demand was made, which resulted in a fail. Two samples were ultimately taken, after a number of insufficient samples, registering at 120 and 130 mg%.

[3] Shortly thereafter, on April 22, 2014, Mr. MacLeod was stopped again in a vehicle with an expired plate that was registered to someone who was prohibited from

driving. Upon initiating a stop, police learned that Mr. MacLeod was prohibited from driving as well, as, indeed, he was on April 17th. Again, a smell of alcohol was noted and an ASD demand was made, registering a fail. Ultimately, two breath samples were provided at 180 and 170 mg%.

[4] Mr. MacLeod comes before the Court with a lengthy related criminal record dating back to 1981. He has 10 prior related offences for impaired driving convictions or driving while the concentration of alcohol in his blood exceeded the legal limit.

[5] I have had the benefit of an old pre-sentence report that was prepared in 2010 which does give some information about Mr. MacLeod's background. He is now 53 years of age, born in the Montreal area, but was adopted at birth. It appears that he has a number of unresolved issues, including abandonment, depression, grief, and, clearly, a significant issue with alcohol. Mr. MacLeod lost his adopted father at age 18 and his mother is currently experiencing dementia. He is trying to assist the family from here but having some significant difficulty.

[6] In his favour, Mr. MacLeod appears to have a good work history as a licensed mechanic technician and does seem to recognize, on some level, that he has a serious problem with alcohol that he needs to start addressing and has indicated a willingness to do so. He has entered guilty pleas, following an attempt to be accepted into the Wellness Court process. He was deemed not to be suitable but it does indicate, again, that he has some insight into his need for treatment.

[7] Counsel are before me today with a joint submission which, in all of the circumstances, in my view, fairly takes into account the relevant principles of sentencing, including denunciation, deterrence, and rehabilitation.

[8] Mr. MacLeod has, I should note, been in custody since the second offence, approximately four months. Counsel are agreed that a credit of six months is appropriate in all of the circumstances and have jointly recommended a sentence which would amount to 30 months less that time served.

[9] As indicated, I am satisfied the sentence is appropriate and I am prepared to adopt it. Accordingly, the sentence will be as follows.

[10] With respect to both counts, contrary to s. 253(1)(b), there will be a sentence of 30 months to be reduced by a credit for six months in pre-trial custody for a remainder of 24 months. Each sentence is to be served concurrently.

[11] With respect to the two counts of driving while prohibited, there will be a sentence of six months, again, concurrent to each other and concurrent to the sentences on the 253 counts as well.

[12] This leaves a global sentence of two years to be followed by 18 months' probation on the following terms and conditions, as agreed upon by counsel, statutory terms, Mr. MacLeod, which will be:

1. That you keep the peace and be of good behaviour;
2. That you appear before the Court when required to do so by the Court;

3. That you notify your probation officer in advance of any change of name or address and promptly of any change in employment or occupation;

[DISCUSSION WITH COUNSEL]

4. That you remain within the Yukon, unless you obtain written permission from your probation officer or the Court;
5. That you report to a probation officer within two working days of your release from custody, and thereafter when and in the manner directed by your probation officer;
6. That you reside as approved by your probation officer and not change that residence without the prior written permission of your probation officer;
7. That you not attend any premises whose primary purpose is the sale of alcohol, including any liquor store, off sales, bar, pub, tavern, lounge, or nightclub;
8. That you attend and actively participate in all assessments and counselling programs, as directed by your probation officer, and complete them to the satisfaction of your probation officer for the following issues: alcohol abuse and any other issues identified by your probation officer.
That you provide your probation officer with consent to release information with regard to your participation in any assessment, counselling, and/or programming that you've been directed to do pursuant to this order;

9. That you are not to drive a motor vehicle at any time.

[13] Do you understand those conditions?

[14] MR. MacLEOD; Yes, Your Honour.

[15] THE COURT: Okay.

[16] In addition to those conditions, and the fact that there is a no-drive condition on your probation order, you are also going to be prohibited from driving a motor vehicle anywhere in Canada for a period of ten years.

RUDDY C.J.T.C.